

**CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
February 26, 2024**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>In</b>	<b>Out</b>
Stephen Ballard	Board Member	Present	10:00 AM	12:02 PM
Haley Cool	Board Member	Present	10:00 AM	12:02 PM
John D. Hines	Board Member	Present	10:00 AM	12:02 PM
Casey Jones	Chairman	Present	10:00 AM	12:02 PM
William R. Burnette	Vice Chairman	Present	10:00 AM	12:02 PM
James F.N. McCune	Secretary	Present	10:00 AM	12:02 PM
Dell Young	Board Member	Present	10:00 AM	12:02 PM
Michael Steier	Board Member	Present	10:00 AM	12:02 PM
Al Wallace	Board Member	Present	10:00 AM	12:02 PM

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. Jones called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, February 26, 2024 at 10:00 a.m.

**APPROVAL OF THE MINUTES**

Approval of the January 22, 2024 Hearing Minutes

The first order of business was to approve the findings and variance conditions of the January 22, 2024 CBPA Board Public Hearing. A motion was made by Mr. Burnette and seconded by Mr. McCune 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.

**RESULT:**           **APPROVED [8 TO 0]**  
**MOVER:**           **William R. Burnette, Vice Chair**  
**SECONDER:**       **James F.N. McCune, Secretary**  
**AYES:**           **Ballard, Cool, Hines, Burnette, McCune, Young, Steier, Wallace**  
**ABSTAIN:**         **Jones**

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. Nilkanth & Palpana Patel – 909 Hall Haven Drive  
Recommendation: Deferred Indefinitely

**RESULT:**           **DEFERRED [UNANIMOUS]**  
**MOVER:**           **James F.N. McCune, Secretary**  
**SECONDER:**       **Stephen Ballard, Member**  
**AYES:**           **Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## **CONSENT AGENDA**

Agenda Item 1. John & Maria Motta at 3380 Eagle Nest Pt

Agenda Item 3. Henry & Kimberly Artime – 408 Behl Ct

Agenda Item 5. Tyler Family Trust – 816 Gilbert Cir

Agenda Item 6. Michael Remington – 605 Ben Bow Dr

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** James F.N. McCune, Secretary  
**SECONDER:** William R. Burnette, Vice Chair  
**AYES:** Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace

## **FORMAL HEARING**

Agenda Item 2. Stewart Investments, LLC – 2940 N. Lynnhaven Rd & 2950 N. Lynnhaven Rd

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** James F.N. McCune, Secretary  
**SECONDER:** William R. Burnette, Vice Chair  
**AYES:** Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace

Agenda Item 4. Carter & Justin Griffin – 1333 N. Bay Shore Dr

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** James F.N. McCune, Secretary  
**SECONDER:** William R. Burnette, Vice Chair  
**AYES:** Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace

## **RESTORATION HEARING**

Agenda Item 8. Nilkanth & Palpana Patel – 909 Hall Haven Drive

Recommendation: Hear today

**MOVER:** James F.N. McCune, Secretary  
**SECONDER:** Stephen Ballard, Member

Substitute Motion by Al Wallace: Defer 90 Days. No Secunder.

Substitute Motion: Defer 30 Days to the March 25, 2024, hearing.

**RESULT:** APPROVED [4 TO 3]  
**MOVER:** Michael Steier, Member  
**SECONDER:** William R. Burnette, Vice Chair  
**AYES:** Jones, Burnette, Steier, Wallace  
**NAYS:** Ballard, McCune, Young  
**ABSTAIN:** Cool, Hines

# Agenda Item 1

**Applicant & Property Owner: John & Maria Motta**

**Address: 3380 Eagle Nest Point**

**Public Hearing: February 26, 2024**

**City Council District: District 8**

**Parcel GPIN:** 1489-81-4025  
**Accela Record:** 2023-CBPA-00057  
**Applicant's Agent:** Robert Kellam  
**CBPA Board Action:** Approved with 12 CBPA Variance Conditions on February 26, 2024.

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 requests are seen throughout the City to stabilize embankments and prevent runoff and erosion into tidal waterways, however, the addition of the paver patio area lends additional impervious cover within the 50-foot seaward buffer.
- 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 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 required buffer restoration provides merit towards the proposed improvements not being of substantial detriment to the water quality of the Chesapeake Bay.
- 5) The required buffer restoration and proposed best management practices with this variance request will ensure a no increase in nonpoint source pollution load on the lot.

## **Board Conditions:**

- 1) A Land Disturbing Activity Plan (Erosion & Sediment Control 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 above 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: **321 square feet x 200 percent = 642 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**.
- 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) 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.
- 11) This variance and associated conditions **are in addition to** the conditions of the Board variance granted January 28, 2002.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated September 11, 2023, prepared by Robert S. Kellam, signed January 23, 2024, by Robert S. Kellam. 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 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.

**Robert Kellam representing the property located at 3380 Eagle Nest Point appeared before the CBPA Board.**

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

**RESULT: APPROVED [UNANIMOUS]  
MOVER: James F.N. McCune, Secretary  
SECONDER: William R. Burnette, Vice Chair  
AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 2

**Applicant & Property Owner: Stewart Investments, LLC**

**Address: 2940 N. Lynnhaven Road & 2950 N. Lynnhaven Road**

**Public Hearing: February 26, 2024**

**City Council District: District 8**

**Parcel GPIN:** 1497-26-4306 & 1497-26-2489  
**Accela Record:** 2023-CBPA-00056  
**Applicant's Agent:** Eddie Bourdon - Sykes Bourdon, Ahern & Levy PC  
**CBPA Board Action:** Approved with 17 CBPA Variance Conditions on February 26, 2024.

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 site was platted in 1959, prior to the Chesapeake Bay Preservation Act. The RPA buffers currently impact 100% of the lot and development on this lot cannot be obtained without encroaching into the RPA.
- 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 encroachment into the RPA to redevelop the lot is inevitable given zoning requirements and the location of the RPA buffer encompassing the entire lot. In addition, the recommended conditions specifically address post plan approval implementation of the proposed improvements to preserve existing conditions of the seaward buffer of the RPA and mature canopy trees on the lot beyond limits of construction.
- 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 subject to the recommended conditions provided in the staff report that include the installation of both structural and nonstructural best management practices throughout the lot to promote infiltration of stormwater.
- 5) The multiple BMPs and stormwater management facilities proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

### **Board Conditions:**

- 1) A Commercial 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 CBPA Improvements Plan Exhibit, Concept Schedule for the proposed new impervious cover within the RPA: **7,364 square feet x 200 percent = 14,728 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of **6 canopy trees, 12 understory trees, the Riparian Slope Mix area planting, and Understory Slope Mix planting.** The required Category IV Buffer with associated planting and proposed bioretention planting bed areas with associated plantings are excluded from this condition.

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 double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
  - Along the seaward portion of the proposed improvements, the required silt fence shall be installed no further seaward than five (5) feet.
  - Along the remaining portions of the property, the required silt fence shall be installed 10 feet from all proposed improvements.
  - All construction activity shall be contained within the limits of the silt fence.
- 6) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 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) ARBORIST REPORT Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases

of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,894.52 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 February 24, 2024, prepared by WPL, signed February 9, 2024, 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 representing the property located at 2940 N. Lynnhaven Road & 2950 N. Lynnhaven Road appeared before the CBPA Board.**

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

**RESULT: APPROVED [UNANIMOUS]  
MOVER: James F.N. McCune, Secretary  
SECONDER: William R. Burnette, Vice Chair  
AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 3

**Applicant & Property Owner: Henry Eleuterio & Kimberly Artime**

**Address: 408 Behl Court**

**Public Hearing: February 26, 2024**

**City Council District: District 1**

**Parcel GPIN:** 1457-30-3208  
**Accela Record:** 2023-CBPA-00074  
**Applicant's Agent:** Self-represented  
**CBPA Board Action:** Approved with 5 CBPA Variance Conditions on February 26, 2024.

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 other owners of property throughout the CBPA have been similarly afforded within the improvement of their lots.
- 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 proposed improvements are modest, and the entire lot falls within the 100-foot RPA buffer.
- 3) The variance is the minimum necessary to afford relief because the request is not egregious and over half the lot falls within the 50-foot seaward buffer, making it impossible for the applicant to avoid encroachment.
- 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 required buffer restoration and minimal increase with the request, the request will not be of substantial detriment to water quality.
- 5) The required buffer restoration will benefit the sparsely vegetated lot and underdeck treatment will ensure a no net increase in nonpoint source pollution load.

### **Board Conditions:**

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **120 square feet x 200 percent = 240 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: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. No perimeter fill is authorized outboard or seaward of the proposed improvements.
5. This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 24, 1994.

\*\*\*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.

**Henry Eleuterio & Kimberly Artime of the property located at 408 Behl Court appeared before the CBPA Board.**

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

**RESULT: APPROVED [UNANIMOUS]**  
**MOVER: James F.N. McCune, Secretary**  
**SECONDER: William R. Burnette, Vice Chair**  
**AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 4

**Applicant & Property Owner: Carter & Justin Griffin**

**Address: 1333 N. Bay Shore Drive**

**Public Hearing: February 26, 2024**

**City Council District: District 6**

**Parcel GPIN:** 2419-10-6234  
**Accela Record:** 2024-CBPA-00001  
**Applicant's Agent:** Billy Garrington  
**CBPA Board Action:** Approved with 18 CBPA Variance Conditions on February 26, 2024.

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 lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, and the encroachment request is similar to existing improvements on adjacent lots.
- 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 subject to the recommended conditions found 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and, if approved, the stormwater mitigation, consisting of bioretention planting beds, permeable paver systems, and buffer restoration will be installed to facilitate stormwater treatment from the new improvement.
- 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 canal as a means to manage towards a no net increase in nonpoint source pollution load.

### Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 2) The proposed lower paver patio seating area 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.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed in substantial compliance with the conceptual master plan submitted by WPL dated February 2, 2024, consisted of **14 canopy trees, 14 understory trees, 28 large shrubs, and 42 small shrubs.**

The required restoration shall be located in the 100-foot Resource Protection Area, Variable Width buffer, and Resource Management Area in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall be installed with substantial compliance and comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction.

The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed driveway expansion/parking pad area 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.
- 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 \$621.50 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) This variance and associated conditions **shall supersede** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted November 22, 1993.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated October 17, 2023, prepared by WPL, signed 1/29/2024 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.

**Bill Garrington representing the property located at 1333 N Bay Shore Drive appeared before the CBPA Board.**

**Anne Adams appeared before the Board in opposition of the variance request.**

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

**RESULT: APPROVED [UNANIMOUS]  
MOVER: James F.N. McCune, Secretary  
SECONDER: William R. Burnette, Vice Chair  
AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 5

**Applicant & Property Owner: Raymond & Janet Tyler**

**Address: 816 Gilbert Circle**

**Public Hearing: February 26, 2024**

**City Council District: District 8**

**Parcel GPIN:** 1498-51-3135  
**Accela Record:** 2024-CBPA-00007  
**Applicant's Agent:** Self-represented  
**CBPA Board Action:** Approved with 1 CBPA Variance Conditions on February 26, 2024.

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 a storage shed is a common accessory structure found on lots throughout the CBPA.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because this variance request is a result of the shape and location of the parcel due to how the parcel was subdivided. As a result of this subdivision everywhere on this property is in the RPA.
- 3) The variance is the minimum necessary to afford relief because the seaward buffer falls on the majority of the lot due to the location of the tidal features. The minimal footprint of the proposed shed provides merit towards the request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the shed is minimal in size and will not be of substantial detriment to water quality.
- 5) Over \$17,000 of buffer plantings were planted on the lot in November 2023 to add to the existing riparian buffer on the lot and the shed will not result in any impact to this vegetation as a means to manage towards a no net increase in nonpoint source pollution load.

### **Board Conditions:**

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.



\*\*\*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.

**Raymond Tyler of the property located at 816 Gilbert Circle appeared before the CBPA Board.**

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

**RESULT: APPROVED [UNANIMOUS]**  
**MOVER: James F.N. McCune, Secretary**  
**SECONDER: William R. Burnette, Vice Chair**  
**AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 6

**Applicant & Property Owner: Michael Remington**

**Address: 605 Ben Bow Drive**

**Public Hearing: February 26, 2024**

**City Council District: District 1**

**Parcel GPIN:** 1466-37-4579  
**Accela Record:** 2024-CBPA-00008  
**Applicant's Agent:** Self-represented  
**CBPA Board Action:** Approved with 5 CBPA Variance Conditions on February 26, 2024.

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 request is similar to, and consistent with, neighborhood standards and does not confer special privilege or convenience to the applicant/owner that other owners of property in the CBPA were afforded.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because this request limits the size of the shed and the patio to the size required to meet the intended purpose of the items. The proposed patio sits immediately adjacent to the house and within the footprint of a previously demolished wood deck.
- 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 although the previous deck and shed were demolished, this request would utilize redevelopment over existing impervious cover in totality if the previous improvements still were still found on the lot.
- 5) The applicant will enhance the lot with buffer restoration as required as a means to manage towards a no net increase in nonpoint source pollution load.

### **Board Conditions:**

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for

review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

2. 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: **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. 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. 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.
5. 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.

**Michael Remington of the property located at 605 Ben Bow Drive appeared before the CBPA Board.**

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

**RESULT: APPROVED [UNANIMOUS]**  
**MOVER: James F.N. McCune, Secretary**  
**SECONDER: William R. Burnette, Vice Chair**  
**AYES: Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace**

## Agenda Item 7

**Applicant & Property Owner: Nilkanth and Kalpana Patel**

**Address: 909 Hall Haven Drive**

**Public Hearing: February 26, 2024**

**City Council District: District 8**

**Parcel GPIN:** 1498-42-6983

**Accela Record:** 2022-CBPV-00004

**Applicant's Agent:** Robert Kellam

**CBPA Board Action:** Deferred at the February 26, 2024 CBPA Board Public Hearing Indefinitely.

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

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

**RESULT:** DEFERRED [UNANIMOUS]

**MOVER:** James F.N. McCune, Secretary

**SECONDER:** Stephen Ballard, Member

**AYES:** Ballard, Cool, Hines, Jones, Burnette, McCune, Young, Steier, Wallace

## Agenda Item 8

**Applicant & Property Owner: Nilkanth and Kalpana Patel**

**Address: 909 Hall Haven Drive**

**Public Hearing: February 26, 2024**

**City Council District: District 8**

**Parcel GPIN:** 1498-42-6983  
**Accela Record:** 2022-CBPV-00004  
**Applicant's Agent:** Robert Kellam  
**CBPA Board Action:** Deferred at the February 26, 2024 CBPA Board Public Hearing to the March 25, 2024 hearing.

A motion was made by Mr. McCune, seconded by Mr. Ballard, to hear the variance request today. A substitute motion was made.

**MOVER:** James F.N. McCune, Secretary  
**SECONDER:** Stephen Ballard, Member

A substitute motion was made by Mr. Wallace, to defer the variance for 90 days. There was no seconder.

**MOVER:** Al Wallace, Member

A substitute motion was made by Mr. Steier, seconded by Mr. Burnette, to defer the variance for 30 days.

**RESULT:** APPROVED [4 TO 3]  
**MOVER:** Michael Steier, Member  
**SECONDER:** William R. Burnette, Vice Chair  
**AYES:** Jones, Burnette, Steier, Wallace  
**NAYS:** Ballard, McCune, Young  
**ABSTAIN:** Cool, Hines

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

Kathy Warren  
Planning and Community Development Department  
2875 Sabre Street  
Suite 500  
Virginia Beach, VA 23452

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

Dear Ms. Warren:

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

1. I am executing this written disclosure regarding the Chesapeake Bay Preservation Area Board's discussion and vote on February 26, 2024 – Agenda Items 7 & 8, located at GPIN, 1498-42-6983.
2. The above-mentioned cases were a result of a previously heard show cause hearing which occurred prior to my appointment to the board.
3. Because the show cause hearing relating to these applications were heard prior to my appointment, I abstained on these items.

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

Sincerely,

Haley Cool

Chesapeake Bay Preservation Area Board Member

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

Kathy Warren  
Planning and Community Development Department  
2875 Sabre Street  
Suite 500  
Virginia Beach, VA 23452

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

Dear Ms. Warren:

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

1. I am executing this written disclosure regarding the Chesapeake Bay Preservation Area Board's discussion and vote on February 26, 2024 – Agenda Items 7 & 8, located at GPIN, 1498-42-6983.
2. The above-mentioned cases were a result of a previously heard show cause hearing which occurred prior to my appointment to the board.
3. Because the show cause hearing relating to these applications were heard prior to my appointment, I abstained on these items.

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

Sincerely,

John D. Hines

Chesapeake Bay Preservation Area Board Member