



**MINUTES  
CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
DECEMBER 18, 2019**

Chair Mr. Jester, called to order the **Chesapeake Bay Preservation Area Board** meeting in the City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, December 18, 2019.

A motion was made by Mr. Jones and seconded by Mr. Smith to approve the November 25, 2019 minutes. All voted for the motion. This vote also serves as the official roll call for this meeting. All members were present except Mr. McCoy.

**BOARD ACTION: APPROVED NOVEMBER 25, 2019 MINUTES ON DECEMBER 18, 2019**

**AYE    8        NO    0        ABSTAIN    0        ABSENT    1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>ABSENT</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>

**Board Members Present: Joe Dreps, David France, David Jester, Casey Jones, June McDaniels, Reese Smith, Michael Steier, and Al Wallace.**



## Administrative Business Election of Officers for 2020

Agenda  
Item

# 1

### Election of 2020 Chesapeake Bay Preservation Area Board Officers

#### 2020 Chesapeake Bay Preservation Area Board Election of Officers

**Chairman – Dave Jester**  
**Vice Chairman – Dave France**  
**Secretary – Casey Jones**

#### 2020 Chesapeake Bay Preservation Area Board Members

- June Barrett-McDaniels
- Norbert Joe Dreps
- Dave France
- Dave Jester
- Casey Jones
- Wayne McCoy
- Reese Smith, Jr.
- Michael Steier
- Al Wallace

**A motion was made by Mr. Jones, seconded by Mr. Smith to elect Mr. Jester as the Chairman, Mr. France as the Vice Chairman, and Mr. Jones as the Secretary. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>ABSENT</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **NLSM Conservation, LLC**  
Address **4152 Ewell Road**  
Public Hearing **December 18, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**2**

**Parcel GPIN:** 1470-90-3329  
**Accela Record:** 2019-CBPA-00045  
**Applicant's Agent:** Self Represented  
**CBPA Board Action:** APPROVED WITH 18 CONDITIONS ON DECEMBER 18, 2019

**Board's Findings:**

The variance of NLSM Conservation, LLC located at 4152 Ewell Road was granted with the following 18 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 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 this variance allows for reasonable development given the hardship that exists on the site while minimizing the environmental impact.
- 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 given that this variance request is dictated by contours of the land and the desire to preserve the existing trees. In addition, 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 is within the RPA.
- 3) The variance is the minimum necessary to afford relief with the design of the improvements created as a minimum footprint necessary to construct a home while avoiding removal of any trees.
- 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 this project is a custom design that addresses the specific site requirements while minimizing impacts to the environment.

- 5) The applicant's use of a site-specific design to avoid the seaward buffer to the variance request as a means to manage towards a no net increase in nonpoint source pollution load.

**CPBA Variance Conditions:**

- 1) The conditions of this variance will supersede the June 25, 2018 CBPA Variance for the property located at 4152 Ewell Road.
- 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) A maximum of 4,600 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50-foot seaward buffer or below the top of bank feature. All remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

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

- 5) Stormwater management shall 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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
- 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.
- 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) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 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**

\$1,902.08 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) 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.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated December 14, 2017, prepared by MSA, P.C. and signed and dated by Braxton Werner of Wernerfield Architects, September 25, 2019. 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.
- 18) The proposed utility yard with condensing units, generator and trash receptacles shall be relocated towards the dwelling to be out of the 20-foot side yard setback, and the 50-foot seaward collectively.

**No one appeared before the Board.**

**Maria Fischer of 4164 Ewell Road appeared before the Board in opposition.**

**A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance as amended (Added Condition 18). All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>ABSENT</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **Krambias Properties, LLC**  
 Address **921 Bobolink Drive**  
 Public Hearing **December 18, 2019**  
 City Council District **Beach**

Agenda  
 Item  
**3**

**Parcel GPIN:** 2418-22-7567  
**Accela Record:** 2019-CBPA-00035  
**Applicant’s Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** DEFERRED ON DECEMBER 18, 2019 UNTIL THE JANUARY 27, 2020 CHESAPEAKE BAY PRESERVATION AREA (CBPA) PUBLIC HEARING

**Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. Jones, seconded by Mr. Wallace to defer the variance until the January 27, 2020 CBPA public hearing. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE**  
**FRANCE AYE**  
**JESTER AYE**  
**JONES AYE**  
**MCCOY ABSENT**  
**MCDANIELS AYE**  
**SMITH AYE**  
**STEIER AYE**  
**WALLACE AYE**



Applicant **City of Virginia Beach**  
 Address **Bonney Road**  
 Public Hearing **December 18, 2019**  
 City Council District **Lynnhaven**

Agenda  
 Item  
**4**

**Parcel GPIN:** 1477-52-4516  
**Accela Record:** 2019-CBPA-00048  
**Applicant’s Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** DEFERRED ON DECEMBER 18, 2019 UNTIL THE JANUARY 27, 2020  
 CHESAPEAKE BAY PRESERVATION AREA (CBPA) PUBLIC HEARING

**Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. Jones, seconded by Mr. Wallace to defer the variance until the January 27, 2020 public hearing. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE**  
**FRANCE AYE**  
**JESTER AYE**  
**JONES AYE**  
**MCCOY ABSENT**  
**MCDANIELS AYE**  
**SMITH AYE**  
**STEIER AYE**  
**WALLACE AYE**



Applicant **Erik and Wei Chen**  
 Address **1501 Quail Point Road**  
 Public Hearing **December 18, 2019**  
 City Council District **Lynnhaven**

Agenda  
 Item  
**5**

**Parcel GPIN:** 2418-04-0096  
**Accela Record:** 2019-CBPA-00055  
**Applicant’s Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** DEFERRED ON DECEMBER 18, 2019 UNTIL THE JANUARY 27, 2020  
 CHESAPEAKE BAY PRESERVATION AREA (CBPA) PUBLIC HEARING

**Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. Jones, seconded by Mr. Wallace to defer the variance until the January 27, 2020 public hearing. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE**  
**FRANCE AYE**  
**JESTER AYE**  
**JONES AYE**  
**MCCOY ABSENT**  
**MCDANIELS AYE**  
**SMITH AYE**  
**STEIER AYE**  
**WALLACE AYE**



Applicant **Thomas Atherton, III**  
Address **1320 Penguin Circle**  
Public Hearing **December 18, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**6**

**Parcel GPIN:** 1488-25-1889  
**Accela Record:** 2019-CBPA-00056  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 17 CONDITIONS ON DECEMBER 18, 2019

**Board's Findings:**

The variance of Thomas Atherton, III located at 1320 Penguin Circle was granted with the following 17 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

- 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 redevelopment of the lot with minimal encroachments within the 50-foot landward buffer does not convey a special privilege to the applicant given the extent of redevelopment on adjacent lots within the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser but rather is necessitated by the fact that 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 amount of redevelopment that is proposed with the variance request, coupled with the minimal encroachments into the upper reaches of the 50-foot landward buffers, provide merit towards the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no storm water*

*treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* The Board concurs with the applicant’s statement.

- 5) *“Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. If properly implemented and maintained, The Board concurs that the restoration of the riparian buffer offers a management practice that aids in a no net increase in nonpoint source pollution.

**CPBA Variance 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: **3,380 square feet x 200 percent = 6,670 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 canopy trees, 8 understory trees, 32 large shrubs, and 48 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline

structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 9) 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.
- 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.
- 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) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 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 \$774.58 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated October 25, 2019, prepared by Gallup Surveyors & Engineers, signed October 25, 2019 by David R. Butler. 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.
- 16) The proposed covered lanai shall not encroach into the 50-foot seaward buffer of the Resource Protection Area (RPA).
- 17) Although shown on the CBPA Exhibit, the use of a permeable pavement system for the proposed driveway is not required as a condition of the Chesapeake Bay Preservation Area (CBPA) variance approval.

**Thomas Atherton and Billy Garrington of Governmental Permitting Consultants appeared before the Board.**

**There was no opposition present.**

**A motion was made by Mrs. McDaniels, seconded by Mr. Wallace to approve the variance as amended (Added Conditions 16 and 17). All voted for the motion except Mr. Smith who was abstained because his company located at 507 Viking Drive, Suite F, is the contractor as stated on the disclosure statement.**

**AYE 8 NO 0 ABSTAIN 1 ABSENT 1**

**DREPS AYE  
FRANCE AYE  
JESTER AYE  
JONES AYE  
MCCOY ABSENT  
MCDANIELS AYE**

<b>SMITH</b>	<b>ABSTAIN</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **Regina Wrench**  
Address **2980 Buccaneer Road**  
Public Hearing **December 18, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**7**

**Parcel GPIN:** 1499-17-5904  
**Accela Record:** 2019-CBPA-00057  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 9 CONDITIONS ON DECEMBER 18, 2019

The variance of Regina Wrench located at 2980 Buccaneer Road was granted with the following 7 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality 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 with the recommended conditions provided in this Staff report reflecting conditions imposed on previous variance requests and the existing condition of waterfront parcels in the vicinity, specifically addressing a no net increase in impervious cover and restoration of the buffer with vegetation that is nonexistent on the lot.
- 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 or contract purchaser because this parcel was platted in 1955, prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. Also, the residential structure was constructed in 1958, therefore, placing this property entirely within the RPA.
- 3) The variance is the minimum necessary to afford relief with a no net increase in impervious cover, as conditioned by this variance.
- 4) In an effort to ensure that this variance request will be in harmony with the purpose and intent of the CBPA Ordinance, not injurious to the neighborhood, nor be of substantial detriment to water quality, or otherwise detrimental to the public welfare, the Board conditions that the removal of impervious cover, as conditioned within the Staff report, will promote infiltration of stormwater, thereby furthering the intent of the CBPA Ordinance.

- 5) *“Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. The Board offers, in addition to the above statement, that there is mutual agreement that the site’s flat topography and high infiltration rates of the existing soil profile help reduce the potential for nonpoint source pollution from reaching adjacent waterways.

**CBPA Variance 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. A Single-Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not 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. 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. 800 square feet of buffer restoration shall be installed for the proposed new impervious cover 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: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said

mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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. The overall impervious cover of the lot shall not exceed 6,940 square feet.
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. 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.
7. 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.**
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.
9. 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 appeared before the Board representing the applicants**

**There was no opposition present.**

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance request with the 9 conditions listed above. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE  
FRANCE AYE  
JESTER AYE  
JONES AYE**

<b>MCCOY</b>	<b>ABSENT</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **David Kilby**  
Address **3065 Bray Road**  
Public Hearing **December 18, 2019**  
City Council District **Lynnhaven**

Agenda  
Item

**8**

**Parcel GPIN:** 1498-20-9716  
**Accela Record:** 2019-CBPA-00058  
**Applicant's Agent:** Billy Garrington, Governmental Permitting Consultants  
**CBPA Board Action:** APPROVED WITH 16 CONDITIONS ON DECEMBER 18, 2019

The variance of David Kilby located at 3065 Bray Road was granted with the following 16 reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality 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 majority of proposed improvements occur within the variable width buffer of the RPA and would be subject to an Administrative Variance had the accessory structure and wood deck not been proposed within the 100-foot RPA buffer. Given the proposed improvements within the 100-foot RPA buffer, the Board is of the opinion that the request does not confer any special privileges to the applicant with the overall impervious cover of the lot being approximately 20 percent and the 100-foot RPA buffer primarily in a natural state with a mature canopy cover and forest floor present.
- 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 or contract purchaser, because *"the property has been under the Bay Act regulations since it was adopted and avoidance is not possible since it was adopted and will forever be in the RPA feature."* Although the lot was platted after the adoption of the CBPA Ordinance, the Board is of the opinion the applicant has maintained a functional RPA buffer despite the existing encroachments and has complied with the performance standards of the CBPA Ordinance, specifically limiting land disturbance to the area necessary to provide for the proposed use and preserving the existing vegetation to the maximum extent practicable.
- 3) The variance is the minimum necessary to afford relief because *"we have located the new driveway as far from the feature as possible only encroaching in the*

*variable width buffer which is the least sensitive portion of the buffer. The driveway will have its own BMP to treat runoff after installation.”* The Board concurs.

- 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 *“water quality will not be impacted by this variance. The property is rather big with an unusual amount of area in a natural state which is the best buffer for treatment. We are as far from the feature as possible and the new driveway will alleviate a serious parking problem on the site. The owners are not able to entertain friends without blocking the access to the property behind them and delivery trucks routinely cause problems and this will solve the issue.”*
- 5) In-lieu of on-site BMPs further disturbing the critical root zones of the existing trees, the Board conditions that a permeable pavement system for the proposed driveway be used in order to minimize impervious cover and to promote infiltration of stormwater into the ground as a means to manage towards a no net increase in nonpoint source pollution load.

**CBPA Variance Conditions:**

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan**
- 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.
- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 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 \$756.93 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 **are in addition to** the conditions of the Board variances granted August 27, 2001 and January 28, 2008.

16) The conditions and approval associated with this variance are based on the exhibit plan dated October 30, 2019, prepared by Chesapeake Bay Site Solutions, signed November 11, 2019 by Gregory O. Milstead. 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

**Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.**

**There was no opposition present.**

**As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance request with the 16 conditions listed above. All voted for the motion.**

<b>AYE</b>	<b>8</b>	<b>NO</b>	<b>0</b>	<b>ABSTAIN</b>	<b>0</b>	<b>ABSENT</b>	<b>1</b>
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<b>DREPS</b>	<b>AYE</b>
<b>FRANCE</b>	<b>AYE</b>
<b>JESTER</b>	<b>AYE</b>
<b>JONES</b>	<b>AYE</b>
<b>MCCOY</b>	<b>ABSENT</b>
<b>MCDANIELS</b>	<b>AYE</b>
<b>SMITH</b>	<b>AYE</b>
<b>STEIER</b>	<b>AYE</b>
<b>WALLACE</b>	<b>AYE</b>



Applicant **Kimberly Miller**  
 Address **512 58th Street**  
 Public Hearing **December 18, 2019**  
 City Council District **Lynnhaven**

Agenda  
 Item  
**9**

**Parcel GPIN:** 2419-60-3154  
**Accela Record:** 2019-CBPA-00062  
**Applicant’s Agent:** Self Represented  
**CBPA Board Action:** APPLICATION WITHDRAWN ON DECEMBER 18, 2019

**No one appeared before the Board.**

**There was no opposition present.**

**Staff received an e-mail from the applicant requesting that the application be withdrawn. A motion was made by Mr. Jones, seconded by Mr. Wallace to withdraw this application. All voted for the motion.**

**AYE 8 NO 0 ABSTAIN 0 ABSENT 1**

**DREPS AYE**  
**FRANCE AYE**  
**JESTER AYE**  
**JONES AYE**  
**MCCOY ABSENT**  
**MCDANIELS AYE**  
**SMITH AYE**  
**STEIER AYE**  
**WALLACE AYE**