



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
JANUARY 28, 2019**

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, January 28, 2019.

A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the December 19, 2018 minutes. All voted for the motion except Mr. Smith who was abstained due to his absence from the meeting, and Mr. Wallace who was abstained due to him not being a board member. This vote also serves as the official roll call for this meeting. All members were present except Mr. Jester.

BOARD ACTION: APPROVED DECEMBER 19, 2018 MINUTES ON JANUARY 28, 2019

AYE 6 NO 0 ABSTAIN 2 ABSENT 1

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

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



Applicant **Sam and Kara Eubanks**
Address **3917 Meeting House Road**
Public Hearing **January 28, 2019**
City Council District **Bayside**

Agenda
Item

1

Parcel GPIN: 1489-23-6933
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 18 CONDITIONS ON JANUARY 28, 2019

The variance of Sam and Kara Eubanks located at 3917 Meeting House Road 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. In addition, condition 1 of the previously approved 1991 CBPA variance only addressed the construction of primary structures, as the request was a proposal for a new subdivision and details regarding accessory structures were not considered or known at that time. Based on this, any improvements other than a primary structure are required to be further evaluated subject to the provisions of the CBPA Ordinance and its performance standards.
- 2) The encroachment into the RPA on this lot is based upon conditions or circumstances that have been imposed by the applicant's predecessor in title that limits a reasonable construction footprint solely for a principal structure; therefore, this request to further encroach has been designed in a manner that minimizes encroachment into the 50 foot landward buffer.
- 3) Given the existing topography of the parcel and use of retaining walls towards transitioning the proposed improvements to the existing grade elevations, the Board is of the opinion that the location of the proposed improvements will be the minimum necessary to afford relief for a modest in-ground pool and pool patio coupled with Staff recommendation that the overall impervious cover be reduced as conditioned within the Staff report.
- 4) The Board is of the opinion that the proposed improvements will not drastically impact the RPA or be injurious to the neighborhood, or a substantial detriment to water quality with the current condition of the riparian buffer being primarily

devoted to turf and the introduction of buffer restoration and stormwater management requirements, will enhance the ecological and biological function of the RPA.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load buffer restoration and bioretention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the river.

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: **1,344 square feet x 200 percent = 2,688 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.

11. The maximum impervious cover of the parcel shall not exceed 8,330 square feet or 35 percent of the site outside of water or wetlands. Said limits of impervious cover shall not encroach any further seaward than shown on the submitted CBPA variance exhibit.
12. Under deck treatment of sand and gravel shall be installed.
13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. 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.

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 \$308.00 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
16. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
17. This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 16, 1991.
18. The conditions and approval associated with this variance are based on the exhibit plan dated September 26, 2018, prepared by WPL, signed November 30, 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 applicant.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. Smith to approve the variance with the 18 conditions listed above. All voted for the motion except Mrs. McDaniels who voted no.

AYE 7 NO 1 ABSTAIN 0 ABSENT 1

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



Applicant **Robert and Michelle Bandy**
Address **4004 Sherwood Lane**
Public Hearing **January 28, 2019**
City Council District **Bayside**

Agenda
Item

2

Parcel GPIN: 1488-18-3211
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 16 CONDITIONS ON JANUARY 28, 2019

The variance of Robert and Michelle Bandy located at 4004 Sherwood Lane was granted with the following 16 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels in which the rear yards of the adjacent lots, which back up to a manmade canal, are all are within the 100 foot RPA buffer.
- 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 because the house was originally built in 1971 and near the current zoning standards, therefore the only area for expansion or development is in the rear of the property. In addition, the proposed improvements have been limited to the landward buffer.
- 4) The Board is of the opinion that the proposed improvements will not drastically impact the RPA, be injurious to the neighborhood, or be a substantial detriment to water quality. As the current condition of the riparian buffer is primarily turf, the recommended buffer restoration and stormwater management provided in the conditions below, should the variance request be granted, will enhance the ecological and biological function of the RPA.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load buffer restoration and bioretention stormwater management will be placed

between the improvements and the river to capture and treat runoff prior to discharging into the river.

CPBA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly

delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,892 square feet x 200 percent = 5,784 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, 28 large shrubs, and 42 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. Runoff from that portion of the driveway being redeveloped will be captured via trench drain and treated to the maximum extent practicable.
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 \$662.75 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. 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 September 20, 2018, prepared by WPL, signed December 3, 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.

Robert Bandy appeared before the Board.

There was no opposition present.

A motion was made by Mrs. McDaniels, seconded by Mr. Jones to approve the variance with the 16 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
MCDANIELS	AYE
POOLE	AYE
SMITH	AYE
STEIER	AYE



Applicant **Kenneth and Kathleen Tottle Revocable Trust**
Address **4046 North Witchduck Road**
Public Hearing **January 28, 2019**
City Council District **Bayside**

Agenda
Item

3

Parcel GPIN: 1488-08-5789
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 12 CONDITIONS ON JANUARY 28, 2019

The variance of Kenneth and Kathleen Tottle Revocable Trust located at 4046 North Witchduck Road was granted with the following 12 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant as the lot has topographic and RPA features and neighboring wetlands that have an impact on the CBPA buffer for this lot.
- 3) The variance is the minimum necessary to afford relief with the majority of the redevelopment offering a retreat in impervious area and encroachments into the buffer thus providing more pervious area on the site.
- 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 river, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the river.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load as a means to manage towards a no net increase in nonpoint source pollution load buffer restoration and bioretention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the river.

CBPA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed 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: **1,397 square feet x 200 percent = 2,794 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.

11. The overall length of the proposed retaining wall shall be reduced so that the eastern return wall of the proposed retaining wall is a minimum of 15 feet off of the property line.
12. The conditions and approval associated with this variance are based on the exhibit plan dated November 14, 2018, prepared by WPL, signed December 4, 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.

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 12 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
SMITH AYE
STEIER AYE
WALLACE AYE**



Applicant Michael Wheatley Revocable Living Trust Address 4133 Cheswick Lane Public Hearing January 28, 2019 City Council District Bayside	Agenda Item 4
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Parcel GPIN: 1478-92-5547
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 15 CONDITIONS ON JANUARY 28, 2019

The variance of Michael Wheatley Revocable Living Trust located at 4133 Cheswick Lane was granted with the following 15 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted 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 improvements have been limited to the landward buffer except for the pathway to the pier and with the entire site of 1.32 acres being within the RPA feature the location as shown provides the least impact to the site.
- 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 the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, and if approved, the existing improvements and the proposed redevelopment will be designed to have treatment provided between the improvements and the river.
- 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 river to capture and treat runoff prior to discharging into the river.

CBPA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed 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. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,164 square feet x 200 percent = 6,328 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, 16 large shrubs, and 24 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. 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 \$725.08 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. This variance and associated conditions **are in addition to** the conditions of the Board variance granted March 26, 2001.

15. The conditions and approval associated with this variance are based on the exhibit plan dated November 1, 2018, prepared by WPL, signed December 3, 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 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 15 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
SMITH	AYE
STEIER	AYE
WALLACE	AYE



Applicant **Jeffrey Keeter**
Address **824 Gilbert Circle**
Public Hearing **January 28, 2019**
City Council District **Lynnhaven**

Agenda
Item

5

Parcel GPIN: 1498-51-5265
Applicant's Agent: Robert Simon
CBPA Board Action: APPROVED WITH 20 CONDITIONS ON JANUARY 28, 2019

The variance of Jeffrey Keeter located at 824 Gilbert Circle 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:

- 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 with the lot is being developed in similar manner to the rest of the sites on Spigel Drive. In addition the Board is of the pinion that the geometry of the parcel, zoning setbacks, and overall impervious cover proposed under 25 percent, that the improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Area.
- 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 residence in keeping with the neighborhood development and the proposed improvements being the highest and best use of the property – working within the unique restraints of the property – geometry of the platted parcel, existing shoreline, and topography of the 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 the proposed development is under 30 percent in the RPA and all stormwater runoff from the development will be treated with BMPs. Also, the Board offers that the relocation of the proposed driveway off of Spigel Drive in-lieu of the driveway off of Gilbert Circle, as

conditioned by the 2017 CBPA variance, provides a better alternative that is more in harmony with the neighborhood, and is more conducive towards velocity reduction of stormwater run-off, thereby promoting infiltration.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, bioretention beds, buffer restoration areas and shoreline management will reduce nonpoint source pollution.

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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. **Inclusive of those trees within the Resource Management Area (RMA) and RPA**, for all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. A maximum of 1,500 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50 foot seaward or 50 foot landward buffers. All remaining pervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable: **7 understory trees, 30 large shrubs, and 45 small shrubs.**

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

13. No portions of the proposed improvements shall encroach into the 50 foot seaward buffer of the Resource Protection Area (RPA).

14. Under deck treatment of sand and gravel shall be installed.
15. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
16. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,275.31 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
17. Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
18. This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted November 22, 2017.
19. The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, Inc., signed January 11, 2019 by Gregory O. 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.
20. A walkway is permitted at a maximum width of 3 feet wide, up to 50% pervious stepping stone/walkway on the north side of the residence, leading from the north side of the proposed concrete driveway, to the north side of the proposed wood deck.

Robert Simon appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mr. Smith, seconded by Mr. McCoy to approve the variance with the 20 conditions as amended (Added Condition 20). 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**

SMITH	AYE
STEIER	AYE
WALLACE	AYE



Applicant **David Byler**
Address **4012 North Witchduck Road**
Public Hearing **January 28, 2019**
City Council District **Bayside**

Agenda
Item

6

Parcel GPIN: 1488-18-0998
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 14 CONDITIONS ON JANUARY 28, 2019

The variance of David Byler located at 4012 North Witchduck Road was granted with the following 14 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:

- 1) 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 the CBPA Ordinance and are similarly situated given the extensive amount of redevelopment provided with the proposed improvements coupled with no further encroachment seaward with new impervious cover.
- 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 *all new improvements being located landward of the existing improvements.*
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with the installation of stormwater treatment facilities and buffer restoration in areas currently devoted to turf, both of which promote and improve water quality. In addition, the owner will participate in the Lynnhaven Oyster Program for off-site water quality as a result of this request.
- 5) The Board is of the opinion that the amount of redevelopment of existing impervious cover and the proposed improvements located in a manner to avoid encroachment into the special flood hazard area and the 50 foot seaward buffer on an exposed peninsula lot offers substantial merit towards long-term management of a no net increase in nonpoint source pollution potential.

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. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **5,419 square feet x 200 percent = 10,838 square feet.** Of the 10,838 square feet of buffer restoration, 4,200 square feet shall be allocated to a 15 foot width vegetated filter strip along the northern portion of the property and adjacent to the existing bulkhead.

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: **14 canopy trees, 14 understory trees, 28 large shrubs, and 42 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. 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 \$1,241.85 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.**
14. The conditions and approval associated with this variance are based on the exhibit plan dated September 27, 2018, prepared by John E. Sirine & Associates, signed September 27, 2018 by Jeffrey D. Williams. 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.

David Byler and Billy Garrington of Governmental Permitting Consultants 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 14 conditions as amended (Amended Condition 11). 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
SMITH	AYE
STEIER	AYE
WALLACE	AYE



Applicant **John Hilderbrandt**
Address **122 B Pinewood Road**
Public Hearing **January 28, 2019**
City Council District **Beach**

Agenda
Item

7

Parcel GPIN: 2418-63-5213
Applicant's Agent: Eddie Bourdon, Sykes Bourdon Ahern & Levy
CBPA Board Action: APPROVED WITH 15 CONDITIONS ON JANUARY 28, 2019

The variance of John Hilderbrandt located at 122 B Pinewood Road was granted with the following 15 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:

- 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 Board is of the opinion that the applicant has provided a CBPA exhibit that respects the unique shape of the platted parcel, as well as the existing shorelines and environmental features of the property to the greatest extent practicable.
- 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 the lot being created many years prior to the adoption of the Bay Act. This lot is greatly hindered by the provisions of the Bay Act since 78 percent of the lot is in the RPA and 99 percent of the buildable portion of the lot is in the RPA.
- 3) The variance is the minimum necessary to afford relief given that 99 percent of the buildable portion of the lot is in the RPA. In addition, the Board is of the opinion that the existing shoreline conditions combined with construction requirements for improvements within the floodplain offers a viable means towards the variance being the minimal 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 installation of the required stormwater treatment facilities and buffer restoration in areas currently devoted to turf, both of which promote and improve water quality.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load the management of stormwater management and Staff's recommended conditions offer substantial merit towards long-term management of a no net increase in nonpoint source pollution potential.

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. 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: **725 square feet x 200 percent = 1,450 square feet.**

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

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

13. 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 \$166.14 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.**

15. The conditions and approval associated with this variance are based on the exhibit plan dated November 27, 2018 and revised December 27, 2018, prepared by John E. Sirine & Associates, signed November 27, 2018 by Jeffrey Williams. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mrs. McDaniels to approve the variance with the 15 conditions listed above. All voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
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DREPS	AYE
FRANCE	AYE
JESTER	ABSENT
JONES	AYE
MCCOY	AYE
MCDANIELS	AYE
SMITH	AYE
STEIER	AYE
WALLACE	AYE



Applicant **Cynthia C Earhart Revocable Trust**
Address **1400 Back Cove Road**
Public Hearing **January 28, 2019**
City Council District **Lynnhaven**

Agenda
Item

8

Parcel GPIN: 1489-78-0493
Applicant's Agent: James Baker
CBPA Board Action: APPROVED WITH 9 CONDITIONS ON JANUARY 28, 2019

The variance of Cynthia C. Earhart Revocable Trust located at 1400 Back Cove Road was granted with the following 9 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:

- 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 Area who are subject to the provisions of this Ordinance and are similarly situated as the redevelopment of this lot is similar to other lots within this neighborhood that have expanded accessory structures within the RPA due to the location of existing improvements – most of which were constructed prior to the adoption of the CBPA Ordinance and delineation of 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 portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief given the location of the proposed improvements will be within an area currently devoted to turf and within close proximity to existing upland improvements.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance, will not be injurious to the neighborhood or of substantial detriment to water quality, or otherwise detrimental to the public welfare as the proposed improvements being located in an area of relatively flat topography, and the construction access being off of an adjacent hard surface. These are similar to several redevelopment projects on adjacent parcels that have encroached into the 100 foot RPA buffer with improvements on lots that were developed prior to the adoption of the CBPA Ordinance.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the applicant proposes to expand the existing planting beds along the perimeter of the lot, further vegetating the established shoreline to provide additional infiltration of stormwater runoff.

CBPA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **725 square feet x 200 percent = 1,450 square feet.**

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

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

8. No perimeter fill is authorized outboard or seaward of the proposed improvements.
9. 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.

James Baker, Contractor 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 9 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
SMITH AYE
STEIER AYE
WALLACE AYE**



Applicant **Charles and Ruth Stang**
Address **2920 Buccaneer Road**
Public Hearing **January 28, 2019**
City Council District **Lynnhaven**

Agenda
Item

9

Parcel GPIN: 1499-28-8265
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CONDITIONS ON JANUARY 28, 2019

The variance of Charles and Ruth Stang located at 2920 Buccaneer 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because this subdivision was recorded many years prior to the adoption of the Bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, 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 redeveloped and developed areas within the 50 foot seaward buffer with a swimming pool and patios is the minimum necessary to afford relief when compared to similarly situated parcels in the vicinity which is based off of post-development impervious cover pertaining to previous CBPA Board variances on Breezy Road (averaging 42 to 44 percent) against the proposed post-development impervious cover percent associated with this request (44.8 percent).
- 4) As a result of this variance request the owner will install grass swales and permeable pavers, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality in an effort to ensure that this variance request will be in harmony with the purpose and intent of the CBPA Ordinance, not injurious to the neighborhood, nor

be of substantial detriment to water quality, or otherwise detrimental to the public welfare.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, 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 is of the 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 pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,352 square feet x 200 percent = 4,704 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 24 small shrubs.**

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

13. The existing 18 inch Oak, delineated as tree number 1 on sheet C02 shall be preserved and the proposed swimming pool and associated retaining wall shifted to the east by approximately 3 feet to lessen the impact on the existing root system.

14. The proposed driveway and walkways shall be constructed of a permeable pavement system.
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 \$539.00 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
17. The conditions and approval associated with this variance are based on the exhibit plan dated November 27, 2018, prepared by Gallup Surveyors & Engineers, signed November 27, 2018 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

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

There was no opposition present.

A motion was made by Mr. Dreps, seconded by Mr. McCoy to approve the variance with the 17 conditions listed above. All voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
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DREPS	AYE
FRANCE	AYE
JESTER	ABSENT
JONES	AYE
MCCOY	AYE
MCDANIELS	AYE
SMITH	AYE
STEIER	AYE
WALLACE	AYE



Applicant **Douglas Burr and Eileen Ju**
 Address **Lot 2, Little Neck Point**
 Public Hearing **January 28, 2019**
 City Council District **Lynnhaven**

Agenda
 Item
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Parcel GPIN: 1489-52-2513
Applicant’s Agent: Eddie Bourdon, Sykes Bourdon Ahern & Levy
CBPA Board Action: DENIED APPLICATION ON JANUARY 28, 2019

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

There was no opposition present.

A motion was made by Mr. Smith, seconded by Mr. Wallace to approve the application with 19 conditions. All voted for the motion except Mr. Dreps, Mr. France, Mrs. McDaniels, Mr. Steier, and Mr. Wallace who voted no. The motion failed, therefore, the variance is denied.

AYE 3 NO 5 ABSTAIN 0 ABSENT 1

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



Applicant **Douglas Burr and Eileen Ju**
 Address **3825 Little Neck Point**
 Public Hearing **January 28, 2019**
 City Council District **Lynnhaven**

Agenda
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Parcel GPIN: 1489-52-0509
Applicant's Agent: Eddie Bourdon, Sykes Bourdon Ahern & Levy
CBPA Board Action: DEFERRED ON JANUARY 28, 2019 UNTIL THE FEBRUARY 25, 2019 PUBLIC HEARING

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

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mrs. McDaniels to defer the variance until the February 25, 2019 public hearing. 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
SMITH AYE
STEIER AYE
WALLACE AYE



Applicant **Celebi Ozic**
 Address **272 Canal Road**
 Public Hearing **January 28, 2019**
 City Council District **Lynnhaven**

Agenda
Item

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Parcel GPIN: 1499-57-3345
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON JANUARY 28, 2019 UNTIL THE MARCH 25, 2019 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. Jones to defer the variance until the March 25, 2019 public hearing. 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
SMITH AYE
STEIER AYE
WALLACE AYE



Applicant **Donald Flanders Jr and Valerie De Lame**
Address **1004 Witch Point Trail**
Public Hearing **January 28, 2019**
City Council District **Bayside**

Agenda
Item

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Parcel GPIN: 1488-25-1889
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 4 CONDITIONS ON JANUARY 28, 2019

The variance of Donald Flanders Jr and Valerie De Lame located at 1004 Witch Point Trail was granted with the following 4 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:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property, as the redevelopment of this property conforms to other properties within this neighborhood who are subject to the provisions of this ordinance and are similarly situated where minor development has occurred within the RPA feature.
- 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 and the residence constructed prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing this property within the RPA.
- 3) The variance is the minimum necessary to afford relief, given the reasonable size of the shed and placement on skids so that the existing topography is not disturbed.
- 4) Due to the presence of riparian buffer vegetation along the seaward portion of the proposed improvements and the minimal increase in overall impervious cover for the site, Staff is of the opinion that the variance is in harmony with the purpose and intent of the CBPA ordinance and will not be injurious to the neighborhood, and will not be of substantial detriment to water quality.
- 5) The preservation of the existing riparian buffer vegetation and the mature forest floor seaward of the proposed improvements provides merit towards a means to manage erosion and sedimentation 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. 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. 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.
4. 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.

Donald Flanders and Valerie De Lame appeared before the Board.

There was no opposition present.

As an item of the consent agenda, the board approved the variance request with the 4 conditions listed above. All voted for the motion except Mr. Jones who was abstained because he has a relative that lives at 1001 Witch Point Trail.

AYE 7 NO 0 ABSTAIN 1 ABSENT 1

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



Applicant **Lynnhaven Area Properties, LLC**
 Address **Prop. of Allen E. Perrel, Lot 4 & closed portion of
 Wolfsnare Road & Parcel B Wolfsnare, Wolfsnare Rd**
 Public Hearing **January 28, 2019**
 City Council District **Beach**

Agenda
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Parcel GPIN: 2407-09-4435, 2407-09-5412, and part of 2407-09-6257
Applicant’s Agent: Lisa Murphy
CBPA Board Action: DEFERRED ON JANUARY 28, 2019 UNTIL THE MARCH 25, 2019 PUBLIC HEARING

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

There was no opposition present.

The applicant requested a deferral. A motion was made by Mr. McCoy, seconded by Mr. Jones to defer the variance until the March 25, 2019 public hearing. 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
 SMITH AYE
 STEIER AYE
 WALLACE AYE**



Applicant **Lynnhaven Area Properties, LLC**
 Address **Wolfsnare Parcel 2, Lot 7, Wolfsnare Road and Westminster Lane**
 Public Hearing **January 28, 2019**
 City Council District **Beach**

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Parcel GPIN: Part of 2407-09-6257
Applicant’s Agent: Lisa Murphy
CBPA Board Action: DEFERRED ON JANUARY 28, 2019 UNTIL THE MARCH 25, 2019 PUBLIC HEARING

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

There was no opposition present.

The applicant requested a deferral. A motion was made by Mr. McCoy, seconded by Mr. Jones to defer the variance until the March 25, 2019 public hearing. 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
SMITH AYE
STEIER AYE
WALLACE AYE