



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
NOVEMBER 22, 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 Wednesday, November 22, 2017.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the October 23, 2017 minutes. All voted for the motion except Mr. Sobota who was abstained due to his absence from the October hearing. This vote also serves as the official roll call for this meeting. All members were present except Mrs. McDaniels.

BOARD ACTION: APPROVED OCTOBER 23, 2017 MINUTES ON NOVEMBER 22, 2017

AYE 7 NO 0 ABSTAIN 1 ABSENT 1

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

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



Applicant **Louis and Stacie Caplan**
Address **3305 Hidden Pointe Cove**
Public Hearing **November 22, 2017**
City Council District **Lynnhaven**

Agenda
Item

1

Description: GPIN: 1488-79-7393

AGENT: Rick Scarper

BOARD ACTION: DEFERRED ON NOVEMBER 22, 2017 UNTIL THE JANUARY 22, 2018 PUBLIC HEARING

Rick Scarper appeared before the Board representing the applicants.

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Sobota to defer the variance until the January 22, 2018 public hearing. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

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



Applicant **Mildred Frazier and Alice Godfrey Trust**
Address **1680 Godfrey Lane**
Public Hearing **November 22, 2017**
City Council District **Lynnhaven**

Agenda
Item

2

Description: GPIN: 2409-23-0703

AGENT: Robert Simon

BOARD ACTION: DEFERRED ON NOVEMBER 22, 2017 UNTIL THE DECEMBER 20, 2017 PUBLIC HEARING

Robert Simon appeared before the Board representing the applicants.

There was no opposition present.

A motion was made by Mr. Martin, seconded by Mr. McCoy to defer the variance until the December 20, 2017 public hearing. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

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



Applicant **Cavalier Golf & Yacht Club**
Address **1052 Cardinal Road**
Public Hearing **November 22, 2017**
City Council District **Lynnhaven**

Agenda
Item

3

Description: GPIN: 2418-24-6584

AGENT: Robert Miller, MSA

BOARD ACTION: APPROVED WITH 18 CONDITIONS ON NOVEMBER 22, 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's agent as utilized areas within the RPA sensitive to existing topography so that upland impacts preserve the naturalized fringe marsh areas and associated vegetative ravines to the greatest extent practicable.
- 2) The original parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, and the encroachment into the RPA on this parcel is based upon conditions or circumstances that are or have been created by the applicant. However, the Board is of the opinion that the request meets the performance standards set forth in Section 106(B) of the CBPA Ordinance is deemed acceptable, as the associated land disturbance is the minimum necessary to provide for the proposed use or development, and existing vegetation within the RPA is being preserved to the greatest extent practicable.
- 3) The variance is the minimum necessary to afford relief due to the applicant's withdraw of proposed improvements from within the 50 foot seaward buffer and the expansion of recreational facilities occurring within areas of the buffer appropriately situated with regards to the existing use and access to the existing recreational facilities.
- 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 has preserved the existing riparian buffer ecosystem to the greatest extent practicable while creating and maintaining the restoration of tidal shores as a means to filter infiltrate stormwater run-off in harmony with the use of the parcel.
- 5) The Board 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 practices focused within the natural ravine areas throughout the

entire parcel will provided a means to manage towards a no net increase in nonpoint source pollution load.

- 6) Finally, the Board recommends the following 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 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 conditions of the existing Chesapeake Bay Preservation Area (CBPA) variances, specifically the required buffer restoration and stormwater management facilities 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: **18,313 square feet x 200 percent = 36,626 square feet** plus 3,200 square feet for the temporary tent structure totaling 39,826 square feet of buffer restoration.

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: **92 canopy trees, 92 understory trees, 184 large shrubs and 276 small shrubs, groundcovers, or ornamental grasses.**

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 proposed parking stalls within the RPA 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 \$4,196.50 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 4,578 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
17. This variance and associated conditions **are in addition to** the conditions of the Board variances granted November 25, 1996; April 22, 2002; May 23, 2005 and May 24, 2010.
18. The conditions and approval associated with this variance are based on the exhibit plan dated September 30, 2017, prepared by MSA, P.C., signed September 30, 2017 by Nathan A. Lahy. 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.

John Milleson, General Manager and Robert Miller with MSA appeared before the Board.

There was no opposition present.

A motion was made by Mr. Smith, seconded by Mr. Jones to approve the variance with the 18 conditions as amended (Amended Condition 13 and Deleted Condition 17). All voted for the motion except Mr. Sobota who voted no and Mr. Martin who was abstained because he had brought up some technical questions that had not been answered and does not feel like he had enough information to come to the same conclusions that the staff had.

AYE 6 NO 1 ABSTAIN 1 ABSENT 1

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



Applicant **FW and Marshall Redford**
Address **824 Gilbert Circle**
Public Hearing **November 22, 2017**
City Council District **Lynnhaven**

Agenda
Item

4

Description: GPIN: 1498-51-5265

AGENT: Robert Simon

BOARD ACTION: APPROVED WITH THE 17 CONDITIONS ON NOVEMBER 22, 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 depicts the dwelling at the minimum setback 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 parcel – the variance is the minimum necessary to afford relief with the overall impervious cover of the lot at 18.23 percent.
- 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 develop the property preserves the existing riparian ecosystem to the greatest extent practicable and abates shoreline conditions that are contributing to the degradation of water quality and minimal migration of sediment into the adjacent tidal waters.
- 5) The Board is of the opinion, when properly coordinated, the applicant's investment in developing 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, the Board recommends the following 17 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. **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. 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. A maximum of 2,000 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50 foot seaward buffer. All remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required 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. The pool shall be constructed prior to or concurrent with the residence.
14. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
15. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of

\$1,067.91 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 1,165 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.

16. 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.

17. The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, Inc signed November 8, 2017 by Gregory O. Milstead. 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.

Robert Simon appeared before the Board representing the applicants.

There was no opposition present.

As an item of the consent agenda, a motion was made by Mr. Martin, seconded by Mr. Sobota to approve the variance request with the 17 conditions listed above. All voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
------------	----------	-----------	----------	----------------	----------	---------------	----------

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



Applicant **Jeffery Atherton**
Address **4408 General Gate Court**
Public Hearing **November 22, 2017**
City Council District **Lynnhaven**

Agenda
Item

5

Description: GPIN: 1477-68-8073

AGENT: Self Represented

BOARD ACTION: DEFERRED ON NOVEMBER 22, 2017 UNTIL THE DECEMBER 20, 2017 PUBLIC HEARING

Jeffery Atherton appeared before the Board.

There was no opposition present.

A motion was made by Mr. Martin, seconded by Mr. Poole to defer the variance until the December 20, 2017 public hearing. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

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