



**CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
December 5, 2022**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
June Barrett-McDaniels	Member	Present	9:18 AM
William R. Burnette	Member	Present	9:19 AM
David France	Member	Present	9:19 AM
David Jester	Member	Absent	
Casey Jones	Secretary	Present	9:19 AM
James F.N. McCune	Member	Present	9:19 AM
Michael Steier	Member	Present	9:19 AM
Al Wallace	Member	Present	9:18 AM
Dell Young	Member	Present	9:17 AM

**APPROVAL OF THE MINUTES**

1. Approval of the November 7, 2022 Hearing 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 Monday, December 5, 2022 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the November 7, 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 November 7, 2022 FINDINGS AND VARIANCE CONDITIONS ON December 5, 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>	Young
<b>ABSENT:</b>	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.**



# Administrative Business Election of Officers for 2023

Agenda Item

# 1

## Election of 2023 Chesapeake Bay Preservation Area Board Officers

### 2023 Chesapeake Bay Preservation Area Board Election of Officers

**Chair – Dave Jester**  
**Vice Chair – Dave France**  
**Secretary – Casey Jones**

### 2022 Chesapeake Bay Preservation Area Board Members

- Dave Jester, Chairman
- Dave France, Vice Chairman
- Casey Jones, Secretary
- June Barrett-McDaniels
- Bill Burnette
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

**A motion was made by Mr. McCune, seconded by Mr. Burnette, to elect Mr. Jones as the Vice Chair, and Mr. France as the Chair. All voted for the motion.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</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, Young
<b>ABSENT:</b>	Jester

**A second motion was made by Mr. Wallace, seconded by Mr. Jones, to elect Ms. McDaniels as the Secretary.**

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

**A substitute motion was made by Mr. McCune, seconded by Mr. Jones, to defer motion of Secretary until 9 members are present.**

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



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 **December 5, 2022**  
City Council District **District 6**, formerly Beach

Agenda Item  
**2**

**Parcel GPINs:** 2417-17-3946, 2417-17-4910, 2417-17-4976, 2417-17-5942  
**Accela Record:** 2022-CBPA-00053  
**Applicant's Agent:** Evan Waagen, MSA  
**CBPA Board Action:** APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON December 5, 2022.

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

**Board's Findings:**

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act ("CBPA" or "Act") and the City's CBPA Ordinance. The application of the Act places a majority of the property within the RPA and would result in the loss of nearly all of the buildable area on this parcel. Since the enactment of the Act and CBPA Ordinance, countless property owners in this area have received similar variances for similar improvements."* Staff offers that the request to encroach into the 100-foot RPA buffer is consistent with similar commercial development requests within the Eastern Brach of the Lynnhaven River watershed in that the proposed improvements are landward of the top of bank feature, the majority of new impervious cover is situated within the City's 100-foot variable width buffer, and the CBPA Exhibit provides mitigation measure consistent with the performance standards set forth in the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"given that all of the proposed improvements will be located landward of the 50-foot seaward buffer, together with the fact that this is a uniquely situated lot where large portion of the lot falls within the RPA, the proposed encroachment is the minimum necessary to achieve a reasonable buildable area on this property."* Staff offers that the proposed improvements, existing 15-foot drainage easement, and the RPA buffer challenge the redevelopment of this lot. As such, the applicant's agent utilized this exception with the coupled challenges above as a starting point and worked

with Staff to refine the proposed improvements to meet these review standards while maintaining the existing drainage easement. As a result, the overall impervious cover of the proposed improvements was reduced from approximately 10,018 square feet to 8,785 square feet and the encroachment into the 100-foot Resource Protection Area (RPA) buffer from approximately 2,271 square feet to 1,623 square feet.

- 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 overall size of the improvements are the minimum necessary to afford relief and have been placed outside of the most sensitive portion of the riparian buffer. The improvements also preserve the riparian buffer ecosystem with the purpose and intent of this ordinance to not be injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare.”* Staff concurs with the statement provided by the applicant’s agent and offers that a detailed site plan review will be required should the variance be granted for the encroachment into the 100-foot RPA buffer. Said review will require a comprehensive review of the stormwater management from the proposed impervious cover meeting the requirements of the Linkhorn Bay Drainage Basin of the City’s Master Drainage Study.
- 5) *“When properly coordinated, the applicant’s proposed development, including the retention of a large area of existing naturalized forest, the implementation of buffer restoration and stormwater management facilities, will provide a means to manage towards a no net increase in nonpoint source pollution load.”* Staff concurs and adds that the required buffer restoration for the new impervious cover within the RPA will provide an additional means toward promoting the infiltration of stormwater runoff from upland improvements.

**Board Conditions:**

- 1) A final subdivision plat shall be submitted for review, approval, and recordation to the Department of Planning and Community Development, Development Services Center (DSC) to vacate the existing internal property lines.
- 2) A Commercial Site Plan shall be submitted to the Department of Planning and Community Development, 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 in substantial compliance with the layout and plant legend submitted as a component of the CBPA Exhibit by MSA, P.C. and dated October 21, 2022.

The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Said restoration shall be installed prior to the issuance of the certificate of occupancy or

release of the building permit.

- 5) In addition to the required buffer restoration for the new impervious cover within the Resource Protection Area (RPA), for the 2 understory trees located in the public right-of-way (ROW) the required mitigation is as follow.

- 3:1 ratio (6 new understory trees to be planted on the lot)

Minimum size at installation for replacement trees shall be as listed below:

- Understory tree (matures to a height of 12' to 35')  $\frac{3}{4}$ " – 1  $\frac{1}{2}$ " caliper at time of installation.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **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.**
- 12) 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.
- 13) 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.
- 14) 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.

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) \*\* 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 \$1,713.93 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 October 21, 2022, prepared by MSA, P.C. 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.

\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

**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.**

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



Applicant & Property Owner **Doan Van Nguyen**  
Address **3525 N Crestline Drive**  
Public Hearing **December 5, 2022**  
City Council District **District 1**, formerly Kempsville

Agenda  
Item

**3**

**Parcel GPIN:** 1456-29-0579  
**Accela Record:** 2022-CBPA-00063  
**Applicant's Agent:** Self-Represented  
**CBPA Board Action:** APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON December 5, 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 we are requesting the smallest size shed necessary for our equipment.
- 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 CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because 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 rear yard of the lot is taken up by the seaward buffer and would benefit by the required buffer restoration given the lot has minimal tree canopy cover.
- 5) We are minimizing impacts to the greatest extent practicable as a means to manage towards a no net increase in nonpoint source pollution load.



**Board Conditions:**

1. The proposed shed shall be located within the 50-foot landward buffer of the Resource Protection Area (RPA).
2. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit, specific to setbacks. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
3. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large shrubs.**

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

4. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.

\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

**Doan Van Nguyen of the property located at 3525 N Crestline Drive appeared before the Board.**

**A motion was made by Mr. Wallace, seconded by Mr. McCune, 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>	Al Wallace, Member
<b>SECONDER:</b>	James F.N. McCune, Member
<b>AYES:</b>	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
<b>ABSENT:</b>	Jester



Applicant & Property Owner **Patrick & Ashley Holmes**  
Address **832 Bishopsgate Lane**  
Public Hearing **December 5, 2022**  
City Council District **District 8**, formerly Lynnhaven

Agenda  
Item

**4**

**Parcel GPINs:** 1498-02-6405  
**Accela Record:** 2022-CBPA-00064  
**Applicant's Agent:** Billy Garrington - Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON December 5, 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 *"granting a variance request in this circumstance would not confer privileges to the applicant which have been denied to other property owners within the CBPA Overlay District in this area."* Staff concurs and adds that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the 100-foot RPA and the Variable Width Buffer encumbers a large area of the back yard on this lot. Proposed improvements occur adjacent to existing impervious, and all is outside 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 and the total percentage of impervious is only 19.6%. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot."* While Staff acknowledges the statement provided by the applicant's agent, the specific conditions of the lot warrant an analysis of the proposed improvements to the access of the site, associated land disturbance to construct the proposed improvements, location within the RPA buffer of the proposed improvements and mitigation measures provided to enhance water quality. Therefore, Staff has

provided the recommended conditions below as a means for the variance request to be in harmony with the intent of the CBPA Ordinance.

- 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 existing RPA buffer on this lot is comprised of some turf grass, canopy trees, leaf litter and some existing impervious cover. All proposed improvements occur outside the 50' Seaward Buffer and have been located only within the 50' landward and variable width buffers adjacent to their existing residence and/or impervious surfaces. This request will require the establishment of additional vegetation within the buffer to help address runoff from the proposed improvements. This request will not be injurious to the neighborhood and with the addition of vegetation, will not be a detriment to water quality as the applicant is mitigating impacts within the buffer to help with the increase in runoff generated by the proposed improvements. The proposed request is not expected to be injurious to the public welfare and is not of substantial detriment of water quality.”* Staff acknowledges that this request does not encroach into the 50-foot seaward buffer and that over half of the new impervious cover falls within the variable width buffer portion of the Resource Protection Area. The applicant has utilized an approach towards managing stormwater on a residential lot through the use multiple best management practices.
- 5) *“It is expected that City Staff will work with the applicant to ensure that the landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscape and a low retaining wall that should aid in slowing the velocity of stormwater leaving the site while allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs within the RPA buffer”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

**Board Conditions:**

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,259 square feet x 200 percent = 4,518 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: **11 canopy trees, 11 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.

- 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts 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) Under deck treatment of sand and gravel shall be installed. 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) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) \*\* 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 \$517.68 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 October 31, 2022, prepared by Painted Fern Landscape Architecture, signed October 31, 2022 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.

\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

**Patrick & Ashley Holmes of the property located at 832 Bishopsgate Lane 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.**

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



Applicant & Property Owner **Romeo Spino**  
Address **2021 Thomas Bishop Lane**  
Public Hearing **December 5, 2022**  
City Council District: **District 8**, formerly Lynnhaven

Agenda  
Item

**5**

**Parcel GPINs:** 1499-56-4825  
**Accela Record:** 2022-CBPA-00065  
**Applicant's Agent:** Billy Garrington - Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** DEFERRED AT THE December 5, 2022 CBPA BOARD PUBLIC HEARING TO THE Monday, January 23, 2023 CBPA BOARD PUBLIC HEARING.

**A motion was made by Mr. McCune, seconded by Mr. Jones, to defer the variance request to the January 23, 2023 CBPA Board Public Hearing. All present voted for the motion.**

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



In Reply Refer to #0069606

December 5, 2022

Robert J. "Bobby" Tajan  
Planning and Community Development Department  
Municipal Center  
Virginia Beach, Virginia 23456

Re: Abstention Pursuant to the Conflicts of Interests Act, Va. Code Section 2.2-3115(F)

Dear Mr. Tajan:

Pursuant to the State and Local Government Conflict of Interests Act, I make the following declaration:

1. I am executing this written disclosure regarding the Chesapeake Bay Protection Act's discussion and vote on item #5 Romeo Spino, 2021 Thomas Bishop Lane, Virginia Beach, Virginia.
2. The Property in question is located directly adjacent to the property I own and in which I reside. And I will be abstaining from this discussion and vote, as I have an interest in this application because of my proximity to the property.
3. Therefore, I abstained from voting or discussion of this matter at the December 5, 2022 CBPA public hearing.

Please record this declaration in the official records of the CBPA. Thank you for your assistance.

Sincerely,



William R. Burnette, Jr.  
CBPA Commission Member



Applicant & Property Owner **Jeffrey & Jennifer Stedfast**  
Address **100 Ridge Road**  
Public Hearing **December 5, 2022**  
City Council District **6**, formerly Beach

Agenda  
Item

**6**

**Parcel GPIN:** 2418-55-4453  
**Accela Record:** 2022-CBPA-00066  
**Applicant's Agent:** Billy Garrington - Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON December 5, 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 other properties along this cove have been redeveloped in similar fashion to the proposed improvements associated with this CBPA variance request. Unique to this lot is the geometry of the peninsula shaped uplands that draws the 50-foot seaward buffer from both sides of the lot of which other owners of property within this cove did not have to contend with when redeveloping their property.
- 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.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the additions and improvements over existing structures to the greatest extent practicable to maximize the redevelopment and the minimize site impacts in the critical buffer areas.
- 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 location and size of the proposed swimming pool and the use of redevelopment associated with the existing patio area to create gathering space landward of the swimming pool offer merit towards the variance being the minimum necessary to afford relief.

- 5) Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

**Board Conditions:**

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,211 square feet x 200 percent = 2,422 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 24 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) 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) **\*\* 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 \$302.75 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.**
- 16) This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 24, 2012.

17) The conditions and approval associated with this variance are based on the exhibit plan dated October 21, 2022, prepared by WPL, signed October 24, 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.

\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

**Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 100 Ridge Road appeared before the Board.**

**A motion was made by Mr. Wallace, seconded by Mr. McCune, 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>	Al Wallace, Member
<b>SECONDER:</b>	James F.N. McCune, Member
<b>AYES:</b>	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
<b>ABSENT:</b>	Jester



Applicant & Property Owner **Adam & Jill Rex**  
Address **Lot 8, Subdivision of Sea Breeze Farm**  
Public Hearing **December 5, 2022**  
City Council District **District 8**, formerly Lynnhaven

Agenda  
Item

**7**

**Parcel GPIN:** 1489-72-2236  
**Accela Record:** 2022-CBPA-00067  
**Applicant's Agent:** Billy Garrington - Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON December 5, 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 proposed dwelling and associated improvements are in keeping with the neighborhood and substantial close to the improvements granted by the Board almost two decades ago.
- 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 impact to the Chesapeake Bay, the new home has been designed and shifted around on the site to minimize site impacts and avoid development in the 50' seaward portion of the site.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the recommended conditions provided in this Staff report that include the installation of both structural and nonstructural best management practices to promote infiltration of stormwater as merit towards the findings of the CBPA Ordinance.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the 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 new impervious cover within the 50-foot landward buffer and 100 percent of the new impervious cover within the 100-foot variable width. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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 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 \$2,424.00 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) This variance and associated conditions **will supersede** the conditions of the Board variance granted September 27, 2004 and August 28, 2006.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 2, 2022, prepared by WPL, signed February 16, 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.

**Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at Lot 8, Subdivision of Sea Breeze Farm appeared before the Board.**

**A motion was made by Mr. Jones, seconded by Mr. Steier, to approve the variance as amended, amending condition 3 to include 200 percent buffer restoration of impervious cover within the 50' landward and a 100 percent buffer restoration for impervious cover within the variable width buffer.**



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



Applicant & Property Owner **Luke & Stephanie Hillier**  
Address **2405 & 2409 Windward Shore Drive**  
Public Hearing **December 5, 2022**  
City Council District **District 8**, formerly Lynnhaven

Agenda  
Item

**8**

**Parcel GPINs:** 1499-98-7334 (Lot 26) & 1499-98-6249 (Lot 27)  
**Accela Record:** 2022-CBPA-00054  
**Applicant's Agent:** Billy Garrington - Governmental Permitting Consultant, Inc.  
**CBPA Board Action:** APPROVED WITH 20 CBPA VARIANCE CONDITIONS ON December 5, 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 proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff acknowledges the statement provided by the applicant's agent and offers that vacating the property line associated with this variance request and evaluating the request based off the encroachment into the RPA buffer given the retreat of impervious cover within the 50-foot seaward buffer provides merit towards not conferring any special privilege to the property owner as other owners of property have been granted similar improvements.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA."* Staff acknowledges the statement provided by the applicant and offer that the redevelopment of the lot is consistent with the performance standards set forth in the CBPA Ordinance given the conditions of redevelopment the applicant has provided with the use of structural and nonstructural best management practices and retreat from the 50-foot seaward buffer of impervious cover.
- 3) The variance is the minimum necessary to afford relief because *"the owners will reduce the site from two (2) lots into one (1) lot. The proposed improvements will minimize the impact to the Chesapeake Bay, the new home has been placed towards the front setback line and shifted around on the site to maximize redevelopment, minimize site impacts, and avoid development in the 50-foot seaward portion of the site."* Staff concurs that the applicant has brought forth a comprehensive approach towards the redevelopment of these lots with the locations of the

proposed improvements to maximize redevelopment and avoid encroachment of the structure within the 50-foot seaward buffer.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay.”* Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of permeable pavers, gravel downspout intercepts, and bioretention planting beds coupled with buffer restoration.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site bioretention and permeable pavers will be used as stormwater management practices and will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and acknowledges that the site currently offers no stormwater management and as stated above, the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers, gravel downspout intercepts, and bioretention planting beds. Staff is of the opinion that the proposed best management practices provide merit to minimize the erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

**Board Conditions:**

- 1) A final subdivision plat shall be submitted for review, approval, and recordation to the Department of Planning and Community Development, Development Services Center (DSC) to vacate the existing internal property lines.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, 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) 12,165 square feet of buffer restoration shall be installed in substantial compliance with the Concept Plant Schedule and Buffer restoration Beds as provided on the CBPA Exhibit: **16 canopy trees, 39 understory trees, and 48 large shrubs.**

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. 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 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

- 14) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 15) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 16) 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.
- 17) 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.
- 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 \$886.87 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) This variance and associated conditions will supersede to the conditions of the Board variance granted November 24, 2003, June 27, 2005, and January 3, 2022.
- 20) The conditions and approval associated with this variance are based on the exhibit plan dated August 30, 2022, prepared by WPL, signed October 31, 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.

\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

**Billy Garrington of Governmental Permitting Consultant, Inc., the agent of the property located at 832 Bishopsgate Lane, 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.**

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