



**MINUTES  
CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
AUGUST 28, 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, August 28, 2017.

A motion was made by Mr. McCoy and seconded by Mr. Martin to approve the July 24, 2017 minutes. All voted for the motion except Mr. Jones, Mr. Smith, and Mr. Sobota who were absent. This vote also serves as the official roll call for this meeting.

**BOARD ACTION: APPROVED JULY 24, 2017 MINUTES ON AUGUST 28, 2017**

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

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

**Board Members Present: David France, David Jester, Brad Martin, Wayne McCoy, June McDaniels, and Richard Poole.**



Applicant **Tom Joynt**  
Address **1332 Kingfisher Court**  
Public Hearing **August 28, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**1**

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

**AGENT: Robert Simon**

**BOARD ACTION: APPROVED WITH 4 CONDITIONS ON AUGUST 28, 2017**

**Board's Findings:**

- 1) Granting the variance to provide for an alternative method of rehardening the shoreline other than the use of riprap for the entirety of the property's shoreline 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 given the existing environmental conditions – mean low water (MLW) and mean high water (MHW) elevations, and absence of vegetated and non-vegetated wetlands channelward of the existing bulkhead.
- 2) The encroachment into the RPA on this lot is based upon both conditions and circumstances that have been created by the applicant and imposed by the conditions of the February 28, 2011 CBPA variance, therefore creating a condition to further encroach into the Resource Protection Area (RPA) with the construction of a riprap shoreline and unnecessary amounts of land disturbance given the existing environmental conditions.
- 3) An evaluation of existing environmental conditions, topography, and alternative methods for hardening the shoreline to preserve upland conditions warrants a justification that the variance is the minimum necessary to afford relief.
- 4) Deleting the February 28, 2011 CBPA variance, condition 5 – which will reduce the amount of land disturbance and upland impacts to the RPA more aligns this variance request in harmony with the purpose and intent of this ordinance and will ensure that it will not be injurious to the neighborhood, will not be of substantial detriment to water quality, nor otherwise detrimental to the public welfare.
- 5) Limiting upland impacts associated with the conditions of the 2011 CBPA variance to address sediment loss with the rehardening of the shoreline and the installation of the required buffer restoration to restore the absence of a riparian system on the

property will offer a means to manage towards a no net increase in nonpoint source pollution load.

- 6) Finally, Staff 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. A Landscape/Buffer Restoration 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. Said plan shall detail the specific location, number, and species of vegetation to be installed and all stormwater management facilities that were documented on the approved June 13, 2011 DSC Site Plan.
3. 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, Development Services Center for review and approval prior to the issuance of a building permit for the shoreline hardening activities. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.
4. Upon granting of a variance, a formal buffer restoration plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval within 30 days from the date of this hearing. Once the plans have been approved, CBPA / CIVIL permit must be obtained concurrent with the building permit required for the rehardening of the shoreline. All required restoration must be installed within 90 days after issuance of the building permit. Failure to comply with this condition will result in an additional show cause hearing.

**Robert Simon appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. Martin, seconded by Mr. Poole to approve the variance with the 4 conditions as amended (Amended Condition 4). All voted for the motion.**

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

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



Applicant **Martin and Susan Schildwachter**  
Address **3113 Blair Circle**  
Public Hearing **August 28, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**2**

**Description: GPIN: 1498-12-0614**

**AGENT: Martin Schildwachter**

**BOARD ACTION: APPROVED WITH 7 CONDITIONS ON AUGUST 28, 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 which 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 parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing this property within the RPA.
- 3) The variance is the minimum necessary to afford relief, given the extent of riparian buffer vegetation preservation and the minimal expansion of accessory structures within the RPA feature.
- 4) Due to the preservation of riparian buffer vegetation along the seaward portion of the proposed improvements and the minimal increase in overall impervious cover for the site, Staff 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 will not be of substantial detriment to water quality.
- 5) The preservation of the existing riparian buffer vegetation and the mature forest floor seaward of the proposed improvements, coupled with underdeck treatment being conditioned, demonstrate a means to manage erosion and sedimentation towards a no net increase in nonpoint source pollution load.

- 6) Finally, Staff 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. 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.
4. 888 square feet of vegetative restoration shall occur within the RPA. As a component of the required restoration, areas of denuded marsh may be sprigged once lower tree limbs are removed associated with condition three (3). The suitable areas sprigged shall be counted towards the vegetative restoration requirements.

If riparian buffer restoration is provided, consisting of upland woody plant materials, said 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: **1 canopy trees, 2 understory, and 3 shrubs.**

Upland riparian buffer 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. Under deck treatment of sand and gravel shall be installed.
6. This variance and associated conditions **are in addition to** the conditions of the Board variance granted May 22, 2000.
7. 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.

**Martin Schildwachter, homeowner appeared before the Board.**

**There was no opposition present.**

**A motion was made by Mr. McCoy, seconded by Mr. Poole to approve the variance with the 7 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>AYE</b>
<b>JONES</b>	<b>ABSENT</b>
<b>MARTIN</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>ABSENT</b>
<b>SOBOTA</b>	<b>ABSENT</b>



Applicant **Jon Wheeler**  
Address **1201 Yancey Circle**  
Public Hearing **August 28, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**3**

**Description: GPIN: 2408-87-6841**

**AGENT: R J Nutter, Troutman Sanders**

**BOARD ACTION: APPROVED WITH THE 15 CONDITIONS ON AUGUST 28, 2017**

**Board's Findings:**

- 1) The reduction of existing impervious cover and the restoration methods proposed to improve the existing environmental conditions of the property, Staff is of the opinion that 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.
- 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 is within the RPA.
- 3) The variance is the minimum necessary to afford relief as the applicant has developed a CBPA exhibit that provides a substantial retreat of impervious cover within the 50 foot seaward buffer – approximately a 1,662 square foot reduction and given the existing right-of-way conditions, developed a means for additional, yet minimally sized, onsite parking that utilizes the existing driveway, as an additional approach to be 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, nor of substantial detriment to water quality, or otherwise detrimental to the public welfare. This is based on the impervious cover retreat from the 50 foot seaward buffer and a buffer restoration plan that includes the introduction of a living shoreline into the riparian ecosystem in the area were the existing concrete boat ramp is being removed as a means to further manage this property towards a no net increase in nonpoint source pollution load.

- 5) Finally, Staff 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. 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. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed in substantial compliance with the Buffer Restoration Plan dated June 28, 2017 prepared by Gallup Surveyors and Engineers, signed June 28, 2017 by Jessica Nelson.

The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in 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.

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. \*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$868.99 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 948 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.
15. The conditions and approval associated with this variance are based on the exhibit plan dated June 28, 2017 prepared by Gallup Surveyors and Engineers, signed June 28, 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.

**R J Nutter, Attorney with Troutman Sanders appeared before the Board representing the applicant.**

**There was no opposition present.**

**As an item of the consent agenda, a motion was made by Mr. Poole, seconded by Mr. Martin to approve the variance request with the 15 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>AYE</b>
<b>JONES</b>	<b>ABSENT</b>
<b>MARTIN</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>ABSENT</b>
<b>SOBOTA</b>	<b>ABSENT</b>



Applicant **Barry and Virginia Sancillio Cross**  
Address **1420 N Woodhouse Road**  
Public Hearing **August 28, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**4**

**Description: GPIN: 2408-89-9343**

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

**BOARD ACTION: APPROVED WITH 21 CONDITIONS ON AUGUST 28, 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 as the applicant has provided a CBPA exhibit that utilizes the zoning criteria of the property to the greatest extent practicable without forcing a Board of Zoning Appeals request in addition to this CBPA variance request.
- 2) Given the geometry of the recorded parcel, the encroachment into the RPA on this property 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 the majority of the buildable portions of this property within the RPA.
- 3) Working within the unique restraints of the property – geometry of the platted parcel, existing shoreline, and topography of the property – the variance is the minimum necessary to afford relief with the applicants use of alternative materials as a means to comply with the performance standards of the CBPA Ordinance towards the promotion of infiltrating stormwater into the ground consistent with the use of structural urban best management practices [City Code, Appendix F, Section 106 (A)(3)(a)(3)].
- 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; as the applicant's desire to redevelop the property does address the current property's dilapidated conditions and shoreline conditions that are contributing to the degradation of water quality and minimal migration of sediment into the adjacent tidal waters.

- 5) Staff is of the opinion, when properly coordinated, the applicant's investment in redeveloping the uplands portion of the property with associated buffer restoration and stormwater management coupled the JPA correcting the on-going shoreline erosion, will provide a means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, Staff 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 along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. 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.**
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. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. The location and limits of grading associated with the Flexamat bank stabilization, as described within the Joint Permit Application (JPA) along the southern portion of the site shall be shown on the revised site plan submitted to the Department of Planning and Community Development, Development Services Center (DSC).
13. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **5,915 square feet x 200 percent = 11,830 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 to the greatest extent practicable.

The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed

within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

14. The proposed driveway shall be constructed of a permeable pavement system.
15. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
16. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,354.83 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 1,478 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
17. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
18. The conditions and approval associated with this variance are based on the exhibit plan prepared by Align Surveying & Design P.C., signed August 24, 2017 by William S. Grant. 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.

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

**There was no opposition present.**

**A motion was made by Mr. McCoy, seconded by Mr. Poole to approve the variance with the 21 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>6</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>3</b>
<b>FRANCE</b>		<b>AYE</b>					
<b>JESTER</b>		<b>AYE</b>					
<b>JONES</b>		<b>ABSENT</b>					

MARTIN	AYE
MCCOY	AYE
MCDANIELS	AYE
POOLE	AYE
SMITH	ABSENT
SOBOTA	ABSENT



Applicant **Sanjay and Sonia Kapoor**  
Address **421 Wolfs Neck Trail**  
Public Hearing **August 28, 2017**  
City Council District **Beach**

Agenda  
Item

**5**

**Description: GPIN: 1497-67-3025**

**AGENT: Ashton Otey**

**BOARD ACTION: APPROVED WITH THE 15 CONDITIONS ON AUGUST 28, 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 as the proposed improvements are consistent with other properties situated in the neighborhood that have proposed improvements within the RPA post adoption of the CBPA Ordinance.
- 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 as the proposed improvements are situated within the least sensitive portions of the property, landward of the 50 foot seaward buffer, and situated adjacent to the primary structure with the use of a retaining wall as a means to preserve the existing topography to the greatest extent practicable within the 100 foot RPA.
- 4) Staff is of the opinion that maintaining the overall impervious cover of the site under 21 percent, coupled with the restoration of the riparian buffer ecosystem and the applicant's commitment to complete the hardening of the shoreline, ensures that this variance request 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.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the redevelopment of this property will be conditioned to comply with the

performance standards of the CBPA Ordinance and criteria of the Stormwater Ordinance for a property that currently has no treatment towards nonpoint source pollution reductions.

- 6) Finally, Staff 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. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. 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.**
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. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,083 square feet x 200 percent = 4,166 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: **11 canopy trees, 11 understory, 22 large shrubs and 33 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.

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

14. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$476.66 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 520 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
  
15. The conditions and approval associated with this variance are based on the exhibit plan dated July 8, 2017 and revised August 11, 2017 prepared by Fox Land Surveying, signed August 11, 2017 by Travis Fox. 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.

**Sanjay Kapoor, homeowner 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. Martin to approve the variance request with the 15 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>6</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>3</b>
<b>FRANCE</b>		<b>AYE</b>					
<b>JESTER</b>		<b>AYE</b>					
<b>JONES</b>		<b>ABSENT</b>					
<b>MARTIN</b>		<b>AYE</b>					
<b>MCCOY</b>		<b>AYE</b>					
<b>MCDANIELS</b>		<b>AYE</b>					
<b>POOLE</b>		<b>AYE</b>					
<b>SMITH</b>		<b>ABSENT</b>					
<b>SOBOTA</b>		<b>ABSENT</b>					



Applicant **Lonnie and Karen Minson**  
Address **2700 Chester Forest Court**  
Public Hearing **August 28, 2017**  
City Council District **Beach**

Agenda  
Item

**6**

**Description: GPIN: 1497-56-7833**

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

**BOARD ACTION: APPROVED WITH 15 CONDITIONS ON AUGUST 28, 2017**

**Board's Findings:**

- 1) Limiting the proposed improvements with the introduction of a retaining wall and primarily focusing those improvements within the 50 foot landward buffer, and given the unique geometry of the site, Staff is of the opinion that 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.
- 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) Staff is off the opinion, given the proposed location of the swimming pool, and the limited dimensional size of the pool and associated pool patio area primarily situated within the 50 foot landward buffer that the variance is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and will not be injurious to the neighborhood, nor be of substantial detriment to water quality with the introduction of buffer plantings within a sparsely wooded property, the proposed improvements minimal encroachment into the 100 foot RPA buffer, and the minimal site impact associated with the proposed improvements.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the redevelopment of this property will be conditioned to comply with the performance standards of the CBPA Ordinance and criteria of the Stormwater

Ordinance for a property that currently has no treatment towards nonpoint source pollution reductions.

- 6) Finally, Staff 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. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,000 square feet x 200 percent = 2,000 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: **5 canopy trees, 5 understory, 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

14. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$229.16 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 250 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
  
15. The conditions and approval associated with this variance are based on the exhibit plan dated June 13, 2017, prepared by WPL, signed July 10, 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 Mrs. McDaniels, seconded by Mr. Martin to approve the variance with the 15 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>6</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>3</b>
<b>FRANCE</b>		<b>AYE</b>					
<b>JESTER</b>		<b>AYE</b>					
<b>JONES</b>		<b>ABSENT</b>					
<b>MARTIN</b>		<b>AYE</b>					
<b>MCCOY</b>		<b>AYE</b>					
<b>MCDANIELS</b>		<b>AYE</b>					
<b>POOLE</b>		<b>AYE</b>					
<b>SMITH</b>		<b>ABSENT</b>					
<b>SOBOTA</b>		<b>ABSENT</b>					



Applicant **Anthony and Sandra Gentile**  
Address **2716 Spigel Drive**  
Public Hearing **August 28, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**7**

**Description: GPIN: 1498-52-3820**

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

**BOARD ACTION: APPROVED WITH 20 CONDITIONS ON AUGUST 28, 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 which are subject to the provisions of this ordinance and are similarly situated with relatively confined properties where development has occurred within both the Resource Protection Area (RPA) and Resource Management Areas (RMA).
- 2) The encroachment into the RPA on this lot is based upon conditions or circumstances that have been created and imposed by the applicant's predecessor in title, given the fact that the parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, but was then further subdivided for the benefit of the adjacent parcel (Lot D), and improvements constructed under the conditions of a CBPA variance.
- 3) Given the conditions provided below, Staff is of the opinion the variance is the minimum necessary to afford relief by reducing the amount of proposed impervious cover within the RPA, the use of alternative materials and stormwater management practices within the RMA as a means to comply with the performance standards of the CBPA Ordinance towards the promotion of infiltrating stormwater into the ground consistent with the use of structural urban best management practices [City Code, Appendix F, Section 106 (A)(3)(a)(3)].
- 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; based on the restoration of the naturalized shoreline conditions that are contributing to the degradation of water quality, introduction of stormwater management, and use of alternative materials

for the benefit of stormwater infiltration associated with proposed impervious cover.

- 5) Staff is of the opinion that the applicant's investment in redeveloping the uplands portion of the property with associated buffer restoration, integration of stormwater management coupled with the restoration of the existing shoreline and upland riparian ecosystem, will aid in a means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, Staff 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. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. The required stormwater management facilities, as shown on the May 24, 1999 Chesapeake Bay Preservation Area (CBPA) exhibit shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
13. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,184 square feet x 200 percent = 2,348 square feet** with all areas below the top of bank restored to a natural state.

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, 12 large shrubs and 18 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.

14. The maximum impervious cover of the parcel shall not exceed 12,037 square feet or 38.5 percent of the site outside of water or wetlands. Said limits of impervious cover shall not be seaward of the delineated top of bank feature.
15. The proposed circular driveway shall be constructed of a permeable pavement system.
16. 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.
17. **\*\*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 \$271.33 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 296 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
18. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
19. This variance and associated conditions **will supersede** the conditions of the September 28, 1998 Board variance.
20. The conditions and approval associated with this variance are based on the exhibit plan dated April 28, 2017, prepared by WPL, signed August 15, 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. Martin, seconded by Mr. Poole to approve the variance with the 20 conditions listed above. All voted for the motion except Mr. McCoy and Mrs. McDaniels who voted no.

AYE 4 NO 2 ABSTAIN 0 ABSENT 3

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



Applicant **Garry and Sandra Larossa**  
 Address **1820 Eden Way**  
 Public Hearing **August 28, 2017**  
 City Council District **Lynnhaven**

Agenda  
 Item  
**8**

**Description: GPIN: 2408-86-1793**

**AGENT: Thomas Ross**

**BOARD ACTION: DEFERRED FOR 30 DAYS ON AUGUST 28, 2017 UNTIL THE SEPTEMBER 25, 2017 PUBLIC HEARING**

**Thomas Ross appeared before the Board representing the applicants.**

**There was no opposition present.**

**A motion was made by Mr. McCoy, seconded by Mr. Martin to defer the variance request for 30 days until the September 25, 2017 public hearing. All voted for the motion except Mr. France and Mrs. McDaniels who voted no.**

**AYE 4 NO 2 ABSTAIN 0 ABSENT 3**

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