



CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
September 8, 2022

Attendee Name	Title	Status	Arrived
June Barrett-McDaniels	Member	Present	9:01 AM
William R. Burnette	Member	Present	8:27 AM
David France	Member	Present	9:03 AM
David Jester	Member	Absent	8:26 AM
Casey Jones	Secretary	Present	8:26 AM
James F.N. McCune	Member	Present	8:27 AM
Michael Steier	Member	Present	9:03 AM
Al Wallace	Member	Present	8:24 AM
Dell Young	Member	Present	8:23 AM

APPROVAL OF THE MINUTES

1. Approval of the August 1, 2022 Minutes

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. France called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Thursday, September 8, 2022 at 10:00 a.m.

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

RESULT:	APPROVED [5 TO 0]
MOVER:	James F.N. McCune, Member
SECONDER:	Al Wallace, Member
AYES:	Barrett-McDaniels, Jones, McCune, Wallace, Young
ABSTAIN:	Burnette, France, Steier
ABSENT:	Jester

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 **John Reid**
Address **2113 E Admiral Drive**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

1

Parcel GPIN: 1499-79-8662
Accela Record: 2022-CBPA-00043
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON September 8, 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 it is an addition of a small front porch which is being requested in a manner that is available to anyone within the Chesapeake Bay Preservation Area.
- 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 variance is the minimum necessary to afford relief because the applicant has utilized the redevelopment of the drive as part of the addition to the primary structure 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 proposed improvements are situated in the landward buffer of the Resource Protection Area and there is no encroachment seaward with this request.
- 5) The Board is of the opinion that the applicant has utilized redevelopment over existing impervious cover for the majority of this project and keeping new impervious cover at a minimum 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, 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. 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. 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. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. 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.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

John Reid of the property located at 2113 E Admiral Drive appeared before 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 variance conditions as provided in the Staff report. All present voted for the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Jester



Applicant & Property Owner **Philip & Jane Jones**
Address **1291 Ketch Point**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

2

Parcel GPIN: 1498-76-8959
Accela Record: 2022-CBPA-00042
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 4 CBPA VARIANCE CONDITIONS ON September 8, 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 other property owners in the RPA area have applied for and have had approved similar small projects 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 all previous impervious cover on the lot and property improvements were constructed prior to the adoption of the CBPA Ordinance and the property owner is requesting the smallest size shed to fit existing equipment and storage needs.
- 3) The variance is the minimum necessary to afford relief because the variance request is to use the property to construct a storage shed to most efficiently use/store pool, gardening, and water sport equipment closer to where it is used and to free up space in the existing garage to store a vehicle. Means taken to minimize impacts include but not limited to, requesting the smallest size shed to fit existing equipment, and will not have to disrupt any existing trees. It will be constructed in a flat area with minimum excavation to existing area, will use silt fence to catch construction debris, will perform majority of debris producing construction in-front on driveway away from back buffer area.
- 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 project is located in a heavily wooded mature canopy area and will not have to disrupt any existing trees.
- 5) We will not be impacting the existing riparian buffer vegetation 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 10 feet seaward of improvements.
3. 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.
4. No perimeter fill is authorized outboard or seaward of the proposed improvements.

Scott Lambright, the son-in-law of the property owner located at 1291 Ketch Point appeared before 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 variance conditions as provided in the Staff report. All present voted for the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Jester



Applicant & Property Owner **David & Mary Sweeney**
Address **1257 N. Inlynnview Road**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

3

Parcel GPIN: 1498-36-6433
Accela Record: 2022-CBPA-00044
Applicant's Agent: Billy Garrington, Governmental Permitting Services
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON September 8, 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 redeveloping a lot in a manner that offers a retreat of impervious cover from the 50-foot seaward buffer.
- 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 100-foot RPA encumbers a large area of the lot while much of the remaining lot lies within the Variable Width Buffer. Proposed improvements provide an overall retreat from the 50' Seaward Buffer. The proposed placement of improvements is due to the proximity of their home within the RPA. While the proposed improvements increase their overall impervious surface in the RPA, all take place in areas that are currently dedicated to lawn or overgrown shrubbery. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot.
- 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 provides a retreat of impervious cover within the 50-foot seaward buffer, utilization of redevelopment over existing impervious cover, best management practices to manage stormwater on the residential lot, and additional buffer restoration within the seaward buffer.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the Board is of the opinion that the buffer restoration area as shown on the proposed plans and best management practices proposed provide merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater potential.

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 per the layout provided in the CBPA Exhibit – **3,333 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 understory trees, 24 large shrubs, and 32 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) 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.

- 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) 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.
- 13) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated July 29, 2022, prepared by Painted Fern Landscape Architecture, signed 07/29/22 by Jessica L .Nelson. 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 variance conditions as provided in the Staff report. All present voted for the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Jester



Applicant & Property Owner **Ralph & Margaret King**
Address **809 S. Spigel Drive**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

4

Parcel GPIN: 1498-51-5051
Accela Record: 2022-CBPA-00045
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 19 CBPA VARIANCE CONDITIONS ON September 8, 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) The CBPA exhibit provided coupled with the use of materials and stormwater methodology integrating best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of the property in the neighborhood that have redeveloped 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 owners have designed the proposed improvements to minimize the impacts 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 requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the retention of existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the proposed improvements and the waterway to capture and treat runoff prior to discharged into 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) 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: **5,085 square feet x 200 percent = 10,170 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: 1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs per 400 square feet to the greatest extent practicable.

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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) 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 on the site plan submitted to the Development Services Center for review and approval.
- 14) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 15) 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.
- 16) 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.
- 17) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 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 \$1,165.31 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 July 29, 2022, prepared by WPL Landscape Architecture, signed July 29, 2022, by Eric A. Garner. 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.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 809 S. Spigel Drive appeared before the Board.

A motion was made by Mr. McCune, seconded by Mr. Burnette, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

RESULT:	APPROVED [7 TO 1]
MOVER:	James F.N. McCune, Member
SECONDER:	William R. Burnette, Member
AYES:	Barrett-McDaniels, Burnette, Jones, McCune, Steier, Wallace, Young
NAYS:	France
ABSENT:	Jester



Applicant & Property Owner **Randall & Lisa Peck**
Address **1675 Godfrey Lane**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

5

Parcel GPIN: 2409-13-7203
Accela Record: 2022-CBPA-00046
Applicant's Agent: Eddie Bourdon, Sykes, Bourdon, Ahern & Levy P.C.
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON September 8, 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 location of the proposed improvements within the RPA are similar to other lots developed in the neighborhood.
- 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 owners have designed the proposed improvements to be minimize the impact to the Chesapeake Bay, the new addition has been placed to the east and shifted around on the site to minimize site impacts and avoid development in the 50' seaward portion of the site and the majority of the proposed improvements encroach within the City's 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 of the multiple best management practices offered, and the provided buffer restoration associated with this request.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed behind the new addition to capture and achieve the stormwater management requirements prior to discharging into the river 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) 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 consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **14 understory trees, 21 large shrubs and 42 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**

- 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) Under deck treatment of sand and gravel shall be installed under the proposed second story deck. Said treatment shall be installed under the wood deck and stairs.
- 14) 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.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) ** 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 \$1,239.79 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.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated July 29, 2022, prepared by WPL Landscape Architecture, Land Surveying, and Civil Engineering, signed July 29, 2022 by Eric A. Garner. 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.

Eddie Bourdon of Sykes, Bourdon, Ahern & Levy P.C. representing the applicant of the property located at 1675 Godfrey Lane appeared before the Board.

A motion was made by Mr. Jones, seconded by Mr. Burnette, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Casey Jones, Secretary
SECONDER:	William R. Burnette, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Jester



Applicant & Property Owner **1600 Arnold Circle, LLC**
Address **1600 Arnold Circle**
Public Hearing **September 8, 2022**
City Council District: **District 6**, formerly Lynnhaven

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Item

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Parcel GPIN: 2409-82-3546
Accela Record: 2022-CBPA-00047
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: DEFERRED AT THE September 8, 2022 CBPA BOARD PUBLIC HEARING TO THE Monday, November 7, 2022 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Burnette, seconded by Mr. Jones, to defer the variance request to the November 7, 2022 CBPA Board Public Hearing. All present voted for the motion.

RESULT:	APPROVED [UNANIMOUS]	Next: 10/3/2022 10:00 AM
MOVER:	William R. Burnette, Member	
SECONDER:	Casey Jones, Secretary	
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young	
ABSENT:	Jester	



Location of Noncompliance **3281 Doncaster Road**
Property Owner **Francis & Lauren Cuozzo**
Public Hearing **September 8, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

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Parcel GPIN: 1498-01-4329
Accela Record: 2022-CBPV-00001
Property Owner's Agent: Self-Represented

Francis & Lauren Cuozzo of the property located at 3281 Doncaster Road appeared before the Chesapeake Bay Preservation Area (CBPA) Board and gave testimony.

Statement of Noncompliance

Development within the Resource Protection Area (RPA) buffer that deviates from the conditions of the December 19, 2012 CBPA Board variance.

CBPA Board Determination of Noncompliance

The testimony presented regarding the activity, unauthorized improvements – expansion of pool patio surround – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mr. Wallace, with a second provided by Mrs. McDaniels to find the property in noncompliance with the conditions of the December 19, 2012 CBPA Variance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **LOW**
- Environmental Impact: **LOW**
- Civil Charge: **\$0.00**

RESULT:	DENIED [2 TO 0] – A SUBSTITUTE MOTION WAS MADE
MOVER:	Al Wallace, Member
SECONDER:	June Barrett-McDaniels, Member
AYES:	Wallace
ABSENT:	Jester
AWAY:	Burnette, France, Jones, McCune, Steier, Young

Substitute Motion:

A substitute motion was made by Mr. Jones with a second provided by Mr. McCune to find the property in noncompliance with the conditions of the December 19, 2012 CBPA Variance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **LOW**
- Civil Charge: **\$0.00**
- Restoration Hearing Ordered: **Yes**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [7 TO 1]
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace
NAYS:	Young
ABSENT:	Jester

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the CBPA Board found the relative degree of deviation to the matter of noncompliance to be HIGH and the environmental impact to the Resource Protection Area (RPA) features to be LOW.

Based off the relative degree of noncompliance and the environmental impact found by the CBPA Board, the CBPA Board issued no civil charge (\$0.00) to the matter.

Restoration Hearing ordered for the Monday, October 3, 2022 CBPA Board Public Hearing.



Location of Noncompliance **3281 Doncaster Road**
 Contractor Name **Ryan Earley, Solid Structures**
 Public Hearing **September 8, 2022**
 City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

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Parcel GPIN: 1498-01-4329
Accela Record: 2022-CBPV-00001
Contractor’s Agent: Self-Represented

Ryan Earley of Solid Structures, the Contractor for the property located at 3281 Doncaster Road appeared before the CBPA Board and gave testimony.

Statement of Noncompliance

Development within the Resource Protection Area (RPA) buffer that deviates from the conditions of the December 19, 2012 CBPA Board variance.

CBPA Board Determination of Noncompliance

The testimony presented regarding the activity, unauthorized improvements – expansion of pool patio surround – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mr. Jones with a second provided by Mr. McCune to find the property in noncompliance with the conditions of the December 19, 2012 CBPA Variance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **LOW**
- Civil Charge: **\$3,000.00**

RESULT:	SUBSTITUTE MOTION MADE [2 TO 0]
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Jones, McCune
ABSENT:	Jester
AWAY:	Barrett-McDaniels, Burnette, France, Steier, Wallace, Young

Substitute Motion:

A substitute motion was made by Mr. Burnette with a second provided by Mr. Steier to find the property in noncompliance with the December 19, 2012 CBPA Variance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **LOW**
- Civil Charge: **\$1,000.00**

All Board members present voted for the substitute motion as follows.

RESULT:	DENIED [2 TO 6] – SUBSTITUTE MOTION
MOVER:	William R. Burnette, Member
SECONDER:	Michael Steier, Member
AYES:	Burnette, Steier
NAYS:	Barrett-McDaniels, France, Jones, McCune, Wallace, Young
ABSENT:	Jester

The substitute motion was denied, and the original motion was voted upon.

The original motion was made by Mr. Jones with a second provided by Mr. McCune to find the property in noncompliance with the conditions of the December 19, 2012 CBPA Variance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **LOW**
- Civil Charge: **\$3,000.00**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [6 TO 2] – ORIGINAL MOTION
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, France, Jones, McCune, Wallace, Young
NAYS:	Burnette, Steier
ABSENT:	Jester

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be HIGH and the environmental impact to the Resource Protection Area (RPA) features to be LOW.

Based off the relative degree of noncompliance and the environmental impact found by the CBPA Board, the CBPA Board issued a civil charge of \$3,000.00 to the matter.



Location of Noncompliance **3220 Stapleford Chase**
 Property Owner **David R. Miller**
 Public Hearing **September 8, 2022**
 City Council District: **District 8**, formerly Lynnhaven

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Parcel GPIN: 1498-16-4212
Accela Record: 2022-CBPV-00003
Property Owner’s Agent: Self-Represented

David R. Miller of the property located at 3220 Stapleford Chase appeared before the Chesapeake Bay Preservation Area (CBPA) Board and gave testimony.

Statement of Noncompliance

Land disturbance and removal of existing vegetation (turf) for the installation of segmented retaining walls.

CBPA Board Determination of Noncompliance

The testimony presented regarding the activity, unauthorized improvements – land disturbance and removal of existing vegetation (turf) for the installation of segmented retaining walls. – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mr. Wallace with no second provided to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **LOW**
- Environmental Impact: **LOW**
- Civil Charge: **\$1,500.00**
- Restoration Hearing Ordered: **Yes**

RESULT: **DENIED [1 TO 0]** – A SECOND TO THE MOTION NOT PROVIDED
MOVER: Al Wallace, Member
ABSENT: Jester
AWAY: Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Young

Substitute Motion:

A substitute motion was made by Mr. Steier with a second provided by Mrs. Young to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **MEDIUM**
- Environmental Impact: **LOW**
- Civil Charge: **\$1,500.00**
- Restoration Hearing Ordered: **Yes**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [5 TO 3]
MOVER:	Michael Steier, Member
SECONDER:	Dell Young, Member
AYES:	Barrett-McDaniels, France, Jones, Steier, Young
NAYS:	Burnette, McCune, Wallace
ABSENT:	Jester

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be MEDIUM and the environmental impact to the Resource Protection Area (RPA) features to be LOW.

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued a civil charge of \$1,500.00 to the matter.

Restoration Hearing ordered within 60-90 days from the date of this public hearing to be at Property Owner's discretion.



Location of Noncompliance **3220 Stapleford Chase**
 Contractor Name **Robert Anderson, Bulldog Lawn Service**
 Public Hearing **September 8, 2022**
 City Council District: **District 8**, formerly Lynnhaven

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Parcel GPIN: 1498-16-4212
Accela Record: 2022-CBPV-00003
Contractor’s Agent: Self-Represented

Robert Anderson of Bulldog Lawn Service, the Contractor for the property located at 3220 Stapleford Chase appeared before the CBPA Board and gave testimony.

Statement of Noncompliance

Land disturbance and removal of existing vegetation (turf) for the installation of segmented retaining walls.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – land disturbance and removal of existing vegetation (turf) for the installation of segmented retaining walls. – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mr. Burnette with a second provided by Mr. Jones to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **MEDIUM**
- Environmental Impact: **LOW**
- Civil Charge: **\$500.00**

RESULT:	DENIED [2 TO 0] – A SUBSTITUTE MOTION WAS MADE
MOVER:	William R. Burnette, Member
SECONDER:	Casey Jones, Secretary
AYES:	Burnette, Jones
ABSENT:	Jester
AWAY:	Barrett-McDaniels, France, McCune, Steier, Wallace, Young

Substitute Motion:

A substitute motion was made by Mr. McCune with a second provided by Mrs. McDaniels to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **MEDIUM**
- Environmental Impact: **LOW**

- Civil Charge: **\$1,500.00**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [6 TO 2]
MOVER:	James F.N. McCune, Member
SECONDER:	June Barrett-McDaniels, Member
AYES:	Barrett-McDaniels, France, McCune, Steier, Wallace, Young
NAYS:	Burnette, Jones
ABSENT:	Jester

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be MEDIUM and the environmental impact to the Resource Protection Area (RPA) features to be LOW.

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued a civil charge of \$1,500.00 to the matter.



Location of Noncompliance **2871 River Road**
 Property Owner **Dennis & Janice Ellmer**
 Public Hearing **September 8, 2022**
 City Council District: **District 8**, formerly Lynnhaven

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Parcel GPIN: 1499-41-4751
Accela Record: 2022-CBPV-00002
Property Owner’s Agent: Billy Garrington - Governmental Permitting Consultants

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 2871 River Road appeared before the CBPA Board and gave testimony.

Statement of Noncompliance

Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf. – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mr. Wallace with a second provided by Mr. Burnette to defer the show cause hearing to the October 3, 2022 CBPA Board Public Hearing.

All Board members present voted for the motion to defer as follows.

RESULT:	DENIED [2 TO 5]
MOVER:	Al Wallace, Member
SECONDER:	William R. Burnette, Member
AYES:	Burnette, Wallace
NAYS:	Barrett-McDaniels, Jones, McCune, Steier, Young
ABSTAIN:	France
ABSENT:	Jester

Substitute Motion:

A substitute motion was made by Mr. McCune with a second provided by Mr. Wallace to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **HIGH**
- Civil Charge: **\$10,000.00**
- Restoration Hearing Ordered: **Yes**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [6 TO 1]
MOVER:	James F.N. McCune, Member
SECONDER:	Al Wallace, Member
AYES:	Barrett-McDaniels, Jones, McCune, Steier, Wallace, Young
NAYS:	Burnette
ABSTAIN:	France
ABSENT:	Jester

Mr. France abstained from the vote. Mr. France is an employee at Kimley-Horn. His firm provides services to the Applicant.

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be HIGH and the environmental impact to the Resource Protection Area (RPA) features to be HIGH.

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued a civil charge of \$10,000.00 to the matter.

Restoration Hearing ordered within 60-90 days from the date of this public hearing to be at Property Owner's discretion.



Location of Noncompliance **2871 River Road**
 Contractor Name **Kaitlyn Lord, SYNLaw**
 Public Hearing **September 8, 2022**
 City Council District: **District 8**, formerly Lynnhaven

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Parcel GPIN: 1499-41-4751
Accela Record: 2022-CBPV-00002
Applicant’s Agent: Self-Represented

Kaitlyn Lord of SYNLaw, the Contractor for the property located at 2871 River Road did not appear before the CBPA Board to give testimony.

Statement of Noncompliance

Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf. – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

Motion:

A motion was made by Mrs. McDaniels with a second provided by Mr. McCune to find the property in noncompliance with the following recommendation.

- Relative Degree of Deviation or Non-Compliance: **HIGH**
- Environmental Impact: **HIGH**
- Civil Charge: **\$10,000.00**

All Board members present voted for the substitute motion as follows.

RESULT:	APPROVED [7 TO 0]
MOVER:	June Barrett-McDaniels, Member
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Burnette, Jones, McCune, Steier, Wallace, Young
ABSTAIN:	France
ABSENT:	Jester

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be HIGH and the environmental impact to the Resource Protection Area (RPA) features to be HIGH.

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued a civil charge of \$10,000.00 to the matter.