



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

Vice Chair Mr. France, called to order the **Chesapeake Bay Preservation Area Board** meeting in the City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, September 24, 2018.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the August 27, 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. Jester.

**BOARD ACTION: APPROVED AUGUST 27, 2018 MINUTES ON SEPTEMBER 24, 2018**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>

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



Applicant **Bryan and Heather Garnett**  
Address **1428 North Woodhouse Road**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

**1**

**Parcel GPIN:** 2409-90-5068  
**Applicant's Agent:** Robert Simon  
**CBPA Board Action:** APPROVED WITH 12 CONDITIONS ON SEPTEMBER 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 existing residence does not have an attached garage as do most developed sites within Alanton and the pool request is in keeping with similar sized pools and decks in the neighborhood.
- 2) The Board offers 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 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 proposed improvements keeping the overall impervious cover under 20 percent for the entire parcel above water and wetland.
- 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 with the placement of all proposed improvements being within areas of relatively flat topography with BMPs being installed to treat stormwater runoff where there are none currently. The Board adds that the access to the proposed improvements during construction occurs across areas of existing impervious cover and areas of turf help support this finding.
- 5) Structural BMPs shall be installed as a means to manage towards a no net increase in nonpoint source pollution load.

**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. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
6. 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.
7. 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.
8. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,557 square feet x 200 percent = 7,114 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.

9. 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.

10. **\*\*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 \$815.14 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.**
  
11. The conditions and approval associated with this variance are based on the exhibit plan dated September 5, 2018, prepared by Chesapeake Bay Site Solutions, signed by Gregory Milstead. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.
  
12. The proposed shed shall be located into the 50 foot landward buffer and over the existing gravel driveway.

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

**Gay Goldsmith of 1426 North Woodhouse Road appeared before the Board in opposition.**

**A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 12 conditions as amended (Added Condition 12). All voted for the motion.**

**AYE    8        NO    0        ABSTAIN    0        ABSENT    1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>



Applicant **Beverly Ann Hyde Trust**  
Address **1388 West Little Neck Road**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

**2**

**Parcel GPIN:** 1488-38-6419  
**Applicant's Agent:** Tom Langley, P.E.  
**CBPA Board Action:** APPROVED WITH 10 CONDITIONS ON SEPTEMBER 24, 2018

**Board's Findings:**

- 1) The proposed improvements are similarly situated with other improvements on properties within the immediate neighborhood and will not confer upon the Applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas.
- 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 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 proposed backyard pool has been located and positioned to minimize seaward encroachment to the maximum extent possible. The Applicant's agent also offers that "the proposed improvements should not contribute to a degradation of water quality.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare, as the Applicant is proposing buffer restoration with new trees and shrubs, and other best management practices to protect water quality to reduce pollution.
- 5) The Applicant is proposing buffer restoration of new trees and shrubs, bioretention, pervious pavers, and pervious gravel driveway to intercept stormwater runoff as a means to manage towards a no net increase in nonpoint source pollution load.

**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. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
6. 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.
7. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,825 square feet x 200 percent = 5,660 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.

8. 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.
9. **\*\*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 \$647.39 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.**
10. The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by Langley & McDonald Inc., signed September 13, 2018 by Alan B Gonyo. 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.

**Tom Langley appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. McCoy, seconded by Mr. Poole to approve the variance with the 10 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>8</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>1</b>
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<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>



Applicant **John and Terry Kubichan**  
 Address **2309 Spindrifft Road**  
 Public Hearing **September 24, 2018**  
 City Council District **Lynnhaven**

Agenda  
 Item  
**3**

**Parcel GPIN:** 2409-09-5563  
**Applicant’s Agent:** Brad Martin  
**CBPA Board Action:** APPLICATION WITHDRAWN ON SEPTEMBER 24, 2018

No one appeared before the Board.

There was no opposition present.

Staff received an e-mail from the applicant/agent requesting that the application be withdrawn. A motion was made by Mr. McCoy, seconded by Mr. Jones to withdraw this application. All voted for the motion.

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

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



Applicant **John and Katherine Wynne Revocable Trust**  
Address **1421 North Bay Shore Drive**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

**4**

**Parcel GPIN:** 2419-11-5075  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 14 CONDITIONS ON SEPTEMBER 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 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. Staff respects the applicant's position; however, given the size of the parcel, and the amount of available land for development in the RMA, Staff instead focuses on the comprehensive approach with regard to the redevelopment of this parcel which includes corrective measures to address erosion threats and vegetative replacements to harvest rainwater and restore the buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather; the buffer zones being made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away. The Board adds that this parcel was platted in 1944, prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the 100 foot RPA and the delineated variable width buffer.
- 3) The applicant's agent provides that the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds. While this variance results in an overall impervious cover of 26.7 percent, the Board is of the opinion that the proposed impervious cover within the 100 foot buffer is minimal given that the overall comparison of the proposed impervious cover in the 50 foot landward buffer is a minimal increase of approximately 170 square feet.
- 4) The applicant's agent provides that the purpose and intent of the ordinance is simply water quality, to prevent pollution on the Bay as a result of non-point source pollution. 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. As mentioned above, the Board is of the opinion that the proposed project provides a comprehensive approach that benefits the short-term maintenance and redevelopment of the riparian buffer ecosystem by addressing existing and future erosion potential and by providing a master plan towards revegetation of the parcel that will provide long-term water quality benefits through interception and infiltration of rainwater.

- 5) 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.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
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. Buffer restoration shall be installed in substantial compliance with the Landscape Masterplan provided by Page Duke Landscape Architects. Said 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. The existing trees, 3 in total delineated as trees 42, 43, and 45 located south of the existing boathouse and proposed gravel path to the pier shall be preserved.
13. \*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$539.22 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.
14. The conditions and approval associated with this variance are based on the exhibit plan dated July 25, 2018, prepared by Gallup Surveyors and Engineers, signed July 25, 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.**

**A motion was made by Mr. Smith, seconded by Mr. Jones to approve the variance with the 14 conditions as amended (Amended Condition 12). All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE  
FRANCE AYE  
JESTER ABSENT  
JONES AYE  
MCCOY AYE**

<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>



Applicant **Lynnhaven Area Properties, LLC**  
Address **Washington Square, Sec. 7, Pt. 1, Carnaby Court,  
Lots 9A and 10A**  
Public Hearing **September 24, 2018**  
City Council District **Beach**

Agenda  
Item

**5**

**Parcel GPIN:** 1488-25-1889 and 2407-28-7531  
**Applicant's Agent:** Lisa Murphy, Attorney  
**CBPA Board Action:** APPROVED WITH 15 CONDITIONS ON SEPTEMBER 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 these lots were platted prior to the adoption of the Chesapeake Bay Preservation Act ("CBPA" or "Act") and the City's CBPA Ordinance. The application of the Act places the entirety of the buildable portion of Lot 10A and nearly all of the buildable portion of Lot 9A within the RPA and would result in the loss of nearly all of the buildable area of Lot 9A and all of the buildable area of Lot 10A. The proposed improvements are consistent with other properties situated in the neighborhood that have proposed improvements within the RPA post adoption of the CBPA Ordinance.
- 2) The encroachments into the RPA in connection with the proposed development of Lots 9A and 10A are not based on conditions or circumstances that are or have been created or imposed by the Applicant, but rather are necessitated by the fact that these lots were platted prior to the adoption of the Act and the City's CBPA Ordinance, which placed all of the buildable area of Lot 10A and nearly all of the buildable area of Lot 9A within the RPA.
- 3) The variance is the minimum necessary to afford relief as these lots are uniquely situated in that nearly the entirety of each lot falls within the RPA. Therefore, the proposed development, which is consistent with the development of townhomes on other lots in this neighborhood is the minimum necessary to afford relief.
- 4) The proposed development is consistent with the location of improvements on other properties in the vicinity. This coupled with the preservation of 900 square feet of riparian buffer ecosystem and the proposed buffer restoration on-site, together with the proposed off-site restoration, ensures that these variance requests are in harmony with the purpose and intent of the ordinance and are not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to public welfare.
- 5) When properly coordinated, the Applicant's proposed development, including the implementation of buffer restoration and riparian buffer preservation, combined with an additional purchase of oyster beds for off-site mitigation and the implementation of any stormwater management facilities is provided as a means to manage towards a no net increase in nonpoint source pollution load.

**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.
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. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
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. 2,500 square feet of buffer restoration shall be installed in substantial compliance with the proposed mitigation areas as shown on Sheet 2 of the submitted CBPA Exhibit. 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. 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. 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. 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.
12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from 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 \$827.75 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 August 6, 2018, prepared by MSA, P.C., signed August 6, 2018 by Jason M. Thomas. 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.

**Lisa Murphy, Attorney appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mrs. McDaniels, seconded by Mr. McCoy to approve the variance with the 15 conditions listed above. All voted for the motion except Mr. France who works for Kimley-Horn & Associates at 4525 Main Street Virginia Beach, VA was abstained because he does work for the applicant.**

<b>AYE</b>	<b>7</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>1</b>	<b>ABSENT</b>	<b>1</b>
<b>DREPS</b>		<b>AYE</b>					
<b>FRANCE</b>		<b>ABSTAIN</b>					
<b>JESTER</b>		<b>ABSENT</b>					
<b>JONES</b>		<b>AYE</b>					
<b>MCCOY</b>		<b>AYE</b>					
<b>MCDANIELS</b>		<b>AYE</b>					
<b>POOLE</b>		<b>AYE</b>					
<b>SMITH</b>		<b>AYE</b>					
<b>STEIER</b>		<b>AYE</b>					



Applicant **Shore Drive Area Properties, LLC**  
Address **3925 Shore Drive**  
Public Hearing **September 24, 2018**  
City Council District **Bayside**

Agenda  
Item

**6**

**Parcel GPIN:** 1489-18-4463  
**Applicant's Agent:** Lisa Murphy, Attorney  
**CBPA Board Action:** APPROVED WITH 17 CONDITIONS ON SEPTEMBER 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 this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act ("CBPA" or "Act") and the City's CBPA Ordinance. The application of the Act places a majority of the property within the RPA and would result in the loss of nearly all of the buildable area on this parcel. Since the enactment of the Act and CBPA Ordinance, countless property owners in this area have received similar variances for similar improvements. As the property will be subdivided, this position is not valid. The Board's review is that encroachments are limited and reasonable, and consistent with developed properties in the vicinity.
- 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." As stated above, this position is not valid should the variance be granted and the lot subdivided. Staff is of the opinion that the discussion of a hardship is based off of the geometry of the lot being approximately 652 feet wide and approximately 159 feet deep. Whether developed with 1 single family residence, or developed as proposed, not encroaching into the 100 foot RPA would be difficult to design for with the residual area landward of the 100 foot RPA measuring approximately 100 feet in width and approximately 7 feet in depth – taken from the 50 foot front yard setback.
- 3) The variance is the minimum necessary to afford relief given the retreat of the existing encroachment into the 50' seaward buffer and the fact that all of the proposed improvements will be located landward of the 50 foot seaward buffer, together with the fact that this is a uniquely situated lot where nearly the entire lot falls within the RPA, the proposed encroachment being 16 percent of the overall parcel outside water and wetlands is the minimum necessary to achieve a reasonable buildable area on this property.
- 4) The overall size of the improvements are the minimum necessary to afford relief and have been placed outside of the most sensitive portion of the riparian buffer. Moreover, turf areas are limited to pathways to walk around the houses. Those facts coupled with the

preservation of the riparian buffer ecosystem ensures that this 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.

- 5) When properly coordinated, the Applicant's proposed development, including the retention of nearly  $\frac{3}{4}$  of an acre of existing naturalized forest, the implementation of buffer restoration and of any stormwater management facilities, together with the removal of an existing foundation, will provide a means to manage towards a no net increase in nonpoint source pollution load.

**CPBA Variance Conditions:**

1. All proposed improvements, both residences and associated swimming pools, shall be constructed concurrent.
2. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
3. 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.
4. 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.**
5. 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.
6. 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.**
7. 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.
8. 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.
9. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

10. Individual site plans 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.
11. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
12. 16,288 square feet of buffer restoration shall be installed in substantial compliance with the proposed mitigation areas as shown on Sheet 2 of the submitted CBPA Exhibit. 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. 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. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. \*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,237.12 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. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
16. The conditions and approval associated with this variance are based on the exhibit plan dated August 6, 2018, prepared by MSA, P.C., signed August 6, 2108 by Jason M. Thomas. 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.
17. As proffered by the applicant, the pools will be removed, and the decking will be limited to 400 square feet including the walkway going to the driveway.

**Lisa Murphy, Attorney appeared before the Board representing the applicant.**

**Scott Acey, Engineer appeared before the Board to make commentary.**

There was no opposition present.

A motion was made by Mrs. McDaniels to deny the variance. The motion failed for a lack of a second. A substitute motion was made by Mr. McCoy, seconded by Mr. Jones to approve the variance with the 17 conditions as amended (Added Condition 17). All voted for the motion except Mrs. McDaniels who voted no, and Mr. France who works for Kimley-Horn & Associates at 4525 Main Street Virginia Beach, VA was abstained because he does work for the applicant.

AYE	6	NO	1	ABSTAIN	1	ABSENT	1
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DREPS	AYE
FRANCE	ABSTAIN
JESTER	ABSENT
JONES	AYE
MCCOY	AYE
MCDANIELS	NO
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant **Jeffrey and Kelly Taylor**  
Address **2121 Maple Street**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

**7**

**Parcel GPIN:** 1499-59-5344  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 11 CONDITIONS ON SEPTEMBER 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 this house was built prior to the adoption of the Bay Act and avoidance of the buffer is impossible. The Board is of the opinion that the proposed improvements are similarly situated with other improvements on properties within the immediate neighborhood and do not confer upon the applicant any special privileges.
- 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 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 by the owners limiting the size of the new additions to as small as possible to allow for the additional living space. We have tried to keep the overall lot coverage as low as possible but the lot is very small in size and thus non-conforming for the R7.5 zoning district which makes it hard to accommodate the addition. Given the amount of redevelopment provided by the applicant and the removal of on-grade impervious cover to promote infiltration, the Board is of the opinion that the request is the minimal necessary to afford relief.
- 4) The Board offers 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 with the conditioned buffer restoration, and applicant's use of existing impervious cover with regards to the location of the proposed improvements. In addition, the applicant owns the adjacent parcel to the south and maintains the existing ecosystem in harmony with the adjacent tidal flats.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the owner will be installing buffer restoration as mitigation for the new impervious cover and the contractor will install erosion and sedimentation measures during all phases of construction to protect adjacent waters while construction is on-going.

**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. 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. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
5. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
6. 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. 400 square feet of buffer restoration shall be installed. 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, 2 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. 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.

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

- 9. No perimeter fill is authorized outboard or seaward of the proposed improvements.
- 10. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 11. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.

**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 11 conditions listed above. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

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



Applicant **1600 Arnold Circle, LLC**  
Address **1600 Arnold Circle**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

8

**Parcel GPIN:** 1488-25-1889  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 15 CONDITIONS ON SEPTEMBER 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 proposed dwelling and associated improvements are in keeping with the neighborhood. The Board is of the opinion that the applicant has provided a CBPA exhibit that depicts the dwelling at the front yard setback along Arnold Circle and at both side yard setbacks. Placing the proposed residence closer to the street would be out of character with the neighborhood and would require a variance from the Board of Zoning Appeals.
- 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 prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property is within the RPA.
- 3) The variance is the minimum necessary to afford relief as the owners have designed the proposed improvements to be minimal. The Board is of the opinion that the applicant has worked within the unique constraints of the property – geometry of the platted parcel, existing shoreline, and topography of the property with regard to the variance being the minimum necessary to afford relief. In addition to the applicants use of alternative materials as a means to comply with the performance standards of the CBPA Ordinance towards the promotion of infiltrating stormwater into the ground, consistent with the use of structural urban best management practices [City Code, Appendix F, Section 106 (A)(3)(a)(3)].
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed dwelling and improvements are in keeping with the neighborhood and the site currently does not have any stormwater treatment. The Board is of the opinion that the applicant's desire to redevelop the property with a custom designed residence has merit to being in harmony with the purpose and intent of the Ordinance given the location of the proposed improvements, preservation of the 50 foot seaward buffer, and the installation of buffer restoration as a means to prevent the request from being a degradation to water quality.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load bioretention beds will be placed seaward of the improvements to store and treat the proposed impervious cover prior to being released into the adjacent waterway. The Board is of the opinion, when properly coordinated, the applicant's investment in redeveloping the uplands portion of the property with associated buffer restoration and stormwater management, coupled the use of a permeable paver driveway, will provide a means to manage towards a no net increase in nonpoint source pollution load.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **15,452 square feet x 200 percent = 30,904 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.

11. 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.
12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$3,541.08 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.**
14. The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by WPL, signed September 7, 2018 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
15. This variance supersedes the previous CBPA Board variance dated September 24, 2007.

**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. Jones to approve the variance with the 15 conditions as amended (Added Condition 15). All voted for the motion except Mr. France who voted no.**

**AYE 7 NO 1 ABSTAIN 0 ABSENT 1**

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



Applicant **John Dunn and Kimberly Brown**  
Address **2309 Broad Bay Road**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

9

**Parcel GPIN:** 1499-99-8075  
**Applicant's Agent:** Self Represented  
**CBPA Board Action:** APPROVED WITH 7 CONDITIONS ON SEPTEMBER 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 proposal conforms to other properties within this neighborhood, which are subject to the provisions of the CBPA Ordinance and are similarly situated where development has occurred within the 100 foot RPA buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing the majority of this property within the RPA.
- 3) The Board is of the opinion that the variance is the minimum necessary to afford relief, given that the expansion of an accessory structure is within the upper reach of the 50 foot landward buffer in an area currently devoted to turf.
- 4) The Board is of the opinion that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, as the encroachment into the RPA is consistent with the location of improvements on other properties in the vicinity, and not of substantial detriment to water quality due to the access to and limits of expansion within the RPA in areas currently devoted to turf, nor will it be detrimental to the public welfare.
- 5) The Board is of the opinion with the proposed improvements situated within an area of flat topography, coupled with underdeck treatment and the installation of buffer restoration as a means to manage erosion and sedimentation, that the proposed improvements provide merit to a no net increase in nonpoint source pollution load.

**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. 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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **690 square feet x 200 percent = 1,380 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, 3 understory trees, and 6 large shrubs, and 9 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.

5. Under deck treatment of sand and gravel shall be installed.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

**John Dunn appeared before the Board.**

**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 7 conditions listed above. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE  
FRANCE AYE**

<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>



Applicant **Owls Creek Energy LLC**  
Address **411 South Birdneck Road**  
Public Hearing **September 24, 2018**  
City Council District **Beach**

Agenda  
Item

**10**

**Parcel GPIN:** 2417-40-4823  
**Applicant's Agent:** Scott Acey, P.E.  
**CBPA Board Action:** APPROVED WITH 11 CONDITIONS ON SEPTEMBER 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 reasons for disturbance in the RPA is to provide the minimum access width required by the City for BMP maintenance access, fit the existing BMP with riprap to protect the RPA, clean up the trash in the RPA, and provide a sculpted landscape." The Board provides that the existing grade elevations within the 50 foot seaward buffer, as shown on the CBPA exhibit, will not be manipulated with the request to place fill material within the 100 foot RPA. The placement of fill material is limited to the 50 landward buffer of the RPA and only impacts existing grade elevations of 11 feet and higher.
- 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 to better the existing conditions in the RPA and downstream wetlands. The Board adds that the original plat of this parcel occurred prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief as limits of impacts were minimized to provide the minimum access width required by the City for BMP maintenance and access, to clean up trash in the RPA, and provide a sculpted landscape. The Board provides that the proposed development, as defined by the City's CBPA Ordinance definition of development, which is based off of land disturbance associated with the placement of fill material and not associated with the introduction of additional impervious cover within the RPA, will not decrease the permeability of the site or negatively impact water quality.
- 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 limits of this impact are only to provide grading where necessary to meet the minimum requirements for BMP access, add riprap to control the velocity discharge from the existing BMP, and remove porting of the concrete cart path in the RPA. The Board provides that the voluntary removal of illegally discarded materials and trash in the RPA by that applicant, and the request to grade an accessible route to the existing BMP that is collecting a significant portion of the local watershed

provides significant merit towards not being injurious to the neighborhood, not being of substantial detriment to water quality, or be otherwise detrimental to the public welfare.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load the limits of impacts were minimized to provide the minimum access width required by the City for BMP maintenance access. The Board provides that the applicant is not proposing an increase in the amount of impervious cover within the RPA and offers that maintaining a vegetative cover within the entire 100 foot RPA buffer provides merit towards effectively retarding runoff, preventing erosion, and filtering nonpoint source pollution.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be held with the on-site Civil/Stormwater Inspector from Permits and Inspections prior to any land disturbance associated with the placement of fill material within the Resource Protection Area (RPA).
2. A double row of 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. The base of the fill material shall be a minimum of 5 feet landward of the inner most silt fence.
3. All construction activity and limits of disturbance 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.**
4. 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.
5. The placement of fill shall be performed in phases and sequenced so that one stockpile is completed, graded and stabilized before moving on to the next area of fill. The sequencing shall be documented on the site plan for the placement of fill and their locations for review.
6. There shall be a generally flat area of 5 to 7 feet between the location of the silt fence and the toe of fill for the northern most stockpile area. This will also allow for construction equipment access around the northern side of the stockpile.
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. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
9. All areas within the 50 foot seaward buffer shall be designated as no-mow zones to allow for a grow-out of grassland or meadow areas and migration of woody plants.

10. **\*\*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 \$262.85 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.**

11. The conditions and approval associated with this variance are based on the exhibit plan dated September 11, 2018, prepared by MSA, P.C., signed September 11, 2018 by John I. Bloom III. 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.

**Scott Acey, P.E. 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 11 conditions listed above. All voted for the motion except Mr. France who works for Kimley-Horn & Associates at 4525 Main Street Virginia Beach, VA was abstained because he does work for the applicant.**

**AYE 7 NO 0 ABSTAIN 1 ABSENT 1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>ABSTAIN</b>
<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>



Applicant **Jamie Collins-Facteau**  
Address **3513 Sandy Point Key**  
Public Hearing **September 24, 2018**  
City Council District **Lynnhaven**

Agenda  
Item

**11**

**Parcel GPIN:** 1487-68-1393  
**Applicant's Agent:** Self Represented  
**CBPA Board Action:** APPROVED WITH 5 CONDITIONS ON SEPTEMBER 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 proposed improvements are in keeping with the neighborhood, minimal in respect to the request for a wood deck, 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 the proposed wood deck being comparatively a typical size for a single family residences.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare as the improvements are minimal and placed where there are no trees or shrubs to be removed, while large enough to satisfy the applicant's needs.
- 5) The Board offers that the proposed improvements are not located in the most sensitive portions of the parcel – the 50 foot seaward buffer, and that the retention of the existing riparian buffer canopy trees coupled with the existing vegetative area outboard of the parcel provides a natural means to manage towards a no net increase in nonpoint source pollution load.

**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, 1 understory tree, 2 large shrubs, and 3 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. 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.

**No one appeared before the Board.**

**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 5 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>8</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>1</b>
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<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>ABSENT</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>POOLE</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>