



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
October 23, 2023**

Attendee Name	Title	Status	In	Out
Stephen Ballard	Board Member	Absent		
June Barrett-McDaniels	Board Member	Present	10:00 AM	11:47 AM
William R. Burnette	Secretary	Present	10:00 AM	11:47 AM
David France	Chairman	Present	10:00 AM	11:47 AM
Casey Jones	Vice Chairman	Present	10:00 AM	11:47 AM
James F.N. McCune	Board Member	Present	10:00 AM	11:47 AM
Michael Steier	Board Member	Present	10:00 AM	11:47 AM
Al Wallace	Board Member	Present	10:00 AM	11:47 AM
Dell Young	Board Member	Present	10:00 AM	11:47 AM

APPROVAL OF THE MINUTES

1. Approval of the September 25, 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, October 23, 2023 at 10:15 a.m.

The first order of business was to approve the findings and variance conditions of the September 25, 2023 CBPA Board Public Hearing. A motion was made by Mr. McCune and seconded by Mr. Jones to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE September 25, 2023 FINDINGS AND VARIANCE CONDITIONS ON October 23, 2023 AS FOLLOWS.

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

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 1. Goodspeed Residential, LLC at 484 Goodspeed Road

Agenda Item 2. Christopher & Morgan Wise at 1333 W. Little Neck Road

Agenda Item 4. Daniel & Carolyn Farris at 2312 Leeward Shore Drive

Agenda Item 5. William & Diana Gardner at 2637 S. Kings Road

Agenda Item 6. Blake Callaghan & Angela Cerda at 337 W. Chickasaw Road

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

FORMAL HEARING

Agenda Item 3. Paul Haebler & Kathleen Owens at 2113 E. Kendall Circle

Recommendation: Strike condition 13 to remain in grant program (VCAP)

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

SHOW CAUSE HEARING

Agenda Item 7. Shane & Maria Sullivan at 1508 McCullough Lane

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

Recommendation: low/high

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

2. Civil Charge

Recommendation: \$1500

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

3. Restoration Hearing

Recommendation: 60 Days

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

Agenda Item 8. Nilkanth and Kalpana Patel at 909 Hall Haven Drive

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



Applicant & Property Owner **Goodspeed Residential, LLC**
Address **484 Goodspeed Road**
Public Hearing **October 23, 2023**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

1

Parcel GPIN: 2419-41-2413
Accela Record: 2023-CBPA-00040
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON October 23, 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 management 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) 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 placement of the proposed improvements limits encroachment into the 50-foot landward buffer of the RPA and Resource Management Area (RMA) while utilizing the redevelopment of impervious cover on the lot to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality, coupled with the retention of existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site and bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **476 square feet x 200 percent = 952 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: **5 canopy trees, 4 understory trees, 4 large shrubs, and 6 small shrubs.**

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

- 4) 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) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$109.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated June 27, 2023, prepared by WPL, signed September 28, 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.

Eddie Bourdon of Sykes, Bourdon, Ahern & Levy PC representing the property located at 484 Goodspeed 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 Chair
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Christopher & Morgan Wise**
Address **1333 W. Little Neck Road**
Public Hearing **September 25, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

2

Parcel GPIN: 1488-37-2894
Accela Record: 2023-CBPA-00043
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON October 23, 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 extent of redevelopment provided with the proposed improvements, coupled with the use of stormwater management practices required through site plan review, offers merit towards the variance request not conferring upon the applicant any special privilege or conveniences.
- 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 State adopted the bay act after the house was originally built. The new dwelling will be built around the existing dwelling footprint in order to maximize redevelopment to the greatest extent practicable and all new impervious will be properly mitigated for.
- 3) The variance is the minimum necessary to afford relief because the placement of the proposed improvements limits encroachments into the landward and variable width buffers and utilizes the redevelopment of impervious cover on the lot to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the retention of the existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) Strict erosion and sedimentation control measures, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters 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: **4,943 square feet x 200 percent = 9,886 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: **31 canopy trees, 50 understory trees, 50 large shrubs, and 75 small shrubs.**

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

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

of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.

- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,132.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted June 22, 2020 with the exception of condition 4 that required the following.

"Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 2,693 square feet x 200 percent = 5,386 square feet. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: 7 canopy trees, 7 understory trees, 28 large shrubs, and 42 small shrubs.

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

Said 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.

- 16) The conditions and approval associated with this variance are based on the exhibit plan dated September 1, 2023, prepared by Gallup Surveyors & Engineers, signed September 1, 2023 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Billy Garrington of Governmental Permitting Consultant representing the property located at 1333 W. Little Neck 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 Chair
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Paul Haebler & Kathleen Owens**
Address **2113 E. Kendall Circle**
Public Hearing **October 23, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

3

Parcel GPIN: 1499-79-5766
Accela Record: 2023-CBPA-00046
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON October 23, 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 similar to others throughout the neighborhood and that both adjacent properties have similar accessory structures on the lot.
- 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 proposed improvements utilize redevelopment of the existing impervious cover on the lot to the greatest extent practicable and removes approximately 114 square feet from of existing impervious cover from the seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the placement of the buffer restoration, as shown on the submitted buffer restoration plan, and the limited size of the proposed improvements, will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) The buffer restoration area as shown on the proposed plans, and best management practices proposed, provide merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater potential 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 in substantial compliance with the buffer restoration plan provided by Orbis Landscape Architecture.

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

- 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) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$234.43 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated August 25, 2023, prepared by Waterfront Consulting, Inc. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Billy Garrington of Governmental Permitting Consultant representing the property located at 2113 E. Kendall Circle appeared before the CBPA Board.

A motion was made by Ms. McDaniels, 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 [6 TO 2]
MOVER:	June Barrett-McDaniels, Member
SECONDER:	James F.N. McCune, Member
AYES:	Barrett-McDaniels, Jones, McCune, Steier, Wallace, Young
NAYS:	Burnette, France
ABSENT:	Ballard



Applicant & Property Owner **Daniel & Carolyn Ferris**
Address **2312 Leeward Shore Drive**
Public Hearing **October 23, 2023**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Parcel GPIN: 2500-00-8183
Accela Record: 2023-CBPA-00047
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON October 23, 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 within 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 proposed swimming pool and patio areas are proposed smaller than the standard to reduce impervious cover numbers within the RPA.
- 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 buffer restoration offered with this request and the size of the proposed improvements will ensure the variance request will not be a substantial detriment to water quality.
- 5) Bioretention beds and buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The existing 36-inch Cedar tree delineated as being removed on sheet C-2.0 of the Chesapeake Bay Preservation Area (CBPA) Exhibit shall be preserved and the necessary tree protection provided on the revised site plan. Said tree protection shall be installed prior to any land disturbance and remain in place until all improvements are installed, and the site is stabilized.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) 3,956 square feet of buffer restoration shall be installed on the lot per the conceptual buffer restoration plan provided with the CBPA Exhibit.

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: **5 canopy trees, 6 understory trees, 22 large shrubs, and 33 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.

- 10) Construction limits shall be contained within the limits of the wire reinforced silt fence. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed walkways, exclusive of the walkway to the front door, shall be constructed of organic material (mulch), and maximum of 4 feet in width, with steppingstones not to exceed 50 percent of the path area. Said walkway shall be relocated outside of the dripline of the existing cedar tree to be preserved.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$424.87 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.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 15, 2023, prepared by WPL, signed October 3, 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.

**** 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 representing the property located at 2312 Leeward Shore 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 Chair
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **William & Diana Gardner**
Address **2637 S. Kings Road**
Public Hearing **October 23, 2023**
City Council District **District 8**, formerly Beach

Agenda Item

5

Parcel GPIN: 1497-55-8852
Accela Record: 2023-CBPA-00048
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON October 23, 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 throughout the neighborhood and would not confer a special privilege to the owner given the location of the proposed improvements on the lot.
- 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) This variance request is the minimum necessary to afford relief given the subject recommended conditions found in this 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 given the location of the proposed improvements, the retreat of impervious cover out of the 50-foot seaward buffer, and the recommended conditions in this staff report, the variance request will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) Bioretention beds and Buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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 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: **12 canopy trees, 9 understory trees, 26 large shrubs, and 39 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) 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 \$427.39 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 June 15, 2023, prepared by WPL, signed September 1, 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.

** 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 representing the property located at 2637 S. Kings 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 Chair
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Blake Callaghan & Angela Cerda**
Address **337 W. Chickasaw Road**
Public Hearing **October 23, 2023**
City Council District **District 1**, formerly Kempsville

Agenda Item

6

Parcel GPIN: 1457-71-7062
Accela Record: 2023-CBPA-00050
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON October 23, 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 similar in nature to those found on surrounding properties within 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 of the recommended conditions in this 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 proposed best management practices coupled with the required buffer restoration and recommended conditions shall ensure the variance request will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) Bioretention beds and Buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the creek as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The overall impervious cover of the site shall not exceed 36 percent of the lot area outside of water and wetlands.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) 3,580 square feet of buffer restoration shall be installed on the lot in substantial compliance with the Layout Plan and Concept Plant Schedule provided with the Chesapeake Bay Preservation Area (CBPA) Exhibit.

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: **5 canopy trees, 7 understory trees, 24 large shrubs, and 36 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. **Canopy 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 and be a minimum of 40 feet spaced from each other to promote healthy canopy growth.** 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) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$563.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated May 3, 2023, prepared by WPL, signed August 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.

**** 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 representing the property located at 337 W. Chickasaw 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 Chair
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Shane & Maria Sullivan**
 Address **1508 McCullough Lane**
 Public Hearing **October 23, 2023**
 City Council District **District 6**

Parcel GPIN: 2409-91-7263
Accela Record: 2023-CBPV-00004
Contractor’s Agent: Billy Garrington - Governmental Permitting Consultant

Billy Garrington - Governmental Permitting Consultant representing the property located at 1508 McCullough Lane appeared before the CBPA Board and gave testimony.

Shane Sullivan, the applicant, and owner of the property located at 1508 McCullough Lane, appeared before the Board.

Statement of Noncompliance

Unauthorized construction of an accessory structure (Tiki bar) with associated patio area on the property.

CBPA Board Determination of Noncompliance

The testimony presented in this hearing indicates that the activity, unauthorized improvements – unauthorized construction of an accessory structure (Tiki bar) with associated patio area on the property – 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. McCune, seconded by Mr. Steier, to find the property in noncompliance with the following recommendations:

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

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

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

- Civil Charge: **\$1500.00**

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

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

- Restoration Hearing: 60 Days (**December 20, 2023**)

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

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 LOW 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 \$1,500.00 to the matter and a Restoration Hearing set for December 20, 2023.



Applicant & Property Owner **Nilkanth and Kalpana Patel**
Address **909 Hall Haven Drive**
Public Hearing **October 23, 2023**
City Council District: **District 8**

Parcel GPINs: 1498-42-6983
Accela Record: 2022-CBPV-00004
Applicant’s Agent: N/A
CBPA Board Action: DEFERRED AT THE October 23, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, November 27, 2023 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Burnette, seconded by Mr. McCune, to defer the variance request to the November 27, 2023 CBPA Board Public Hearing. All present voted for the motion.

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