



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

Attendee Name	Title	Status	Arrived
Stephen Ballard	Member	Absent	
June Barrett-McDaniels	Member	Present	9:18 AM
William R. Burnette	Member	Present	9:19 AM
David France	Chairman	Present	9:19 AM
Casey Jones	Vice Chairman	Present	9:19 AM
James F.N. McCune	Member	Present	9:19 AM
Michael Steier	Member	Present	9:19 AM
Al Wallace	Member	Present	9:18 AM
Dell Young	Member	Present	9:17 AM

APPROVAL OF THE MINUTES

1. Approval of the December 5, 2022 Hearing Minutes

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. France called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, January 23, 2023 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the December 5, 2022 CBPA Board Public Hearing. A motion was made by Mr. Jones 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.

BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE December 5, 2022 FINDINGS AND VARIANCE CONDITIONS ON January 23, 2023 AS FOLLOWS.

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

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



Administrative Business Election of Secretary for 2023

Agenda Item

1

Election of 2023 Chesapeake Bay Preservation Area Board Secretary

2023 Chesapeake Bay Preservation Area Board Election of Officers

Secretary – Casey Jones

2022 Chesapeake Bay Preservation Area Board Members

- Dave Jester, Chairman
- Dave France, Vice Chairman
- Casey Jones, Secretary
- June Barrett-McDaniels
- Bill Burnette
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

A motion was made by Mr. Jones, seconded by Mr. Steier, to elect Mr. Burnette as the Secretary. All voted for the motion.

RESULT:	APPROVED [5 TO 3]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	Michael Steier, Member
AYES:	Burnette, France, Jones, Steier, Wallace
NAYS:	Barrett-McDaniels, McCune, Young
ABSENT:	Ballard



Applicant & Property Owner **1600 Arnold Circle, LLC**
 Address **1600 Arnold Circle**
 Public Hearing **January 23, 2023**
 City Council District: **District 6**, formerly Lynnhaven

Agenda
Item

2

Parcel GPIN: 2409-82-3546
Accela Record: 2022-CBPA-00047
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: DEFERRED INDEFINATELY ON January 23, 2023.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 1600 Arnold Circle appeared before the Board.

A motion was made by Ms. Young, no seconder, to defer until sufficient information regarding turf runoff/chemicals is obtained. All present voted for the motion.

RESULT:	DENIED [2 TO 6]
MOVER:	Dell Young, Member
AYES:	Wallace, Young
NAYS:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier
ABSENT:	Ballard

A motion was made by Mr. Steier, seconded by Mr. Burnette, to approve as is. All present voted for the motion.

RESULT:	DENIED [2 TO 6]
MOVER:	Michael Steier, Member
SECONDER:	William R. Burnette, Member
AYES:	Burnette, Steier
NAYS:	Barrett-McDaniels, France, Jones, McCune, Wallace, Young
ABSENT:	Ballard

A motion was made by Mr. Burnette, seconded by Mr. McCune, to request of an indefinite deferral. All present voted for the motion.

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



Applicant & Property Owner **Romeo Spino**
Address **2021 Thomas Bishop Lane**
Public Hearing January 23, 2023
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

3

Parcel GPINs: 1499-56-4825
Accela Record: 2022-CBPA-00065
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: DEFERRED AT THE January 23, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, February 27, 2023 CBPA BOARD PUBLIC HEARING.

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

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



Applicant & Property Owner **Philip & Jane Jones**
Address **1291 Ketch Point**
Public Hearing **January 23, 2023**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

4

Parcel GPIN: 1498-76-8959
Accela Record: 2022-CBPA-00068
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 9 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because other property owners in the RPA area have applied for and have had approved similar small projects.
- 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.
- 3) The variance is the minimum necessary to afford relief because the request and layout of the proposed improvements offers merit towards the variance 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 applicant has brought forth an application that minimizes impacts to the RPA buffer to the greatest extent practicable.
- 5) The applicant has proposed to remove portions of the impervious cover within the 50-foot seaward and 50-foot landward buffers and install under deck treatment of sand and gravel for the proposed covered porches. This, coupled with the recommended conditions, shall act 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. Submitted concurrent with building permit application shall be the required buffer restoration shown on the exhibit/physical survey detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements.
3. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large 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. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Under deck treatment of sand and gravel shall be installed.
8. Perimeter fill material 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 riparian buffer area.
9. This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 8, 2022.

***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.

Philip & Jane Jones of the property located at 1291 Ketch Point Drive appeared before the CBPA Board.

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

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



Applicant & Property Owner **Robert & Jessica Grosso**
 Address **5324 Fairfield Boulevard**
 Public Hearing **January 23, 2023**
 City Council District: **District 1**, formerly Kempsville

Agenda
Item

5

Parcel GPINs: 1466-48-6342
Accela Record: 2022-CBPA-00069
Applicant’s Agent: David Durrett
CBPA Board Action: DEFERRED AT THE January 23, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, February 27, 2023 CBPA BOARD PUBLIC HEARING.

David Durrett representing the applicant of the property located 5324 Fairfield Boulevard appeared before the Board.

Judith Melligar and David Melligar King appeared before the Board in opposition of the variance request.

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

RESULT:	DEFERRED [UNANIMOUS]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	Al Wallace, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Victoria & Victor Spears**
Address **3328 Upper Palace Green**
Public Hearing **January 23, 2023**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

6

Parcel GPIN: 1498-05-4885
Accela Record: 2022-CBPA-00070
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants, Inc.
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the property was platted in 1979 prior to the Chesapeake Bay Preservation Act.
- 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 improvements have been designed over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts.
- 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 brought forth a proposed layout that eliminates encroachment into the 50-foot seaward buffer and utilizes redevelopment to the greatest extent practicable.
- 5) The applicant has provided a layout of the proposed improvements that ensures a no net increase in nonpoint source pollution load by including new bioretention planting beds as well as sand/gravel underdeck treatment to slow, capture, and treat the on-site stormwater runoff before entering the river, which shall act 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 layout and proposed naturalized areas on the lot shall be in substantial compliance with the Master Plan and Detailed Site Design exhibits provided by WPL, dated November 21, 2022. 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 to the greatest extent practicable.

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 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.

- 10) 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$647.39 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated October 4, 2022, prepared by WPL, signed January 3, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Billy Garrington - Governmental Permitting Consultants, Inc. representing the applicant of the property located at 3328 Upper Palace Green appeared before the Board.

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

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



Applicant & Property Owner **Elizabeth & Wesley Flowers**
Address **1804 Duke of York Quay**
Public Hearing **January 23, 2023**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

7

Parcel GPIN: 1499-84-4234
Accela Record: 2022-CBPA-00071
Applicant's Agent: Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the property was platted in 1973 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 location of the proposed improvements is in the most reasonable spot on the lot to minimize impacts to the riparian buffer and existing topography.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because this request does not encroach into the 50-foot seaward buffer and the applicant has situated the proposed improvements to fall within the upper limits of the landward buffer and variable width buffer.
- 5) The buffer restoration areas as shown on the proposed plans and best management practices proposed provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration 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: **1,530 square feet x 200 percent = 3,060 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 8 understory trees, 16 large shrubs, and 24 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) Underdeck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$382.50 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.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated July 15, 2022, prepared by WPL, signed January 6, 2022 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 - Sykes, Bourdon, Ahern & Levy PC representing the applicant of the property located at 1804 Duke of York Quay appeared before the Board.

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

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



Applicant & Property Owner **Taylor Mihaly**
Address **3113 Basin Road**
Public Hearing **January 23, 2023**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

8

Parcel GPIN: 1499-07-6979
Accela Record: 2022-CBPA-00072
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 12 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because given the impervious development of the residential lots along Basin Road with most residential structures being built during the 1960's and the density of the area equal to or greater than 4 dwelling units per acre, the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff 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 average existing impervious cover for properties in the vicinity range from approximately 42 percent to 60 percent. The subject variance request results in an overall impervious cover of 45.9 percent.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the recommended conditions provided below for this variance request offers merit towards this variance request being in harmony with the CBPA Ordinance.
- 5) Rooftop disconnects, rainwater harvesting, and bioretention planting beds will be provided as best management practices and coupled with the recommended conditions provided for this variance request, these measures offer management towards this variance request being a no net increase in nonpoint source pollution load for the proposed improvements.

Board Conditions:

- 1) A Single-Family RPA Small Projects 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. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) 1,600 square feet of buffer restoration shall be installed. 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, 4 understory trees, 12 large shrubs, and 16 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. 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 issuance of the certificate of occupancy or release of the building permit.

- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.**
- 6) 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.
- 7) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**



Applicant & Property Owner **ORP Ventures, LLC**
Address **816 24th Street**
Public Hearing **January 23, 2023**
City Council District: **District 6**, formerly Beach

Agenda
Item

9

Parcel GPIN: 2417-78-8769
Accela Record: 2022-CBPA-00074
Applicant's Agent: Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC
CBPA Board Action: APPROVED WITH CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed development conforms with zoning regulations and is consistent with the character of the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the layout of the proposed improvements on the lot minimize impacts to the RPA to the greatest extent practicable and preserves the existing topography of the 50-foot seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements will not be detrimental to the public welfare or of substantial detriment to water quality.
- 5) Bioretention stormwater management and gravel drip intercepts will be used as methods to capture and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

Chesapeake Bay Preservation Area (CBPA) Conditions: 16 conditions for Lot A-1

- 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: **1,027 square feet x 200 percent = 2,054 square feet**. The required restoration shall be located seaward of the proposed retaining wall to the greatest extent practicable with the required canopy and understory trees located throughout the lot to promote long-term healthy growing habits.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 15 large shrubs, and 20 small shrubs**.

Said 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. 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) Fill material shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration. No perimeter fill or grading is authorized seaward of the proposed improvements.
- 6) All trash and debris shall be removed by hand from the 50-foot seaward buffer and disposed of in a lawful manner. Moderate maintenance shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the 50-foot seaward buffer.

- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements. **Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 11) Construction limits and all construction activities shall be contained within the limits of the delineated silt fence.
- 12) All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that "All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence."
- 13) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 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) ** 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 \$235.35 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2023 and revised January 11, 2023, prepared by WPL, signed January 11, 2023 by Eric A. 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.

Chesapeake Bay Preservation Area (CBPA) Conditions: 13 conditions for Lot A-2

- 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) 2,600 square feet of buffer restoration shall be installed on the lot. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 18 large shrubs, and 24 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) 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) 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.
- 12) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$301.81 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 13) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2023 and revised January 11, 2023, prepared by WPL, signed January 11, 2023 by Eric A. 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.

** 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 - Sykes, Bourdon, Ahern & Levy PC representing the applicant of the property located at 816 24th Street appeared before the Board.

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

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

- 8) 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.
- 9) Stormwater treatment shall be provided equal to 200 percent of the proposed new impervious cover within the RPA – treatment of 1,586 square feet of impervious cover.
- 10) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 11) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated January 12, 2023 prepared by WPL. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 3113 Basin Road appeared before the Board.

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

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



Applicant & Property Owner **ORP Ventures, LLC**
Address **Lot 5, 2984 Queen City Road**
Public Hearing **January 23, 2023**
City Council District: **District 1**, formerly Kempsville

Agenda
Item

10

Parcel GPIN: 1456-03-5949
Accela Record: 2022-CBPA-00076
Applicant's Agent: Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the lot is challenged by the timeframe the lot was platted (1910 under Princess Anne County), and presence of the RPA buffer delineated off a man-made drainage ditch that was constructed in the early 1950s to serve as a drainage facility for the development of the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted in 1910 – approximately 80 years prior to the adoption of the Chesapeake Bay Preservation Act.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements are suitable for the lot given the zoning district requirements for lot area and dimension requirements for lot width. The applicant has situated the proposed single-family residence at the front yard setback and has selected a house footprint with an attached garage to utilize the buildable area on the lot to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because erosion and sediment control requirements coupled with stormwater management regulations aid in the preservation of water quality on a constricted lot such as the subject lot during construction of the proposed improvements with best management practices contributing to the long-term sustainability of water quality.

- 5) The applicant is proposing infiltration beds, bioretention planting beds, and dry swales as best management practices on the lot with this request coupled with the conditioned buffer restoration 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 along the south side of the residence. 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, 4 understory trees, 8 large shrubs, and 16 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) The proposed driveway 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.
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed per the following specifications.

- A maximum of 5 feet off the rear or east side of the proposed improvements.
- A maximum of 8 feet off the south side of the proposed improvements.
- A maximum of 15 feet off the north side of the proposed improvements.

All construction activity shall be within the limits of silt fence as specified above.

- 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) 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.
- 12) 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.
- 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 \$248.41 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 November 18, 2022, prepared by Fox Land Surveying. 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.

Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC representing the applicant of the property located at Lot 5, 2984 Queen City Road appeared before the Board.

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

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



Applicant & Property Owner **ORP Ventures, LLC**
Address **Lot 6, 2984 Queen City Road**
Public Hearing **January 23, 2023**
City Council District: **District 1**, formerly Kempsville

Agenda
Item

11

Parcel GPIN: 1456-03-5949
Accela Record: 2022-CBPA-00076
Applicant's Agent: Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the lot is challenged by the timeframe the lot was platted (1910 under Princess Anne County), and presence of the RPA buffer delineated off a man-made drainage ditch that was constructed in the early 1950s to serve as a drainage facility for the development of the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted in 1910 – approximately 80 years prior to the adoption of the Chesapeake Bay Preservation Act.
- 3) 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 layout must meet all zoning standards set forth in the City's Zoning Ordinance and the request is in harmony with the intent of the CBPA Ordinance due to the size and layout of the proposed improvements on the lot.
- 4) The variance is the minimum necessary to afford relief because the proposed improvements are suitable for the lot given the zoning district requirements for lot area and dimension requirements for lot width and the proposed single-family residence is situated at the front yard setback and has selected a house footprint with an attached garage to utilize the buildable area on the lot to the greatest extent practicable.
- 5) The applicant is proposing infiltration beds, bioretention planting beds, and dry swales as best management practices on the lot with this request coupled with the conditioned buffer restoration 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: 971 square feet x 200 percent = 1,942 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, 4 understory trees, 12 large shrubs, and 16 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. 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) 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) The proposed driveway 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.
- 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 \$222.52 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.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated November 18, 2022, prepared by Fox Land Surveying. 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.

Eddie Bourdon - Sykes, Bourdon, Ahern & Levy PC representing the applicant of the property located at Lot 6, 2984 Queen City Road appeared before the Board.

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

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



Applicant & Property Owner **David Miller**
Address **3220 Stapleford Chase**
Public Hearing **January 23, 2023**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

12

Parcel GPIN: 1498-16-4212
Accela Record: 2022-CBPA-00073
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON January 23, 2023.

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because due to the recommended conditions provided in this staff report.
- 2) Staff offers that the encroachment into the RPA is typical of this area.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements increase the impervious cover by 609 square feet on a lot that is over halfway encumbered by the 50-foot seaward buffer, which increases the proposed impervious cover of the lot from 22 to 25 percent of the lot area above water/wetlands and will be in substantial agreement with the proposed buffer restoration plan and the second tier will be buffer restoration.
- 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 proposed permeable pavers and infiltration beds coupled with the required buffer restoration to ensure that the proposed improvements will not be of substantial detriment to the water quality of the Chesapeake Bay.
- 5) Permeable pavers and infiltration beds coupled with the recommended conditions act as a means to manage towards a no net increase in nonpoint source pollution load for this variance 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) 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 restoration plan received from Vision Scapes. 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.
- 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) 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.
- 8) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 9) 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.
- 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) The conditions and approval associated with this variance are based on the exhibit plan dated October 19, 2022, prepared by Gallup Surveyors and Engineers, signed October 19, 2022 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 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.

David Miller of the property located at 3220 Stapleford Chase appeared before the Board.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 3220 Stapleford Chase appeared before the Board.

A motion was made by Mr. McCune, seconded by Mr. Burnette, to hear Agenda Items 12 and 14 together. All present voted for the motion.

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

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

RESULT:	APPROVED [7 TO 1]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	William R. Burnette, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard

RESULT:	APPROVED [7 TO 1]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	William R. Burnette, Member
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSENT:	Ballard



Applicant & Property Owner **Dennis Ellmer**
Address **2871 River Road**
Public Hearing January 23, 2023
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

13

Parcel GPINs: 1499-41-4751
Accela Record: 2022-CBPA-00075
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: DEFERRED AT THE January 23, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, February 27, 2023 CBPA BOARD PUBLIC HEARING.

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

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



Applicant & Property Owner **Dennis Ellmer**
 Address **2871 River Road**
Public Hearing January 23, 2023
 City Council District **District 8**, formerly Lynnhaven

Agenda
Item

15

Parcel GPINs: 1499-41-4751
Accela Record: 2022-CBPA-00075
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: DEFERRED AT THE January 23, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, February 27, 2023 CBPA BOARD PUBLIC HEARING.

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

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