

**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
JANUARY 22, 2024**

Attendee Name	Title	Status	In	Out
Stephen Ballard	Board Member	Present	10:00 AM	11:25 AM
Haley Cool	Board Member	Present	10:00 AM	11:25 AM
John D. Hines	Board Member	Present	10:00 AM	11:25 AM
Casey Jones	Chairman	Absent		
William R. Burnette	Vice Chairman	Present	10:00 AM	11:25 AM
James F.N. McCune	Secretary	Present	10:00 AM	11:25 AM
Dell Young	Board Member	Present	10:00 AM	11:25 AM
Michael Steier	Board Member	Present	10:00 AM	11:25 AM
Al Wallace	Board Member	Present	10:00 AM	11:25 AM

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. Burnette called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, January 22, 2024 at 10:00 a.m.

APPROVAL OF THE MINUTES

Approval of the December 20, 2023 Hearing Minutes

The first order of business was to approve the findings and variance conditions of the December 20, 2023 CBPA Board Public Hearing. A motion was made by Mr. McCune and seconded by Mr. Steier 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 [6 TO 0]**
MOVER: **James F.N. McCune, Secretary**
SECONDER: **Michael Steier, Member**
AYES: **Ballard, Burnette, McCune, Young, Steier, Wallace**
ABSTAIN: **Cool, Hines**
ABSENT: **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.

CONSENT AGENDA

Agenda Item 2. Jarrett and Ma Luisa Price – Lot 69, Thalia Shores

Agenda Item 3. Elizabeth & Paul Kunde – 2945 Breezy Rd

Agenda Item 4. George N. Karavolos Revocable Trust – 2004 English Cedar Cir

Agenda Item 6. Peter Congdon – 2305 Haversham Cl

Agenda Item 7. Sea Breeze Farm Inc – Lot 58, Sea Breeze Trail

Agenda Item 8. Mason Kalfus & Susan Burgess – 1328 E. Bay Shore Dr

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

FORMAL HEARING

Agenda Item 1. Russell Tye – 1573 Quail Point Rd

RESULT: APPROVED [6 TO 2]
MOVER: Stephen Ballard, Member
SECONDER: James F.N. McCune, Secretary
AYES: Ballard, Hines, Burnette, McCune, Steier, Wallace
NAYS: Cool, Young
ABSENT: Jones

Agenda Item 5. Kubichan Living Trust – 3109 Dolphin Rd

RESULT: APPROVED [5 TO 2]
MOVER: Michael Steier, Member
SECONDER: James F.N. McCune, Secretary
AYES: Ballard, Cool, Burnette, McCune, Steier
NAYS: Young, Wallace
ABSENT: Hines, Jones

Agenda Item 1

Applicant & Property Owner: Russell Tye

Address: 1573 Quail Point Road

Public Hearing: January 22, 2024

City Council District: District 6

Parcel GPIN: 2408-93-2004
Accela Record: 2023-CBPA-00059
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 4 CBPA VARIANCE CONDITIONS ON August 28, 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 tree removal requests are routinely reviewed to manage riparian resources on properties throughout the RPA in the City with the intent to address the age and health of canopy trees in addition to potential hazards to structural improvements of a lot.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the mature canopy cover on the lot consist primarily of mature pine trees and that the riparian buffer is a resource that should be properly managed overtime to ensure health and function of the buffer.
- 3) The variance is the minimum necessary to afford relief subject to the recommended conditions of 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 mature canopy cover within the RPA provides value towards rainwater interception and absorption as a means of contributing to the overall water quality of the adjacent waterway. With regards to evaluating substantial detriment to water quality, the conditions in the staff report shall ensure the request is not a substantial detriment.
- 5) Mature canopy cover within the RPA provides value towards rainwater interception and absorption that contributes to the overall health of a watershed. Outboard of the retention of mature canopy cover within a watershed, extensive mitigation will ensure a no net increase in nonpoint source pollution load.

Board Conditions:

1. A landscape plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

2. The landscape plan shall detail the location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
3. Mitigation options for the remaining 10 canopy trees requested to be removed due to being hazardous or in close proximity to structures on the lot as described on the CBPA exhibit shall be required as follows.

3:1 ratio with canopy tree mitigation only (30 canopy trees to be planted)

-or-

2:1 ratio with canopy tree and understory tree mitigation (20 canopy trees and 20 understory trees)

The required mitigation shall be located in the 100-foot RPA. 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. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the release of the utility/right of way permit.

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

- Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper at time of installation.
- Understory tree (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.

4. A pre-construction meeting shall be held with a CBPA inspector prior to tree removal. All trees approved for removal shall be marked with red tree markers and all trees to be preserved as conditioned in this report shall be marked with blue tree markers.

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

Russell Tye of the property located at 1573 Quail Point Road appeared before the CBPA Board.

A motion was made by Mr. Ballard, 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: Stephen Ballard, Member
SECONDER: James F.N. McCune, Secretary
AYES: Ballard, Hines, Burnette, McCune, Steier, Wallace
NAYS: Cool, Young
ABSENT: Jones

Agenda Item 2

Applicant & Property Owner: Jarrett and Ma Luisa Price

Contract Purchaser: Kenneth Kemner

Address: Lot 69, Thalia Shores

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 1487-38-4972
Accela Record: 2023-CBPA-00065
Applicant's Agent: Robert Kellam
CBPA Board Action: APPROVED WITH 18 CBPA VARIANCE CONDITIONS ON January 22, 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 this lot was platted in 1952 and the current owner of lot 69 also owns Lot 68 and has agreed to sell additional property to the purchaser of lot 69 so the proposed home may be moved out of the 50-foot seaward CBPA 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 because the proposal limits all proposed new impervious cover to the 50-foot landward buffer of the 100-foot RPA 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 applicant has retained all canopy cover and vegetation within the 50-foot seaward buffer on the lot and the existing gravel driveway within the 50-foot seaward buffer will be removed and converted to buffer restoration.
- 5) The preservation of the existing vegetation within the RPA on the lot and the additional buffer restoration as required and the proposed lot grading will promote the sheet flow of the storm water into the 50-foot seaward CBPA buffer that is well stabilized by vegetation will ensure a no net increase in nonpoint source pollution load with this request.

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) Turf grass on the lot is limited to the area south of the proposed driveway and shall not extend beyond the delineated silt fence of the CBPA plan. Said area of turf grass shall not exceed 1,600 square feet.
- 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 on the lot shall be achieved through the following mitigation methods.
 - 3,555 square feet of buffer restoration shall be installed on the lot within the area disturbed for the removal of the existing gravel drive.
 - All areas outside the limits of construction shall be left in a natural state, including the forest floor (leaf litter), and left intact.

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

- 5) A certified arborist report shall be provided for review and approval during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
- 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. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.

- 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 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 and staked in the field for review by City Staff prior to land disturbance.
- 11) The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or Certificate of Occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) 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.
- 17) **** 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 \$1,051.87 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.**
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated October 17, 2023, prepared by Robert S. Kellam, signed November 6, 2023 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.

**** 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.

Robert Kellam representing the property located at Lot 69, Thalia Shores appeared before the CBPA Board.

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

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

Agenda Item 3

Applicant & Property Owner: Elizabeth & Paul Kunde

Address: 2945 Breezy Road

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 1499-18-8109
Accela Record: 2023-CBPA-00067
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 5 CBPA VARIANCE CONDITIONS ON January 22, 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 adjacent properties have similar improvements.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements, as situated in the rear yard, offers minimal expansion of the patio surround within the 50-foot seaward buffer and situating the patio expansion immediately adjacent to the existing single-family residence.
- 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 placed seaward on the lot, coupled with the recommended conditions below, ensures the variance request will not be of substantial detriment to water quality.
- 5) The recommended conditions including in the required buffer restoration ensures that the variance request will not increase 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: **135 square feet x 200 percent = 270 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.** 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 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. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
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.

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

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

Agenda Item 4

Applicant & Property Owner: George N. Karavolos Revocable Trust

Address: 2004 English Cedar Court

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 1499-78-9270
Accela Record: 2023-CBPA-00068
Applicant's Agent: Billy Garrington
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON January 22, 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 based upon the extent of redevelopment proposed to the existing conditions of the lot and the CBPA exhibit coupled with the use of materials and stormwater methodology.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the placement of the proposed improvements limits the encroachment into the buffer, situating in the 50-foot landward buffer on a lot that is encompassed by the RPA in both the rear and front yards of the lot. The applicant has utilized redevelopment to the greatest extent on the highly encumbered lot and has shifted the layout of the home to further reduce encroachment in the rear yard 50-foot landward 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 applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds, gravel downspout intercepts, and underdeck treatment.
- 5) The proposed best management practices, which includes bioretention planting beds, gravel downspout intercepts, and underdeck treatment, as well as the installation of the conditioned 4,924 square feet of buffer restoration that restores the lack of tree canopy cover on the lot shall ensure the variance request 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: **2,462 square feet x 200 percent = 4,924 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 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. 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. All construction activities and associated land disturbance shall be contained within limits of the site fence.
- 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 and staked in the field for review by City Staff prior to land disturbance.
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 12) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 13) ** 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 \$564.20 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.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated October 10, 2023, prepared by Gallup Surveyors & Engineers, signed November 30, 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 representing the property located at 2004 English Cedar Circle appeared before the CBPA Board.

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

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

Agenda Item 5

Applicant & Property Owner: Kubichan Living Trust

Address: 3109 Dolphin Road

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 1489-97-9917
Accela Record: 2023-CBPA-00069
Applicant's Agent: Billy Garrington
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON January 22, 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 given the impervious development of the residential lots along Dolphin Road, with most residential structures being built during the mid-1970's and the density of the area equal to or greater than four dwelling units per acre, the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions for this variance request.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the limit provided to the overall impervious cover associated with the redevelopment of this lot is more harmonious with the findings of the CBPA Ordinance than that provided with the CBPA Exhibit.
- 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 coupled with the required buffer restoration, best management practices, and the recommended conditions, the request is in harmony with the purpose and intent of the Ordinance and will not be of 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 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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,295 square feet x 200 percent = 2,590 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: **3 canopy trees, 7 understory trees, 12 large shrubs, and 18 small shrubs.**

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

- 4) 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 5 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 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 \$313.95 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 October 23, 2023, prepared by WPL, signed November 30, 2023 by Eric A. Garver. 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.

A motion was made by Mr. Steier, 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 [5 TO 2]
MOVER: Michael Steier, Member
SECONDER: James F.N. McCune, Secretary
AYES: Ballard, Cool, Burnette, McCune, Steier
NAYS: Young, Wallace
ABSENT: Hines, Jones

Agenda Item 6

Applicant & Property Owner: Peter Congdon

Address: 2305 Haversham Close

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 2409-06-1222
Accela Record: 2023-CBPA-00071
Applicant's Agent: Billy Garrington
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON January 22, 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements, as situated in the rear yard, provide merit towards being the minimum necessary to afford relief given the extent of redevelopment, size of the proposed structure, and location adjacent to the existing residence.
- 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 lot currently has minimal canopy cover and the required buffer restoration throughout the remaining portions of the 100-foot buffer will provide a benefit towards water quality on the lot. Additionally, the request utilizes all redevelopment over the existing patio space with slight increases in impervious cover and the desire to slightly expand the proposed covered patio.
- 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 Broad Bay as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

1. The conditions and approval associated with this variance are based on the exhibit plan dated October 11, 2023, prepared by WPL, signed December 1, 2023 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **336 square feet x 200 percent = 678 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 22, 2003.

***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 representing the property located at 2305 Haversham Close appeared before the CBPA Board.

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

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

Agenda Item 7

Applicant & Property Owner: Sea Breeze Farm, Inc.

Contract Purchaser: Kirbor Homes, LLC.

Address: Lot 58, Sea Breeze Trail

Public Hearing: January 22, 2024

City Council District: District 8

Parcel GPIN: 1489-60-9426
Accela Record: 2023-CBPA-00072
Applicant's Agent: Billy Garrington
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON January 22, 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 CBPA exhibit provided, coupled with the use of materials and stormwater methodology integrating best management practices on the lot, offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of the property in the neighborhood that have redeveloped lots platted prior to the adoption of the CBPA Ordinance.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the placement of the proposed improvements limits encroachment to the landward and variable width buffers and with no impact to the 50-foot seaward buffer on the lot.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the 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.
- 5) Planting buffer restoration and/or bio-retention stormwater management will be placed between the improvements and the river 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.

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

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

- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.

- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 13) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,366.06 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated November 28, 2023, prepared by WPL, signed December 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. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

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

Billy Garrington representing the property located at Lot 58, Sea Breeze Trail appeared before the CBPA Board.

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

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

Agenda Item 8

Applicant & Property Owner: Mason Kalfus & Susan Burgess

Address: 1328 E. Bay Shore Drive

Public Hearing: January 22, 2024

City Council District: District 6

Parcel GPIN: 2418-49-8901
Accela Record: 2023-CBPA-00073
Applicant's Agent: Billy Garrington
CBPA Board Action: APPROVED WITH 12 CBPA VARIANCE CONDITIONS ON January 22, 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 property was platted in 1953 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed request 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 coupled with the use of materials, the required buffer restoration, and the recommended conditions, the request will not be of 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 creek as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The proposed sport court shall be relocated landward of the 100-foot Resource Protection Area (RPA) buffer.
- 2) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 3) 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.
- 4) 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.**
- 5) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 6) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) This variance and associated conditions **are in addition to** the conditions of the Board variance granted February 25, 2019.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated December 21, 2018, prepared by WPL, signed January 11, 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.

** 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 representing the property located at 1328 E. Bay Shore Drive appeared before the CBPA Board.

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

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