



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
February 27, 2023**

Attendee Name	Title	Status	Arrived
Stephen Ballard	Board Member	Present	8:42 AM
June Barrett-McDaniels	Member	Present	8:43 AM
William R. Burnette	Secretary	Present	8:43 AM
David France	Chairman	Present	8:43 AM
Casey Jones	Vice Chairman	Present	8:46 AM
James F.N. McCune	Member	Present	8:44 AM
Michael Steier	Member	Present	8:44 AM
Al Wallace	Member	Present	8:42 AM
Dell Young	Member	Present	8:47 AM

APPROVAL OF THE MINUTES

1. Approval of the January 23, 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, February 27, 2023 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the January 23, 2023 CBPA Board Public Hearing. A motion was made by Mr. Wallace and seconded by Mr. Jones to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

BOARD ACTION: THE CBPA BOARD VOTED TO APPROVE THE January 23, 2023 FINDINGS AND VARIANCE CONDITIONS ON February 27, 2023 AS FOLLOWS.

RESULT:	APPROVED [8 TO 0]
MOVER:	Al Wallace, Member
SECONDER:	Casey Jones, Vice Chairman
AYES:	Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young
ABSTAIN:	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.



Applicant & Property Owner **Romeo Spino**
 Address **2021 Thomas Bishop Lane**
 Public Hearing **February 27, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda
Item

1

Parcel GPINs: 1499-56-4825
Accela Record: 2022-CBPA-00065
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants, Inc.
CBPA Board Action: DEFERRED AT THE February 27, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, April 24, 2023 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. McCune, seconded by Ms. McDaniels, to defer the variance request to the April 24, 2023 CBPA Board Public Hearing. All present voted for the motion.

Mr. Burnette abstained due to conflict of interest with being an adjacent property owner to the applicant.

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



Applicant & Property Owner **Robert & Jessica Grosso**
Address **5324 Fairfield Boulevard**
Public Hearing **February 27, 2023**
City Council District **District 1**, formerly Kempsville

Agenda
Item

2

Parcel GPIN: 1466-48-6342
Accela Record: 2022-CBPA-00069
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON February 27, 2023.

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

Board's Findings:

1. Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The site currently does not offer any stormwater mitigation for the bay; however, the proposed improvements will be required to have treatment provided between the improvements and the bay and several properties along this reach of the Elizabeth River watershed are located within the 100-foot Resource Protection Area (RPA) buffer and subject to the same environmental conditions as this property.
2. This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the encroachment 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, and any improvements proposed on the lot will require CBPA approval.
3. The variance is the minimum necessary to afford relief because much of the rear lot is impacted by the CBPA and this request sits the proposed improvements with setbacks with minimal encroachment and the layout is cognitive of the existing confined conditions of the lot, zoning setbacks, and delineated RPA feature within the neighborhood, which appears to be consistent with the findings of the CBPA Ordinance.
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 planned detached garage will meet setback requirements with minimal impact to the CBPA buffer. In addition, the property owner is required to comply with the provisions of the City's Floodplain Ordinance. As such, the proposed improvements will be

built to a higher standard for flood proofing and flood venting than most other accessory structures within the neighborhood.

5. The garage gutters will be directed towards vegetated land cover for infiltration and buffer restoration shall be planted to help 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 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 consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees, 8 large shrubs and 16 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 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 5 feet seaward of improvements.
6. No perimeter fill material, disturbance of existing vegetation, or altering of existing contours is permitted.

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

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

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.

RESULT:	NO VOTE
MOVER:	Casey Jones, Secretary
SECONDER:	James F.N. McCune, Member

A substitute motion was made by Mr. Wallace, seconded by Ms. McDaniels, for the location of shed to be relocated to rear left of house with gravel from driveway to front of shed. All present voted for the motion.

RESULT:	APPROVED [6 TO 3]
MOVER:	Casey Jones, Secretary
SECONDER:	June Barrett-McDaniels, Member
AYES:	Barrett-McDaniels, France, Jones, Steier, Wallace, Young
NAYS:	Ballard, Burnette, McCune



Applicant & Property Owner **Dennis & Janice Ellmer**
 Address **2871 River Road**
 Public Hearing **February 27, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda
Item

3

Parcel GPIN: 1499-41-4751
Accela Record: 2022-CBPA-00075
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 3 CBPA VARIANCE CONDITIONS ON February 27, 2023.

A motion was made by Mr. Burnette, seconded by Mr. McCune, to hear Agenda Item 3 in conjunction with Agenda Item 13, Restoration Hearing for 2871 River Road. All present voted for the motion.

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

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 (CBPA) who are subject to the provisions of this Ordinance and are similarly situated because the site was originally platted in 1952 and the existing improvements area in keeping with the neighborhood and that premise of this finding is to get to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision when considering granting a variance to the CBPA Ordinance. During this encroachment process associated with the restoration order the applicant separated from the contractor who performed the work without proper authorizations and has since followed all necessary procedures to retain the improvements that were installed prior to obtaining a variance to the CBPA Ordinance.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance thus impacting 90 percent of the lot and a hardship is present based off the recordation of this legally created residential lot and the post-adoption of the City’s CBPA Ordinance. Any proposal may be reviewed and approved by the locality in accordance with the

variance process from any provisions of the Ordinance with the right and ability to prove such an exception in the Resource Protection Area (RPA).

- 3) The variance is the minimum necessary to afford relief because the synthetic turf although currently categorized as impervious area still allows water infiltration into the ground water aquifers. However, the terms “minimum necessary to afford relief” is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. While the area of synthetic turf could be relocated so that the encroachment into the RPA feature is less the result would impact the established landscape.
- 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 synthetic turf has the potential to improve the site by conserving water (estimated that every square foot of natural grass replaced saves 55 gallons of water per year); the reduction of several pounds of harmful pesticides and fertilizers, and can help reduce noxious emissions from lawnmower and the location of the synthetic turf will not be injurious to the neighborhood and offers merit towards not being of substantial detriment to water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load bioretention beds will be improved and expanded seaward of the improvements to store and treat the synthetic turf and additional trees installed to offset the impacts of how turf is categorized, and a minimal amount of available void space may be present within the aggregate subbase of the synthetic turf providing some value towards pollutant capture and infiltration of rainwater.

Board Conditions:

- 1) Upon granting of a variance, a CBPA / CIVIL permit must be obtained within 45 days. All required restoration must be installed or in the process of installation within 60 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.
- 2) This variance and associated conditions are **in addition to** the conditions of the CBPA Board variance granted November 24, 2003 and July 23, 2007.
- 3) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2022, prepared by WPL, titled CBPA Planting Exhibit. 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.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 2871 River Road appeared before the Board.

Dennis Ellmer of the property located at 2871 River Road appeared before the Board.

Senator Bill DeSteph appeared before the Board in support of the variance request.

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

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

RESULT:	APPROVED [6 TO 3]
MOVER:	Casey Jones, Secretary
SECONDER:	June Barrett-McDaniels, Member
AYES:	Barrett-McDaniels, France, Jones, Steier, Wallace, Young
NAYS:	Ballard, Burnette, McCune

A substitute motion was made by Mr. Wallace, seconded by Ms. McDaniels, to remove portion of synthetic lawn to meet 200% buffer restoration. All present voted for the motion.

RESULT:	DENIED [3 TO 5]
MOVER:	Al Wallace, Member
SECONDER:	June Barrett-McDaniels, Member
AYES:	Barrett-McDaniels, Wallace, Young
NAYS:	Ballard, Burnette, Jones, McCune, Steier
ABSTAIN:	France



Applicant & Property Owner **Edward & Angela Anderson**
Address **1208 Witchduck Bay Court**
Public Hearing **February 27, 2023**
City Council District **District 9**, formerly Bayside

Agenda
Item

4

Parcel GPINs: 1488-08-1551
Accela Record: 2022-CBPA-00048
Applicant's Agent: Daniel Vandyke
CBPA Board Action: DEFERRED AT THE February 27, 2023 CBPA BOARD PUBLIC HEARING TO THE Monday, April 24, 2023 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. McCune, seconded by Mr. Jones, to defer the variance request to the April 24, 2023 CBPA Board Public Hearing. All present voted for the motion.

RESULT:	APPROVED [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 **Amanda & Benjamin Waldron**
Address **2000 Alphine Court**
Public Hearing **February 27, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

5

Parcel GPIN: 1499-77-7989
Accela Record: 2022-CBPA-00078
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants, Inc.
CBPA Board Action: APPROVED WITH 12 CBPA VARIANCE CONDITIONS ON February 27, 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 1952 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and this variance request will not confer upon the applicant any special privilege if the recommended conditions are followed, and a comprehensive buffer restoration plan is implemented restoring much of this lot back to a functioning riparian buffer ecosystem.
- 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 improvements are being proposed within the small available footprint between the existing house and the retaining wall to minimize site impacts in the lower lying areas of the site. The recommended conditions found in the staff report aid in this 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offer stormwater mitigation for the bay, so the proposed stormwater mitigation will be added to facilitate treatment from the new improvements for the betterment of the bay and because of the accepted recommended conditions of this variance request.

- 5) The proposed buffer mitigation will enhance and compliment the site. Permeable Pavers will be installed to meet the stormwater management regulations to store and treat runoff prior to discharging into the river as a means to manage towards a no net increase in nonpoint source pollution load. Buffer restoration will benefit the little to no tree canopy present on the lot and will ensure that the variance does not contribute nonpoint source pollution into the bay.

Board Conditions:

- 1) The overall impervious cover of the lot shall not exceed 6,000 square feet or 35.3 percent of the lot above water and wetlands.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Said site plan shall address all conditions associated with the August 11, 2021, Chesapeake Bay Preservation Area (CBPA) Administrative Variance and the conditions associated with the February 27, 2023, CBPA Board Variance herein.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall achieve the following restoration requirements
 - Installation of **4,075 square feet** of buffer restoration in substantial compliance with CBPA Exhibit provided by WPL dated December 2, 2022 – approximately 3,475 square feet located along the southern portion of the lot between Broad Bay and the existing boat basin, and 600 square feet located adjacent to the swimming pool. Said 3,475 square feet buffer restoration area shall be restored to a suitable upland/high marsh wetland community based on existing topography and grade elevation (i.e., high marsh, transition, shrub, upland, etc.). Said plant material for this area shall specify wetland plants, perennial, shrub, and tree species appropriate for the existing environmental conditions and provide the required form / size (i.e., plug, bare root, container, etc.) for each.
 - Installation of **4 canopy trees, 4 understory trees, 8 large shrubs and 12 small shrubs or grasses.**
 - Installation of **1,558 square feet** of buffer restoration. Said restoration shall achieve the full complement of vegetation consisting of **4 canopy trees, 8 understory trees and 12 small shrubs** consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the RPA, 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” – 6” in depth. Said mulched

restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings.

Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall 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) 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.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 9) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 10) The proposed walkway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided, and a site plan submitted to the Development Services Center for review and approval.
- 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) The conditions and approval associated with this variance are based on the exhibit plan dated December 2, 2022, prepared by WPL, signed January 29, 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.

Billy Garrington of Governmental Permitting Consultants, Inc. representing the applicant of the property located at 2000 Alpine Court 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Macklin & Diane Smith**
Address **2513 Broad Bay Road**
Public Hearing **February 27, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

6

Parcel GPIN: 1499-88-2629
Accela Record: 2022-CBPA-00080
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON February 27, 2023.

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

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and the surrounding adjacent properties have similar improvements.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because this project meets the small project standards to limit land disturbance and impact to the buffer with the proposed improvements being located within the 100-foot RPA buffer to avoid impacts to existing vegetation 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 pool itself helps to harvest rainwater. This request disturbs less than 2,500 square feet of land and several stormwater management facilities will be provided to treat runoff before entering the bay.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, additional landscape mitigation and BMP will be used as needed and the native soil is sand. In addition, soil amendments, rainwater harvesting, infiltration beds, bioretention planting beds will be included and no disturbance to the existing riparian buffer as BMPs on the lot, even though they are not required due to the land disturbance associated with the request.

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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not 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. Buffer restoration shall be in substantial compliance with the landscape design provided by Di-namic Landscape Designs dated February 6, 2023, prepared by Diane Smith, VNLA Certified Horticulturalist.

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.
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.

Diane Smith, the applicant of the property located at 2000 Alphine Court, 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Brian & Brandy Clark**
Address **1108 Michaelwood Drive**
Public Hearing **February 27, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

7

Parcel GPIN: 1488-55-6738
Accela Record: 2023-CBPA-00001
Applicant's Agent: Mark Garrett - Sykes, Bourdon, Ahern & Levy PC
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON February 27, 2023.

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

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. Several lots along this reach of Michaelwood Drive have improvements located landward of the top of bank feature with several of those lots having an overall impervious cover of approximately 25 percent of the lot above water and wetlands.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the proposed development is encroaching minimally into the 50-foot landward buffer and all other proposed improvements are in the variable width buffer and the proposed improvements are situated to minimize encroachment within the buffer to the best of their ability.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality.
- 5) Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering 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: **1,734 square feet x 200 percent = 3,468 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, 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 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 10 feet from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) The conditions and approval associated with this variance are based on the exhibit plan dated December 15, 2022, prepared by Align Surveying & Design, P.C. 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.

Mark Garrett of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at 1108 Michaelwood Drive, 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Cargin, LLC**
Address **2369 S. Wolfsnare Drive**
Public Hearing **February 27, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

8

Parcel GPIN: 1498-80-4089
Accela Record: 2023-CBPA-00002
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON February 27, 2023.

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

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements are 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.
- 3) The variance is the minimum necessary to afford relief because the pool is located in the only place possible and is limited in size as much as possible. The layout of the proposed improvements is reasonable given the location of 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 size and layout of the proposed improvements on the lot are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff and improve water quality.
- 5) Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay. The removal of the accessory structures will also be an upgrade in water quality as a means to manage towards a no net increase in nonpoint source pollution load. In addition, the lot has a well-established tree canopy cover, and the applicant is only requesting to remove trees within the exact area where the improvements are proposed.

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: **1,631 square feet x 200 percent = 3,262 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: **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. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) ****** 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 \$373.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated January 2, 2023, prepared by Waterfront Consulting, LLC. 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.

Billy Garrington of Governmental Permitting Consultant, Inc. representing the applicant of the property located at 2369 S. Wolfsnare Drive, 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Mary & Nathan Cobb**
Address **3913 Meeting House Road**
Public Hearing **February 27, 2023**
City Council District **District 9**, formerly Bayside

Agenda
Item

9

Parcel GPIN: 1489-24-7031
Accela Record: 2023-CBPA-00004
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: APPROVED WITH 12 CBPA VARIANCE CONDITIONS ON February 27, 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 site was originally platted in 1990 and the RPA buffers currently impact a 96% of the lot. The improvements are in keeping with the development of the neighborhood and adjacent properties.
- 2) The encroachment into the RPA on this lot is based upon circumstances that have been created by the predecessor in title that limits a reasonable construction footprint solely for a principal structure; therefore, this request to further encroach has been designed in a manner that minimizes encroachment into the 100-foot RPA buffer for reasonable improvements.
- 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 proposed improvements situate the new impervious cover to minimize encroachment into the most environmentally sensitive portions of the riparian buffer and has situated the improvements adjacent to the existing residence with no encroachment within 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 are in keeping with the redevelopment of the neighborhood and adjacent parcels. The proposed redevelopment will be required to have treatment provided between the improvements and the canal. The proposed artificial turf will be designated with non-toxic materials and will have a gravel infiltration subbase that will serve as containment for its surface runoff thorough out the covered area.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site. Portions of

the natural lawn areas will be replaced with buffer restoration and stormwater management facilities (Bioretention and gravel infiltration subbase) will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the canal as a means to manage towards a no net increase in nonpoint source pollution load. The best management practices coupled with the buffer restoration as shown on the submitted buffer restoration plan will ensure a no net increase in nonpoint source pollution load into the bay with 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) Buffer restoration shall be installed in substantial compliance with the Buffer Restoration Plan submitted with the Chesapeake Bay Preservation Area (CBPA) Exhibit prepared by WPL. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 9) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 10) ** 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 \$619.89 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.

- 11) This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 16, 1991.

- 12) The conditions and approval associated with this variance are based on the exhibit plan dated June 9, 2022, prepared by WPL, signed December 21, 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.

Billy Garrington of Governmental Permitting Consultant, Inc. representing the applicant of the property located at 3913 Meeting House 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Matthew & Claire Coose**
Address **1025 Curlew Drive**
Public Hearing **February 27, 2023**
City Council District **District 6**, formerly Lynnhaven

Agenda
Item

10

Parcel GPIN: 2418-34-2775
Accela Record: 2023-CBPA-00005
Applicant's Agent: Billy Garrington - Governmental Permitting Consultant, Inc.
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON February 27, 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 lots were created many decades prior to the bay act being adopted and this is a standard building addition request to provide additional living space for the family.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the current owner purchased the house that was previously approved by the Board and were not associated with the previous variance. The entire lot is impacted by the RPA feature both front yard and back yard.
- 3) The variance is the minimum necessary to afford relief because the new addition being planned is relatively small in square footage (appx. 700 sq. ft.) in order to comply with the minimum necessary for relief and is located as far from the feature as possible to the extent a BZA variance will be required later and has designed the layout of the proposed improvements to minimize impacts to the best of their ability on this lot that is completely encumbered by the RPA.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because this new development will include bmp's to filter storm water, additional buffer restoration as required for treatment of runoff, in addition to enhancing the soil and creating infiltration planting beds to help with conditions on the lot, even though best management practices are not required given the associated land disturbance.
- 5) Infiltration planting beds and buffer restoration post construction, strict E & S measures,

stockpile on existing hard surfaces, and single point access all to help protect the adjacent waterway as a means to manage towards a no net increase in nonpoint source pollution.

Board Conditions:

1. The conditions and approval associated with this variance are based on the exhibit plan dated November 10, 2022, prepared, and signed November 28, 2022, by Warren Allen Whitmore, Jr. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not 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. A landscape plan showing the required buffer restoration detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the Planning Administration Chesapeake Bay Board team. 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: 762 square feet x 200 percent = 1,524 square feet consisting of 2 canopy trees, 2 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 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. 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. 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.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
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 Board variance granted August 27, 2012.

Billy Garrington of Governmental Permitting Consultant, Inc. representing the applicant of the property located at 1025 Curlew Drive, 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:	Ballard, Barrett-McDaniels, Burnette, France, Jones, McCune, Steier, Wallace, Young



Applicant & Property Owner **Erik N Moore & et al**
Address **2760 Holly Road**
Public Hearing **February 27, 2023**
City Council District **District 6**, formerly Beach

Agenda
Item

11

Parcel GPIN: 2418-90-3409
Accela Record: 2023-CBPA-00006
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON February 27, 2023.

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

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements, as conditioned, would not give the applicant any convenience not accorded to others who are subject to the provisions of this Ordinance.
- 2) This variance request is based upon conditions that have been created by the original developer of the lot associated with the 1997 CBPA Variance making it challenging in situations such as this when an individual purchases property and it is not disclosed that the said property falls within the Chesapeake Bay Preservation Area.
- 3) The variance is the minimum necessary to afford relief because subject to the recommended conditions and minimal land disturbance with the request the encroachment into the RPA for the proposed wood deck is acceptable.
- 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 limiting in size of proposed improvements as conditioned in the staff report make the variance request the minimum necessary to afford relief to allow for revegetation of denuded areas, implementing organic material towards the reestablishment of a forest floor seaward of the existing retaining wall, and deploying methodologies to abate ongoing surface erosion.
- 5) Quality materials will be used to not be harmful to the environment as a means to manage towards a no net increase in nonpoint source pollution load and the conditioned buffer restoration associated with the proposed improvements, under deck treatment, and retention of existing vegetation of the lot provide merit towards water quality benefits.

Board Conditions:

1. Along the west side of the existing single-family residence the width of the wood deck shall not exceed 14 feet and the length shall not exceed 38 feet.
 2. 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.
 3. All areas seaward of the existing retaining walls and seaward of the proposed wood deck shall be restored to a forested floor condition. Said forested floor condition shall consist of a mulch layer of organic material (pine straw, leaf litter, etc.) at 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to a denuded condition exposing the existing soil surface. Within the restored naturalized area salt and flood tolerant plant species shall be installed at the following rate.
 - **8 small shrubs and 16 grasses**
- 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. 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.
 6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
 7. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
 8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 28, 1997.

Stefan Moore of the property located at 2760 Holly Road appeared before the Board.

Stacey Moore appeared before the Board in support of the variance request.

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

RESULT:	APPROVED [8 TO 1]
MOVER:	William R. Burnette, Secretary
SECONDER:	Al Wallace, Member
AYES:	Ballard, Burnette, France, Jones, McCune, Steier, Wallace, Young
NAYS:	Barrett-McDaniels



Applicant & Property Owner
Jennifer Cosentino & Shane Spanitz
Address **3105 Lynnhaven Drive**
Public Hearing **February 2, 2023**
City Council District **District 8**, formerly Lynnhaven

Agenda
Item

12

Parcel GPIN: 1499-08-7657
Accela Record: 2023-CBPA-00003
Applicant's Agent: Mark Garrett - Sykes, Bourdon, Ahern & Levy, PC
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON February 27, 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 area in keeping with the necessary redevelopment in this impacted area of Lynnhaven Colony.
- 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 owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The house has been placed over the existing footprint of the current home to minimize impacts and avoid development in the 50' seaward portion of the site and the placement of the proposed improvements limits encroachment into the 50-foot seaward buffer and utilizes redevelopment to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the use of underdeck treatment with the proposed improvements. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) The existing shoreline will be enhanced and expanded upon to compliment the site.

Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the canal as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The 24-inch deciduous tree located along the western portion of lot shall be preserved. Submitted concurrent with the Single-Family RPA Site Plan shall be a tree preservation plan that provides the location and type of tree preservation measures for all trees on the lot to be preserved.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,332 square feet x 200 percent = 2,664 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 14 understory trees, 14 large shrubs, and 21 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. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$305.25 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted August 1, 2022.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated November 23, 2022, prepared by WPL, signed December 30, 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.

Mark Garrett of Sykes, Bourdon, Ahern & Levy, PC representing the applicant of the property located at 3105 Lynnhaven Drive, appeared before the Board.

Don Pollard, originally in opposition of the variance request, appeared before the Board and rescinded his opposition.

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



Address of Noncompliance **2871 River Road**
 Property Owner **Dennis & Janice Ellmer**
 Public Hearing **February 27, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda
Item

13

Parcel GPIN: 1499-41-4751
Accela Record: 2022-CBPV-00002
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED TO HEAR IN CONJUNCTION WITH AGENDA ITEM 3 AFTER-THE-FACT CHESAPEAKE BAY PRESERVATION AREA (CBPA) VARIANCE REQUEST.

A motion was made by Mr. Burnette, seconded by Mr. McCune, to hear Agenda Item 13 in conjunction with Agenda Item 3, After-the-fact CBPA Variance request at 2871 River Road. CBPA Variance conditions associated with Agenda Item 3 shall serve as restoration initiatives. All present voted for the motion.

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