



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
July 24, 2023**

Attendee Name	Title	Status	In	Out
Stephen Ballard	Board Member	Present	8:55 AM	12:25 PM
June Barrett-McDaniels	Member	Present	8:54 AM	12:25 PM
William R. Burnette	Secretary	Present	8:53 AM	12:25 PM
David France	Chairman	Present	8:54 AM	12:25 PM
Casey Jones	Vice Chairman	Present	8:54 AM	12:25 PM
James F.N. McCune	Member	Present	8:52 AM	12:25 PM
Michael Steier	Member	Present	8:53 AM	12:25 PM
Al Wallace	Member	Present	8:55 AM	12:25 PM
Dell Young	Member	Present	8:58 AM	12:25 PM

APPROVAL OF THE MINUTES

1. Approval of the June 26, 2023 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, July 24, 2023 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the June 26, 2023 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. Burnette to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE June 26, 2023 FINDINGS AND VARIANCE CONDITIONS ON July 24, 2023 AS FOLLOWS.

RESULT:	APPROVED [7 TO 0]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	William R. Burnette, Secretary
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, Wallace, Young
ABSTAIN:	McCune, Steier

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

CONSENT AGENDA

Agenda Item 2. Tristine R. Barton Revocable Trust at 3300 Upper Palace Green

Agenda Item 4. Justin & Marcia Wheeler at 2228 Windward Shore Drive

Agenda Item 6. Tidewater Land Management, LLC at 3105 Newbern Lane

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

FORMAL HEARING

Agenda Item 1. Marjorie & James Cromwell at 1528 E. Bay Shore Drive

RESULT:	APPROVED [7 TO 2]
MOVER:	William R. Burnette, Secretary
SECONDER:	Michael Steier, Member
AYES:	Ballard, Burnette, France, Jones, Steier, Wallace, Young
NAYS:	Barrett-McDaniels, McCune

Agenda Item 3. Jason Andrew & Colby Kight Murphy Revocable Trust at 1301 Mockingbird Place

RESULT:	APPROVED [8 TO 1]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	James F.N. McCune, Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Young
NAYS:	Wallace

Agenda Item 5. Gordon T. Roughton Jr. at 2300 Leeward Shore Drive

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

SHOW CAUSE HEARING

Agenda Item 7. Christina Minton at 2212 Leeward Shore Drive

Noncompliance Found YES – Medium, High

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Al Wallace, Member
SECONDER:	Stephen Ballard, Board Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young

Civil Charge – YES - \$1000.00

RESULT:	APPROVED [8 TO 1]
MOVER:	Al Wallace, Member
SECONDER:	William R. Burnette, Secretary
AYES:	Ballard, Burnette, France, Jones, McCune, Steier, Wallace, Young
NAYS:	Barrett-McDaniels

Restoration Hearing – YES - November 27, 2023

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



Applicant & Property Owner **Marjorie & James Cromwell**

Address **1528 E. Bay Shore Drive**

Public Hearing **July 24, 2023**

City Council District **District 6**, formerly Lynnhaven

Agenda Item

1

Parcel GPIN: 2419-21-1286
Accela Record: 2023-CBPA-00034
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 (CBPA) who are subject to the provisions of this Ordinance and are similarly situated because CBPA Variance requests along East Bay Shore typically redevelop lots within the RPA to alleviate improvements from being adjacent to the existing top of bank.
- 2) Staff offers 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 proposed improvements limits encroachment to the landward and variable width buffers while utilizing redevelopment of existing impervious cover on the site and the recommended conditions below have been provided as a means towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because this request situates over 70 percent of the new impervious cover is located within the RMA of the Chesapeake Bay watershed. In addition, the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality given that the lot currently does not provide best management practices towards water quality.
- 5) Enhanced bioretention beds and buffer restoration on the lot will provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,569 square feet x 200 percent = 7,138 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **10 canopy trees, 24 understory trees, 36 large shrubs, and 54 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 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) 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.
- 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 \$817.89 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) The conditions and approval associated with this variance are based on the exhibit plan dated April 17, 2023, prepared by WPL, signed May 31, 2023 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.
- 17) The proposed improvements shall be relocated so that the primary structure is situated landward of the 100-foot RPA buffer.

** 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 1528 E. Bay Shore Drive appeared before the Board.

Mark Cromwell of the property located at 1528 E. Bay Shore Drive appeared before the Board.

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

RESULT:	APPROVED [7 TO 2]
MOVER:	William R. Burnette, Secretary
SECONDER:	Michael Steier, Member
AYES:	Ballard, Burnette, France, Jones, Steier, Wallace, Young
NAYS:	Barrett-McDaniels, McCune



Applicant & Property Owner **Tristine R. Barton Revocable Trust**

Address **3300 Upper Palace Green**

Public Hearing **July 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

2

Parcel GPIN: 1498-15-1390
Accela Record: 2023-CBPA-00035
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the 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 originally 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 proposed improvements utilize redevelopment over existing impervious cover and the expansions to the existing driveway have been situated furthest away from the 50-foot seaward buffer and are acceptable for the functionality of the circular drive.
- 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 have been situated to avoid encroachment within the 50-foot seaward buffer and will not be a detriment to water quality.
- 5) The lot is heavily wooded and no existing vegetation is proposed for removal with this request 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 plan dated July 1, 2023, prepared by WPL, signed July 1, 2023 by Eric Garner. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
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: **1,380 square feet x 200 percent = 2,760 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 18 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 have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. 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.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
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.
8. 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.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 3300 Upper Palace Green appeared before the Board.

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

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



Applicant & Property Owner **Jason Andrew & Colby Kight**
Murphy Revocable Trust
Address **1301 Mockingbird Place**
Public Hearing **July 24, 2023**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

3

Parcel GPIN: 2418-24-0473
Accela Record: 2023-CBPA-00036
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 1946 prior to the Chesapeake Bay Preservation Act and 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 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 this variance request keeps the proposed improvements immediately adjacent to the existing residence and proposes buffer restoration planting beds on the lot to address areas of concentrated stormwater run-off from both the impervious cover on the lot and adjacent roadways that drain through the lot into the Lynnhaven River.
- 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 with the slight increase in impervious cover, the applicant has proposed extensive buffer restoration throughout the seaward buffer on the lot.
- 5) The best management techniques of bioretention planting beds seaward of the proposed improvements, coupled with the required buffer restoration, 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) **5,445 square feet** of buffer restoration shall be installed within the RPA on the lot in substantial compliance with the CBPA Exhibit conceptual plant schedule and layout as follows: **12 canopy trees, 12 understory trees, 6 transplanted trees (transplanted to avoid future shading of the reestablished tidal marsh), 24 large shrubs, 36 small shrubs, and the necessary ornamental grass coverage to establish the planting area adjacent to the rip rap revetment.**

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. 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 23, 2012.
- 16) The corner area of the summer kitchen area shall be removed from the 50-foot seaward buffer.

***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 1301 Mockingbird Place appeared before the Board.

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

RESULT:	APPROVED [8 TO 1]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	James F.N. McCune, Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Young
NAYS:	Wallace



Applicant & Property Owner **Justin & Marcia Wheeler**

Address **2228 Windward Shore Drive**

Public Hearing **July 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

4

Parcel GPIN: 1499-78-2845
Accela Record: 2023-CBPA-00038
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 similarly situated homeowners with existing swimming pools have similar accessory structures in the rear yard.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements are situated in the upper reaches of the 50-foot landward buffer and include no encroachment seaward of the existing accessory structures.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the applicant has taken means to minimize impacts in the RPA, including keeping all improvements above the top of bank, no proposed tree removals, and keeping the new impervious cover out of the seaward buffer on the lot.
- 5) Required buffer restoration will be placed within the RPA on the lot as 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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. A planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the City CBPA staff prior to the issuance of a building permit. 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: **715 square feet x 200 percent = 1,430 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: **4 canopy trees, 4 understory trees, 8 large shrubs, and 16 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 have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of **10** feet seaward of improvements.
6. 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.
7. 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.

Justin Wheeler, applicant, and owner, of the property located at 2228 Windward Shore Drive appeared before the Board.

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

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



Applicant & Property Owner **Gordon T. Roughton Jr.**

Address **2300 Leeward Shore Drive**

Public Hearing **July 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

Parcel GPIN: 2500-10-2076
Accela Record: 2023-CBPA-00039
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 due to the recommended conditions by Staff set forth in the staff report.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the conditions in the staff report address reducing the size of the proposed improvements so as to ensure the variance is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the request, as conditioned, will not be detrimental to the water quality of the Chesapeake Bay and is in harmony with the purpose and intent of the ordinance.
- 5) Staff will work with the applicant to devise a sufficient landscape and buffer restoration plan for the lot 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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed

2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. A planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the City CBPA staff prior to the issuance of a building permit. 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: **1200 square feet x 200 percent = 2,400 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 18 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 have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
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.

Gordon Roughton, the applicant of the property located at 2300 Leeward Shore Drive, appeared before the Board.

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

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



Applicant & Property Owner **Tidewater Land Management, LLC**

Address **3105 Newbern Lane**

Public Hearing **July 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

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Parcel GPIN: 1489-98-7158
Accela Record: 2023-CBPA-00037
Applicant's Agent: Eddie Bourdon - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON July 24, 2023.

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 necessary redevelopment in this impacted area of Lynnhaven Colony.
- 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 nature of the request is reasonable given the environmental constraints on this lot and the applicant had demonstrated an understanding and purpose of the CBPA Ordinance by maximizing redevelopment, reverting approximately 806 square feet of existing impervious cover to pervious, and adding 1,317 square feet of new development, resulting in minimal overall new impervious on the lot.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the 50-foot seaward buffer encompasses the entire lot, and the applicant has maximized redevelopment to limit new impervious cover. An extensive buffer restoration plan is proposed to offer over 4,322 square feet of restoration with the majority falling in the seaward buffer given that the lot is.
- 5) Much of the remaining portions of the site will be devoted to buffer restoration and shall include a variety of trees and shrubs to offer more of a functional, beneficial riparian buffer on the lot as compared the current conditions 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) **4,322 square feet** of buffer restoration shall be installed on the lot.

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, 5 understory trees, 25 large shrubs, and 60 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 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.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation

impacts not included with this variance request.

- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) The proposed driveway and associated walkways shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided, and a site plan submitted to the Development Services Center for review and approval.
- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 14) 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 \$301.81 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) The conditions and approval associated with this variance are based on the exhibit plan dated July 6, 2023, prepared by WPL, signed July 6, 2023 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.

Mark Garrett, with Sykes, Bourdon, Ahern, Levy PC, representing the property located at 3105 Newbern Lane appeared before the Board.

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

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



Applicant & Property Owner **Christina Minton**
Address **2212 Leeward Shore Drive**
Public Hearing **July 24, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

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Parcel GPIN: 2409-29-0640
Accela Record: 2023-CBPV-00003 and 2022-CBPV-00005
Contractor's Agent: George Dillon

George Dillon, the Agent for the property located at 2212 Leeward Shore Drive appeared before the CBPA Board and gave testimony.

Statement of Noncompliance

Unauthorized development within the RPA with the redevelopment and expansion of accessory structures.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – unauthorized development within the RPA with the redevelopment and expansion of accessory structures – which is the subject of this show cause action, constitutes a noncompliance of the provisions of the Chesapeake Bay Preservation Area Ordinance.

A. Noncompliance Found

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

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

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Al Wallace, Member
SECONDER:	Stephen Ballard, Board Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young

B. Civil Charge

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

- Civil Charge: **\$1000.00**

RESULT:	APPROVED [8 TO 1]
MOVER:	Al Wallace, Member
SECONDER:	William R. Burnette, Secretary
AYES:	Ballard, Burnette, France, Jones, McCune, Steier, Wallace, Young
NAYS:	Barrett-McDaniels

C. Restoration Hearing

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

- November 27, 2023

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

CBPA Board Action to the Noncompliance

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

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued a civil charge of \$1,000.00 to the matter.