



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
AUGUST 27, 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 Monday, August 27, 2018.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the July 23, 2018 minutes. All voted for the motion except Mr. Jones who was abstained (no reason given). This vote also serves as the official roll call for this meeting. All members were present.

BOARD ACTION: APPROVED JULY 23, 2018 MINUTES ON AUGUST 27, 2018

AYE 8 NO 0 ABSTAIN 1 ABSENT 0

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

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



Property Owner & Applicant **Constance C. Saunders**
Address **Saw Pen Point, Sec. 2 Lot 13, Tree Chop Circle**
Public Hearing **August 27, 2018**
City Council District **Bayside**

Agenda
Item

1

Parcel GPIN: 1478-94-3040
Applicant's Agent: Robert Kellam
CBPA Board Action: APPROVED WITH THE 16 CONDITIONS ON AUGUST 27, 2018
Accela Record: 2018-CBPA-00027

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 this application is for the construction of a single family residence on an in-fill lot. The proposed single family residence is of average size for this neighborhood and the applicant is not proposing additional accessory structures, within the RPA such as a swimming pool with patio, which are typical for this subdivision. The Board offers that the proposed size of the residence is in harmony with the development style of the neighborhood, that the proposed improvements are situated in the least sensitive portion of the RPA feature, and that the dwelling is located at the front yard setback. The Board also acknowledges the unique need for the applicant to construct a single level residence for mobility reasons.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property is within the RPA.
- 3) The applicant has provided that the variance is the minimum necessary to afford relief given the modest size of the primary structure with a minimal request for an accessory structure – wood deck located off of the rear of the proposed primary structure. The Board is of the opinion, given the triangular shape of the parcel and the applicant's need for a specific layout of the proposed single residence, that this variance request provides merit towards being the minimum necessary to afford relief.
- 4) The applicant has provided that the variance is in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the intent of the CBPA Ordinance is to protect the seaward 50 foot buffer and not to render existing lots un-buildable." The Board is of the opinion that the variance request, as submitted, is a detriment to water quality without addressing the current

condition of the shoreline concurrent with the development of the proposed upland improvements.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load and towards preventing the variance from causing or contributing to a degradation of water quality, the following reasonable and appropriate conditions that address the need to correct the current shoreline condition, the management of stormwater runoff from proposed impervious cover through the means of infiltration, and the restoration of the 100 foot riparian buffer to a vegetated condition of forested trophic layers consistent with those conditions that existed prior to the redevelopment of the shoreline.
- 6) 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.
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: **6,293 square feet x 200 percent = 12,586 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **11 canopy trees, 11 understory trees, 33 large shrubs and 45 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. The shoreline shall be repaired and stabilized in accordance with the active Waterfront Construction Permit, authorizing the construction of a riprap revetment and marsh sill for the creation of a living shoreline prior to the release of an approved CBPA Site Plan from the DSC for the upland improvements (single family residence with associated accessory structures).
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 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 \$1,442.14 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 April 4, 2018, revised August 2, 2018, prepared by Kellam Gerwitz, signed August 3, 2018 by Robert Kellam. 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 Kellam appeared before the Board representing the applicant.

There was no opposition present.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **Patrick and Sheryl Reynolds**
 Address **2421 Windward Shore Circle**
 Public Hearing **August 27, 2018**
 City Council District **Lynnhaven**

Agenda
Item

2

Parcel GPIN: 1499-98-3029
 Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
 CBPA Board Action: DEFERRED ON AUGUST 27, 2018 TO THE OCTOBER 22, 2018 PUBLIC HEARING
 Accela Record: 2018-CBPA-00031

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

There was no opposition present.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **South Linkhorn Bay Trust, et. al.**
 Address **Lot 196, N. Linkhorn Park Extended, York Lane**
 Public Hearing **August 27, 2018**
 City Council District **Lynnhaven**

Agenda
 Item
3

Parcel GPIN: GPIN: 2418-47-4423
 Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
 CBPA Board Action: DEFERRED ON AUGUST 27, 2018 TO THE OCTOBER 22, 2018 PUBLIC HEARING
 Accela Record: 2018-CBPA-00036

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

There was no opposition present.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **South Linkhorn Bay Trust, et. al.**
 Address **Lot 197, N. Linkhorn Park Extended, York Lane**
 Public Hearing **August 27, 2018**
 City Council District **Lynnhaven**

Agenda
 Item
4

Parcel GPIN: 2418-47-4336
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON JANUARY 25, 2016 UNTIL THE MARCH 28, 2016 PUBLIC HEARING
Accela Record: 2018-CBPA-00037

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

There was no opposition present.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **Cory Clark**
Address **820 S Spigel Drive**
Public Hearing **August 27, 2018**
City Council District **Lynnhaven**

Agenda
Item

5

Parcel GPIN: 1498-51-9219
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CONDITIONS ON AUGUST 27, 2018
Accela Record: 2018-CBPA-00043

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 this 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 been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 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 because 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.
- 3) The variance is the minimum necessary to afford relief by the applicant's attempt to avoid the most sensitive areas of land and leaving as much area in a natural state, the entire 50 foot seaward buffer, while building a house in keeping with the size and location of the neighborhood, and locating the improvements at the side and front yard setbacks provides merit to being the minimal necessary given the geometry of the upland area.
- 4) The variance is in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with the topography of the site in relation to the location of the tidal feature, and the applicant's desire to develop the property in a manner that will preserve the existing riparian ecosystem to the greatest extent practicable.
- 5) The applicant provides, as a means to manage towards a no net increase in nonpoint source pollution load; "*strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.*" 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) The 16 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 no further than 15 feet seaward of the proposed improvements and shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
5. Construction limits shall be contained within the limits of the delineated silt fence. **Within the RPA, all areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. 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. A maximum of 2,500 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.

12. **The pool shall be constructed prior to or concurrent with the residence.**
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 \$2,118.96 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. 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.
16. The conditions and approval associated with this variance are based on the exhibit plan dated June 26, 2018, prepared by Gallup Surveyors and Engineers, signed June 26, 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.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **Patrick and Elizabeth Cremin**
Address **704 Earl of Chesterfield Court**
Public Hearing **August 27, 2018**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 2407-09-4961
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 5 CONDITIONS ON AUGUST 27, 2018
Accela Record: 2018-CBPA-00040

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated; as the proposed improvements are minimal and occur in areas of existing turf and will not result in any alteration to the existing topography or vegetation.
- 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 with both the deck and patio being comparatively small in relation to most homes throughout the area. The Board commends the applicant for situating the proposed improvements where previous land disturbance has occurred, and without encroaching further seaward with the proposed patio area.
- 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 it keeps the improvements at a minimum and placed where there are no trees or shrubs to be removed, but large enough to satisfy our needs as a family and homeowner.
- 5) The proposed improvements are not located in the most sensitive portions of the parcel – 50 foot seaward buffer, and that the retention of the existing riparian buffer canopy trees coupled with the existing marsh outboard of the parcel provides a natural means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, the 5 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. 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.**
3. 400 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 3 understory, and 3 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. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading. 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 release of the building permit.

4. Under deck treatment of sand and gravel shall be installed.
5. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

Patrick Cremin appeared before the Board.

There was no opposition present.

As an item of the consent agenda, a motion was made by Mr. Poole, seconded by Mr. Jones to approve the variance request with the 5 conditions listed above. All voted for the motion.

AYE	9	NO	0	ABSTAIN	0	ABSENT	0
DREPS		AYE					
FRANCE		AYE					
JESTER		AYE					
JONES		AYE					
MCCOY		AYE					

MCDANIELS	AYE
POOLE	AYE
SMITH	AYE
STEIER	AYE



Property Owner & Applicant **Gerado Ruiz**
Address **849 E. Sparrow Road**
Public Hearing **August 27, 2018**
City Council District **Kempsville**

Agenda
Item

7

Parcel GPIN: 1447-80-9425
Applicant's Agent: Rick Scarper
CBPA Board Action: APPROVED WITH 13 CONDITIONS ON AUGUST 27, 2018
Accela Record: 2018-CBPA-00041

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 Bay Act was adopted after the recordation of the subdivision parcel. The applicant has relocated improvements landward of the RPA to the greatest extent practicable.
- 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 with the majority of improvements being relocated to the RMA and post development not being located within the 50 foot seaward portion of the buffer.
- 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 given the existing impervious cover within the seaward portion of the buffer being removed and the existing mature riparian resource being preserved. In addition, the reduction of impervious cover within both the seaward buffer and landward buffer provides merit towards promoting infiltration and filtering nonpoint source pollution of sediments and nutrients from stormwater sheetflow.
- 5) The proposal represents a retreat from receiving tidal waters and preserves the RPA resource features as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.
- 6) The 13 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, and tree protection barriers 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. 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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,598 square feet x 200 percent = 5,196 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, 12 understory trees, 24 large shrubs, and 36 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.

11. 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.
12. **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 \$595.37 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.
13. The conditions and approval associated with this variance are based on the exhibit plan dated July 3, 2018, prepared by Site Improvement Associates, signed July 3, 2018 by Claude F. Lym. 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.

Rick Scarper 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 13 conditions listed above. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Property Owner & Applicant **Mary Majeau and Joseph Koziol**
Address **4065 N. Witchduck Road**
Public Hearing **August 27, 2018**
City Council District **Bayside**

Agenda
Item

8

Parcel GPIN: 1488-07-6832
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 7 CONDITIONS ON AUGUST 27, 2018
Accela Record: 2018-CBPA-00042

Board's Findings:

- 1) The variance is the minimum necessary to afford relief with the proposed wood deck in keeping with similar improvements within this neighborhood.
- 2) 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 with the proposed wood deck being consistent with residential development in the Resource Protection Area (RPA).
- 3) As a means to manage towards a no net increase in nonpoint source pollution load buffer area will be provided at two times the size of the deck.
- 4) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated as the proposed improvements are in keeping with other improvements on adjacent parcels within the neighborhood.
- 5) 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.
- 6) Finally, the 7 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. 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.
4. 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.
5. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **552 square feet x 200 percent = 1,104 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: **3 canopy trees, 6 understory trees, and 9 shrubs.**

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

6. Under deck treatment of sand and gravel shall be installed.
7. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. A revised and up-to-date physical survey, certified as complete and accurate by persons duly licensed by the Commonwealth of Virginia to practice as such shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

Joseph Koziol 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 7 conditions listed above. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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