



**CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA**

**November 1, 2021**

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. Jester called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, November 1, 2021 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the October 4, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. Wallace to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

**BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE OCTOBER 4, 2021 FINDINGS AND VARIANCE CONDITIONS ON NOVEMBER 1, 2021 AS FOLLOWS.**

<b>YES</b>	<b>9</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>0</b>
BARRETT-MCDANIELS				YES			
BURNETTE				YES			
FRANCE				YES			
JESTER				YES			
JONES				YES			
MCCUNE				YES			
STEIER				YES			
WALLACE				YES			
YOUNG				YES			

**All CBPA Board Members present voted as above.**



Applicant & Property Owner **Timothy D. Siviter**  
Address **2220 Leeward Shore Drive**  
Public Hearing **November 1, 2021**  
City Council District **Lynnhaven**

Agenda Item

**1**

**Parcel GPIN:** 2409-19-8659  
**Accela Record:** 2021-CBPA-00059  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 19 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, 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 is the last infield lot to be developed on Bay Island and other properties have recently been developed in similar fashion."* The Board concurs and provides that this exception is intended to make sure that the variance request would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. CBPA Variance records indicate that approximately 16 CBPA Variances have been granted to properties located along Leeward Shore Drive with similar improvements.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"this site has never been developed and the CBPA ordinance now impacts over half the upland of the site."* The Board concurs that this lot was platted in 1966 before the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, thereby placing portions of the site in the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the variance allows for the development of the property in keeping with other properties for size and coverage."* The Board concurs and is of the opinion that the owners have designed the improvements to minimize site impacts in the critical buffer areas of the Chesapeake Bay Preservation Area. In addition, Staff's recommended conditions specifically address post-plan approval implementation of the proposed improvements to preserve existing conditions of the seaward buffer of the RPA and mature canopy trees on the lot beyond the limits of construction.

- 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 have been moved forward to avoid the most sensitive portion of the site. A BZA variance has been requested.”* The Board is of the opinion that the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality subject to the recommended conditions provided in this Staff report that include the installation of both structural and nonstructural best management practices to promote infiltration of stormwater.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the site currently has no BMPs, and all stormwater runoff continues to erode the unprotected shoreline. The proposed rip rap and installation of BMPs will halt erosion and achieve a no additional non-point source pollution load.”* The Board is of the opinion that the BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

**Board 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) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 3) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
  - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.
  - Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
  - All construction activity shall be contained within the limits of the silt fence.
- 4) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 5) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.
- 6) All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that *“All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence.”*

- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 8) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 9) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 10) A certified arborist report shall be provided for review during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
- 11) 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.
- 12) 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.
- 13) A maximum of 2,500 square feet of turf is permitted for this lot. Said turf shall not be permitted within the 50-foot seaward buffer or outboard of the conditioned limits of construction (conditioned as 10 feet outboard the proposed improvements). All remaining pervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable consisting of **12 understory trees, 32 large shrubs, and 48 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 14) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located within the conditioned limits of construction.
- 15) 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.
- 16) The proposed driveway 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.
- 17) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the limits of construction.
- 18) \*\* 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 \$716.37 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.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated August 10, 2021, prepared by Chesapeake Bay Site Solutions. 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.

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the recommended conditions as provided in the Staff report. All present 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>
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner <b>William &amp; Louise Donigan</b> Address <b>452 Discovery Road</b> Public Hearing <b>November 1, 2021</b> City Council District <b>Lynnhaven</b>	Agenda Item <h1>2</h1>
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**Parcel GPIN:** 2419-51-6852  
**Accela Record:** 2021-CBPA-00057  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** DEFERRED AT THE NOVEMBER 1, 2021 CBPA BOARD PUBLIC HEARING TO THE MONDAY, JANUARY 3, 2022 CBPA BOARD PUBLIC HEARING.

**A motion was made by Mr. Wallace, seconded by Mr. France, to defer the variance request to the January 3, 2022 CBPA Board Public Hearing. All present 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>
BARRETT-MCDANIELS	YES				MCCUNE		YES
BURNETTE	YES				STEIER		YES
FRANCE	YES				WALLACE		YES
JESTER	YES				YOUNG		YES
JONES	YES						



Applicant & Property Owner **Virginia Beach Racquet Club, Etc.**  
Address **1951 Thomas Bishop Lane**  
Public Hearing **November 1, 2021**  
City Council District **Lynnhaven**

Agenda Item

**3**

**Parcel GPIN:** 1499-46-9576  
**Accela Record:** 2021-CBPA-00063  
**Applicant's Agent:** Eddie Bourdon, Esq., Sykes, Bourdon, Ahern, Levy PC  
**CBPA Board Action:** APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the overall reduction of impervious cover within the RPA, down zoning the R-20 portion of the lot to R-40 and maintaining a 20-foot setback from the top of bank feature with all future improvements provides merit towards the variance request not conferring any special privilege to this property owner.
- 2) Although the lot will be subdivided after the adoption of the CBPA Ordinance, the Board is of the opinion that the applicant has maintained a functional RPA buffer despite the existing encroachments and has complied with the performance standards of the CBPA Ordinance. This includes specifically limiting land disturbance to the area necessary to provide for the proposed use and preserving the existing vegetation to the maximum extent practicable. Although the action to create these lots is self-imposed, it is recognized that the redevelopment of the lot will provide an overall reduction of impervious cover in the RPA.
- 3) The variance is the minimum necessary to afford relief because the statement provided by the applicant, the Board is of the opinion that the reduction in the overall impervious cover coupled with the recommended condition that the future development of the individual single-family residences be limited to a maximum of 30 percent.
- 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 retention of the existing vegetation in the RPA buffer to the greatest extent practicable as well as the introduction of additional buffer restoration mitigation and stormwater management for the individual single-family lots

provides significant merit towards the variance request not being of substantial detriment to water quality taking into account that a viable riparian buffer can achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients [City Code, Appendix F, Sec 106 (B)(3)(a)].

- 5) Net reduction in impervious area within the buffer and installation of stormwater BMPs will serve as a means to manage towards a no net increase in nonpoint source pollution load.

**Board Conditions:**

- 1) For each individual single-family residence, the maximum impervious cover for primary and accessory structures shall not exceed the following amount specific to each lot.
  - **Proposed Lot 1A** – 30 percent of the lot above water and wetlands or 10,237 square feet of overall impervious cover
  - **Proposed Lot 1B** – 30 percent of the lot above water and wetlands or 10,342 square feet of overall impervious cover
  - **Proposed Lot 1C** – 30 percent of the lot above water and wetlands or 10,315 square feet of overall impervious cover, exclusive of the impervious cover within the variable width private ingress/egress and utility easement to the adjacent lot.
- 2) There shall be no encroachment of proposed impervious cover, redevelopment of existing impervious cover, or placement of fill material within the 50-foot seaward buffer Resource Protection Area (RPA) or within 20 feet of the top of bank feature, whichever is greater as delineated on the CBPA Exhibit.
- 3) Individual Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval of each lot prior to the issuance of a building permit.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 5) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
  - Along the seaward portion of the proposed improvements the required silt fence shall be installed along the 50-foot seaward buffer of the RPA or along the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit, whichever is greater.
  - Along the remain portions of the property the required silt fence shall be installed 15 feet from all proposed improvements.
  - All construction activity shall be contained within the limits of the silt fence.
- 6) **Specific for Lot 1A, the silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 7) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.



- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 9) All areas outside the limits of construction within the 50-foot seaward buffer shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that "All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence."
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 11) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 12) The 100-foot RPA buffer shall be restored for each lot with a 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 100-foot 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. 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) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located landward of the 50-foot seaward buffer of the RPA and the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit.
- 14) **\*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with the site plan approval for each individual lot. Payment for each lot shall be in the following amount per lot.**

- **Impervious cover in the RPA feature associated with the proposed improvements on each lot divided by 4, then divided by 27, then multiplied by 15 and then multiplied by 1.65 for the total dollar amount to be paid.**

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.

- 15) The conditions and approval associated with this variance are based on the subdivision exhibit plan dated January 15, 2021, prepared by Todd H. French, LS of Timmons Group. 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.

**A motion was made by Ms. Barrett-McDaniels, seconded by Mr. France, to approve the variance with the recommended conditions as provided in the Staff report. All present voted for the motion.**

<b>AYE</b>	<b>7</b>	<b>NO</b>	<b>1</b>	<b>ABSTAIN</b>	<b>1</b>	<b>ABSENT</b>	<b>0</b>
BARRETT-MCDANIELS		YES			MCCUNE		ABSTAIN
BURNETTE		YES			STEIER		YES
FRANCE		YES			WALLACE		NO
JESTER		YES			YOUNG		YES
JONES		YES					



Applicant & Property Owner **Colin & Courtney Kelly**  
Address **2232 Windward Shore Drive**  
Public Hearing **November 1, 2021**  
City Council District **Lynnhaven**

Agenda Item

**4**

**Parcel GPIN:** 2409-19-0274  
**Accela Record:** 2021-CBPA-00066  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1958 prior to the Chesapeake Bay Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Given the overall impervious cover of the site proposed at 25 percent of the lot above water and wetlands and location of the proposed improvements within the RPA buffer, the Board is of the opinion that should the CBPA Board grant a variance to this request that the action would not confer a special privilege to the owner given the situation of the impervious cover and location of the proposed improvements.
- 2) The Board offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 *"the owners have designed the improvements in an area deemed to be the best area to minimize site impacts in the critical buffer areas."* The Board concurs given the existing environmental conditions of the lot and the proposed improvements situated in an area currently devoted to turf.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay, and if approved the proposed redevelopment will be*

*required to have treatment provided between the improvements and manmade canal.”* The Board offers that the location of the proposed improvements landward of the 50-foot seaward buffer and reestablishment of a riparian buffer ecosystem within the lot provides merit towards a long-term benefit to water quality initiatives and rainwater infiltration.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the adjacent man-made canal.”* In addition to this statement provided by the applicant’s agent, the Board offers that the application of artificial turf to the minimal extent proposed with this variance request provides merit towards minimizing impervious cover similar to the use of a permeable paver system consistent with some of the performance standards set forth in Section 106(A)(3)(c)(3) of the CBPA Ordinance.

**Board 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: **2,186 square feet x 200 percent = 4,372 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: **5 canopy trees, 5 understory trees, 20 large shrubs, and 30 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) 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 along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) 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.
- 11) 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.
- 12) 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.
- 13) **\*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$500.95 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.**

- 14) The conditions and approval associated with this variance are based on the exhibit plan dated October 6, 2020, prepared by WPL, signed October 1, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the recommended conditions as provided in the Staff report. All present 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>
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Luke & Thao Balsamo**  
Address **325 Susan Constant Drive**  
Public Hearing **November 1, 2021**  
City Council District **Lynnhaven**

Agenda Item

**5**

**Parcel GPIN:** 2419-61-8714  
**Accela Record:** 2021-CBPA-00064  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, 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 *"numerous homes in the area have been redeveloped just recently and when you have homes built many years prior to the Bay Act being adopted the hardship will never be removed from the property."* The Board acknowledges the statement provided by the applicant and offers that the redevelopment of this lot within the R20 Zoning District specific to this neighborhood is consistent with the overall impervious cover averages for other lots that have been redeveloped or granted variances to encroach within the RPA buffer of the Chesapeake Bay watershed.
- 2) The Board offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 *"the owner has tried to locate the development over existing impervious cover as much as possible to get as much redevelopment as possible and locate flat areas as far removed from the feature as possible."* The Board offers that approximately 742 square feet of the new impervious cover associated with this variance request is located within the 50-foot landward buffer of the RPA with the remaining new impervious cover is located within the RMA.
- 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 new development will require significant*

*buffer restoration in areas currently devoted to turf, with land disturbance over 2,500 square feet therefore being required to treat significant rainwater that currently is not being treated and they will also do off-site treatment through the Oyster Heritage Fund.”* The Board concurs with the applicant’s statement and is of the opinion that the redevelopment and expansion of the circular driveway offer infiltration potential for rainwater given the recommended conditions below, specifically condition 3 that utilizes a permeable pavement system for increased infiltration.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“strict E&S measures will be installed before any work will begin and will remain in place and in good working order until vegetative cover is established. Single point accessway and stockpiling of materials on flat areas and on existing impervious cover where possible will all help water treatment plus new buffer restoration equal to 200 percent of all new impervious cover.”* The Board concurs with the statement provided by the applicant’s agent and offers the recommended conditions below as a comprehensive approach towards the management of this request towards a no net increase in nonpoint source pollution load.

**Board 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) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) The proposed circular portion of the driveway redevelopment 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.
- 4) 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.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **742 square feet x 200 percent = 1,484 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.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) 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.
- 9) 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.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 12) 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.
- 13) 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.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

- 15) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 25, 2016.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated September 23, 2021, prepared by Gaddy Engineering Services, LLC, signed by Michael S. Gaddy. 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.

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the recommended conditions as provided in the Staff report. All present 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>
BARRETT-MCDANIELS	YES					MCCUNE	YES
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **John Davis**  
Address **505 Mockingbird Drive**  
Public Hearing **November 1, 2021**  
City Council District **Beach**

Agenda Item

**6**

**Parcel GPIN:** 2417-49-8082  
**Accela Record:** 2021-CBPA-00065  
**Applicant's Agent:** Self-represented  
**CBPA Board Action:** APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1963 and the proposed improvements are in keeping with the development of the neighborhood."* The Board offers that all the lots located on Mockingbird Drive and Bluebird Drive along the tidal feature have improvements, both primary and accessory structures that encroach into the Resource Protection Area (RPA) buffer. Of the 8 lots within the RPA buffer along these street 2 lots have existing swimming pools. To redevelop any of the subject lots would occur within the 100-foot RPA buffer of the Chesapeake Bay watershed.
- 2) The Board offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 *"the pool is located near the house along the right side of the property, which keeps the patio and pool outside of the 50-foot seaward buffer."* The Board offers that the applicant engaged Staff to review the proposed improvements prior to the submittal of the CBPA Variance application. During said meeting, the applicant reduced the size of the overall proposed improvements and rotated the layout of the proposed improvements as a means to reduce the encroachment request into the RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise

detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood.”* The Board acknowledges the statement provided by the applicant and offers that the location of the proposed improvements and existing topography of the lot offers a means for sheet flow and infiltration to occur prior to runoff reaching the adjacent tidal feature.

- 5) To manage towards a no net increase in nonpoint source pollution load the applicant provided that *“they will stockpile material on existing hard surfaces along with a single construction entrance on the right side of home away from the water. All construction access will be on hard surfaces. The site currently does not have any BMPs, and the location of the project variance will not cause further source pollution as it is on level ground and there is level ground between the project site area and the bank.”* Given the location of the proposed improvements from the tidal feature and flat topography of the area adjacent to the proposed improvements the Board offers that the applicant’s management of the project during the construction of the proposed improvements is import towards a no net increase in nonpoint source pollution. To ensure the management of the construction methodology as provided by the applicant above Staff offers the recommended conditions below.

**Board 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 with a Landscape Plan shall be submitted to the Development Services Center for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the CBPA Exhibit shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,269 square feet x 200 percent = 2,538 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 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) Construction matting shall be used along the northern side of the residence for the construction accessway from the existing driveway to the rear of the residence.
- 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 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.
- 9) 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.**
- 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) 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.

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the recommended conditions as provided in the Staff report. All present voted for the motion.**

AYE	9	NO	0	ABSTAIN	0	ABSENT	0
BARRETT-MCDANIELS	YES					MCCUNE	YES
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Nicholas & Sarah Nestor**  
Address **1924 W Twin Cove Road**  
Public Hearing **November 1, 2021**  
City Council District **Lynnhaven**

Agenda Item

**7**

**Parcel GPIN:** 1499-16-3514  
**Accela Record:** 2021-CBPA-00067  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON NOVEMBER 1, 2021.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

**Board's Findings:**

- 1) This variance request 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 property was platted in 1956 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* The Board acknowledges that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the adoption of the City's CBPA Ordinance and offers that the redevelopment of this lot is consistent with development patterns in the neighbor and similar to improvements on surrounding lots specific to this neighborhood.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant because *"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 originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffers cover over 100% of the lot."* The Board acknowledges that this lot is encumbered by the Resource Protection Area (RPA) buffer and is encumbered by the 100-foot RPA buffer and a substantial amount of the Variable Width buffer.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements in the area deemed to be the best area to minimize site impacts in the critical buffer areas."* The Board is of the opinion that the applicant and applicant's agent have designed the proposed improvements minimize impacts by keeping the improvements located out of the 50-foot seaward buffer of the RPA with a significant amount of redevelopment being proposed that will replace existing improvements without expanding the current footprint.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal.”* The Board is of the opinion that the recommended conditions provided below offer best management practices towards water quality and water quantity management that the lot does not currently provide.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. The Board concurs and offers that the granting of this variance would require those best management practices to remain functioning as intended in perpetuity.

**Board 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) Construction limits along the entire perimeter of the project shall lie a maximum of 10 feet outboard of the improvements, both existing and proposed.
- 3) No trees outboard of the construction limits, 10 feet outboard of the improvements both existing and proposed shall be removed as shown on the Recommended Tree Preservation Exhibit provided in the Staff report. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 4) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 5) 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.
- 6) 3,721 square feet of buffer restoration shall be installed 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: **5 canopy trees, 5 understory trees, 20 large shrubs, and 30 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. 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) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 9) 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.
- 10) 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.**
- 11) 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.
- 12) 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.
- 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 \$852.72 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.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated September 16, 2021, prepared by WPL, signed September 30, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.



**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the recommended conditions as provided in the Staff report. All present 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>
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					