



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

January 3, 2022

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, January 3, 2022 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the December 6, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. Burnette 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 DECEMBER 6, 2021 FINDINGS AND VARIANCE CONDITIONS ON JANUARY 3, 2022 AS FOLLOWS.

YES	7	NO	0	ABSTAIN	1	ABSENT	1
BARRETT-MCDANIELS				ABSTAIN			
BURNETTE				YES			
FRANCE				YES			
JESTER				YES			
JONES				YES			
MCCUNE				ABSENT			
STEIER				YES			
WALLACE				YES			
YOUNG				YES			

All CBPA Board Members present voted as above.



Applicant & Property Owner **William & Louise Donigan**
Address **452 Discovery Road**
Public Hearing **January 3, 2022**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 2419-51-6852
Accela Record: 2021-CBPA-00057
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 18 CBPA VARIANCE CONDITIONS ON JANUARY 3, 2022.

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 applicant has designed the proposed improvements in a manner that complements the existing topography of the lot with the use of materials to limit imperviousness and limit land disturbance with the use of retaining walls.
- 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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has demonstrated an understanding of the CBPA Ordinance's required findings with the proposed size and locations of the structures. The Board is of the opinion that the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 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 this lot has a mature tree canopy, and the applicant has taken measures to minimize impacts in the RPA by keeping the main improvements in the landward portion of the buffer.
- 5) Stormwater from the development will drain via overland flow and shallow concentrated pathways to the point of discharge at the property limits. No change in flow patterns is proposed as a means of 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 pool shall be constructed concurrent with all proposed improvements proposed in this variance application that will be adjacent to the existing single-family residence.
- 3) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements, shall be authorized outboard or seaward of the proposed improvements.
- 4) Submitted concurrent with the site plan shall be a separate 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 and turf zones.
- 5) 1,563 square feet of buffer restoration shall be installed on the lot as depicted on the CBPA Exhibit provided for the CBPA Variance request. 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 have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings.

- 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 and Civil Inspections Staff 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) 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.

- 10) Construction limits and all construction activities shall be contained within the limits of the condition silt fence.
- 11) 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.
- 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) ****** 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 \$178.97 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 prepared by Gaddy Engineering Services and signed November 23, 2021 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.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 452 Discovery Road appeared before the Board.

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

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		YES				MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Luke & Stephanie Hillier**
Address **2405 Windward Shore Drive**
Public Hearing **January 3, 2022**
City Council District **Lynnhaven**

Agenda
Item

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Parcel GPIN: 1499-98-7334
Accela Record: 2021-CBPA-00077
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON JANUARY 3, 2022.

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 use of materials and stormwater methodology integrating multiple best management practices on the lot offers merit towards the variance request and the redevelopment of this lot.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather 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.
- 3) The applicant's agent provides that the variance is the minimum necessary to afford relief because the owners have designed the proposed improvements to be minimize the impact to the Chesapeake Bay, the new home has been placed towards the front setback line and shifted around on the site to maximize the redevelopment, to minimize site impacts, and avoid development in the 50' seaward portion of the site.
- 4) The applicant's agent provides that 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 applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of permeable pavers, gravel downspout intercepts, and bioretention planting beds.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers, gravel downspout intercepts, and bioretention planting beds as well as the installation of the conditioned 4,450 square feet of buffer restoration that restores the lack of tree canopy cover on the lot.

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: **2,225 square feet x 200 percent = 4,450 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: **8 canopy trees, 8 understory trees, 24 large shrubs, and 36 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 evenly distributed within the RPA buffer 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 15 feet from improvements.
- 9) 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.**
- 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) 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) 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.
- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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) 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.
- 16) No structural improvements shall encroach into the 50-foot seaward buffer other than the proposed walkway to the pier.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated November 24, 2021, prepared by WPL Landscape Architecture, signed November 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

A motion was made by Ms. McDaniels seconded by Mr. Wallace, to approve the variance as amended, removing condition 16 as provided in the Staff report and add condition 16 with regard to

encroachment of structural improvements within the 50-foot seaward buffer. All present voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		YES				MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Christopher Sevilla**
Address **404 Putnam Road**
Public Hearing **January 3, 2022**
City Council District **Lynnhaven**

Agenda
Item

3

Parcel GPIN: 1477-78-0408
Accela Record: 2021-CBPA-00078
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 4 CBPA VARIANCE CONDITIONS ON JANUARY 3, 2022.

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 project is a small project that will involve the construction of a 400 square foot patio. This will be far less intrusive to the RPA than other larger requests.
- 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 variance is only required due to my property being located in the Chesapeake Bay Resource Protection Area and there is little to no room on my property for me to construct this patio without impacting the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements, situated in the rear yard, and entirely within the landward buffer, provides merit towards the variance being the minimum necessary to afford relief given the location of the proposed improvements directly adjacent to the existing single-family residence.
- 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 small amount of land disturbance will not be a substantial detriment to water quality of the Chesapeake Bay or the public welfare.
- 5) The proposed improvements will incorporate buffer restoration for the 400 square feet of new cover in the RPA as a means to manage towards a no net increase in nonpoint source pollution load.

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 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. 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.**
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **400 square feet x 200 percent = 800 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: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 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. 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 perimeter fill is authorized outboard or seaward of the proposed improvements.

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

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		YES				MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Brendan & Rosemarie Dougherty**
Address **4413 Paul Jones Lane**
Public Hearing **January 3, 2022**
City Council District **Lynnhaven**

Agenda
Item

4

Parcel GPIN: 1477-67-6316
Accela Record: 2021-CBPA-00079
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 4 CBPA VARIANCE CONDITIONS ON JANUARY 3, 2022.

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 applicants are not seeking to construct anything and tree removal is a necessary part of home maintenance.
- 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 the trees have been growing for many years and posed a hazard for some time.
- 3) The applicant provides that the variance is the minimum necessary to afford relief given the trees requested for removal are only the ones in proximity to damage the house with five trees further away being retained on the property.
- 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 applicant has stated in the Water Quality Impact Assessment (WQIA) that mitigation will be provided and that the trees pose a hazard to the neighboring houses in the neighborhood and substantial plant life remains to maintain water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant intends to the applicants intend to plant smaller trees and shrubs to assist in erosion control and to ensure that there is no increase in pollution.

Board Conditions:

1. No trees shall be removed from within 60 feet from the edge of water.
2. Exclusive of the trees being authorized for removal within the RPA, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, shall be left in a natural state.
3. 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. Once approved, a permit shall be obtained from Permits & Inspections Division for the issuance of a utility/right of way permit for tree removal in the RPA.
4. Mitigation for trees to be removed shall be installed as defined below.
 - 17 canopy trees (matures to a height greater than 35') at a 1 – 2" caliper at time of planting.
 - 17 understory trees (matures to a height of 12' to 30') at a ¾" to 1 ½" caliper at time of planting
 - OR-
 - 11 canopy trees (matures to a height greater than 35') at a 1 – 2" caliper at time of planting.
 - 11 understory trees (matures to a height of 12' to 30') at a ¾" to 1 ½" caliper at time of planting.
 - 22 large shrubs (matures to a height of 5' to 8').

The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

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

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		YES				MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					