



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
April 24, 2023**

Attendee Name	Title	Status	Arrived
Stephen Ballard	Board Member	Present	8:37 AM
June Barrett-McDaniels	Member	Present	8:38 AM
William R. Burnette	Secretary	Present	8:40 AM
David France	Chairman	Present	8:39 AM
Casey Jones	Vice Chairman	Present	8:39 AM
James F.N. McCune	Member	Present	8:41 AM
Michael Steier	Member	Present	8:40 AM
Al Wallace	Member	Present	8:38 AM
Dell Young	Member	Present	8:38 AM

APPROVAL OF THE MINUTES

1. Approval of the March 27, 2023 Hearing Minutes

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. France called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, April 24, 2023 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the March 27, 2023 CBPA Board Public Hearing. A motion was made by Mr. McCune and seconded by Mr. Ballard 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 March 27, 2023 FINDINGS AND VARIANCE CONDITIONS ON April 24, 2023 AS FOLLOWS.

RESULT:	APPROVED [8 TO 0]
MOVER:	James F.N. McCune, Member
SECONDER:	Stephen Ballard, Board Member
AYES:	Ballard, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSTAIN:	Barrett-McDaniels

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



Applicant & Property Owner **Romeo Spino**
Address **2021 Thomas Bishop Lane**
Public Hearing **April 24, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

1

Parcel GPIN: 1499-56-4825
Accela Record: 2022-CBPA-00065
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON April 24, 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 new property owner is attempting to redevelopment portions of the lot that are exhibiting structural failure and eroding the existing bank feature.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has worked with Staff vigorously to redevelop the lot within the existing footprint of impervious cover to the greatest extent practicable on a challenged 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 subject to the recommended conditions provided in the staff report.
- 5) Bioretention planting beds, rooftop disconnection, and rainwater harvesting will reduce pollution in the post-development stormwater runoff as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The proposed landscape planters located seaward of the artificial turf area shall be moved landward and aligned with the seaward edge of the proposed swimming pool. Said artificial turf area shall be adjusted accordingly.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a detailed Sequence of Construction (SOC) provided on the site plan. Said SOC shall address but is not limited to marking of proposed improvements layout in the field, bank protection during construction, management of stormwater run-off during construction, excavation associated with the construction of the proposed improvements inclusive of ground compaction, stabilization of grade and phases to which stabilization will occur and long-term evaluation and management of any future erosion that occurs due to construction.
- 4) 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.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA, inclusive of the City's 100-foot variable width buffer. Said restoration shall achieve the full complement of vegetation consisting of 1 canopy trees, 1 understory trees, 2 large shrubs and 3 small shrubs or groundcovers per every 400 square feet of buffer restoration required.

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

- 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 Planning Staff, CBPA Civil Inspector and Engineer of Record collectively 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. For all portions of the existing bank that are denuded daily by construction activity a temporary soil stabilization measures shall be applied at the end of each working day. All disturbed or denuded

areas shall utilize temporary stabilization measures in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

- 9) For all portions of the existing bank that are regraded, and the final grade established, an erosion and sediment control blanket, suitable for areas that require higher flow rates, steeper slopes, or longer-term use shall be installed over all areas of disturbed land both seaward and landward of the retaining wall. Said material shall be secured using a peg, staple, or stake per manufacturer recommendations and a vegetive cover provided so that the areas of disturbance have a complete vegetative cover post-construction.
- 10) The area of land seaward of the proposed improvements shall remain in a “cover crop” vegetative cover such as grasses or perennial legumes that provides and active root system in the soil that holds the soil from water erosion while above ground growth shields soil movement from wind erosion and rainfall splatter to minimize soil movement.
- 11) 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.**
- 12) A double row of 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 staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 13) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 14) 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.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted November 25, 1996.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 3, 2023, prepared by WPL. 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.
- 17) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 2021 Thomas Bishop Lane, appeared before the Board.

Brad Martin of WPL representing the applicant of the property located at 2021 Thomas Bishop Lane, appeared before the Board.

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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Alex & April Reichmeider**

Address **2713 River Road**

Public Hearing **April 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

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Parcel GPIN: 1499-61-3832
Accela Record: 2023-CBPA-00016
Applicant's Agent: David Chewey - David Chewey Landscape Architect
CBPA Board Action: APPROVED WITH 13 CBPA VARIANCE CONDITIONS ON April 24, 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 this request is similar to other requests made that have requested to construct retaining walls within the RPA to correct grading and drainage issues without significantly impacting the riparian buffer resource.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has brought forth a request that offers minimal impacts to the RPA on the lot and creates a more usable area in the rear yard for the property owners while maintaining the functionality of the buffer by reducing overgrowing species in the riparian 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 new BMP installed with the proposed retaining wall will slow the rainwater sheet flow from the higher elevations on the lot, while also improving the state of the riparian buffer on the lot by offering maintenance to ensure the health and functionality of the buffer composition.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, downspouts from the back of the home and grading of the proposed lawn area will be directed towards the new BMP planting beds at the top of the wall, elevating the ground with the wall

to ensure runoff is slow as it enters the BMP, and minimal tree removal will occur 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) 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) 4,323 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) in substantial compliance with the Proposed Landscape Development Plan prepared by David Chewey Landscape Architect, dated February 28, 2023.

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. 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) Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.

- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated February 28, 2023, prepared by David Chewey, signed February 28, 2023, by David Chewey. 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.
- 13) Three-quarters (3/4) of the proposed retaining wall shall be relocated landward of the 50-foot seaward buffer of the Resource Protection Area (RPA) to be within the 50-foot landward buffer. The relocated portion of the retaining wall is said section located east of the proposed patio area.

David Chewey of David Chewey Landscape Architect representing the applicant of the property located at 2713 River Road, appeared before the Board.

Eric Reichmeider of the property located at 2713 River Road, appeared before the Board.

A motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with a 13th condition added.

RESULT:	DENIED [4 TO 1]
MOVER:	Casey Jones, Vice Chairman
SECONDER:	James F.N. McCune, Member
AYES:	Ballard, Jones, McCune, Wallace
NAYS:	Young
AWAY:	Barrett-McDaniels, Burnette, France, Steier

2. Substitute Motion to approve as submitted with 12 conditions

RESULT:	DENIED [4 TO 5]
MOVER:	Michael Steier, Member
SECONDER:	James F.N. McCune, Member
AYES:	Ballard, Burnette, McCune, Steier
NAYS:	Barrett-McDaniels, France, Jones, Wallace, Young

3. Motion to approve with a 13th condition added

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



Applicant & Property Owner **Richard & Carmen Cellon**

Address **1204 Gloucester Lane**

Public Hearing **April 24, 2023**

City Council District **District 6**, formerly Lynnhaven

Agenda Item

3

Parcel GPIN: 2408-87-4576
Accela Record: 2023-CBPA-00017
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON April 24, 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 owner is following the variance process for an exception to the CBPA Ordinance given the location of the proposed improvements and past variance request history of the previous owner of the property.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has provided a layout of proposed improvements that addresses their needs with regard to the addition to the primary structure, has worked in harmony with the layout of the proposed swimming pool to be in substantial compliance with the layout of the swimming pool granted with the 2007 CBPA Variance, and has located other accessory structures (shed and pool house) out of the 100-foot buffer and within the City's Variable Width 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 layout of the proposed improvements is mindful of the existing site conditions and situated on the lot so that substantial amount of land disturbance is not necessary to construct the proposed improvements as submitted.
- 5) Strict erosion and sedimentation controls measures to halt non-point source pollution, stock piling materials on existing hard surfaces, single point accessway and revegetating any denuded

areas all help to limit pollution from entering the waterway all 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) A 3-foot-wide pool surround be provided continuously around the south, east, and north side of the swimming pool to provide a safe means of travel around the proposed improvement.
- 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) 2,554 square feet of buffer restoration shall be installed within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 small shrubs.**

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

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

- 9) Wire reinforced 36-inch silt fence, 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.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$585.29 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) This variance and associated conditions **shall supersede** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted July 23, 2007, with exception to condition 12 that states the following
 - *“Buffer restoration totaling 1,820 sq. ft. (includes pool surface) shall be installed which is equal to 125% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4” – 6” in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of eighteen (18) trees shall be installed and shall be*

comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable.”

Said condition shall be documented on the revised site plan. Documentation shall describe the health and functionality of said condition requirement. Prior restoration requirements shall be installed if not present.

- 17) The conditions and approval associated with this variance are based on the exhibit plan dated February 21, 2023, prepared by Gallup Surveyors and Engineers, signed February 21, 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. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

Billy Garrington of Governmental Permitting Consultant representing the applicant of the property located at 1204 Gloucester Lane, appeared before the Board.

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

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



Applicant & Property Owner **Pete & Sarah Kotarides**

Address **1407 N. Bay Shore Drive**

Public Hearing **April 24, 2023**

City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Parcel GPIN: 2419-10-3587
Accela Record: 2023-CBPA-00018
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants, Inc.
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON April 24, 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 dwelling and associated improvements are in keeping with similar redevelopment projects in the Bay Colony Subdivision.
- 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 originally platted in 1968, 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 owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been relocated landward on the site to remove the improvements from the 50' seaward RPA Buffer, to minimize site impacts, and to avoid new impervious area in the 50' seaward portion of the site.
- 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 as the variance request includes removing impervious cover from the 50' seaward buffer and relocating the proposed improvements further landward to overall reduce impacts to the 100' RPA buffer. In addition, this request removes over 9,000 square feet of impervious cover on the lot.
- 5) The existing planting beds will be enhanced and expanded upon to compliment the site. Bioretention stormwater management, gravel downspout intercepts, and the required buffer restoration will be placed between the improvements and the waterway to capture and treat

runoff prior to discharging into the bay” as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **4,351 square feet x 200 percent = 8,702 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: **11 canopy trees, 28 understory trees, 52 large shrubs, and 78 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) 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 canopy trees adjacent to the proposed improvements and methods taken to preserve the health and longevity of said trees during construction with regard to site monitoring and post-construction maintenance. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining canopy trees before, during and after the project is complete.
- 5) The proposed driveway, exclusive of the auto forecourt shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction in compliance with the Virginia Stormwater Best Management Practice (BMP) Clearinghouse – Practice

- 7: Permeable Pavement shall be provided site plan submitted to the Development Services Center for review and approval.
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
 - 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
 - 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
 - 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
 - 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
 - 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
 - 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
 - 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
 - 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
 - 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
 - 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$997.10 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats

in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

17) The conditions and approval associated with this variance are based on the exhibit plan dated December 28, 2022, prepared by WPL, signed March 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.

Billy Garrington of Governmental Permitting Consultants, Inc. representing the applicant of the property located at 1407 N. Bay Shore Drive, appeared before the Board.

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

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

Mrs. Barrett-McDaniels abstained due to the Applicant being a client of Aquarius Engineering PC.

Mr. France abstained due to the Applicant being a client of Kimley-Horn.

From: [Paul J. Scully](#)
To: [Victoria R. Eisenberg](#)
Cc: [Shannon M. Heederik](#); [Cole S. Fisher](#)
Subject: FW: Item 4 -Kotarides
Date: Monday, April 24, 2023 2:17:23 PM

-----Original Message-----

From: June Barrett-McDaniels <junemcdanielscbpa@icloud.com>
Sent: Monday, April 24, 2023 11:23 AM
To: Paul J. Scully <PScully@vbgov.com>
Subject: Item 4 -Kotarides

CAUTION: This email originated from outside of the City of Virginia Beach. Do not click links or open attachments unless you recognize the sender and know the content is safe.

PJ,

I abstained from the above item, heard 4/24/2023, because my company, Aquarius Engineering PC, has provided substantial professional services in the past few decades. I wish to avoid the appearance of a conflict. Please forward to all pertinent parties.

Sincerely,

June Barrett-McDaniels, PE
Aquarius Engineering PC
2301 Riptide Court
Virginia Beach, VA 23451
757-575-1315

Please forward to Tory

Sent from my iPad



Applicant & Property Owner **Lisa Barr & Kelly Hayes**

Address **2409 Broad Bay Road**

Public Hearing **April 24, 2023**

City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

Parcel GPIN: 1499-98-2733
Accela Record: 2023-CBPA-00019
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON April 24, 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 granting a variance request in this circumstance would not confer privileges to the applicant which have been denied to other property owners within the CBPA RPA in this area.
- 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 proposed given the slope of the existing backyard and have been designed to have the least impact on the RPA 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 proposed improvements are minimal and provide much needed functionality to the backyard of this lot for the homeowners and would not pose a substantial detriment to water quality given the location and layout of the proposed improvements within the RPA. All proposed improvements inside the 50' Seaward Buffer are designed as mulched paths or terraces, which will improve site circulation and promote the slowing of the velocity of stormwater while also promoting infiltration.
- 5) The improvements will be mitigated with additional landscape that should aid in slowing the velocity of stormwater leaving the site while the also allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan (proposed areas of Buffer

Restoration) that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs within the RPA buffer as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

1. A conditions and approval associated with this variance are based on the exhibit plan dated March 3, 2023, prepared by Painted Fern Landscape Architecture, signed March 3, 2023, by Jason M. Thomas. 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 reviewal 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. 615 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) 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: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.

5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted April 25, 2005.

Kelly Hayes of the property located 2409 Broad Bay Road, appeared before the Board.

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

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



Applicant & Property Owner **Steven Kissel**
 Address **2600 Long Creek Drive**
 Public Hearing **April 24, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

6

Parcel GPINs: 1499-78-2845
Accela Record: 2023-CBPA-00020
Applicant’s Agent: Sean Wheaton - Virginia Beach Patios Inc.
CBPA Board Action: DEFERRED AT THE April 24, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, May 22, 2023 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Wallace, seconded by Mr. McCune, to defer the variance request to the May 22, 2023 CBPA Board Public Hearing. All present voted for the motion.

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



Applicant & Property Owner **Geoff & Pamela Fout**
Address **2312 Windward Shore Drive**
Public Hearing **April 24, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

7

Parcel GPIN: 1499-98-9874
Accela Record: 2023-CBPA-00021
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 3 CBPA VARIANCE CONDITIONS ON April 24, 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 applicant's request is in harmony with the neighborhood and other variances that gave granted encroaching into the RPA feature on a pre-Chesapeake Bay Act 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 this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because the location of the gazebo on the property is the only area available on property and furthest away from the water possible with the least amount of land disturbance.
- 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 property owners have limited the size of the proposed structure and located it to have the least reduce impacts to the RPA buffer.
- 5) Staff provides the recommended conditions regarding the beneficial buffer restoration acting 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. **1 canopy tree, 2 understory trees, and 6 small shrubs** shall be planted within the Resource Protection Area, in areas currently devoted to turf. The plantings 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.

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

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



Applicant & Property Owner **Eli Nidam & Mazal Sibony**
Address **1104 Lady Ginger Lane**
Public Hearing **April 24, 2023**
City Council District **District 9, formerly Bayside**

Agenda
Item

8

Parcel GPIN: 1478-86-4316
Accela Record: 2023-CBPA-00025
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 9 CBPA VARIANCE CONDITIONS ON April 24, 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 as the redevelopment of this lot is similar to other lots within this neighborhood that have expanded accessory structures within the RPA due to the location of existing improvements – most of which were constructed prior to the adoption of the CBPA Ordinance and delineation of the 100-foot RPA buffer.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief given the location of the proposed improvements and the recommended conditions found in the staff report, specifically the buffer restoration is a needed benefit to the lot lacking an established canopy cover.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements are located furthest away possible from the water, directly adjacent from to the home, in an area of relatively flat topography, and the construction access being off an adjacent hard surface.
- 5) The recommended conditions below to create planting beds along the eastern property line provide additional benefit on the lot towards intercepting and infiltration of stormwater

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 for all flat work on the lot. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration for the proposed improvements shall be as follow.

- Swimming pool surround expansion – 800 square feet of buffer restoration.

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 areas currently devoted to turf. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth and 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.

- Sport court - **4 canopy trees, 4 understory trees, 8 large shrubs, and 16 small shrubs.** Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
3. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration requiring a minimum of 25% of the remaining pervious area on each lot (including those lots within the RMA) shall incorporate mulched planting beds shall be installed if removed from the lot.
 4. A landscape plan shall be submitted to the Department of Planning & Community Development, Development Service Center for review and approval for all required buffer restoration.
 5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
 6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
 7. 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.

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.
9. This variance and associated conditions are in addition to the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted June 24, 2002, and September 27, 2004, with the exception of condition 7.

The owners of the property of located at 1371 W. Little Neck Road appeared before the CBPA Board.

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

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Burnette, Secretary
SECONDER:	Casey Jones, Vice-chairman
AYES:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young