



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
MAY 24, 2018**

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 Thursday, May 24, 2018.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the April 23, 2018 minutes. All voted for the motion. This vote also serves as the official roll call for this meeting. All members were present except Mr. Dreps and Mrs. McDaniels.

BOARD ACTION: APPROVED APRIL 23, 2018 MINUTES ON MAY 24, 2018

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE

Board Members Present: David France, David Jester, Casey Jones, Wayne McCoy, Richard Poole, Reese Smith, and Michael Steier.



Applicant	Victor and Michelle Bakkar	Agenda Item 1
Property Owner	Victor and Michelle Bakkar	
Address	1408 N. Woodhouse Road	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 2408-89-1482

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 19 CONDITIONS ON MAY 24, 2018

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 CBPA Board has granted numerous variances similar to this request since the Bay Act was adopted and this property is impacted by the RPA feature and thus any new development is impacted. The Board offers that the applicant's effort to limit the redevelopment of this parcel to the 50 foot landward buffer, variable width buffer, and Resource Management Area (RMA) also contribute to this finding inasmuch as the location of the proposed improvements do not encroach into the most sensitive portion of the parcel – below the top of bank and into the area of the existing bulkhead tiebacks.
- 2) The Board is of the opinion that the encroachment 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 and further impacted by parcels predecessor in title who chose to utilize this parcel and portions of the upland riparian buffer as an area for wetland mitigation.
- 3) The variance is the minimum necessary to afford relief based off of the purpose and intent of the Bay Act which is to protect water quality by limiting impervious cover, by reducing run-off and by installing a riparian buffer along the shoreline – all of which will happen as a result of this request.
- 4) This 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 by limiting construction activity in proximity of the proposed improvements requiring that all areas outward remain in their natural state and having all disturbed areas stabilized before removing erosion and sediment control measures.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load silt fence will be the first installed and the last removed. Stockpile areas will be limited to flat areas and if possible areas that are currently impervious. All denuded areas will be vegetated, bio retention beds are already installed to treat run-off (associated with 2004 CBPA variance) and buffer restoration installed.

- 6) The following 19 conditions provided are reasonable and appropriate 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 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 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. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
7. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
8. 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.
9. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
10. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, 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.

11. The unauthorized wood shed shall be removed and the area restored to a natural condition.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **614 square feet x 200 percent = 1,228 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 trees, 8 large shrubs and 12 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. The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
14. The proposed walkway to the existing boat pier shall be constructed of organic material (mulch), and a maximum of 4 feet in width, with stepping stones not to exceed 50 percent of the path area.
15. Under deck treatment of sand and gravel shall be installed.
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 \$140.25 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**

18. This variance and associated conditions supersedes the conditions of the Board variance granted June 28, 2004 with the exception of number 12 through 14.
19. The conditions and approval associated with this variance are based on the exhibit plan dated January 15, 2018 and revised February 19, 2018, prepared by Hassell & Folkes, P.C., signed April 4, 2018 by Timothy M. Fallon. 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.

Conditions 12 through 14 of the June 28, 2004 CBPA Variance:

12. *Buffer restoration shall be installed equal to 200% of impervious cover (11,752 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
13. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
14. *A minimum of 24 additional trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*

Victor Bakkar appeared before 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. Smith, seconded by Mr. Poole to approve the variance with the 19 conditions as amended (Amended Condition 18). All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Honorable Judge Everett A. Martin, Jr.	Agenda Item 2
Property Owner	Martha C. Martin	
Address	1328 Starling Court	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 2418-14-9002

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH THE 16 CONDITIONS ON MAY 24, 2018

Board's Findings:

- 1) The Birdneck Point Subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and have been granted, so the granting this variance request will in no way 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) The variance is the minimum necessary to afford relief given the challenges of this parcel due to the shape and size of the shoreline and for redeveloping this parcel in a manner that keeps the overall impervious cover under 20 percent and utilizes a series of retaining walls to limit fill material outboard of the proposed improvements.
- 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 most of these homes currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality.
- 5) As a means to provide towards a no net increase in nonpoint source pollution load from this variance request, the applicant provides that strict erosion and sedimentation control measures will be utilized towards non-point source pollution management, stockpiling materials on existing hard surfaces, single point access way, and revegetation all denuded areas will be implemented as a means to manage towards a no net increase in nonpoint source pollution load. The Board concurs that the construction sequencing for installing the proposed improvements and diligent management of erosion and sediment control measures during all

construction activities contributes significantly towards limiting additional non-point source pollution load.

- 6) Finally, the 16 conditions provided are reasonable and appropriate 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 equal to 200 percent of the proposed new impervious cover within the RPA: **1,533 square feet x 200 percent = 3,066 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 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. The area of existing high marsh along the northern portion of the parcel, adjacent to the riprap revetment as delineated on the CBPA Exhibit shall be reestablished.
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 \$351.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
16. The conditions and approval associated with this variance are based on the exhibit plan dated March 19, 2018, prepared by Gallup Surveyors and Engineers, signed March 31, 2018 by Bruce Gallup. 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.

As an item of the consent agenda, a motion was made by Mr. McCoy, seconded by Mr. Poole to approve the variance request with the 16 conditions listed above. All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Matthew Tillotson	Agenda Item 3
Property Owner	Elaine and John Lewis Ames, Jr.	
Address	3336 Litchfield Road	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 1488-89-8248

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 18 CONDITIONS ON MAY 24, 2018

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 applicant has provided a CBPA exhibit that depicts the dwelling at the minimum front yard setback along Litchfield Road without pursuing a Board of Zoning Appeals variance. Placing the proposed residence closer to the street and within this setback would be out of character with the neighborhood.
- 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 and the applicant has incorporated everything the Board has routinely approved in recent years to avoid the most sensitive area of the property.
- 3) The variance is the minimum necessary to afford relief with the applicant's attempt to keep the lot coverage numbers as low as possible, avoid the most sensitive areas of land, leaving as much area in a natural state while building a house in keeping with the size and location of houses in the surrounding area.
- 4) While the applicant provides that 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 due to the treatment requirements for stormwater for the proposed impervious cover, large portions of the parcel being left in a natural state by the homeowner, the installation of buffer restoration to mitigate for the new impervious cover, and the participation into the Lynnhaven Oyster Heritage program with off-site water quality mitigation. The Board is of the opinion that the topography of the site in relation to the location of the tidal feature, that the applicant's desire to develop the property in a manner that will preserve the existing riparian ecosystem will not pose a substantial detriment to water quality.
- 5) The Board is of the opinion that if properly coordinated, the applicant's investment in developing the uplands portion of the property with associated buffer restoration and stormwater management, coupled with maintenance to the existing shaded shoreline, will provide a means to manage towards a no net increase in nonpoint source pollution load.

- 6) Finally, the 18 conditions provided are reasonable and appropriate 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. **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 or below the top of bank feature. 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 Department 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. Under deck treatment of sand and gravel shall be installed.
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 \$2,050.58 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
16. Mature trees exist adjacent to tidal waters, and the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
17. This variance and associated conditions **will supersede** the conditions of the Board variance granted December 23, 2002.
18. The conditions and approval associated with this variance are based on the exhibit plan dated April 4, 2018, prepared by Gallup Surveyors and Engineers, signed April 4, 2018 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application

submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

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

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 18 conditions as amended (Deleted Condition 13 of Staff's recommended conditions found in the staff write up). All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Francis and Christine Verfurth	Agenda Item 4
Property Owner	Francis and Christine Verfurth	
Address	1040 Bobolink Drive	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 2418-25-0079

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH THE 16 CONDITIONS ON MAY 24, 2018

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 the Ordinance and are similarly situated with the majority of the proposed improvements being landward of the 50 foot seaward buffer and the pattern of redevelopment of this parcel being consistent with this neighborhood and within this reach of the Lynnhaven River.
- 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 Board is of the opinion that the variance is the minimum necessary to afford relief because of the total impervious cover not exceeding 30 percent of the land area, the applicant's effort to relocate the proposed improvements outside of the 50 foot seaward buffer, and devoting more than half of the proposed improvements associated with this variance request to the redevelopment of existing impervious cover.
- 4) The variance is in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood, nor will it be otherwise detrimental to the public welfare because that the redevelopment of the parcel will comply with other single family redevelopments in the neighborhood, with minimal encroachments occurring within the more sensitive portions of the property, therefore preventing the redevelopment of this parcel from contributing to the detriment of water quality within the Lynnhaven River.
- 5) The Board is of the opinion that the construction sequence for installing the proposed improvements and diligent management of erosion and sediment control measures during all construction activities contributes significantly towards limiting additional non-point source pollution load and further offers that that the maintenance and restoration of the 50 foot seaward buffer into a riparian buffer system will assist with the infiltration of stormwater as a means to manage towards a no net increase in nonpoint source pollution load.

- 6) Finally, the 16 conditions provided are reasonable and appropriate 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 equal to 200 percent of the proposed new impervious cover within the RPA: **1,635 square feet x 200 percent = 3,270 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: **9 canopy trees, 8 understory trees, 18 large shrubs, and 27 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. Under deck treatment of sand and gravel shall be installed.
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 \$ 373.99 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
16. The conditions and approval associated with this variance are based on the exhibit plan dated March 19, 2018 and revised May 3, 2018, prepared by Gallup Surveyors & Engineers, signed May 3, 2018 by Bruce Gallup. 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.

As an item of the consent agenda, a motion was made by Mr. McCoy, seconded by Mr. Poole to approve the variance request with the 16 conditions listed above. All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Christopher Jackson	Agenda Item 5
Property Owner	Page Bishop	
Address	1409-B Blue Heron Road	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 1498-59-4118

AGENT: Eddie Bourdon, Sykes Bourdon Ahern & Levy

BOARD ACTION: APPROVED WITH 19 CONDITIONS ON MAY 24, 2018

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because ALL non-water dependent proposed improvements for the development of this home/lot are located **OUTSIDE** of the state mandated 100 foot RPA Buffer. Of all the developed waterfront parcels in Virginia Beach impacted by the RPA Buffer, (the applicant's agent does) not believe that there are more than five percent (5%) that do not have any encroachment into the State mandated 100-foot buffer. On this site, that buffer encompasses 26,348.4 square feet of land along over 200 linear feet of shoreline.
- 2) This variance request is necessitated by the City of Virginia Beach having created a 'variable width' buffer in addition to the State mandated 100 foot buffer as a means of imposing a greater amount of water quality enhancing requirements on waterfront properties when they are redeveloped and/or existing improvements are modified/expanded. In spite of the fact that well over ninety percent (90%) of the City's waterfront areas impacted by the Bay Act were already subdivided and developed prior to the promulgation of the Bay Act, the City chose not to designate all of its developed waterfront as an I.D.A., which the City clearly could have done. Virginia Beach chose not to do so in order to achieve greater water quality improvements than a simple ten percent (10%) reduction in non-point source pollutant load (all that is required in areas designated as I.D.A.'s). As a consequence, this applicant will be doing far more to protect and enhance water quality than the overwhelming majority of waterfront homesites within the Chesapeake Bay Watershed in Virginia Beach that are impacted by RPA buffer requirements.
- 3) The variance is the minimum necessary to afford relief because given the substantial canopy cover being preserved on this very large lot, adding areas of buffer restoration, preserving the entire 100 foot RPA Buffer, coupled with the fact that eighty percent (80%) of the impervious developed area will be in the RMA and an overall impervious percentage of twenty-six and one-half percent (26.5) of the site (with a large portion of the proposed impervious surface within the variable width Buffer required in order to simply access the property), the variance is truly minimal.

- 4) The variance preserving the entire 100 foot deep, 26,348.5 square foot RPA buffer and ninety-one and one-half percent (91.5) of the total of both the 100 foot and variable width buffers (i.e. 41,257.6 SF out of 45,130.9 SF) excluding the driveway within the variable width buffer, while capturing and treating all stormwater and installing additional buffer restoration is clearly in harmony with the purpose and intent of the ordinance. The total avoidance of development within the 100' RPA along over 200 linear feet of shoreline along the Lynnhaven River in this neighborhood is absolutely unique and clearly NOT injurious to the neighborhood, nor will this development as conditioned be in any way detrimental to water quality or to the public welfare.
- 5) The applicant provides that as a means to manage towards a no net increase in nonpoint source pollution load all stormwater will be captured and treated; substantial amounts of existing canopy cover shall be preserved and additional canopy cover/buffer restoration will be created. The Board offers that in addition to this statement, that the preservation of the 100 foot RPA buffer in its entirety will capture and filter sediment within sheetflow into the adjacent tidal waters and reduce nutrients entering the Lynnhaven Bay.
- 6) Finally, the 19 conditions provided are reasonable and appropriate 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. **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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **7,877 square feet x 200 percent = 15,754 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: **16 canopy trees, 16 understory trees, 80 large shrubs and 120 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. The proposed driveway stem and paved parking area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
14. **The pool shall be constructed prior to or concurrent with the residence.**
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 \$1,804.91 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
17. 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.
18. This variance and associated conditions **will supersede** the conditions of the Board variance granted January 22, 2001.
19. The conditions and approval associated with this variance are based on the exhibit plan dated March 15, 2018, prepared by Gallup Surveyors & Engineers, signed March 30, 2018 by Bruce Gallup. 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 applicant.

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Jones to approve the variance with the 19 conditions as amended (Deleted Condition 18 of Staff's recommended conditions found in the Staff write up). All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	John Schlabach	Agenda Item 6
Property Owner	John Schlabach	
Address	101 Pinewood Road	
Public Hearing	May 24, 2018	
City Council District	Beach	

Description: GPIN: 2418-82-6393

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 18 CONDITIONS ON MAY 24, 2018

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because the property was recorded and developed many years prior to the adoption of the Bay Act, the house burned and we are rebuilding in the same footprint as much as possible and staying out of the seaward buffer as much as possible and keeping the lot coverage as low as possible.
- 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 or predecessor in title, 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 because the applicant has minimized lot coverage maintains portions of the property in a natural state and preserves areas for buffer restoration to be installed as mitigation.
- 4) The variance request is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the applicant is redeveloping the existing impervious cover as much as possible and keeping the overall project lot coverage low to limit runoff and promote water quality. Buffer restoration will also help enhance post construction water quality.
- 5) The Board is off the opinion that the implementation and diligent management of erosion and sediment control measures during the redevelopment activities for this parcel contribute significantly towards limiting additional non-point source pollution load, and further offers that that the maintenance and restoration of the 50 foot seaward and majority of the 50 foot landward buffer into a riparian buffer system will assist with the infiltration of stormwater.
- 6) Finally, the 18 conditions provided are reasonable and appropriate 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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,709 square feet x 200 percent = 7,446 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: **19 canopy trees, 38 understory trees, 38 large shrubs, and 57 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 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 swimming pool and associated pool shall be constructed prior to or concurrent with the residence.**
14. Under deck treatment of sand and gravel shall be installed.
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 \$849.74 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
17. Where 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.
18. The conditions and approval associated with this variance are based on the CBPA Variance Exhibit ~~plan dated~~, prepared by Gaddy Engineering Services, signed April 5, 2018 by Michael S. Gaddy. The conditions and approval associated with this variance

are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

Billy Garrington of Governmental Permitting 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 18 conditions listed above. All voted for the motion except Mr. France who vote no.

AYE 6 NO 1 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	NO
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Caren Augustine Revocable Trust	Agenda Item 7
Property Owner	Caren Augustine Revocable Trust	
Address	1044 Curlew Drive	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 2418-35-5430

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 18 CONDITIONS ON MAY 24, 2018

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 Board is of the opinion that absent the increase in impervious cover, the retreat of existing impervious cover and the redevelopment of this parcel occurring landward of the 50 foot seaward buffer conforms with the location of improvements on adjacent parcels.
- 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 1946 and 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 because the new single family residence is being placed in the majority of the footprint of the previous home. The impervious cover total will slightly increase with the new development. The previous home had encroachment into the 50 foot seaward buffer and the new residence does not thus there is a retreat and most importantly the shoreline was in a state of significant erosion and had been used as a dump site for debris trying to halt the erosion. The current owner remedied the erosion at a considerable expense to save his valuable land but also to improve water quality by halting the erosion and protecting the fringe marsh along the shoreline.
- 4) With the encroachment into the RPA being consistent with the location of improvements on other properties in the vicinity, the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality due to the applicant's collective attempt to redevelop this parcel. The applicant has corrected the erosion at the shoreline through the Joint Permit Application (JPA) process, balanced redevelopment of existing impervious cover, and proposes a retreat from the 50 foot seaward buffer as a means to enhance rainwater infiltration through stormwater run-off reduction.

- 5) The applicant's investment in redeveloping those portions of the RPA already developed (7,887 square feet in total), coupled with the integration of non-structural stormwater management practices and buffer restoration, will provide a means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, the 18 conditions provided are reasonable and appropriate 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. **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. The 50 foot seaward buffer shall be restored in its entirety to a functioning riparian buffer with the remaining required buffer restoration progressing landward. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **7,278 square feet x 200 percent = 14,556 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: **12 canopy trees, 18 understory trees, 74 large shrubs, and 111 small shrubs.**

Buffer 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.

13. **The pool shall be constructed prior to or concurrent with the residence.**
14. Under deck treatment of sand and gravel shall be installed.
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 \$1,667.41 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
17. The conditions and approval associated with this variance are based on the exhibit plan dated October 16, 2017 and revised May 7, 2018, prepared by Gallup Surveyors and Engineers, signed May 7, 2018 by Bruce Gallup. 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.

18. The overall impervious cover of the parcel shall not exceed 29.5 percent.

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

There was no opposition present.

A motion was made by Mr. France, seconded by Mr. McCoy to defer the application for 30 days. All voted for the motion except Mr. Jester, Mr. Jones and Mr. Steier who voted no and Mr. Smith was abstained because his company has had discussions with the owner, and will be the “presumptive” contractor/builder for this project. The motion failed. Another motion was made by Mr. Jones, seconded by Mr. Poole to approve the variance with 18 conditions as amended (Deleted Condition 13 of Staff’s recommended conditions found in the Staff write up, and add a new condition). All voted for the motion except Mr. McCoy who voted no and Mr. Smith who was abstained as previously stated.

AYE 5 NO 1 ABSTAIN 1 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	NO
MCDANIELS	ABSENT
POOLE	AYE
SMITH	ABSTAIN
STEIER	AYE



Applicant	Brad and Kotrina O'Neal	Agenda Item 8
Property Owner	Brad and Kotrina O'Neal	
Address	501 Gills Place	
Public Hearing	May 24, 2018	
City Council District	Kempsville	

Description: GPIN: 1466-08-0114

BOARD ACTION: APPLICATION WITHDRAWN ON MAY 24, 2018

No one appeared before the Board.

There was no opposition present.

The application was withdrawn. A motion was made by Mr. McCoy, seconded by Mr. Jones to withdraw this application. All voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

DREPS	ABSENT
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant	Joseph and Christine Rhodes	Agenda Item 9
Property Owner	John Clarke	
Address	1297 Holly Point Road	
Public Hearing	May 24, 2018	
City Council District	Lynnhaven	

Description: GPIN: 1498-65-3976

AGENT: Eddie Bourdon, Sykes Bourdon Ahern & Levy

BOARD ACTION: APPROVED WITH 15 CONDITIONS ON MAY 24, 2018

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because the building additions and porch conversions are in keeping with the neighborhood.
- 2) The Board provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted in 1969, 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 because the owners have designed the proposed improvements to be minimal and stay outside of the 50 foot seaward buffer (except for redevelopment) with the Board adding that the majority of the proposed impervious cover is situated within the variable width buffer associated with the circular driveway expansion.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the building and porch additions are in keeping with the neighborhood and the site currently does not have any stormwater treatment.
- 5) Bio-retention beds will be placed seaward of the improvements to store and treat the proposed impervious cover prior to being released into the adjacent waterway as a means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, the 15 conditions provided are reasonable and appropriate 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. 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. 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.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,725 square feet x 200 percent = 3,450 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: **9 canopy trees, 9 understory trees 18 large shrubs and 27 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.

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. ****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 \$395.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
15. The conditions and approval associated with this variance are based on the exhibit plan dated March 21, 2018, prepared by WP Large, signed May 4, 2018 by Eric Gardner. 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 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.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

**DREPS ABSENT
FRANCE AYE**

JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSENT
POOLE	AYE
SMITH	AYE
STEIER	AYE