



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
JULY 22, 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, July 22, 2019.

A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the May 23, 2019 minutes. All voted for the motion except Mrs. McDaniels who was abstained due to her absence from that meeting. This vote also serves as the official roll call for this meeting. All members were present.

BOARD ACTION: APPROVED MAY 23, 2019 MINUTES ON JULY 22, 2019

AYE 8 NO 0 ABSTAIN 1 ABSENT 0

DREPS	AYE
FRANCE	AYE
JESTER	AYE
JONES	AYE
MCCOY	AYE
MCDANIELS	ABSTAIN
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 **Mehdi Salemi and Sara Abolahrai**
Address **1536 West Little Neck Road**
Public Hearing **July 22, 2019**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 1489-50-0669
Applicant's Agent: Eddie Bourdon, Sykes Bourdon Ahern & Levy
CBPA Board Action: APPROVED WITH 13 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Mehdi Salemi and Sara Abolahrai located at 1536 West Little Neck Road was granted with the following 13 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 and offers that the location of the existing environmental features, specifically the delineated top of bank feature and associated bank contains encroachment into the least sensitive portion of 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 with the house being constructed in 1953 and prior to the adoption of the CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief with the proposed improvements being limited landward within the buffer, to the greatest extent practicable except for a pathway to the existing pier.
- 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. The current condition of the riparian buffer is primarily turf and the recommended buffer restoration 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 the restoration of the riparian buffer offers a management practice towards a no net increase in nonpoint source pollution from this variance request.

CPBA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit plan prepared by WPL dated May 20, 2019 and signed by Eric Garner May 20, 2019. 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.
2. A Single Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
3. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
4. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **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.

5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. 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.**
7. 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.
8. 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.**
9. 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.
10. 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.
11. 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.
12. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$342.14 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**

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

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 Mr. Smith to approve the variance with the 18 conditions listed above. All voted for the motion except Mr. Jester and Mrs. McDaniels who vote no.

AYE 7 NO 2 ABSTAIN 0 ABSENT 0

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



Applicant **Jeanie Robinson**
Address **3236 Holly Road**
Public Hearing **July 22, 2019**
City Council District **Beach**

Agenda
Item

2

Parcel GPIN: 2418-92-2503
Applicant's Agent: Meg French
CBPA Board Action: APPROVED WITH 8 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Jeanie Robinson located at 3236 Holly Road 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:

- 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 harmony with other similar developments that in this reach of the river, where encroach has been in the upper limits of the RPA.
- 2) The encroachment into the RPA on this lot is based upon conditions or circumstances that have been created by the predecessor in title with the approved development planned for the structures and parking only.
- 3) The variance is the minimum necessary to afford relief given that the requested area of the patio is minimal in size. The Board is of the opinion that the request to expand the existing patio area is the minimum necessary to provide for function and circulation out of the rear of the existing residential structure.
- 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 minimal proposed addition for the patio coupled with extensive planting and minimal turf area.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the existing rear yard will be mulched and planted and the proposed plantings offers a means towards additional infiltration and interception of stormwater.

CPBA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration shall be installed in substantial compliance with the CBPA Exhibit planting plan provided by Meg French, Certified Landscape Designer.

The required restoration shall be located in the Resource Protection Area 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. 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.**
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. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. This variance and associated conditions **are in addition to** the conditions of the Board variance granted May 24, 2010.
8. No portion of the bridge structure shall be placed below the existing swale's top of slope in the area directly above the swale.

Meg French appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the 7 conditions listed in the staff report. A substitute motion was made by Mr. Smith seconded by

**Mrs. McDaniels to approve the variance with 8 conditions as amended (Added Condition 8).
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 **Farino Living Trust**
Address **681 Thalia Point Road**
Public Hearing **July 22, 2019**
City Council District **Beach**

Agenda
Item

3

Parcel GPIN: 1488-01-5274
Applicant's Agent: Robert Simon, Waterfront Consulting, Inc.
CBPA Board Action: APPROVED WITH 1 CONDITION ON JULY 22, 2019

Board's Findings:

The variance of Farino Living Trust located at 681 Thalia Point Road was granted with the following 1 reasonable and appropriate condition 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 practicability of redeveloping the existing shoreline is based off of a site analysis conducted by the applicant agent and based off of current field and environmental conditions specific to this lot.
- 2) The encroachment into the RPA on this lot is based upon conditions or circumstances that are or have been imposed by the applicant's predecessor in title because the condition was required for CBPA variance approval in 2006 by our predecessor in title without regard to future owners or site conditions and the redevelopment of the shoreline provides merit towards the purpose and intent of the CBPA Ordinance to protect existing high quality state waters and prevent any increase in pollution.
- 3) The variance is the minimum necessary to afford relief as submitted with the property being developed in accordance with the approved variance and the bulkhead being replaces in compliance with all guidelines for permit approval from the US ACOE, VMRC, and Wetlands Board.
- 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 redevelopment of the shoreline providing merit towards the purpose and intent of the CBPA Ordinance to protect existing high-quality state waters and prevent any increase in pollution.

- 5) With the redevelopment of the shoreline and no impervious cover proposed with the variance request, there is no increase in impervious cover and therefore no increase in nonpoint source pollution.

CBPA Variance Conditions:

- 1. This variance is in addition to the conditions of the CBPA Board variance granted February 27, 2006 and removes condition 7 of said 2006 CBPA variance that states “If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of the existing bulkhead. Said condition shall be so noted on the site plan.”

Robert Simon of Waterfront Consulting, Inc. 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 1 condition 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 **Mark and Kathleen Boettcher Trust**
Address **739 Shepham Court**
Public Hearing **July 22, 2019**
City Council District **Lynnhaven**

Agenda
Item

4

Parcel GPIN: 1488-21-0720
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 10 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Mark and Kathleen Boettcher Trust located at 739 Shepham Court was granted with the following 10 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 maximum allowable square footage of a detached/accessory structure being 500 square feet and the overall project, while increasing the impervious cover in the 100 foot RPA by 116 square feet, provides a retreat of encroachment within the RPA on a lot that was platted prior to the adoption of the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief with the request is conscience to both the performance standards of the CBPA Ordinance and the minimum necessary to afford relief given the size of the lot, date the lot 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 proposed improvements being minimal on a 32,433 square foot lot with old (mature) trees with 10 – 15 percent heavy underbrush riparian buffer with the nearest perennial waterway 300 feet away.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the project will reduce the use of fertilizer on the lot and increase the width of the riparian buffer.

CBPA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit plan dated April 3, 2019, prepared by Roger P. Morgan, Architect and signed by Roger P. Morgan. 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.
2. A Single Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
3. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
4. Buffer restoration shall be installed equal to 100 percent of the proposed new impervious cover within the RPA, or **1,491 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.

5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. 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.
7. 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.**
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. 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.

Mark Boettcher 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 Mr. McCoy to approve the variance request with the 10 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 **Demarkus Parker and Jobenia Odum**
Address **936 Le Cove Drive**
Public Hearing **July 22, 2019**
City Council District **Kempsville**

Agenda
Item

5

Parcel GPIN: 1456-19-1636
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 10 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Demarkus Parker and Jobenia Odum located at 936 Le Cove Drive was granted with the following 10 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. As conditioned, the granting of the variance will not confer upon the applicant any special privilege or conveniences 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.
2. There shall be no encroachment into the 100 foot RPA. With no encroachment into the 100 foot RPA, the variance is the minimum necessary to afford relief and the variance is in harmony with the purpose and intent of the CBPA Ordinance.
3. As conditioned, the variance is not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare. In addition, the existing BMP's, approved during site plan review will be installed and therefore contribute towards water quality.

CPBA Variance Conditions:

1. A Single Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance consisting of **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs per every 400 square feet of impervious cover in the RPA.**

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

4. No pavers shall be installed in the 50 foot landward buffer and all existing pavers within the 50 foot landward buffer shall be removed. Any additional pavers may be installed within 3 feet of the left side of the existing pool as depicted on this drawing dated July 18, 2019.
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. 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.**

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

Demarkus Parker and Jobenia Odum appeared before the Board representing the applicant.

Allen Loree of 928 Le Cove Drive appeared before the Board to make commentary.

A motion was made by Mr. Smith, seconded by Mr. Steier to approve the variance with the 10 conditions as amended (Deleted Condition 4 of Staff's recommended conditions found in the Staff write up and replaced with a new condition). All voted for the motion except Mr. Wallace who voted no.

AYE 8 NO 1 ABSTAIN 0 ABSENT 0

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



Applicant **Thet Kyaw**
Address **621 West Kingston Circle**
Public Hearing **July 22, 2019**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 1488-50-7952
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 7 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Thet Kyaw located at 621 West Kingston Circle was granted with the following 7 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property which are subject to the provisions of the CBPA Ordinance with the request being like other improvements on adjacent lots that have small accessory structures off the rear of the primary structure.
- 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 neighborhood was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing much of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief with a substantial portion of the proposed improvements being redevelopment with the footprint of the wood deck is similar in size to other existing decks within the neighborhood.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not of substantial detriment to water quality with the retention of all existing vegetation within the property, the introduction of buffer planting to an already present riparian buffer, the proposed improvements being outboard of the 50 foot seaward buffer, and the minimal site impact associated with the proposed improvements.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the applicant provides that the lot has been landscaped and areas allowed to naturalize. In addition, the conditioned buffer restoration coupled with

approximately 80 feet of stabilized groundcover and plantings in the RPA buffer offers a means to filter stormwater runoff.

CPBA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. The proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **313 square feet x 200 percent = 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 3 small shrubs.**

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

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

- 6. Construction limits 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.**
- 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.

Thet Kyaw 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 7 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 **David and Krysten Mroz**
Address **632 Robens Road**
Public Hearing **July 22, 2019**
City Council District **Lynnhaven**

Agenda
Item

7

Parcel GPIN: 1487-48-5569
Applicant's Agent: Self Represented
CBPA Board Action: APPROVED WITH 5 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of David and Krysten Mroz located at 632 Robens Road was granted with the following 5 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 proposed improvements being minimal and occurring in areas of existing turf and will not result in any alteration to the existing topography or vegetation.
- 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 improvements focusing the majority of the improvements over existing impervious cover as redevelopment with minimal expansions to the existing wood deck.
- 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 minimizes encroachment into the RPA buffer and minimizes land disturbance with the extent of redevelopment proposed over existing impervious cover.
- 5) The proposed improvements are not located in the most sensitive portions of the parcel – 50 foot seaward buffer, and that the retention of the existing riparian buffer canopy trees coupled with the existing marsh outboard of the parcel provides

a natural means to manage towards a no net increase in nonpoint source pollution load. In addition, the applicant provides that *“underdeck treatment of rock will be installed as a means to minimize sediment migration through erosion control.”*

CBPA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 400 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance 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. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading. 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 release of the building permit.

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

David Mroz 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 Mr. McCoy to approve the variance request with the 15 conditions as amended (amended Condition 2). 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 **Denise Kulick**
Address **1076 Downshire Chase**
Public Hearing **July 22, 2019**
City Council District **Lynnhaven**

Agenda
Item

8

Parcel GPIN: 1498-16-9982
Applicant's Agent: Richard Calvert, Calvert Marine
CBPA Board Action: APPROVED WITH 9 CONDITIONS ON JULY 22, 2019

Board's Findings:

The variance of Denise Kulick located at 1076 Downshire Chase 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 Areas who are subject to the provisions of this ordinance and are similarly situated because there is a wall failure with potential collapse. The request to place fill material within the 100 foot RPA associated with the bulkhead replacement is limited to an area within the existing bulkhead and upland retaining wall and does not extent further into the RPA nor impact the existing riparian buffer.
- 2) Staff 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 as the new wall design/replacement is based on the recommendations of a Structural Engineer to avoid further loss and damage to property. The work is necessary to correct the failure.
- 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 wall replacement is to avoid a failure and impacts to water quality at the site and impacts to adjacent neighbors.

- 5) The applicant provides that as a means to manage towards a no net increase in nonpoint source pollution load there will be no change in the impervious cover of the existing upland improvements as merit towards effectively retarding runoff, preventing erosion, and filtering nonpoint source pollution.

CPBA Variance Conditions:

1. The conditions and approval associated with this variance are based on the exhibit plan dated February 1, 2019, prepared by Blakeway, signed May 30, 2019 by Stephen Blevins. 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.
2. A pre-construction meeting shall be held with the CBPA Inspector and Waterfront Operations Inspector prior to any land disturbance, including demolition.
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. The construction limits shall be as depicted on the JPA.
5. Construction limits along the seaward portion shall be per the 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. *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 \$256.66 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including

oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

9. The applicant shall provide a landscaping plan to be reviewed and approved by Development Services Center prior to the issuance of a building permit.

Richard Calvert with Calvert Marine appeared before the Board representing the applicant.

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Wallace to approve the variance with the 9 conditions as amended (Amended Condition 4 and 5, and added Condition 9). 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



RESTORATION HEARING Address of Non-compliance 936 Le Cove Drive Applicant Demarkus Parker and Jobenia Odum Public Hearing July 22, 2019 City Council District Kempsville	Agenda Item 9
---	--------------------------------

Parcel GPIN: 1456-19-1636
Applicant’s Agent: Demarkus Parker and Jobenia Odum
CBPA Board Action: REMOVED THE RESTORATION HEARING ON JULY 22, 2019 BASED ON THE APPROVAL OF THE AFTER-THE-FACT VARIANCE REQUEST.

Demarkus Parker and Jobenia Odum appeared before the Board representing the applicant.

Allen Loree of 928 Le Cove Drive appeared before the Board to make commentary.

A motion was made by Mr. Smith, seconded by Mr. Steier to approve the after-the-fact variance request, agenda item 5 of the July 22, 2019 CBPA Board agenda as a restoration hearing for the unauthorized improvements. All voted for the motion except Mr. Wallace who voted no.

AYE 8 NO 1 ABSTAIN 0 ABSENT 0

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



Address of Non-compliance 2201 Wood Ibis Way Property Owner Peter Koumoutseas Public Hearing July 22, 2019 City Council District Bayside	Agenda Item 10
---	--------------------------

Parcel GPIN: 1489-09-7474
Applicant’s Agent: Self Represented
CBPA Board Action: SHOW CAUSE HEARING HELD ON JULY 22, 2019 VIOLATION FOUND, IMPOSED A CIVIL CHARGE, RESTORATION HEARING ORDER SET FOR AUGUST 26, 2019

Peter Koumoutseas appeared before the Board.

There was no opposition present.

A motion was made by Mr. Smith, seconded by Mrs. McDaniels to find a violation with the deviation or noncompliance has been medium and the environmental impact has been low. Was imposed a civil charge of \$1,000 and imposed a restoration hearing order for August 26, 2019. All voted for the motion except Mr. France, Mr. Jester and Mr. Jones who voted no.

AYE 6 NO 3 ABSTAIN 0 ABSENT 0

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