



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

August 1, 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, August 1, 2022 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the July 8, 2022 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. McCune 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 July 8, 2022 FINDINGS AND VARIANCE CONDITIONS ON August 1, 2022 AS FOLLOWS.

YES	5	NO	0	ABSTAIN	1	ABSENT	3
BARRETT-MCDANIELS				YES			
BURNETTE				ABSENT			
FRANCE				ABSENT			
JESTER				ABSTAIN			
JONES				YES			
MCCUNE				YES			
STEIER				ABSENT			
WALLACE				YES			
YOUNG				YES			

All CBPA Board Members present voted as above. CBPA Board Members abstaining from the vote were absent from the previous month's public hearing.



Applicant & Property Owner **Amir Islam & Ariel Whitmire**
Address **1879 N. Great Neck Road**
Public Hearing **August 1, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

1

Parcel GPIN: 1499-55-3168
Accela Record: 2022-CBPA-00029
Applicant's Agent: David Chewey
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON August 1, 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 is providing correcting measures that address the conditions of the existing improvements with minimal encroachment proposed into the RPA buffer to accommodate the needs of the new residents.
- 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 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 increase in impervious cover is distributed through multiple areas of improvements specific to walkways, retaining walls and small patio area. The distribution of new impervious cover within the RPA occurs within the rear, side and front yards of the existing 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 this request will reestablish a natural buffer along the base of these improvements that will provide a cohesive plan that balances the built environment with erosion control, water quality and natural habitats. The premise is to have these improvements blend in with the surrounding buffers.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load all water flow will be directed to a bmp along the base of the proposed walls in planting beds to provide a no net increase in non-point pollution.

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: **2,024 square feet x 200 percent = 4,048 square feet.**

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 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.

- 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) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 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 \$463.83 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 July 12, 2022, prepared by DCLA, signed July 12, 2022, by David M. Chewey. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA 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 conditions as provided in the Staff report. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Shane Spanitz & Jennifer Cosentino**
Address **3105 Lynnhaven Drive**
Public Hearing **August 1, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

2

Parcel GPIN: 1499-08-7657
Accela Record: 2022-CBPA-00034
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 10 CBPA VARIANCE CONDITIONS ON August 1, 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 adding the back deck to make up for FEMA required lift to have access to the back of the house.
- 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 are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the deck is average in size.
- 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 we will be adding vegetation to increase buffer and the deck will be uncovered and drip through with deck under treatment.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load this is a sparsely wooded lot and would benefit from buffer restoration coupled with the flat topography of the lot providing pervious cover for run-off produced from the proposed improvements to sheet-flow across before draining into tidal waters.

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. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees and 6 large 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.

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition. All erosion and sediment control measures shall be staked in the field for review by City Staff prior to land disturbance.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the rear and side 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. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.
6. 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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
7. The construction access way, stockpiling area and contractor parking area shall be noted on the building plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
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. Under deck treatment of sand and gravel shall be installed.

10. No perimeter fill 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 conditions as provided in the Staff report. All present voted for the motion.

AYE 6 NO 0 ABSTAIN 0 ABSENT 3

BARRETT-MCDANIELS	YES	MCCUNE	YES
BURNETTE	ABSENT	STEIER	ABSENT
FRANCE	ABSENT	WALLACE	YES
JESTER	YES	YOUNG	YES
JONES	YES		



Applicant & Property Owner **James Bennett & Mary Mantey**
Address **1618 Duke of Windsor Road**
Public Hearing **August 1, 2022**
City Council District: **District 6**, formerly Lynnhaven

Agenda
Item

3

Parcel GPIN: 2408-88-5861
Accela Record: 2022-CBPA-00035
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON August 1, 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 several property owners within this neighborhood have made request for exception to construct swimming pools and other accessory structures within the RPA and have been granted those exceptions with similar conditions as provided below.
- 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 existing lot is located in the RPA and this property was platted in 1964.
- 3) The Board is of the opinion that the proposed improvements, as situated in the rear yard, and entirely in the landward buffer, provide merit towards the variance request being the minimal 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 all water flow from impervious areas will be directed into rain barrels, conservation landscapes, or pervious areas for best management practices to reduce storm water runoff.
- 5) After installing a living shoreline, we plan to install a riparian buffer to decrease any stormwater entering waterway. For construction we plan to stockpile material on existing hard surfaces along with a single construction entrance on the right side of home away from the water 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. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees and 6 large 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.

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project and construction accessway 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.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Richard & Melanie Hanson**
Address **321 Susan Constant Drive**
Public Hearing **August 1, 2022**
City Council District: **District 6**, formerly Lynnhaven

Agenda
Item

4

Parcel GPIN: 2419-61-9612
Accela Record: 2022-CBPA-00036
Applicant's Agent: Robert Simon, Waterfront Consulting, Inc.
CBPA Board Action: APPROVED WITH 9 CBPA VARIANCE CONDITIONS ON August 1, 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 several properties along this manmade canal fall within the RPA with the 50-foot seaward buffer comprising much of the rear upland for those lots.
- 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 the request is minimal, and the size and layout of the proposed improvements limit the impacts to the RPA buffer to the greatest extent practicable.
- 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 recommended conditions below offer a means towards providing infiltration of runoff from the proposed improvements.
- 5) Buffer restoration will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the Bay as 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) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **556 square feet x 200 percent = 1,112 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.

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) 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.
- 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) 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.
- 7) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.

8) The conditions and approval associated with this variance are based on the exhibit plan dated June 30, 2022, prepared by Chesapeake Bay Site Solutions, Inc., signed June 30, 2022, by Robert Simon. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

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

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Grant & Lisa Sibley**
Address **1500 Quail Point Road**
Public Hearing **August 1, 2022**
City Council District: **District 6**, formerly Lynnhaven

Agenda
Item

5

Parcel GPIN: 2408-94-9255
Accela Record: 2022-CBPA-00037
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON August 1, 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's approach to redevelop this peninsula shaped lot is in harmony with the redevelopment of adjacent lots that have minimized encroachments into the 50-foot seaward buffer on lots platted prior to the adoption of the CBPA Ordinance.
- 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 the layout of the proposed redevelopment of this lot minimizes encroachment into the RPA buffer to the greatest extent practicable and situates the majority of the proposed improvements to the 50-foot landward 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 requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has included a BMP mulch bed between the proposed improvements and the water, permeable pavers for the proposed driveway, and wetlands plantings incorporated with their Wetlands Board permit approval.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the lot currently offers no stormwater management and 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 and bioretention BMP beds as well as the conditioned buffer restoration in areas currently devoted to turf.

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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the increase in new impervious cover within the 50-foot landward buffer: **1,782 square feet x 200 percent = 3,564 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, 16 large shrubs, and 24 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. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) 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.

- 8) 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.**
- 9) 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.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 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) 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) 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.
- 14) This variance and associated conditions **will supersede** the conditions of the Board variance granted February 22, 2016.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated April 25, 2022, prepared by Gallup Surveyors & Engineers, signed April 25, 2022, by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA 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 conditions as provided in the Staff report. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Alston D. Johnston RT**
Address **1333 Starling Court, Lot 213**
Public Hearing **August 1, 2022**
City Council District: **District 6**, formerly Lynnhaven

Agenda
Item

6

Parcel GPIN: 2418-13-8688
Accela Record: 2022-CBPA-00039
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON August 1, 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 this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 layout of the proposed redevelopment of this lot minimizes encroachment into the 100-foot RPA buffer to the greatest extent practicable and situates the majority of the proposed improvements within the 100-foot variable width 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 purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bio retention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven oyster heritage program all to benefit water quality.

- 5) The applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers and bioretention BMP beds as well as the conditioned buffer restoration in areas currently devoted to turf. The applicant has also situated the proposed redevelopment of this lot as such so that there are no impacts to the 50-foot seaward buffer and minimal impacts to the 50-foot landward buffer.

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: **2,164 square feet x 200 percent = 4,328 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: **10 canopy trees, 10 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) A wire double row of wire reinforced 36" 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 and staked in the field for review by City Staff prior to land disturbance.
- 8) 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.**
- 9) 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.
- 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) 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) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 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 \$495.91 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 June 23, 2022, prepared by Gallup Surveyors & Engineers, signed June 23, 2022, by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA 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 conditions as provided in the Staff report. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Patricia & Wayne Pickett**
Address **404 S. Newtown Road**
Public Hearing **August 1, 2022**
City Council District: **District 1**, formerly Kempsville

Agenda
Item

7

Parcel GPIN: 1456-79-7949
Accela Record: 2022-CBPA-00033
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 5 CBPA VARIANCE CONDITIONS ON August 1, 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 to grant or deny the approval of the variance request should not be based upon who the applicant is, but rather the primary basis for the disposition of the request, for this request - a storage shed on the lot.
- 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, this lot falls within the RPA.
- 3) The seaward buffer falls on the majority of the lot and the proposed improvements, as situated in the rear yard, provides merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance request is in harmony with the purpose & intent of this ordinance as it will facilitate the storage of powered tools & equipment in sheltered conditions where spillage of oil, gas & other contaminant could inadvertently make it to the ground. The new replacement shed will enhance over all appearance & improve property values.
- 5) We developed plans to minimize runoff from property by planting trees, shrubs & vegetation. We use natural & organic (non-chemical) plant support, we mulch our grass (natural fertilizer) to promote ground cover, soil retention & minimize run off. Trash discards & etc. are properly disposed of & nothing is dumped into the river" 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, specific to setbacks. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large 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.

3. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
4. 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.
5. No perimeter fill 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 conditions as provided in the Staff report. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Francis & Lauren Cuozzo**
 Address **3281 Doncaster Rd**
 Public Hearing **August 1, 2022**
 City Council District: **District 8**, formerly Lynnhaven

Agenda
Item
8

Parcel GPIN: 1498-01-4329
Accela Record: 2022-CBPA-00041
Applicant’s Agent: Ryan Earley, Solid Structures
CBPA Board Action: DEFERRED INDEFINITELY AT THE August 1, 2022 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Mr. McCune, to defer the variance request indefinitely. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS	YES					MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					