



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
November 27, 2023**

Attendee Name	Title	Status	In	Out
Stephen Ballard	Board Member	Present	10:00 AM	1:06 PM
June Barrett-McDaniels	Board Member	Present	10:00 AM	1:06 PM
William R. Burnette	Secretary	Present	10:00 AM	1:06 PM
David France	Chairman	Present	10:00 AM	1:06 PM
Casey Jones	Vice Chairman	Present	10:00 AM	1:06 PM
James F.N. McCune	Board Member	Present	10:00 AM	1:06 PM
Michael Steier	Board Member	Present	10:00 AM	1:06 PM
Al Wallace	Board Member	Present	10:00 AM	1:06 PM
Dell Young	Board Member	Present	10:00 AM	1:06 PM

APPROVAL OF THE MINUTES

1. Approval of the October 23, 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, November 27, 2023 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the October 23, 2023 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 October 23, 2023 FINDINGS AND VARIANCE CONDITIONS ON November 27, 2023 AS FOLLOWS.

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

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

DEFERRALS

Agenda Item 7. John & Maria Motta – 3380 Eagle Nest Pt

Recommendation: Defer 30 days to the December 20, 2023 hearing.

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

CONSENT AGENDA

Agenda Item 1. Edward & Rebecca Downs – 2912 Buccaneer Rd

Agenda Item 2. Richard & Theresa Shapiro – 2101 Dawn Ave

Agenda Item 4. Joe Petersen & Marcy Draper – 148 Pinewood Rd

Agenda Item 8. Lynn & Michael Kaufman – 2124 E. Admiral Dr

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

FORMAL HEARING

Agenda Item 3. Gregory & Christine Provencher – 565 Susan Constant Dr

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

Agenda Item 5. Joshua & Jamie Bondurant – Lot 57, Subdivision of Sea Breeze Farm

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

Agenda Item 6. Stewart Investments, LLC – 2940 N. Lynnhaven Rd & 2950 N. Lynnhaven Rd

Recommendation: Defer indefinitely.

RESULT:	DEFERRED [UNANIMOUS]
MOVER:	James F.N. McCune, Member
SECONDER:	Casey Jones, Vice Chair
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young

RESTORATION HEARING

Agenda Item 9. Christina Minton – 2212 Leeward Shore Dr

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

SHOW CAUSE HEARING

Agenda Item 10. Nilkanth and Kalpana Patel - 909 Hall Haven Dr

1. Water Quality / Degree of Deviation or Non-compliance

Recommendation: MEDIUM, HIGH

RESULT: APPROVED [8 TO 0]
MOVER: Al Wallace, Member
SECONDER: June Barrett-McDaniels, Member
AYES: Ballard, Burnette, France, Jones, Steier, Young
EXCUSED: McCune

2. Civil Charge

Recommendation: \$7500

RESULT: APPROVED [8 TO 0]
MOVER: June Barrett-McDaniels, Member
SECONDER: Michael Steier, Member
AYES: Ballard, Barrett-McDaniels, Burnette, France, Jones, Wallace
EXCUSED: McCune

3. Restoration Hearing

Recommendation: 90 Days

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



Applicant & Property Owner **Edward & Rebecca Downs**
Address **2912 Buccaneer Road**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

1

Parcel GPIN: 1499-38-0320
Accela Record: 2023-CBPA-00051
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON November 27, 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 variance request is similar to improvements throughout the neighborhood and adjacent properties.
- 2) This variance request 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 kept the addition at a minimal size to minimize impacts to the RPA 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 new development would introduce new buffer restoration measures on the lot to ensure no detrimental impacts to water quality with this request.
- 5) The shoreline management practices associated with this request to reduce marsh shading and promote further wetlands growth and the buffer restoration associated with this request ensures a no net increase in nonpoint source pollution load in the Chesapeake Bay.

Board Conditions:

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit. 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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **315 square feet x 200 percent = 630 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: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. 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.

8. Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.

***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.

Jim Barletto of Academy Enterprises Construction representing the property located at 6612 Pinewood Court appeared before the CBPA Board.

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

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



Applicant & Property Owner **Richard & Theresa Shapiro**
Address **2101 Dawn Avenue**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

2

Parcel GPIN: 1499-28-0691
Accela Record: 2023-CBPA-00053
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON November 27, 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 similar improvements are found on adjacent properties throughout the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has utilized redevelopment to the greatest extent practicable to limit the amount of new impervious cover introduced on the lot with this variance request.
- 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 additional buffer restoration will be planted throughout the lot in associated with the minimal new impervious cover with the request.
- 5) Buffer restoration shall be populated throughout the lot in lieu of the new impervious cover with this request and strict erosion and sediment control measures will be in place 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 May 20, 2019, prepared by Hoggard-Eure Associates, P.C., signed September 22, 2023 by J. Stephen Ferguson. The conditions and approval associated with this variance are based on the Board 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 exceeds 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. 400 square feet of buffer restoration shall be installed within the RPA.

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

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
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.

Richard Shapiro of the property located at 2101 Dawn Avenue appeared before the CBPA Board.

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

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



Applicant & Property Owner **Gregory & Christine Provencher**
Address **565 Susan Constant Drive**
Public Hearing **November 27, 2023**
City Council District **District 6**

Agenda Item

3

Parcel GPIN: 2419-31-3464
Accela Record: 2023-CBPA-00052
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON November 27, 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 routine maintenance throughout the riparian buffer is normal with property owners to manage riparian resources on properties throughout the RPA in the City with the intent to address the age and health of canopy trees in addition to a potential hazard there may be to structural improvements of a lot.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the canopy cover on the lot is mature and trees are clustered in groups throughout the backyard and are situated in close proximity to the shoreline.
- 3) The variance is the minimum necessary to afford relief subject to the recommended conditions in the staff report.
- 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 mitigation conditioned below will add to the age and species diversity of the riparian buffer on the lot.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the interception of rainfall that a tree contributes to a watershed is a means of water quality and should be acknowledged as a benefit towards water quality.

Board Conditions:

1. A landscape 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 landscape plan shall detail the location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape 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. The following trees or tree clusters as described on the CBPA Exhibit shall be preserved.
 - a. Tree(s) numbered 1, 3, 16, and 23.
4. Mitigation options for the remaining 13 canopy trees requested to be removed due to being hazardous or in close proximity to structures on the lot as described on the CBPA exhibit and arborist report shall be required as follows.
 - a. 13 canopy trees and 21 understory trees
 - or-
 - b. 2:1 ratio (26 canopy trees to be planted)

The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

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

- Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper at time of installation.
 - Understory tree (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.
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. A pre-construction meeting shall be held with a CBPA inspector prior to tree removal. All trees approved for removal shall be marked with red tree markers and all trees to be preserved as conditioned in this report shall be marked with blue tree markers.

***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.

Gregory Provencher of the property located at 565 Susan Constant Drive appeared before the CBPA Board.

Brad Foster, an adjacent neighbor, to the property located at 565 Susan Constant Drive appeared before the CBPA Board.

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

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



Applicant & Property Owner **Joel Petersen & Marcy Draper**
Address **148 Pinewood Road**
Public Hearing **November 27, 2023**
City Council District **District 6**

Agenda Item

4

Parcel GPIN: 2418-73-9753
Accela Record: 2023-CBPA-00054
Applicant's Agent: Dar Partin - Arbor Tree Care, Inc.
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON November 27, 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 routine maintenance throughout the riparian buffer is normal with property owners to manage riparian resources on properties throughout the RPA in the City with the intent to address the age and health of canopy trees in addition to a potential hazard there may be to structural improvements of a lot.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the riparian buffer is a living resource that needs to be managed over time to preserve the function of the riparian ecosystem and offers the recommended conditions to manage and preserve the riparian buffer on the lot.
- 3) The variance is the minimum necessary to afford relief because several trees that show no signs of decline can be preserved with this request and the recommended conditions in the staff report ensure the request 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 recommended conditions ensure the variance request is in harmony with the purpose and intent of the CBPA Ordinance.
- 5) Preservation of select canopy trees and the buffer restoration required with the removal of healthy trees in close proximity to the existing residence will not be detrimental to water quality and contribute to any nonpoint source pollution load on the lot.

Board Conditions:

- 1) A Landscape 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 landscape plan shall detail location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape 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) The following healthy trees or tree clusters described as hazardous to the property on the submitted arborist report and numbered on the CBPA Exhibit shall be preserved as follows:
 - Tree(s) numbered 2, 8, 9, 10, 11, and 12.
- 4) Mitigation options for the remaining 10 healthy trees requested to be removed described as hazardous to the property on the submitted arborist report and numbered on the CBPA Exhibit shall be required as follow.
 - 3:1 ratio (**30** new canopy trees to be planted)
 - or-
 - 10 canopy trees, 10 understory trees, 15 large shrubs, and 20 small shrubs

The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

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

- Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper at time of installation.
 - Understory tree (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.
- 5) A pre-construction meeting shall be held with a CBPA inspector prior to tree removal. All trees approved for removal shall be marked with red tree markers and all trees to be preserved as conditioned in this report shall be marked with blue tree markers.
 - 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.
 - 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 not included with this variance request.

***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.

Joel Peterson of the property located at 148 Pinewood Road appeared before the CBPA Board.

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

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



Applicant & Property Owner **Joshua & Jamie Bondurant**
Address **Lot 57, Subdivision of Sea Breeze Farm**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

5

Parcel GPIN: 1489-60-7684
Accela Record: 2023-CBPA-00055
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON November 27, 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 CBPA exhibit provided coupled with the use of materials and stormwater methodology integrating best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of the property in the neighborhood that have redeveloped lots platted prior to the adoption of the CBPA Ordinance.
- 2) 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 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 placement of the proposed improvements limits encroachment to the landward and variable width buffers.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the requirement for stormwater treatment with the variance request ensures no detriment to water quality, coupled with the retention of existing vegetation within the 50-foot seaward buffer.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, buffer restoration and bio-retention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay.

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.

Buffer restoration shall be installed in substantial compliance with the Improvements Plan, Concept Plant Schedule and layout submitted with this variance request. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers per said plan consisting of **25 canopy trees, 25 understory trees, 50 large shrubs, 75 small shrubs and a perennial meadow mix.**

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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.
- 6) 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.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts 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) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 13) 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.
- 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 \$2,019.87 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.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated July 10, 2023, prepared by WPL, signed November 7, 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.

Billy Garrington of Governmental Permitting Consultant, Inc., representing the property located at Lot 57, Subdivision of Sea Breeze Farm, appeared before the CBPA Board.

Eric Garner of WPL, representing the property located at Lot 57, Subdivision of Sea Breeze Farm, appeared before the CBPA Board.

Michael Newsome of 1428 Five Hill Trail appeared before the Board in opposition of the variance request.

Doug Ranger of 1424 Five Hill Trail appeared before the Board in opposition of the variance request.

A motion was made by Ms. McDaniels, 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 [UNANIMOUS]
MOVER:	June Barrett-McDaniels, Member
SECONDER:	Michael Steier, Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Stewart Investments, LLC**
 Address **2940 N. Lynnhaven Road & 2950 N. Lynnhaven Road**
 Public Hearing **November 27, 2023**
 City Council District **District 8**

Agenda Item

6

Parcel GPINs: 1497-26-4306 & 1497-26-2489
Accela Record: 2023-CBPA-00056
Applicant’s Agent: Eddie Bourdon - Sykes Bourdon, Ahern & Levy PC
CBPA Board Action: DEFERRED AT THE November 27, 2023 CBPA BOARD PUBLIC HEARING INDEFINITELY.

Eddie Bourdon of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at 2940 N. Lynnhaven Road & 2950 N. Lynnhaven Road, appeared before the Board.

Deanna Akright of 2916 Cessna Drive appeared before the Board in opposition of the variance request.

Susan Lyons of 408 Ingram Road appeared before the Board in opposition of the variance request.

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

RESULT:	DEFERRED [UNANIMOUS]
MOVER:	James F.N. McCune, Member
SECONDER:	Casey Jones, Vice Chair
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **John & Maria Motta**
Address **3380 Eagle Nest Point**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

7

Parcel GPINs: 1489-81-4025
Accela Record: 2023-CBPA-00057
Applicant's Agent: Robert Kellam
CBPA Board Action: DEFERRED AT THE November 27, 2023 CBPA BOARD PUBLIC HEARING TO THE Wednesday, December 20, 2023 CBPA BOARD PUBLIC HEARING.

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

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



Applicant & Property Owner **Lynn & Michael Kaufman**
Address **2124 E. Admiral Drive**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

8

Parcel GPIN: 1499-89-2675
Accela Record: 2023-CBPA-00060
Applicant's Agent: Brad Martin, P.E. - WPL
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON November 27, 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 variance request is similar to others in the neighborhood.
- 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 layout of the proposed improvements minimizes impact to the 100-foot buffer to the greatest extent practicable to address the needs of the property owner.
- 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 area of the proposed improvements does not substantially impact the existing vegetative cover of the lot therefore providing additional infiltration opportunity.
- 5) The overall amount of land disturbance is less than 2,500 square feet and limited to the upper limits of the RPA buffer. Buffer restoration will be placed on the lot in lieu of the slight increase in impervious cover 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 October 27, 2023, prepared by WPL. The conditions and approval associated with this variance are based on the Board 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 exceeds 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. 400 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA.

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

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. 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 Consultant, representing the property located at 2124 E. Admiral Drive appeared before the CBPA Board.

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

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



Address of Noncompliance **2212 Leeward Shore Drive**
Property Owner **Christina Minton**
Public Hearing **November 27, 2023**
City Council District **District 8**

Agenda Item

9

Parcel GPIN: 2409-29-0640
Accela Record: 2023-CBPV-00003
Applicant's Agent: George Dillon, Esq. - Anchor Legal Group, PLLC
CBPA Board Action: APPROVED WITH 7 RESTORATION CONDITIONS ON November 27, 2023.

The Chesapeake Bay Preservation Area Board restoration order was granted with the following reasonable and appropriate conditions offered towards preventing the violation from causing or contributing to a degradation of water quality as provided in the Staff report, based off the exhibits provided by WPL, dated November 13, 2023, detailing the removal of the unauthorized improvements.

Board Conditions:

- 1) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition. The construction access way, staging area if needed, and stockpiling area shall be delineated in the field at said meeting.
- 2) Land disturbance shall be limited to the area necessary to provide for the proposed activity associated with the restoration order.
- 3) A 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 4) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 5) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final inspection. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 6) Upon granting of a restoration order a **CBPA / CIVIL permit** must be obtained within 30 days. All required unauthorized improvements shall be in the process of being removed within 45 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.
- 7) The conditions associated with this restoration order are based on the exhibit plan dated November 13, 2023 prepared by WPL. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect

the release of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order.

George Dillon, Esq. of Anchor Legal Group, PLLC representing the property located at 2212 Leeward Shore Drive appeared before the CBPA Board.

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

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



Applicant & Property Owner **Nilkanth and Kalpana Patel**
 Address **909 Hall Haven Drive**
 Public Hearing **November 27, 2023**
 City Council District: **District 8**

Parcel GPIN: 1498-42-6983
Accela Record: 2022-CBPV-00004
Contractor’s Agent: Robert Kellam

Robert Kellam representing the property located at 909 Hall Haven Drive appeared before the CBPA Board and gave testimony.

Statement of Noncompliance

Unauthorized development within the Resource Protection Area (RPA) with the expansion of existing accessory structures.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – unauthorized construction of existing 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 motion was made by Mr. Wallace, seconded by Ms. McDaniels, to find the property in noncompliance with the following recommendations:

- Environmental impact to the features of the RPA and water quality: **MEDIUM**
- Degree of deviation or non-compliance: **HIGH**

RESULT:	APPROVED [8 TO 0]
MOVER:	Al Wallace, Member
SECONDER:	June Barrett-McDaniels, Member
AYES:	Ballard, Burnette, France, Jones, Steier, Young
EXCUSED:	McCune

A motion was made by Ms. McDaniels, seconded by Mr. Steier, to find the property in noncompliance with the following recommendation:

- Civil Charge: **\$7500.00**

RESULT:	APPROVED [8 TO 0]
MOVER:	June Barrett-McDaniels, Member
SECONDER:	Michael Steier, Member
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, Wallace
EXCUSED:	McCune

A motion was made by Mr. Jones, seconded by Mr. Burnette, to find the property in noncompliance with the following recommendation:

- Restoration Hearing: 90 Days (**Monday, February 26, 2024**)

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

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the environmental impact to the Resource Protection Area (RPA) features to be MEDIUM and the relative degree of deviation to the matter of noncompliance 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 \$7,500.00 to the matter and a Restoration Hearing set for Monday, February 26, 2024.