



**CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
October 3, 2022**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
June Barrett-McDaniels	Member	Present	10:06 AM
William R. Burnette	Member	Present	10:07 AM
David France	Vice-Chair	Present	10:07 AM
David Jester	Chair	Present	10:08 AM
Casey Jones	Secretary	Present	10:08 AM
James F.N. McCune	Member	Present	10:07 AM
Michael Steier	Member	Present	10:08 AM
Al Wallace	Member	Present	10:07 AM
Dell Young	Member	Absent	

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, October 3, 2022.

The first order of business was to approve the findings and variance conditions of the September 8, 2022 CBPA Board Public Hearing. A motion was made by Mr. McCune and seconded by Mr. Burnette to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

**BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE September 8, 2022 FINDINGS AND VARIANCE CONDITIONS ON October 3, 2022 AS FOLLOWS.**

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

**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 **Charles Ryan Fanelli**  
Address **949 Bobolink Drive**  
Public Hearing **October 3, 2022**  
City Council District: **District 6, formerly Lynnhaven**

Agenda  
Item

**1**

**Parcel GPIN:** 2418-23-2541  
**Accela Record:** 2022-CBPA-00051  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON October 3, 2022.

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

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because approximately 9 CBPA variances have been granted to other owners of properties adjacent to and along the same waterway as this lot. Those variances have dealt with similar encroachments requests and have been conditions in the same manner as the recommended conditions associated with this variance request.
- 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 we have designed the improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts and the outdoor spaces – specifically the paver patio area is an appropriate size given the minimal deck space off the rear of the residence.
- 4) The applicant's agent provides that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because this request utilizes redevelopment over existing impervious cover to the greatest extent practicable in addition to the best management practices introducing bioretention planting beds and over 100 linear feet of shoreline management with approximately 800 square feet of native shoreline plantings and naturalization.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention & naturalized planting/buffer will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

**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 consisting of native shoreline plantings, understory trees, and shrubs shall be installed within the RPA per the designated areas on the CBPA Exhibit. Said installation shall be installed at the following rate: **3 understory trees, 9 small shrubs, and 800 square feet of native shoreline plantings.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Mitigation for the three (3) pine trees to be removed is required at a 1:1 ratio (3 new canopy trees to be planted).
- 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 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.
- 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 not included with this variance request.

- 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) 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.
- 15) This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted April 28, 2014 with exception to condition 16 and 20 as provided.
  - *“16. Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.”*
  - *“20. Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (739 sq. ft. x 200% = 1,478 sq. ft.) and 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. 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” – 6” 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 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.”*
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 26, 2022, prepared by WPL Landscape Architecture, signed August 15, 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. 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. McCune, seconded by Mr. Jones, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.**

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



Applicant & Property Owner **Jennifer Ward**  
Address **1029 Bobolink Dr**  
Public Hearing **October 3, 2022**  
City Council District: **District 6, formerly Lynnhaven**

Agenda  
Item

**2**

**Parcel GPIN:** 2418-14-9684  
**Accela Record:** 2022-CBPA-00052  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON October 3, 2022.

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

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the location of the proposed improvements within the RPA are similar to other lots developed in this neighborhood for encroachments into the 50-foot landward buffer in areas currently devoted to turf.
- 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 applicant's agent provides that the variance is the minimum necessary to afford relief because they have designed the improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be increased to facilitate treatment from the new improvement and part of the city street improvements.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that much of the RPA on this lot is turf and the stormwater management methodology and buffer restoration will benefit the lot and the watershed.

**Board Conditions:**

- 1) The proposed patio and fire pit area shall be constructed on an aggregate base to allow for infiltration of rainwater.
- 2) 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.
- 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 proposed new impervious cover within the RPA: **2,242 square feet x 200 percent = 4,484 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 7 understory trees, 22 large shrubs, and 33 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.

- 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 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.
- 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 not included with this variance request.
- 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 \$513.79 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.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 28, 2022, prepared by WPL Landscape Architecture, signed August 11, 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. 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. McCune, seconded by Mr. Jones, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.**

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



Applicant & Property Owner **Chanticleer Associates Limited Partnership & Pennsylvania Reality Group VA II, Inc.**  
Address **1416 Taureau Court, 1478 Petite Court & Ackiss Land, Sec B, Lots N, O, P, & Q**  
Public Hearing **October 3, 2022**  
City Council District: **District 6, formerly Beach**

Agenda  
Item  
**3**

**Parcel GPINs:** 2417-08-3383, 2417-17-3946, 2417-17-4910, 2417-17-4976 & 2417-17-5942  
**Accela Record:** 2022-CBPA-00053  
**Applicant's Agent:** Evan Waagen - MSA, P.C.  
**CBPA Board Action:** DEFERRED AT THE October 3, 2022 CBPA BOARD PUBLIC HEARING TO THE Monday, November 7, 2022 CBPA BOARD PUBLIC HEARING.

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

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Casey Jones, Secretary
<b>SECONDER:</b>	Al Wallace, Member
<b>AYES:</b>	Barrett-McDaniels, Burnette, France, Jester, Jones, McCune, Steier, Wallace
<b>ABSENT:</b>	Young





Applicant & Property Owner **Lee & Mary Murphy**  
Address **2712 Spigel Drive**  
Public Hearing **October 3, 2022**  
City Council District: **District 8**, formerly Lynnhaven

Agenda  
Item

**4**

**Parcel GPIN:** 1498-52-4788  
**Accela Record:** 2022-CBPA-00055  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON October 3, 2022.

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

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the property was platted in 1968 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 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.
- 3) The location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 4) The proposed changes with this variance request are not of substantial detriment to water quality as the agent indicated in the Water Quality Impact Assessment, this variance request has minimal land disturbance to the property and with the proposed mitigation methods, the project provides additional benefits to the water quality of the Chesapeake Bay.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention & naturalized planting/buffer will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

**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. 400 square feet of buffer shall be installed for the proposed new impervious cover within the RPA.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

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

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

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

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



Applicant & Property Owner **Francis & Lauren Cuozzo**  
Address **3281 Doncaster Road**  
Public Hearing **October 3, 2022**  
City Council District: **District 8**, formerly Lynnhaven

Agenda  
Item

**5**

**Parcel GPIN:** 1498-01-4329  
**Accela Record:** 2022-CBPA-00041  
**Applicant's Agent:** Ryan Earley, Solid Structures  
**CBPA Board Action:** APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON October 3, 2022.

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

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because it is an expansion of a paver patio that will create minimum effect on water's edge and neighbors.
- 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 Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because the homeowner has limited the size of the expansion only to provide additional seating for the family.
- 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 most of the paver area is to the left side of the property, not the water's edge.
- 5) *"We are doing one route of construction entrance and not impacting any vegetation that already provides benefit to the site"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that a mature vegetated shoreline is present, has not been disturbed and offers a filter strip for filtering runoff. In addition, Staff offers the recommended conditions below as a means to enhance the existing conditions towards providing long-term water quality benefits.

**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. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
3. 400 square feet of buffer restoration shall be installed within the RPA.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **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.

4. Buffer restoration of 2,378 square feet conditioned by the December 19, 2012 CBPA Variance shall be installed and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future.
5. No perimeter fill is authorized outboard or seaward of the proposed improvements.
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. This variance and associated conditions **are in addition to** the conditions of the Board variance granted August 26, 1996 and December 19, 2012.

**Ryan Earley of Solid Structures representing the applicant of the property located at 3281 Doncaster Road appeared before the Board.**

**A motion was made by Mr. Wallace, seconded by Mr. Jones, to hear both Cuozzo agenda items – restoration hearing and after-the-fact variance request together. All present voted for the motion.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Al Wallace, Member
<b>SECONDER:</b>	Casey Jones, Secretary
<b>AYES:</b>	Barrett-McDaniels, Burnette, France, Jester, Jones, McCune, Steier, Wallace
<b>ABSENT:</b>	Young

### **AFTER-THE-FACT VARIANCE**

1. Francis & Lauren Cuozzo at 3281 Doncaster Rd.
2. Motion to keep condition 3.

<b>RESULT:</b>	<b>DENIED [3 TO 4]</b>
<b>MOVER:</b>	June Barrett-McDaniels, Member
<b>SECONDER:</b>	Michael Steier, Member
<b>AYES:</b>	Barrett-McDaniels, Jester, Steier
<b>NAYS:</b>	Burnette, Jones, McCune, Wallace
<b>ABSENT:</b>	Young
<b>AWAY:</b>	France

3. Motion to make the “motion to keep condition 3” the main motion.

<b>RESULT:</b>	<b>DENIED [2 TO 6]</b>
<b>MOVER:</b>	Michael Steier, Member
<b>SECONDER:</b>	June Barrett-McDaniels, Member
<b>AYES:</b>	Barrett-McDaniels, Steier
<b>NAYS:</b>	Burnette, France, Jester, Jones, McCune, Wallace
<b>ABSENT:</b>	Young

4. Vote for original motion modified to strike condition 3 AND to add an amendment of condition 4 to 100% impervious.

<b>RESULT:</b>	<b>APPROVED [6 TO 2]</b>
<b>MOVER:</b>	William R. Burnette, Member
<b>SECONDER:</b>	Al Wallace, Member
<b>AYES:</b>	Burnette, France, Jester, Jones, McCune, Wallace
<b>NAYS:</b>	Barrett-McDaniels, Steier
<b>ABSENT:</b>	Young



Applicant of Noncompliance **2871 River Road**  
 Property Owner **Dennis & Janice Ellmer**  
 Public Hearing **October 3, 2022**  
 City Council District: **District 8**, formerly Lynnhaven

Agenda  
Item

**7**

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

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

Dennis Ellmer, of the property located at 2871 River Road, appeared before the CBPA Board and gave testimony.

Stephen Ballard, of S.B. Ballard Construction, appeared before the CBPA Board and gave testimony.

**Request**

Reopen the show cause hearing for the property located at 2871 River Road.

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

**A motion was made by Mr. McCune with a second provided by Mr. Burnette to reopen the show cause hearing for the property located at 2871 River Road.**

<b>RESULT:</b>	<b>APPROVED [5 TO 2]</b>
<b>MOVER:</b>	James F.N. McCune, Member
<b>SECONDER:</b>	William R. Burnette, Member
<b>AYES:</b>	Barrett-McDaniels, Burnette, Jester, Jones, McCune
<b>NAYS:</b>	Steier, Wallace
<b>ABSTAIN:</b>	France
<b>ABSENT:</b>	Young

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

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

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

<b>RESULT:</b>	<b>APPROVED [5 TO 2]</b>
<b>MOVER:</b>	James F.N. McCune, Member
<b>SECONDER:</b>	William R. Burnette, Member
<b>AYES:</b>	Burnette, Jester, Jones, McCune, Wallace
<b>NAYS:</b>	Barrett-McDaniels, Steier
<b>ABSTAIN:</b>	France
<b>ABSENT:</b>	Young

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 LOW 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 \$0.00 to the matter.

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





Applicant of Noncompliance **2871 River Road**  
 Contractor Name **Kaitlyn Lord, SYNLawn**  
 Public Hearing **October 3, 2022**  
 City Council District: **District 8**, formerly Lynnhaven

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Item

**8**

**Parcel GPIN:** 1499-41-4751  
**Accela Record:** 2022-CBPV-00002  
**Contractor’s Agent:** Self-represented

**Request**

Reopen the show cause hearing for the property located at 2871 River Road.

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

**A motion was made by Mr. McCune with a second provided by Mr. Burnette to reopen the show cause hearing for the property located at 2871 River Road.**

<b>RESULT:</b>	<b>DENIED [3 TO 4]</b>
<b>MOVER:</b>	James F.N. McCune, Member
<b>SECONDER:</b>	William R. Burnette, Member
<b>AYES:</b>	Burnette, Jester, McCune
<b>NAYS:</b>	Barrett-McDaniels, Jones, Steier, Wallace
<b>ABSTAIN:</b>	France
<b>ABSENT:</b>	Young

**A substitute motion was made by Mr. Wallace with a second provided by Mr. McCune to reopen the show cause hearing for the property located at 2871 River Road.**

<b>RESULT:</b>	<b>DENIED [3 TO 4]</b>
<b>MOVER:</b>	Al Wallace, Member
<b>SECONDER:</b>	James F.N. McCune, Member
<b>AYES:</b>	Burnette, McCune, Wallace
<b>NAYS:</b>	Barrett-McDaniels, Jester, Jones, Steier
<b>ABSTAIN:</b>	France
<b>ABSENT:</b>	Young