



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
JULY 6, 2020**

In accordance with Virginia Code Virginia § 2.2-3708.2(A)(3), Virginia Code § 15.2-1413 and the City's Continuity of Government Ordinance adopted on March 31, 2020, and Chapter 854 of the 2019 Acts of Assembly as amended, the chair of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board called a special meeting for a public hearing to be held on Monday, July 6, 2020, at 10:00 am BY ELECTRONIC COMMUNICATION MEANS which was held virtually with CBPA Board Members, Staff and citizens participating via video/audio conference.

A motion was made by Mr. McCoy and seconded by Mr. Wallace to approve the June, 22, 2020 CBPA Variance conditions. All voted for the motion. This vote also serves as the official roll call for this meeting.

BOARD ACTION: APPROVED JUNE 22, 2020 MINUTES ON JULY 6, 2020

YES 6 NO 0 ABSTAIN 0 ABSENT 3

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

Board Members Present: Joe Dreps, David Jester, Wayne McCoy, June McDaniels, Michael Steier, and Al Wallace.



Property Owner Charles E. & Mary G. White Applicant Stephen Alexander Homes, LLC Address Leeward Shore Drive Public Hearing July 6, 2020 City Council District Lynnhaven	Agenda Item 1
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Parcel GPIN: 2409-19-8659
Accela Record: 2020-CBPA-00005
Applicant’s Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: DEFERRED INDEFINITELY AT THE JULY 6, 2020 CBPA PUBLIC HEARING

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

Richard Lewis, resident of 2216 Leeward Shore Drive attended the public hearing in opposition but did not speak given the request to defer the variance request. There was no opposition present to the deferral request.

A motion was made by Mr. McCoy, seconded by Mr. Steier to indefinitely defer the variance request. All Board members present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
DREPS		YES					
FRANCE		ABSENT					
JESTER		YES					
JONES		ABSENT					
MCCOY		YES					
MCDANIELS		YES					
SMITH		ABSENT					
STEIER		YES					
WALLACE		YES					



Applicant & Property Owner **Jeremy & Natalie Biggie**
 Address **409 Susan Constant Drive**
 Public Hearing **July 6, 2020**
 City Council District **Lynnhaven**

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Parcel GPIN: 2419-61-4826
Accela Record: 2019-CBPA-00044
Applicant’s Agent: Robert Simon, Waterfront Consulting Inc.
CBPA Board Action: DEFERRED AT THE JULY 6, 2020 CBPA BOARD PUBLIC HEARING TO THE AUGUST 3, 2020 CBPA BOARD PUBLIC HEARING.

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

Chris Martin, Princess Anne Hills Civic League President attended the public hearing virtually with the intent to provide comments on behalf of the Civic League but did not speak given the request to defer the variance request. There was no opposition present to the deferral request.

A motion was made by Mrs. Barrett-McDaniels, seconded by Mr. Steier to defer the variance request to August 3, 2020 CBPA Board Public Hearing. All voted for the motion.

AYE 4 NO 2 ABSTAIN 0 ABSENT 3

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



Property Owner & Applicant **William & Maureen Keller**
Address **701 Suffolk Circle**
Public Hearing **July 6, 2020**
City Council District **Lynnhaven**

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Parcel GPIN: 1488-30-0987
Accela Record: 2020-CBPA-00024
Applicant's Agent: Self-represented, William Keller
CBPA Board Action: APPROVED WITH 17 CONDITIONS ON JULY 6, 2020

Board's Findings:

The variance of William & Maureen Keller located at 701 Suffolk Circle was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 1) The applicant provides that 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 have been granted, so the approval of this request will in no way confer any special privilege to the current owners. The Board concurs and is of the opinion, as stated above, that the redevelopment of the lot is comparable in character to proposals to redevelop a lot that was constructed in the early 1970's and is specifically consistent with other redevelopment projects in the vicinity of the lot.
- 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 portions of this lot are within the RPA.
- 3) Although the variance request increases the overall impervious cover of the lot, the Board is of the opinion that the variance is the minimum necessary to afford relief as presented given the limited extent of redevelopment occurring within the 50-foot seaward buffer and below the top of bank feature. These areas of the lot are the most sensitive portions of the riparian buffer and the applicant's intent is to stabilize and restore the environmental conditions and vegetation of said areas to enhance the health of the existing riparian ecosystem inclusive of the existing tidal marsh along the toe of slope.
- 4) The Board offer that the proposed improvements offer an enhancement to stormwater management, will improve water quality with a potential to reduce stormwater runoff velocities from upland improvements, and will promote the infiltration of rainwater with the proper selection of vegetation associated with the mitigation initiatives within the 100-

foot RPA buffer (especially understory and shrub woody vegetation), all contributing towards preventing sediment and nutrient conveyance into the adjacent waterway.

- 5) Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waterways. The Board concurs that the construction sequencing for installing the proposed improvements and diligent management of erosion and sediment control measures during all construction activities contributes significantly towards limiting additional non-point source pollution load from entering the waterway.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,182 square feet x 200 percent = 2,364 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 located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 9) 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.**
- 10) 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.
- 11) 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.
- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 15) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$270.87 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated May 4, 2020, prepared by Gallup Surveyors and Engineers, signed May 4, 2020 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.

- 17) The overall impervious cover of the lot shall not exceed 36 percent of the lot area above water and wetlands.

William Keller appeared before the Board and gave testimony for the variance request.

A motion was made by Mrs. Barrett-McDaniels, seconded by Mr. Wallace to approve the variance with the 17 condition as amended, adding condition 17. All present voted for the motion.

AYE 6 NO 0 ABSTAIN 0 ABSENT 3

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



Property Owner & Applicant **Ashley H. Wade**
Address **3121 Basin Road**
Public Hearing **July 6, 2020**
City Council District **Lynnhaven**

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Item

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Parcel GPIN: 1499-07-4938
Accela Record: 2020-CBPA-00025
Applicant's Agent: Billy Garrington – Governmental Permitting Service
CBPA Board Action: APPROVED WITH 17 CONDITIONS ON JULY 6, 2020

Board's Findings:

The variance of Ashley H. Wade located at 3121 Basin Road was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Basin Road with most residential structures being built during the 1960's and the density of the area equal to or greater than 4 dwelling units per acre, the Board is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff for this variance request. The recommended conditions require the applicant to meet additional standards for stormwater management and riparian buffer mitigation that would not be required if the residential lot was not located within the RPA Buffer of the Chesapeake Bay watershed.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because it is a modest request for a small pool and pool deck and the recommended condition, specifically condition 10 that evaluates the overall impervious cover of the lot in relationship to the redevelopment of the neighborhood and limits the overall impervious cover associated with the redevelopment of this lot in harmony with the findings of the CBPA Ordinance than that provided with the CBPA Exhibit.
- 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 introduction of stormwater management with a

request that disturbs less than 2,500 square feet of uplands, coupled with riparian buffer mitigation in an area with underlying soils that are moderately well drained offers merit towards providing water quality. Staff offers that the selection of plant material associated with the stormwater management facilities and riparian buffer mitigation should be evaluated off indigenous plants specific to the USDA Plant Hardiness Zone for this area, Zone 8a and selected based off valuable water uptake specific to the selected plant species.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, BMPs will treat stormwater runoff and the analysis and layout of the stormwater management facilities, if sequenced thought-out the lot offers nutrient reduction annually on a lot and associated project that would not require stormwater management as proposed.

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: **507 square feet x 200 percent = 1,014 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 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) 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.**
- 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 5 feet from improvements.
- 7) Construction limits along the seaward portion of the project shall lie a maximum of 5 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) The maximum impervious cover of the parcel shall not exceed 7,105 square feet.
- 11) Stormwater treatment shall be provided equal to 200 percent of the proposed new impervious cover within the RPA – treatment of 1,014 square feet of impervious cover.
- 12) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 13) The proposed pool deck shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 14) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$116.18 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or

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

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

17) The conditions and approval associated with this variance are based on the exhibit plan dated June 16, 2020, prepared by Clark Design Group, LLC. 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 with Governmental Permitting Services appeared before the Board representing the applicant.

As an item of the consent agenda, a motion was made by Mrs. Barrett-McDaniels, seconded by Mr. McCoy to approve the variance with the 15 condition as stated in the Staff report. All present voted for the motion.

AYE 6 NO 0 ABSTAIN 0 ABSENT 3

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



Address of Noncompliance **2745 Spigel Drive**
 Property Owner **Lance P & Cheri M Shores**
 Public Hearing **July 6, 2020**
 City Council District **Lynnhaven**

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Parcel GPIN: 1498-42-6749
Accela Record: 2020-CBPV-00002
Property Owner’s Agent: Lance P. & Cheri M. Shores

Board’s Action:

The Board found with the testimony presented at the Show Cause Hearing that the activity, unauthorized land disturbance, removal of vegetation to be preserved and placement of fill material on the lot constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Based on the testimony at the public hearing, the Board found the environmental impact to the features of the RPA as LOW and the degree of deviation or non-compliance as HIGH.

A civil charge of \$4,000 was imposed.

Lane and Cheri Shores appeared before the Board and gave testimony for the variance request.

A motion was made by Mr. McCoy, seconded by Mrs. Barrett-McDaniels. All present voted for the motion.

AYE 6 NO 0 ABSTAIN 0 ABSENT 3

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