



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
FEBRUARY 25, 2019**

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, February 25, 2019.

A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the January 28, 2019 minutes. All voted for the motion except Mr. Jester who was abstained due to his absence from the meeting. This vote also serves as the official roll call for this meeting. All members were present.

BOARD ACTION: APPROVED JANUARY 28, 2019 MINUTES ON FEBRUARY 25, 2019

AYE 8 NO 0 ABSTAIN 1 ABSENT 0

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

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



Applicant **Douglas Burr and Eileen Ju**
Address **3825 Little Neck Point**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 1489-52-0509
Applicant's Agent: Eddie Bourdon, Sykes Bourdon Ahern & Levy
CBPA Board Action: APPROVED WITH 18 CONDITIONS ON FEBRUARY 25, 2019

Board's Findings:

The variance of Douglas Burr and Eileen Ju located at 3825 Little Neck Point 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 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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing this property within the RPA.
- 3) The variance is the minimum necessary to afford relief as the Board is of the opinion that the applicant's attempt to avoid the most sensitive areas of land, to design a project with regard to the existing geometry of the upland area, to leave as much area as possible in a natural state, including the entire 50 foot seaward buffer, while building a house that will encroach into the front and side yard setbacks that will be in keeping with the size and location of other dwellings in the neighborhood all provides merit to being the minimal necessary.
- 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 purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas

currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.

- 5) Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way an revegetating any denuded areas all help to limit pollution from entering the adjacent waters as a means to manage towards a no net increase in nonpoint source pollution load.

CPBA Variance Conditions:

1. The Center for Conservation Biology, Mapping Portal most recent data indicates a bald eagle nest within the vicinity of 3825 Little Neck Point. All construction activities shall be coordinated with Virginia Department of Game and Inland Fisheries. Once coordinated, approval letters shall be provided to the Development Services Center (DSC) prior to the release of an approved site plan to ensure compliance with state and federal laws.
2. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
3. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
4. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
5. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
6. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
7. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. 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.

10. 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.
11. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
12. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
13. A maximum of 2,800 square feet of turf is permitted for this property and shall be limited to the areas of turf as delineated on the CBPA exhibit. All remaining pervious area shall be areas of buffer restoration. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **11 understory trees, 22 large shrubs, and 33 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.

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 \$937.97 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. 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.

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 November 8, 2018, prepared by Gallup Surveyors & Engineers, signed January 30, 2019 by Bruce Gallup. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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 Mrs. McDaniels, seconded by Mr. Jones to approve the variance with the 18 conditions listed above. All voted for the motion.

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



Applicant **Philip and Amber Schworm**
Address **3301 Old Kirkwood Drive**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda
Item

2

Parcel GPIN: 1488-90-8934
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 15 CONDITIONS ON FEBRUARY 25, 2019

The variance of Philip and Amber Schworm located at 3301 Old Kirkwood Drive 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:

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 on other parcels within 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 as the house was built prior to the City's adoption of the OCBPA Ordinance and at current zoning standards, therefore the only area for expansion or development is in the rear of the property. In addition, the Board is of the opinion that the applicant's request is conscience to both the performance standards of the CBPA Ordinance and the minimum necessary to afford relief given the size of the parcel, date the parcel was recorded, and location of the RPA buffer.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with the Board's position being that the proposed improvements will not negatively impact the components of the RPA, be injurious to the neighborhood, nor a substantial detriment to water quality because the current condition of the riparian buffer is primarily devoted to turf. With the recommended amount of buffer restoration conditioned below, should the variance request be granted, coupled with the restoration methods of the buffer planting and stormwater management should 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 practices will be installed to capture and treat runoff prior to discharging into the adjacent waterways.

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. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,313 square feet x 200 percent = 4,626 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.

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. The proposed impervious cover shall not encroach into the 50 foot seaward buffer.
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 \$530.06 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 January 11, 2019, prepared by Fox Land Surveying, signed January 13, 2019 by Travis Fox. 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 applicants.

There was no opposition present.

As an item of the consent agenda, a motion was made by Mr. McCoy, seconded by Mr. Jones to approve the variance request with the 15 conditions listed above. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Applicant **Young Living Trust**
Address **1328 East Bay Shore Drive**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda
Item

3

Parcel GPIN: 2418-49-8901
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CONDITIONS ON FEBRUARY 25, 2019

The variance of Young Living Trust located at 1328 East Bay Shore Drive 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) The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels therefore, 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.
- 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 as the owners have designed the proposed improvements to minimize the impacts to the Chesapeake Bay and have been limited to the landward buffer except for a minor encroachment for a pathway.
- 4) The variance is in harmony with the purpose and intent of the CBPA 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.
- 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 Bay to capture and treat run-off prior to discharge into the Bay.

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. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,073 square feet x 200 percent = 2,146 square feet**. Of the 2,146 square feet of buffer restoration, approximately 900 square feet of buffer restoration shall be installed seaward of the proposed retaining wall.

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

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

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$245.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
15. Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
16. This variance and associated conditions **are in addition to** the conditions of the Board variance granted May 24, 1993.
17. The conditions and approval associated with this variance are based on the exhibit plan dated December 21, 2018, prepared by WPL, signed January 4, 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.

As an item of the consent agenda, a motion was made by Mr. McCoy, seconded by Mr. Jones to approve the variance request with the 17 conditions listed above. All voted for the motion.

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



Applicant **James and Kelly Sheeran**
Address **909 Bingham Street**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda
Item

4

Parcel GPIN: 2408-81-9587
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CONDITIONS ON FEBRUARY 25, 2019

Board's Findings:

The variance of James and Kelly Sheeran located at 909 Bingham Street 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 the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. In addition, variance requests along this reach of the RPA feature have been minimal and is of the opinion that the proposed improvements are not necessarily in keeping with the development of the neighborhood but rather, are cognitive to the environmental features of the lot.
- 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 with the house originally built in the 1960's and near the current zoning standards, therefore the only area for expansion is in the rear of the property in addition to the proposed improvements being limited to the landward buffer except for a minor encroachment for the stairway. Moreover, the Board is of the opinion that the applicant's use of the side yard and selection of construction materials to minimize impacts on the existing topography provides additional merit towards this variance being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of the CBPA 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, and currently does not offer any stormwater mitigation for the bay.

- 5) Planting buffer restoration and bioretention stormwater management will be placed between improvements and the bay to capture and treat run-off prior to discharging in the Bay as a means to manage towards a no net increase in nonpoint source pollution load.

CPBA Variance Conditions:

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 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 with portions of the required best management practices being located within the front yard.

11. Exclusive of the fenced in portions of the rear yard, the remaining area within the 100 foot RPA shall be converted to a natural state and augmented with **5 understory trees, 10 large shrubs, and 15 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.

12. Under deck treatment of sand and gravel shall be installed under all decks, existing and proposed.
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 \$214.95 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. The conditions and approval associated with this variance are based on the exhibit plan dated August 22, 2018, prepared by WPL, signed November 5, 2018 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 Mrs. McDaniels, seconded by Mr. France to approve the variance with the 17 conditions as amended (Amended Condition 12). All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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



Applicant **Linkhorn Investments Co, LLC**
Address **1525 McCullough Lane**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda
Item

5

Parcel GPIN: 2409-91-4398
Applicant's Agent: Jason Barney
CBPA Board Action: APPROVED WITH 11 CONDITIONS ON FEBRUARY 25, 2019

Board's Findings:

The variance of Linkhorn Investments Co, LLC located at 1525 McCullough Lane was granted with the following 11 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 property is situated along the waterfront of Linkhorn Bay and many properties along the waterfront here have bulkheads along the shoreline.
- 2) The applicant's agent provides that the variance request on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but due to the applicant being unaware of the condition of the 2005 CBPA variance requiring that a rip rap revetment be used to replace the bulkhead, and that the applicant is this condition to be replaced with other measures that are more effective for reducing non-point source run-off from the site.
- 3) The variance is the minimum necessary to afford relief with the applicant no requesting any additional impervious cover, and with 90 percent of the bulkhead already replaced, removal would not be feasible and would cause more disturbance.
- 4) The Board is of the opinion that replacing Condition 5 with a condition requiring additional bioretention beds will be more effective in reducing pollutant run-off from the site provides merit towards the variance being in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not 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 applicant has provided that the proposal will reduce nonpoint source pollution from the site with no new impervious cover being proposed, and adding additional bioretention beds to capture additional nonpoint source run-off from the existing impervious areas.

CPBA Variance Conditions:

1. The variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) variance Board variance granted December 22, 2005 with condition 5 being stricken from the December 22, 2005 CBPA variance.
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. 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.
4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
5. 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.
6. The conditions of the existing December 22, 2005 CBPA variance, specifically the required buffer restoration and stormwater management facilities shall be documented on a revised Landscape/Buffer Restoration plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present. The required stormwater management facilities shall be reinstalled outboard of the existing canopy trees driplines.
7. A 10 foot wide buffer restoration planting bed shall be installed parallel to the proposed bulkhead. Said area of restoration is in addition to the December 22, 2005 CBPA variance buffer restoration requirements and shall achieve the full complement of vegetation consisting of shrubs and groundcovers to the greatest extent practicable.
8. A Landscape/Buffer Restoration 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. Said plan shall detail the specific location, number, and species of vegetation to be installed and all stormwater management facilities that were documented on the approved April 23, 2008 DSC Site Plan in addition to the buffer restoration requirements associated with this variance.
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, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit
10. The existing boardwalk will be removed from behind the bulkhead.

11. A landscape, architect or engineer will provide an as built, one year after the improvements are completed, ascertaining that both the existing buffer requirements from the 2005 variance, plus the new requirements that have been fully installed or in adequately healthy conditions.

Jason Barney appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mrs. McDaniels, seconded by Mr. Wallace to approve the variance with the 11 conditions as amended (Added Conditions 10 and 11). All voted for the motion except Mr. McCoy who was abstained because the representative was an employee of his located at 5003 Rouse Drive.

AYE 8 NO 0 ABSTAIN 1 ABSENT 0

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



Applicant **David McClellan**
 Address **553 Longleaf Road**
 Public Hearing **February 25, 2019**
 City Council District **Beach**

Agenda
 Item
6

Parcel GPIN: 1497-98-8641
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED ON FEBRUARY 25, 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. Steier to defer the variance until the March 25, 2019 public hearing. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

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