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, September 23, 2019.

A motion was made by Mr. Jones and seconded by Mr. France to approve the August 26, 2019 minutes. All voted for the motion except Mr. McCoy who was abstained due to his absence from that meeting. This vote also serves as the official roll call for this meeting. All members were present except Mr. Smith.

BOARD ACTION: APPROVED AUGUST 26, 2019 MINUTES ON SEPTEMBER 23, 2019

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DREPS  AYE
FRANCE  AYE
JESTER  AYE
JONES  AYE
MCCOY  ABSTAIN
MCDANIELS  AYE
SMITH  ABSENT
STEIER  AYE
WALLACE  AYE

Board Members Present: Joe Dreps, David France, David Jester, Casey Jones, Wayne McCoy, June McDaniels, Michael Steier, and Al Wallace.
Eddie Bourdon, Attorney with Sykes Bourdon Ahern & Levy appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. McCoy to defer the variance until the October 28, 2019 public hearing. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

DREPS AYE
FRANCE AYE
JESTER AYE
JONES AYE
MCCOY AYE
MCDANIELS AYE
SMITH ABSENT
STEIER AYE
WALLACE AYE
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 in this subdivision as the Board concurs that the proposed dwelling is in harmony with the improvements in the neighborhood, and the review of the CBPA Ordinance is within the areas range from 18 percent to 23 percent in overall impervious cover above water and wetland.

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 are based on the request to construct a new dwelling for the property. The Board concurs and offers that the structure was built in 1939 and is of the opinion that the redevelopment will provide needed maintenance to the vegetation on the property and will include ecological benefits to the RPA with replacement of aging unhealthy trees with young trees.

3) The owners have designed the proposed improvements to minimize the impacts to the Chesapeake Bay and with the inclusion of bio-retention beds to provide for the treatment of stormwater as a means to be the minimum necessary to afford relief. While the Board respects that applicant’s perspective, conditions have been provided specific to this CBPA variance to further ensure that the request will be 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 with the proposed dwelling and improvements being in keeping with the neighborhood and the site not currently having stormwater treatment. The Board concurs and offers that the proposed redevelopment of the lot offers benefits through stormwater management and buffer restoration to restore the declining riparian buffer.
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 concurs.

**CPBA Variance Conditions:**

1) A Single-Family RPA 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.

2) 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.

3) Buffer restoration shall be installed equal to **10,686 square feet** 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: **32 canopy trees, 32 understory trees, 52 large shrubs, and 78 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.

4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6) 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.

7) 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.

8) 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.

9) 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.

10) 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.

11) 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.

12) 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.

13) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.

14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of $2,448.87 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

16) This variance and associated conditions will supersede the conditions of the CBPA variance granted July 27, 2005.

17) The conditions and approval associated with this variance are based on the exhibit plan dated April 13, 2018, prepared by WPL, signed September 7, 2019 by Eric A. 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 applicant.**

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Wallace to approve the variance with the 17 conditions as listed above. All voted for the motion except Mr. France and Mrs. McDaniels who voted no and Mr. Jones who was abstained.

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David Kledzik appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. Wallace to defer the variance until the October 28, 2019 public hearing. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

DREPS AYE
FRANCE AYE
JESTER AYE
JONES AYE
MCCOY AYE
MCDANIELS AYE
SMITH ABSENT
STEIER AYE
WALLACE AYE
Parcel GPIN: 2418-37-6035
Accela Record: 2019-CBPA-00040
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 20 CONDITIONS ON SEPTEMBER 23, 2019

The variance of Len Futerman and Ilene Goldstein located at 1019 S. Bay Shore Drive was granted with the following 20 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**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 development of the neighborhood and adjacent parcels. Given the year the plat was recorded for the neighborhood and the similarities of the shoreline with adjacent lots within the RPA, the Board concurs with the statement provided by the applicant’s agent.

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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.

3) The variance is the minimum necessary to afford relief given that the house was originally built in the 1950’s in its current location on the lot, we feel the best areas for expansion/redevelopment for the property is as shown to help avoid additional impacts to the resource. The proposed improvements have been limited to the landward buffer except for walkways.

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 in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay. However, if
approved, the proposed redevelopment will be required to have treatment provided between the improvements and the waterway and along the City street.

5) As a means to manage towards a no net increase in nonpoint source pollution load planting buffer restoration and bioretention stormwater management will be placed between the improvements and the waterway to capture and treat run-off prior to discharge into the Bay in addition to along the City right-of-way. Given the existing grade elevation along the rip rap revetment and low-lying topography within the seaward buffer, the Board is of the opinion that the required buffer restoration could be manipulated, and a selection of plant species provided to restore the 50-foot seaward buffer into a high marsh/upland woody shrub buffer.

**CPBA Variance Conditions:**

1) A Single-Family RPA 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.

2) The proposed paver patio shall not exceed 750 square feet in size as shown in its proposed location on the submitted CBPA Exhibit.

3) A trench drain shall be installed at the base of the circular driveway addition with a rain garden or BMP to treat any storm runoff from the driveway, and to be worked out with the Development Services Center (DSC) and Staff to treat public and private waters as needed.

4) 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.

5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **4,600 square feet x 200 percent = 9,200 square feet.**

The required restoration shall be located in the 50-foot seaward buffer of the Resource Protection Area, in areas currently devoted to turf to the greatest extent practicable and transition landwards as needed to fulfill the required buffer restoration square footage. Areas of the lot inundated by abnormal high tides or storm surge may be converted to no-mow zones as a component of the required buffer restoration. Said buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future.
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, grasses and groundcovers suitable for the existing grade elevations and environmental conditions. The following quantities are required: **12 canopy trees, 12 understory trees, 46 shrubs – large and small, and 69 grasses and/or groundcovers.** 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 30 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.

6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

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

8) 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.

9) 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.**

10) 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.

11) 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.**

12) 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.
13) 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.

14) 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.

15) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.

16) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

17) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of $1,080.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

18) This variance and associated conditions **will supersede** the conditions of the Board variance granted October 24, 1994.

19) The conditions and approval associated with this variance are based on the exhibit plan dated April 22, 2019, prepared by WPL, signed August 2, 2019 by Eric A. 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.

20) Remove the play area that is approximately 12 feet by 16 feet.

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

There was no opposition present.
A motion was made by Mr. Jones, seconded by Mrs. McDaniels to approve the variance with the 20 conditions as amended (Deleted Condition 3 of Staff’s recommended condition found in the staff write up, and replaced it with a new condition, and added condition 20). All voted for the motion.
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- JESTER: AYE
- JONES: AYE
- MCCOY: AYE
- MCDANIELS: AYE
- SMITH: ABSENT
- STEIER: AYE
- WALLACE: AYE
The variance of Forest and Elizabeth Hickman located at 2721 Canal Road was granted with the following 17 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**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 located because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The Board offers, through an analysis of similarly shape lots with the majority of the buildable area being within the 50-foot seaward buffer on lots platted prior to the adoption of the CBPA Ordinance, that the post-development impervious cover ranges from 33.6 percent to 49 percent of the lot above water and wetland.

2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the lot has topographic relief starting at the front of the site and down to the bulkhead impact on the CBPA buffer in the subject lot, these all appear to be natural conditions. 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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.

3) The variance is the minimum necessary to afford relief because the house was originally built in the 1960’s, we feel the best areas for expansion/redevelopment as shown for the property to help avoid additional impacts to the resource. The Board is of the opinion that the overall post-development impervious cover provides merit towards being the minimum necessary to afford relief given that improvements on other lots...
within the neighborhood consist of development within the 50-foot seaward buffer with swimming pools, wood deck and patios.

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 in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay. The Board offers that the use of a permeable paver system with the redevelopment and expansion of the proposed driveway provides merit towards being in harmony with the purpose and intent of the Ordinance and has provided the recommended condition, specifically condition 2 below.

5) As a means to manage towards a no net increase in nonpoint source pollution load, buffer restoration and bio-retention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay. In addition to the above statement, that there is mutual agreement that the site’s flat topography and high infiltration rates of the existing soil profile help reduce the potential for nonpoint source pollution from reaching adjacent waterways. The Board’s opinion that this lot and several in this area are impacted more by abnormal tidal events that breach the existing bulkhead and infiltrate the existing stormwater drainage system than any impacts from the resulting percentage of impervious cover.

**CPBA Variance Conditions:**

1) A Single-Family RPA 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.

2) 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.

3) 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.

4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 1,109 square feet x 200 percent = 2,218 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, 5 understory trees, 10 large shrubs, and 15 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) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

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

7) 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.

8) 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.

9) 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.

10) 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.
11) 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.

12) 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.

13) 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.

14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of $254.14 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

16) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

17) The conditions and approval associated with this variance are based on the exhibit plan dated August 1, 2019, prepared by WPL, signed August 8, 2019 by Eric A. 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 applicant.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mrs. McDaniels to approve the variance with the 17 conditions listed above. All voted for the motion.
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The variance of Gracly, LLC located at 401 Susan Constant Drive was granted with the following 18 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**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 development of the neighborhood and adjacent parcels.” The Board respects the point of view provided by the applicant’s agent with lots located to the west of this lot similar in size. Several lots within the area encroach within the 100-RPA if not entirely due the lot depth and the man-made canal.

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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.

3) The variance is the minimum necessary to afford relief because the house was originally built in the 1960s in its current location on the lot, we feel the best areas for expansion/redevelopment for the property as shown to help avoid additional impact to the resource. The proposed improvement have been limited to landward buffer. In addition, the recommended condition below provide merit to the variance request being 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 in keeping with the development of the neighborhood and adjacent parcels, the
site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay. In addition, Staff has provided recommended condition below that provide merit to the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

5) Planting buffer restoration and bio-retention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay as a means to manage towards a no net increase in nonpoint source pollution load. Given the existing topography of the rear yard and lack of an established riparian buffer, the Board is of the opinion that the required buffer restoration and selection of plant species provided would of a reestablishment of habitat if properly implemented beginning in the 50-foot seaward buffer and moving landward.

CBPA Variance Conditions:

1) A Single-Family RPA 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.

2) Exclusive of the existing 1-story frame building adjacent to the bulkhead, the proposed impervious cover within the 100-foot RPA buffer and seaward of the existing single-family residence shall not exceed 1,800 square feet.

3) 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.

4) 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.

5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: $3,100 \text{ square feet} \times 200\text{ percent} = 6,200 \text{ square feet}$.

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: 8 canopy trees, 8 understory trees, 32 large shrubs, and 48 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.

6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

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

8) 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.

9) 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.

10) 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.

11) 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.

12) 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.
13) 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.

14) 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.

15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of $710.41 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

17) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

18) The conditions and approval associated with this variance are based on the exhibit plan dated June 24, 2019, prepared by WPL, signed September 5, 2019 by Eric A. 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.

Eddie Bourdon, Attorney with Sykes Bourdon Ahern & Levy appeared before the Board representing the applicant.

There was no opposition present.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance request with the 18 conditions listed above. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

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FRANCE AYE
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The variance of Mark and Kathleen Pawlak located at 2233 Spinnaker Circle was granted with the following 7 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**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 located because the improvements are in similar to developed lots within the neighborhood that encroach into the RPA.

2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the lot was platted prior to the adoption of the CBPA Ordinance.

3) The variance is the minimum necessary to afford relief because the deck offers reasonable space for the desired use given the location of the proposed deck improvements within up reach of the RPA buffer.

4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements will not remove any existing vegetation provide buffer restoration.

5) Buffer restoration and under deck treatment will be installed as a means towards a no net increase and nonpoint source pollution load.
**CPBA Variance Conditions:**

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning & Community Development, 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.

2. Submitted concurrent with the CBPA exhibit to the Department of Planning & Community Development, Zoning Division 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.

3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: \[670 \text{ square feet} \times 200 \text{ percent} = 1,340 \text{ square feet}\].

   Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

   The required restoration shall be located in the Resource Protection Area 100-foot buffer 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.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**

6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

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

Mark Pawlak appeared before the Board.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 7 conditions listed above. All voted for the motion.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

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