



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
OCTOBER 22, 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, October 22, 2018.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the September 24, 2018 minutes. All voted for the motion except Mr. Jester who was abstained due to his absence from the September meeting. This vote also serves as the official roll call for this meeting. All members were present.

BOARD ACTION: APPROVED SEPTEMBER 24, 2018 MINUTES ON OCTOBER 22, 2018

AYE 8 NO 0 ABSTAIN 1 ABSENT 0

DREPS	AYE
FRANCE	AYE
JESTER	ABSTAIN
JONES	AYE
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.



Applicant **Patrick and Sheryl Reynolds**
 Address **2421 Windward Shore Circle**
 Public Hearing **October 22, 2018**
 City Council District **Lynnhaven**

Agenda
 Item
1

Parcel GPIN: 1499-98-3029
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON OCTOBER 22, 2018 UNTIL THE NOVEMBER 21, 2018 PUBLIC HEARING

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. Poole to defer the variance until the November 21, 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



Contract Purchaser **Stephen Alexander Homes**
 Property Owner **South Linkhorn Bay Trust & et al.**
 Address **Lot 196, North Linkhorn Park Extended, York Lane**
 Public Hearing **October 22, 2018**
 City Council District **Lynnhaven**

Agenda
 Item
2

Parcel GPIN: 2418-47-4423
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON OCTOBER 22, 2018 UNTIL THE NOVEMBER 21, 2018 PUBLIC HEARING

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. Poole to defer the variance until the November 21, 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**



Contract Purchaser **Stephen Alexander Homes**
 Applicant **South Linkhorn Bay Trust & et al.**
 Address **Lot 197, North Linkhorn Park Extended, York Lane**
 Public Hearing **October 22, 2018**
 City Council District **Lynnhaven**

Agenda
 Item
3

Parcel GPIN: 2418-47-4336
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON OCTOBER 22, 2018 UNTIL THE NOVEMBER 21, 2108 PUBLIC HEARING

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. Poole to defer the variance until the November 21, 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



Applicant **Andrew and Lori Baan**
Address **2711 Poinciana Drive**
Public Hearing **October 22, 2018**
City Council District **Lynnhaven**

Agenda
Item

4

Parcel GPIN: 1499-59-4345
Applicant's Agent: Mike Gaddy, P.E.
CBPA Board Action: APPROVED WITH 18 CONDITIONS ON OCTOBER 22, 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, or less than most homes in the area. The Board provides that a high percentage of the proposed improvements will be in areas of existing impervious cover, offer an element of resiliency towards storm surge flooding, and occur landward of the existing retaining wall, resulting in the preservation of the existing natural resources and the topography of the parcel.
- 2) Staff 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 this property within the RPA. The Board concurs.
- 3) Given the open pile structure construction method being proposed and approximately 80 percent of the proposed improvements associated with the redevelopment of existing impervious cover, The Board is of the opinion that the variance is the minimum necessary to afford relief.
- 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 improvements are minimal, provide a mean of resiliency and adaptation to patterns of storm surge flooding, and preserve the existing topography and vegetation to allow for stormwater uptake and filtering and for marsh land migration.
- 5) The Board offers that the proposed improvements are not located in the most sensitive portions of the parcel, and that the retention of the existing riparian buffer canopy trees, coupled with the existing healthy marsh outboard of the parcel, provides a natural 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 along the existing retaining wall.
5. Construction limits shall be contained within the limits of the existing retaining wall. **All areas outside limits of construction shall be left in a natural state to include existing the forest floor (leaf litter) and upland meadow grass / transition area left intact. Said condition shall be so noted on the site plan.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. 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. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Said turf area shall be restricted to the front yard. Those areas seaward of the 2 foot contour shall be left in a natural state other than maintenance mowing, no more than 3 times a year.

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 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. 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. No proposed improvements shall be located seaward of the existing wood retaining wall, with the exception of the rear steps as shown on the CBPA variance exhibit.
13. No perimeter fill is authorized outboard or seaward of the existing wood retaining wall.
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 \$67.60 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 prepared by Gaddy Engineering Services, LLC, signed October 8, 2018 by Michael Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
17. In addition to the impervious area shown on the CBPA variance exhibit, up to 35 square feet of concrete walk from the drive to the front stairs may be constructed.
18. The structure shall be an open pile construction.

Andrew Baan and Mike Gaddy, P.E., appeared before the Board.

There was no opposition present.

A motion was made by Mr. Smith, seconded by Mr. France to approve the variance with the 18 conditions as amended (Amended Conditions 11 and 12, and added Conditions 17 and 18). 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



Applicant **Akhil and Nita Jain**
Address **1612 Meeting House Lane**
Public Hearing **October 22, 2018**
City Council District **Bayside**

Agenda
Item

5

Parcel GPIN: 1489-23-0626
Applicant's Agent: Robert Simon
CBPA Board Action: APPROVED WITH 11 CONDITIONS ON OCTOBER 22, 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 property is mostly redevelopment and the total impervious cover is less than 30 percent.
- 2) Given that the RPA buffers encompass the entire rear portion of the parcel due to the geometry and topography of the parcel, any and all maintenance and/or proposed work requests will require a variance for encroachment into the RPA on this lot based upon conditions or circumstances that have been imposed by the creation of this subdivision. The Board concurs and offers that the majority of the encroachment is located within the upper reach of the 50 foot landward buffer and that the applicant has offered a 736 square foot reduction in impervious cover within the 50 seaward buffer.
- 3) The variance is the minimum necessary to afford relief with the overall impervious cover associated with the introduction of the proposed improvements being under 30 percent impervious cover for the entire parcel.
- 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 all improvements are on the flat portions of the parcel and BMPs will be installed to treat stormwater runoff where there are none currently. The Board concurs and offers that the retention of the existing concrete patio as a base for the concrete pavers limits land disturbance and reduces the potential for detrimental erosion to occur.
- 5) Structural BMPs shall be installed as a means to manage towards a no net increase in nonpoint source pollution load. Coupled with the required buffer restoration, the Board concurs with the statement made by the applicant's agent.

CPBA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,172 square feet x 200 percent = 2,344 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: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 small shrubs.**

The required restoration shall be located in the 50 foot seaward buffer of the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

7. ****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 \$268.58 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 16, 1991 and December 14, 1992.

9. A Single Family Dwelling (RPA) Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh
11. The conditions and approval associated with this variance are based on the exhibit plan dated October 3, 2018, prepared by Chesapeake Bay Site Solutions, signed October 5, 2018 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.

Robert Simon appeared before the Board representing the applicants.

There was no opposition present.

A motion was made by Mrs. McDaniels, seconded by Mr. Poole to approve the variance with the 11 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					



Applicant **Page and Amy Johnson**
Address **4013 North Witchduck Road**
Public Hearing **October 22, 2018**
City Council District **Bayside**

Agenda
Item

6

Parcel GPIN: 1488-18-3652
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 12 CONDITIONS ON OCTOBER 22, 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 supports the applicant's statement as mentioned above.
- 2) Staff offers 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. In addition, the deed restriction specific to this parcel increases the minimum front yard setback by 15 feet (from 50 feet to 65 feet), to which the applicant has placed the corner of the proposed improvements at the front yard setback. The Board concurs.
- 3) The variance is the minimum necessary to afford relief as the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay and have included bioretention beds within the site to provide for the treatment of stormwater.
- 4) As stated above with regards to the parcel being platted in 1965, prior to the adoption of the CBPA Ordinance, and has a deed restriction that requires a front yard setback of 65 feet, Staff is of the opinion 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. The Board concurs.
- 5) The applicant states, as a means to manage towards a no net increase in nonpoint source pollution load that *"bioretention beds will be placed seaward of the improvements and treat the proposed impervious cover prior to being released into the adjacent waterway."* The Board supports the applicant's attempt towards the variance request being a no net increase in nonpoint source pollution and has conditioned that the proposed buffer restoration occur in the 50 foot seaward buffer of the RPA as a means to reestablish a nonexistent riparian buffer on the parcel.

CPBA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. 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: **4,360 square feet x 200 percent = 8,720 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: **10 canopy trees, 10 understory trees, and 20 large shrubs, and 30 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. ****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 \$999.16 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.**

12. The conditions and approval associated with this variance are based on the exhibit plan dated August 14, 2018, prepared by WP Large, signed October 5, 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.

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

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 12 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**



Applicant **Benjamin and Rebecca Cottrell**
Address **1242 East Bay Shore Drive**
Public Hearing **October 22, 2018**
City Council District **Lynnhaven**

Agenda
Item

7

Parcel GPIN: 2418-59-5194
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CONDITIONS ON OCTOBER 22, 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 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. The Board adds that the applicant's desire to redevelop the existing improvements located along the rear of the residence to the greatest extent practicable and reducing the overall impervious cover of the parcel does not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of the Ordinance and are similarly situated.
- 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 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."* Staff offers that the encroachment is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA. The Board concurs.
- 3) Staff is of the opinion that the applicant's attempt to redevelop the existing wood deck within the same footprint to the greatest extent practicable, and the overall reduction in impervious cover provides merit towards this variance request being the minimum necessary to afford relief. The Board concurs.
- 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 storm water 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."* The Board supports this position and as mentioned above provides specific recommended conditions towards managing the proposed improvements

from contributing to a detriment of water quality during the construction phase of this request.

- 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. Staff is of the opinion that if properly coordinated, the applicant's investment in redeveloping the uplands portion of the property with associated buffer restoration and stormwater management will provide a means to manage towards a no net increase in nonpoint source pollution load. The Board concurs.

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. 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.
5. Construction limits and all construction activities shall be contained within the limits of the delineated silt fence. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,982 square feet x 200 percent = 3,964 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

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

13. 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 \$454.20 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. This variance and associated conditions **will supersede** the conditions of the Board variance granted September 24, 2012.
16. The conditions and approval associated with this variance are based on the exhibit plan dated July 12, 2018, prepared by Gallup Surveyors and Engineers, signed August 14, 2018 by Bruce Galluyp. The conditions and approval associated with this variance are based on the Board

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

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

There was no opposition present.

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

AYE	9	NO	0	ABSTAIN	0	ABSENT	0
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DREPS	AYE
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	AYE
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant **Robert Hummel et al**
Address **929 Cardinal Road**
Public Hearing **October 22, 2018**
City Council District **Lynnhaven**

Agenda
Item

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Parcel GPIN: 2418-33-0147
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 14 CONDITIONS ON OCTOBER 22, 2018

Board's Findings:

- 1) Given the accessway to the proposed improvements, the location of the parcel being at the upper reach of the RPA, and the presence of the 20-foot wide permanent drainage easement, Staff is of the opinion that granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Area who are subject to the provisions of this Ordinance and are similarly situated. The Board concurs.
- 2) The encroachment into the RPA on this parcel is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) Staff is of the opinion that the proposed location of the in-ground pool, the applicant's reduction in the dimensional size of the associated pool patio area, and the proposed improvements being situated directly adjacent to the existing residence, is the minimum necessary to afford relief. The Board concurs.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and will not be injurious to the neighborhood, nor be of substantial detriment to water quality due to the introduction of buffer plantings within a sparsely wooded property, the encroachment into the 100 foot RPA buffer being within the least sensitive portion of the parcel, and site impact associated with the proposed improvements occurring along a relatively flat portion of the parcel within the variable width buffer.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the redevelopment of this parcel will be conditioned to comply with the performance standards of the CBPA Ordinance and criteria of the Stormwater Ordinance for a property that currently has no treatment towards nonpoint source pollution reductions.

CPBA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,410 square feet x 200 percent = 2,820 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: **7 canopy trees, 7 understory trees, 14 large shrubs and 21 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. ****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 \$323.12 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.**
13. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
14. The conditions and approval associated with this variance are based on the exhibit plan prepared by S.B. Ballard Construction Company, signed August 8, 2018 by Wayne S. Barrett. 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. With the exception that there may be retaining or fill as necessary within 5 feet of the proposed pool deck.

Robert Hummel appeared before the Board.

There was no opposition present.

A motion was made by Mr. France, seconded by Mr. Steier to approve the variance with the 14 conditions as amended (Amended Condition 14). All voted for the motion except Mr. McCoy and Mrs. McDaniels who voted no.

AYE 7 NO 2 ABSTAIN 0 ABSENT 0

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