



**MINUTES  
CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
MARCH 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, March 25, 2019.

A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the February 25, 2019 minutes. All voted for the motion. This vote also serves as the official roll call for this meeting. All members were present.

**BOARD ACTION: APPROVED FEBRUARY 25, 2019 MINUTES ON MARCH 25, 2019**

**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**

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



Applicant **Lynnhaven Area Properties, LLC**  
 Address **Lot 4, Wolfsnare Road, Parcel B Wolfsnare Road**  
 Public Hearing **March 25, 2019**  
 City Council District **Beach**

Agenda  
 Item  
**1**

**Parcel GPIN:** 2407-09-4435; 2407-09-5412 and part of 2407-09-6257  
**Applicant’s Agent:** Lisa Murphy  
**CBPA Board Action:** DEFERRED INDEFINITELY ON MARCH 25, 2019

**Lisa Murphy 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 indefinitely. 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 **Lynnhaven Area Properties, LLC**  
Address **Parcel 2, Lot 7, Wolfsnare Rd & Westminster La**  
Public Hearing **March 25, 2019**  
City Council District **Beach**

Agenda  
Item

**2**

**Parcel GPIN:** Part of 2407-09-6257  
**Applicant's Agent:** Lisa Murphy  
**CBPA Board Action:** DEFERRED INDEFINITELY ON MARCH 25, 2019

**Lisa Murphy 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 indefinitely.  
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 **Celebi Ozic**  
Address **2725 Canal Road**  
Public Hearing **March 25, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**3**

**Parcel GPIN:** 1499-57-3345  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 7 CONDITIONS ON MARCH 25, 2019

**Board's Findings:**

The variance of Celebi Ozic located at 2725 Canal Road was granted with the following 7 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 1) That granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the property is currently experiencing flooding due to a failure of primary bulkhead.
- 2) The encroachment into the RPA on this lot is based upon conditions and circumstances that may have been created by the applicant and the applicant's predecessor, however, correction of the serious eroding shoreline, and the outlying condition of the concrete debris field, makes this situation such that action is necessary.
- 3) The variance is the minimum necessary to afford relief because the applicant is proposing fill only, no new impervious area is proposed and furthermore, buffer restoration is being proffered despite no new impervious area being created.
- 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 no loss of buffer will occur and the new bulkhead will halt an ongoing erosion problem.
- 5) No impervious areas have been added, only fill and a steel bulkhead as a means to manage towards a no net increase in nonpoint source pollution load. This is further enhanced by the addition of buffer restoration, without new impervious area.

**CPBA Variance Conditions:**

1. With regards to the redevelopment of the existing bulkhead, a pre-construction meeting shall be held with the CBPA Inspector and Waterfront Operations 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. 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.
5. Buffer restoration shall be installed in the newly created upland area adjacent to the proposed bulkhead work. The area to be determined by staff in review of the engineering documents associated with the construction of the bulkhead.

Said restoration shall achieve the full complement of vegetation consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance.

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

6. This variance and associated conditions **will supersede** the conditions of the Board variance granted April 28, 2008.

7. The conditions and approval associated with this variance are based on the exhibit plan dated March 12, 2019, prepared by Gallup Surveyors & Engineers, LTD., signed March 12, 2019 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. France, seconded by Mr. Smith to approve the variance with the 7 conditions as amended (Deleted Conditions 5, 6, 7, 8, 9, 10, and 13 of Staff's recommended conditions found in the Staff write up and amended Condition 11 found in the Staff write up). All voted for the motion.**

<b>AYE</b>	<b>9</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>0</b>
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<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



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

Agenda  
Item

**4**

**Parcel GPIN:** 1497-98-8641  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPLICATION WITHDRAWN ON MARCH 25, 2019

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

**There was no opposition present.**

**The applicant requested that this application be with withdrawn. A motion was made by Mr. McCoy, seconded by Mr. Jones to withdraw this application. All voted for the motion.**

**AYE 9 NO 0 ABSTAIN 0 ABSENT 0**

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



Applicant **Lance and Cheri Shores**  
Address **2745 Spigel Drive**  
Public Hearing **March 25, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**5**

**Parcel GPIN:** 1498-42-6749  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 16 CONDITIONS ON MARCH 25, 2019

**Board's Findings:**

The variance of Lance and Cheri Shores located at 2745 Spigel Drive 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 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 due to the amount of redevelopment, that the new development will be located landward of the existing retaining wall, that the existing retaining wall will not be disturbed, and that the existing environmental features within the western portion of the lot will be preserved.
- 4) 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 the proposed improvements will integrate 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.

- 5) The Board offers that the applicants' preservation of the western portion of the lot and the conditioned buffer restoration coupled with the proposed living shoreline being pursued provides merit towards the variance request not being in increase in nonpoint source pollution load.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. 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: **1,876 square feet x 200 percent = 3,752 square feet**. As a component of the required restoration, areas of denuded marsh and created marsh – 1,588 square feet shall be sprigged and the suitable areas sprigged may be counted towards the vegetative restoration requirements.

For the riparian buffer restoration that is provided, consisting of upland woody plant materials, said 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 Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory tree, 10 large shrubs, and 15 small shrubs**.

Upland riparian buffer 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 \$429.91 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 31, 2019, prepared by Gallup Surveyors and Engineers, signed March 7, 2019 by David R. 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.
16. All patio and walkways shall be constructed of a permeable pavement system.

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

**There was no opposition present.**

**A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 16 conditions as amended (Added Condition 16). All voted for the motion.**

<b>AYE</b>	<b>9</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>0</b>
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<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>AYE</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **Betsy DiJulio**  
Address **3620 Sea Horse Way**  
Public Hearing **March 25, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**6**

**Parcel GPIN:** 1487-59-6746  
**Applicant's Agent:** Yang Tian  
**CBPA Board Action:** APPROVED WITH 16 CONDITIONS ON MARCH 25, 2019

The variance of Betsy DiJulio located at 3620 Sea Horse Way 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:

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property, as the area encroached upon for the redevelopment of the property is consistent with other properties within this neighborhood who are subject to the provisions of this Ordinance and are similarly situated within 50 feet landward buffer where development has occurred within the Resource Protection Area (RPA).
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing this property within the RPA.
- 3) The proposed location of the small plunge pool, the limited dimensional size of the associated pool patio area, and proposed front entry and deck situated directly adjacent to the existing residence, that the variance is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, as the encroachment into the RPA is consistent with the location of improvements on other properties in the vicinity, and not of substantial detriment to water quality due to the access to and limits of expansion within the RPA, nor will the project be detrimental to the public welfare. In addition, the Board is of the opinion that the applicant's agent as designed the proposed improvements in a manner that is in harmony with the lot's natural features without causing substantial impacts to, or encroachment into the RPA buffer.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load the use of both a stone underdeck treatment and the installation of buffer restoration are proposed as a means to manage towards a no net increase in nonpoint source pollution load and the existing riparian buffer with mature forest floor is being retained seaward of the proposed improvements and below the top of bank feature further mitigating 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. 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. 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. 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 **6 understory trees, 12 large shrubs, and 18 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. Under deck treatment of sand and gravel shall be installed.
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 \$268.12 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
15. 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. The conditions and approval associated with this variance are based on the exhibit plan dated March 8, 2019, prepared by GARC, signed by Yang Tian, Professional Architect. 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.

**Betsy DiJulio appeared before the Board.**

**There was no opposition present.**

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

**AYE 9 NO 0 ABSTAIN 0 ABSENT 0**

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



Applicant **Charles and Barbara Cleveland**  
Address **2317 Windward Shore Drive**  
Public Hearing **March 25, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**7**

**Parcel GPIN:** 2409-08-0660  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 15 CONDITIONS ON MARCH 25, 2019

The variance of Charles and Barbara Cleveland located at 2317 Windward Shore Drive 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:

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because this subdivision was recorded many years prior to the adoption of the Bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 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 retreat of impervious cover from within the 50 foot seaward buffer, the slight increase of approximately 250 square feet of impervious cover in the 50 foot landward buffer, and locating the new impervious cover within the Variable Width Buffer and the Resource Management Area (of which, approximately 1,682 square feet is allocated to the use of permeable pavers, offers merit towards meeting the minimum necessary to afford relief test.
- 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. Staff offers that the redevelopment of portions of the impervious cover will promote infiltration of stormwater, thereby furthering the intent.

- 5) The Board is of the opinion that the applicants' focus on redeveloping those portions of RPA where impervious cover exists to the greatest extent practicable coupled with the integration of non-structural stormwater best management practices and buffer restoration will provide a means to manage towards a no net increase in nonpoint source pollution load.

**CBPA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. 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: **2,526 square feet x 200 percent = 5,052 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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 \$578.87 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 23, 2019, prepared by Gallup Surveyors and Engineers, signed January 23, 2019 by David R. 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.

**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 Mrs. McDaniels to approve the variance request with the 15 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>9</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>0</b>
<b>DREPS</b>		<b>AYE</b>					
<b>FRANCE</b>		<b>AYE</b>					
<b>JESTER</b>		<b>AYE</b>					
<b>JONES</b>		<b>AYE</b>					
<b>MCCOY</b>		<b>AYE</b>					
<b>MCDANIELS</b>		<b>AYE</b>					
<b>SMITH</b>		<b>AYE</b>					
<b>STEIER</b>		<b>AYE</b>					
<b>WALLACE</b>		<b>AYE</b>					



Applicant **Lindsay Shepheard, et al**  
Address **3417 South Crestline Drive**  
Public Hearing **March 25, 2019**  
City Council District **Kempsville**

Agenda  
Item

8

**Parcel GPIN:** 1456-28-1008  
**Applicant's Agent:** Self Represented  
**CBPA Board Action:** APPROVED WITH 8 CONDITIONS ON MARCH 25, 2019

The variance of Lindsay Shepheard, et al located at 3417 South Crestline Drive was granted with the following 8 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 requested variance to the homeowner/applicant will not provide any special privileges, conveniences, or considerations that have not been given other owners whose property was plotted in the 1950s and developed in the 1960s, and which now comes under the provisions established by the 1988 Chesapeake Bay Preservation Act. The requested additions/improvements are sized to maintain an appropriate balance between the land use and the house footprint. Also, homes within the neighborhood have similar structures.
- 2) The homeowner/applicant or predecessor in title has not created or imposed any conditions or circumstances that necessitate this variance request. The request for encroachment into the RPA on this lot is necessary because the property was plotted in the 1950s and developed in the 1960s and now comes under the jurisdiction of the Virginia Beach Chesapeake Bay Preservation Area Board.
- 3) The requested variance within the Seaward buffer is the minimum necessary to afford relief, and the proposed improvement with the removal of the duck blind will reduce impervious square footage. The requested variance within the landward buffer is the minimum necessary to afford relief given that the proposed improvement will be within an area currently devoted to turf. In addition, the existing impervious surface, created prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA ordinance, will be repurposed adjacent to new impervious surface, rather than be relocated or expanded.
- 4) This variance request is in harmony with the purpose and intent of the CBPA ordinance and the responsibilities placed upon the Virginia Beach CBPA Board to ensure appropriate protection of the Chesapeake Bay watershed as the

improvements are not injurious to the neighborhood or of substantial detriment to the waterway or the water quality, or the public's welfare because the requested variance has been carefully thought through and is in keeping with the architecture of the homes, as well as the age of the neighborhood.

- 5) To ensure a no net increase in nonpoint source pollution load from this variance request, the following means are taken to avoid or minimize impacts of development for water quality protection
- Add additional functioning 80 gallon rain barrels to help control runoff and harvest rain water
  - Further remove non-native shrubs and vines and replace with native shrubs and woody vines as identified in the Virginia Department of Forestry publication, "Common Native Shrubs and Woody Vines of Virginia"
  - Increase evergreen and deciduous shrubs to filter water run-off.

**CBPA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
4. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **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.**
5. 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.
6. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **376 square feet x 200 percent = 752 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers

Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration shall be 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. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

7. 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.
8. 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 and Community Development, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

**Lindsay Shephard appeared before the Board.**

**There was no opposition present.**

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mrs. McDaniels to approve the variance request with the 8 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**