



CITY OF
**VIRGINIA
BEACH**

Board of Zoning Appeals

October 1, 2025

Kevin Newton, Chairman
Robert Thornton, Vice Chairman
Myles Pocta, Secretary

City Staff:
Hannah Sabo, Zoning Administrator
Victoria Eisenberg, City Attorney

The Board of Zoning Appeals will conduct a Public Hearing on Wednesday, October 1, 2025, at 2:00 p.m., in the Council Chambers at City Hall, Building 1, 2nd Floor, 2401 Courthouse Drive. There is a staff briefing held at 1:00 p.m., in Room 2034, Building 1. All interested parties are invited to observe.

For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-8074 or go to <https://planning.virginiabeach.gov> or visit the Planning Department, 2403 Courthouse Drive, Virginia Beach, VA by appointment.

Board of Zoning Appeals Agenda for October 1, 2025:

- A. Comments by Zoning Administration and Chairman
- B. Review of Public Hearing Cases
- C. Staff Briefings

Public Hearing at 2:00 p.m.

Case 2025-BZA-00053

Applicant: Michael & Taryn Handlon

Representative: Carl Adkins, II, Solid Structures

Address: 1884 Champion Cir

Request: A variance to the minimum required yard for a proposed building addition

Case 2025-BZA-00061

Applicant: David S. BrisBois

Representative: Self Represented

Address: 6233 Pocahontas Club Rd

Request: A variance to the minimum required yard for a proposed accessory building

Case 2025-BZA-00069

Applicant: Cameron & Rachel Miller

Representative: Self Represented

Address: 1808 Cooper Rd

Request: A variance to the minimum required yard for a proposed accessory building

Case 2025-BZA-00070

Applicant: Lucky & Elizabeth Peterson

Representative: Billy Garrington, GPC, Inc.

Address: 1109 York Ln

Request: A variance to the minimum required yard for a proposed pergola

Case 2025-BZA-00071

Applicant: Beach Framing & Drywall, LLC

Representative: R. Edward Bourdon, Jr., esq., Sykes Bourdon Ahern & Levy

Address: 1920 Gum Bridge Rd

Request: A variance to the minimum required yards for a proposed single-family dwelling

Case 2025-BZA-00076

Applicant: Richard D. Swift

Representative: Self Represented

Address: 1932 Sunrise Dr

Request: A variance to the minimum required yard and maximum allowable accessory structure floor area for existing accessory structures (shed and outbuilding)

Case 2025-BZA-00072 (Preliminary Hearing)

Applicant: Dawn Hrelc, Luke Kohan, The Dawn Hrelc Revocable Trust

Representative: Kevin Martingayle, esq., Bischoff Martingayle, P.C.

Address: 1212 York Ln

Request: A preliminary hearing concerning a Zoning Administrator's determination regarding 1212 York Ln



CASE: 2025-BZA-00053 - Michael and Taryn Handlon c/o Solid Structures

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

1884 Champion Circle

REPRESENTATIVE:

Carl W. Adkins II of Solid Structures, Design, Outdoor Living, and Build

VARIANCE REQUEST(S) (ABBREVIATED):

A variance to the minimum required yard for a proposed building addition.

VARIANCE REQUEST(S) (DETAILED):

The following variance is requested pursuant to Article 5, Section 502(a) of the City Zoning Ordinance:

SIDE YARD ADJACENT TO STREET (NORTHWEST - BEAUTY WAY): A side yard adjacent to a street variance to 28 feet instead of 30 feet as required for the construction of a covered deck or future screen room/sunroom.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2413-49-3138

LOT AREA:

- 20,640 square feet (.47 acres)

AICUZ:

65-70 Decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Southern Rivers
- X (area determined to be outside the 500-year flood)

VOTING DISTRICT:

District 2

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

None found

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Single-family (built in 2008)
- R-20(OP) (Residential District) (Open Space Promotion)
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Residential (single-family), R-20(OP)
- South: Residential (single-family), R-20(OP)
- East: HOA Property (open space), R-20(OP)
- West: Residential (single-family), R-20(OP)

EXISTING CONDITIONS:

- Dwelling: 30.6 feet from front property line (southwest)
- Dwelling: 32.5 feet from side property line (southeast)
- Dwelling: 34.3 feet from side property line adjacent to Beauty Way (northwest)
- Dwelling: Greater than 20 feet from rear property line rear (northeast)
- Attached Deck: 30 feet from the side property line adjacent to Beauty Way (northwest)

EXTENT OF PROJECT:**Covered Deck** (variance requested)

Proposed demolition of existing deck, then replace with new covered deck located 28 feet from the side corner property line instead of 30 feet as required.

BACKGROUND INFORMATION:

According to City records, the subject parcel was developed in 2008. At the time of construction, the property was located within an R-20(OP) zoning district (open space promotion), which is also the current Zoning District assignment.

In 2003, City Council granted a conditional rezoning for the subject neighborhood, which changed the zoning district assignment from agricultural to R-20 residential (open space promotion). This approval allowed parcels in the subdivision to contain less lot area than a standard 20,000 square foot R-20 property. Such reductions are only permitted when developers dedicate a mutually agreed upon amount of public open space throughout a proposed neighborhood. As a result, the parcels within the subject community were approved to range in size from 12,000 square feet to 40,000 square feet, with the subject parcel containing 20,640 square feet.

The applicant is requesting a variance to encroach into the required side yard adjacent to Beauty Way with a proposed one-story covered deck. While the current request is solely for a covered deck, City staff acknowledges that these types of structures are typically good candidates for future enclosures, such as screen porches, sunrooms, and the like. Consequently, staff added a condition for Board consideration that would allow future conversion of the proposed covered deck into a screen porch, sunroom, or similar, with a stipulation that such conversion stay within the footprint of the structure associated with this variance request.

The subject property sits at the corner of Champion Circle and Beauty Way, with its side corner boundary line configured in a seemingly atypical manner. Such observation is based on the subject boundary's 64° southeasterly acute angle along Beauty Way, which is 26° from a 'standard' 90° property line. This configuration appears to constrict the side corner and rear yards in a way not typically associated with other nearby corner lots. Such matter may be viewed as producing the need for modest setback relieve based on a physical condition of the property. Moreover, it could also be argued that such condition is a hardship not generally shared by other corner lots within the subject neighborhood.

KEY CONSIDERATIONS:

- The rather atypically angled subject property boundary along Beauty Way, which appears to somewhat constrict the yard, is arguably a hardship not generally shared by other corner lots in the subdivision.
- While admittedly debatable, the subject request would seemingly alleviate a hardship due to a physical condition relating to the property.
- The proposed improvements, combined with a relatively modest two-foot yard encroachment request, does not appear to be of substantial detriment to adjacent and nearby properties.

LETTERS OF SUPPORT AND OPPOSITION (AS OF 09-22-2025):

- Letters of Support: 0
- Letters of Opposition: 0

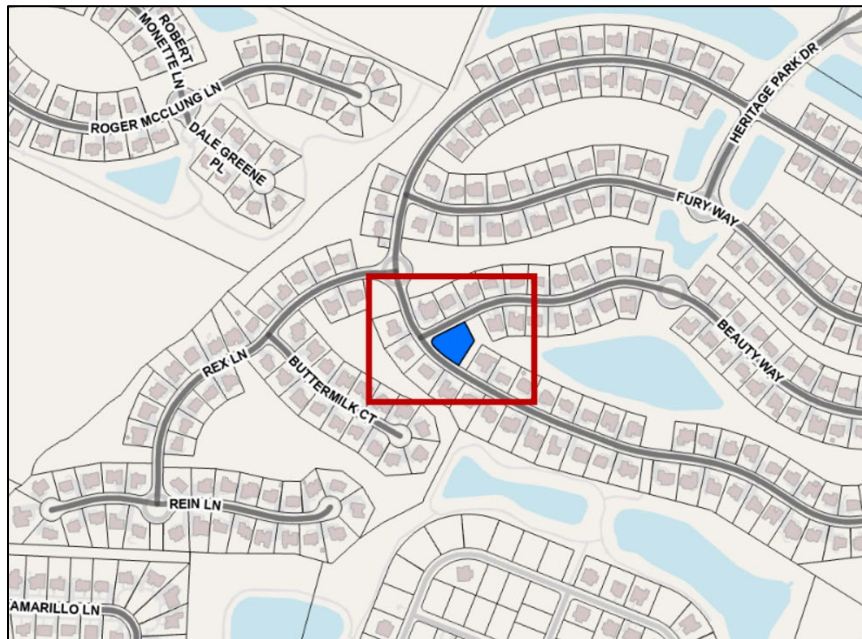
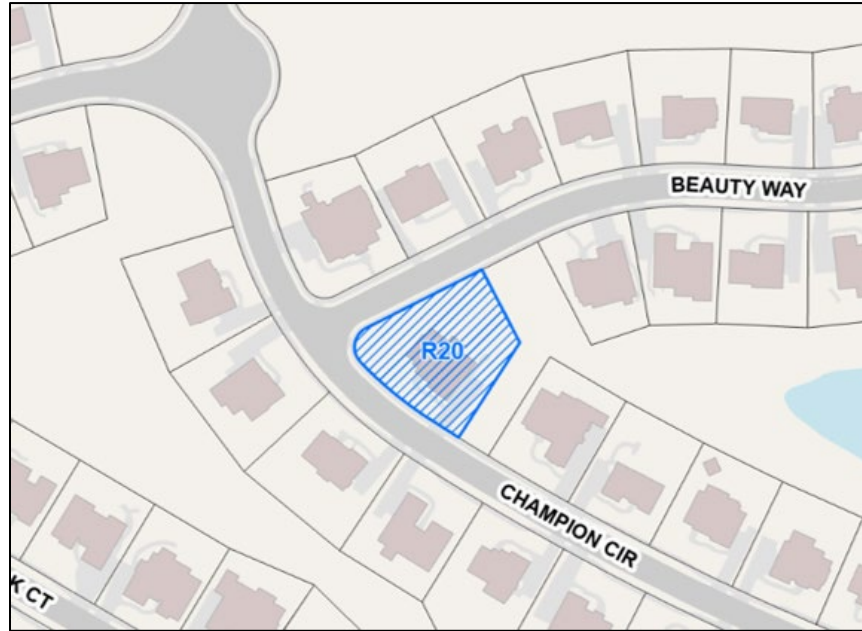
APPLICANT STATED HARDSHIP:

"I would like to request a variance for a 28' side yard setback instead of the 30' setback for the proposed deck and roof structure. The proposed addition of the cover deck portion on the westside will encroach into the 30' side yard setback along Beauty Way. This encroachment would be 1'8" into the current 30' setback on the northwest corner of the proposed structure add would equal approximately 4sqft of area in the setback. The total height of the proposed structure in the area would be 11'5". To meet the existing setback requirements would require the loss of 49sqft of covered space to be utilized. The proposed design is consistent with the current house structure it is being built to. The proposed structure would not impact the view or use of any of the surrounding residence or roadways."

RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, "Physical Survey of Lot 171, Subdivision of Heritage Park, Phase 2," dated April 17, 2025, and prepared by Rouse-Siren Associates, Ltd. (shown as Exhibit 'A' in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. Future conversion of the proposed covered deck into a screen porch, sunroom, or similar, is permitted without returning to the Board of Zoning Appeals for a modification of this approval; however, such conversion must remain within the footprint of the covered deck as shown in the *Site Plan (Exhibit A)* section of this report. In addition, such conversion allowance does not include a second story room addition or second story deck/balcony/porch. The Zoning Administrator shall have the right to determine conformance with this condition.
3. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other applicable authority.

LOCATION MAPS:



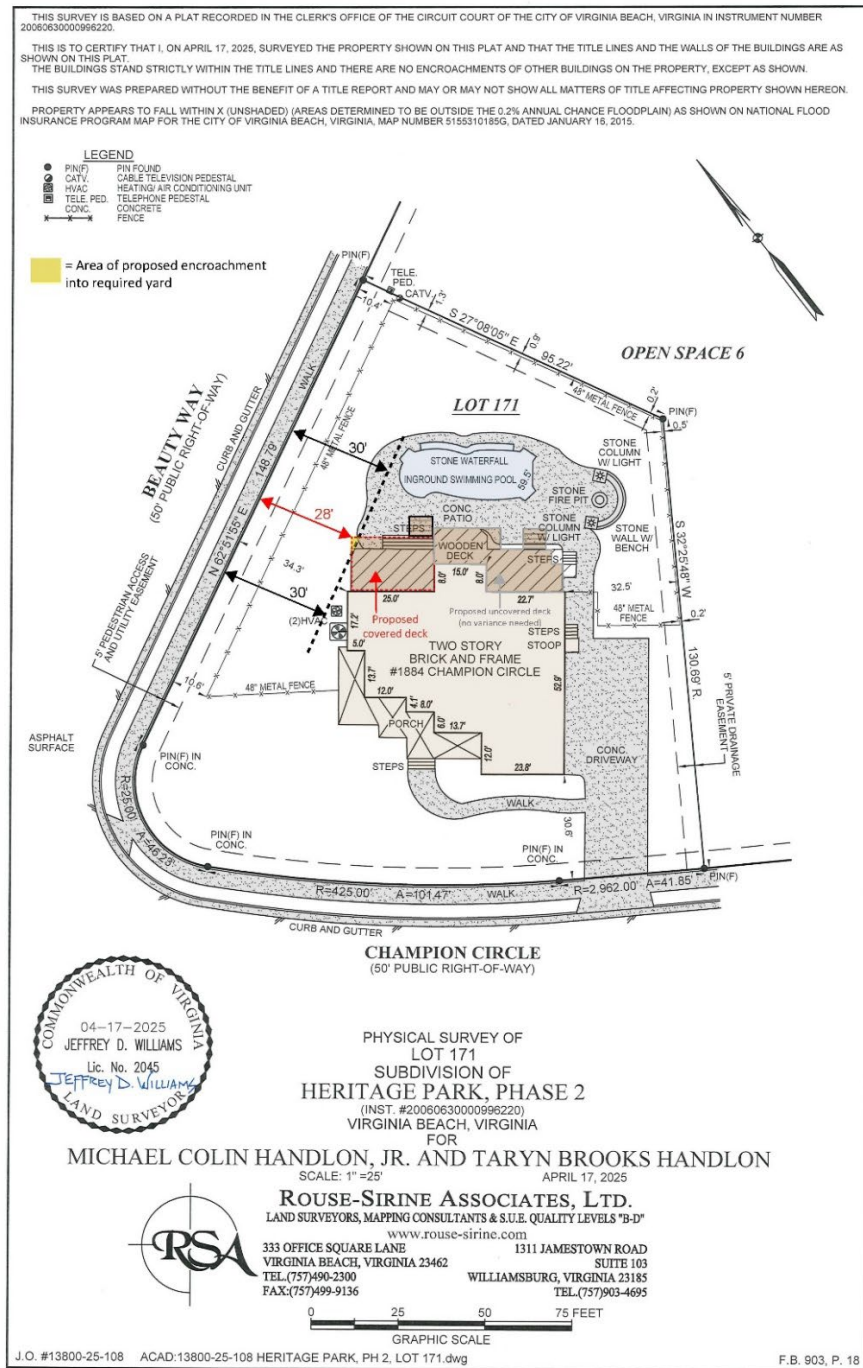
AERIAL:



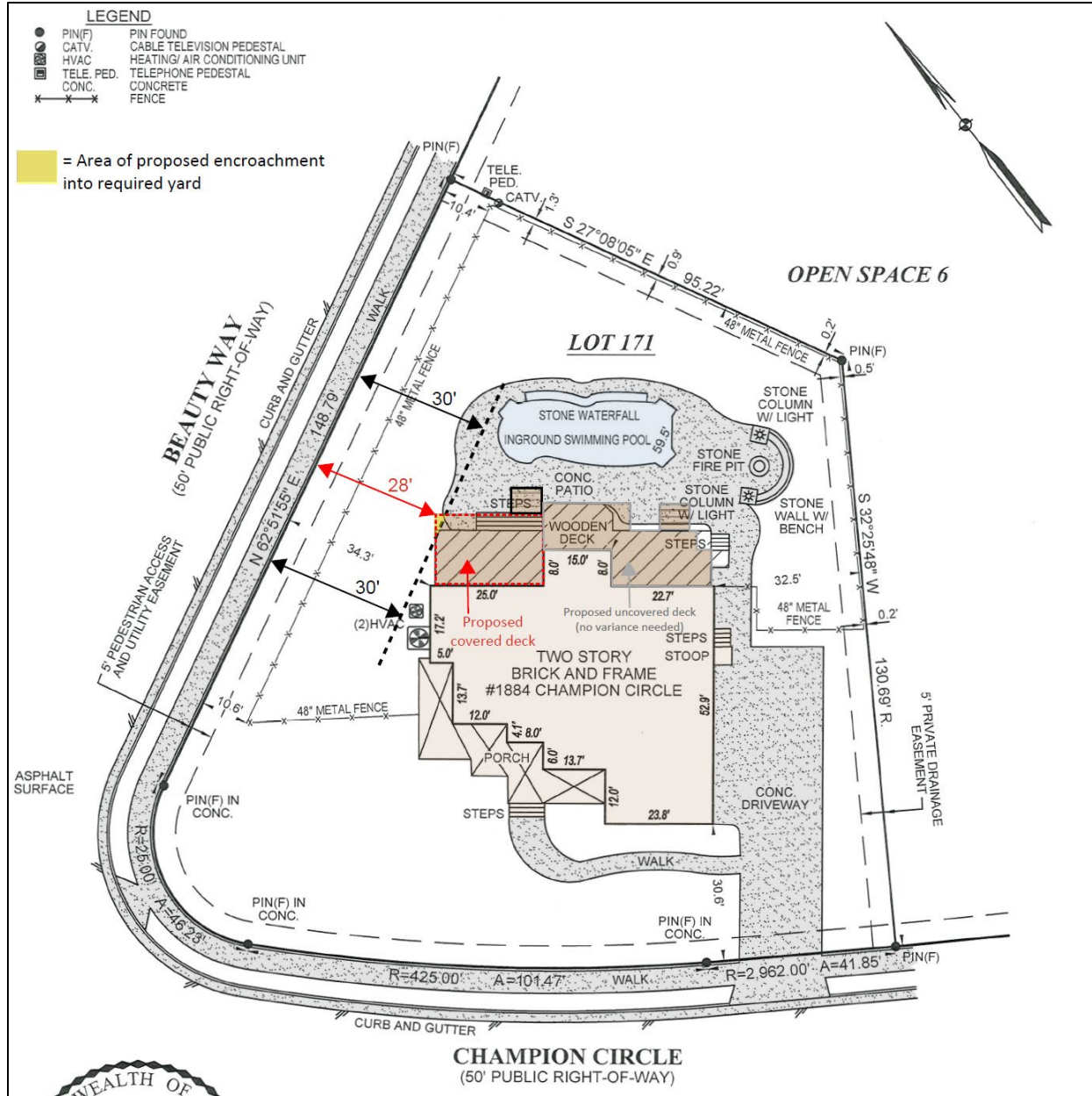
AERIAL (DETAIL):



SITE PLAN (EXHIBIT A):



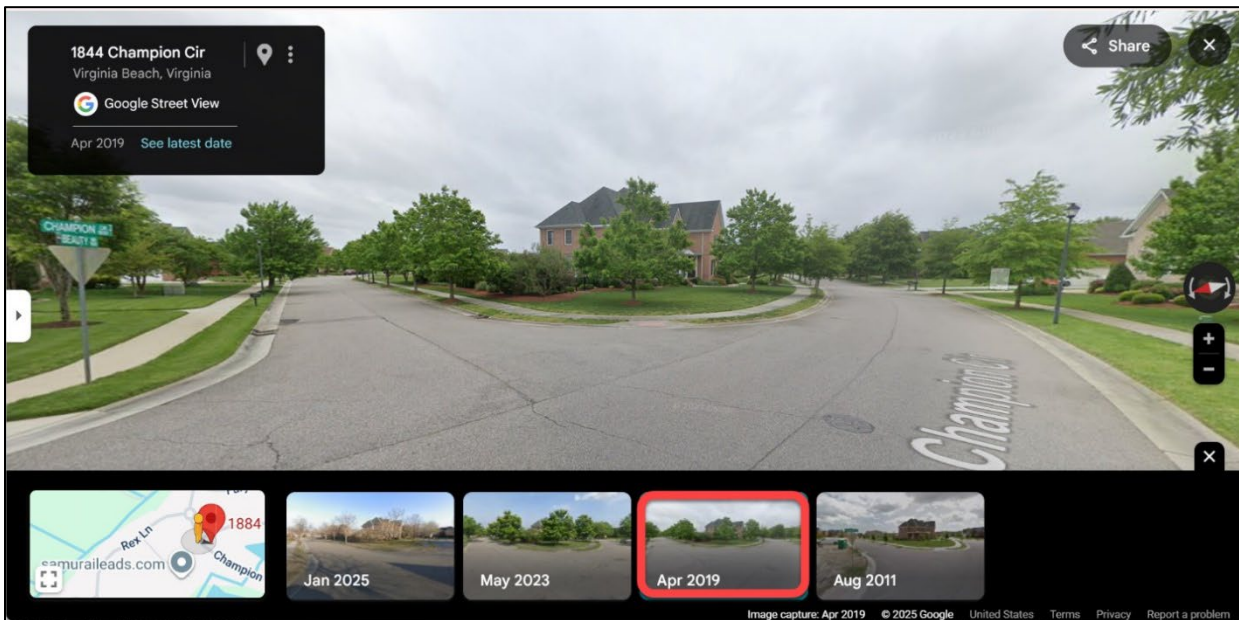
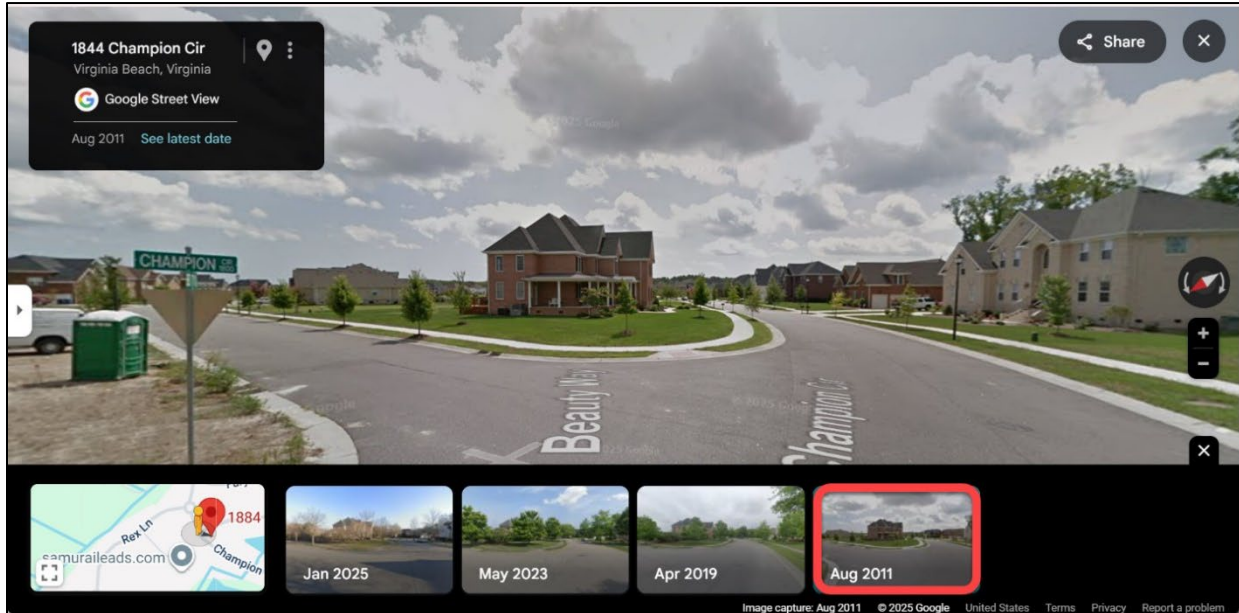
SITE PLAN DETAIL (EXHIBIT A):



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:




PHOTOGRAPHS:



PHOTOGRAPHS:



DISCLOSURE STATEMENT:

	CITY OF VIRGINIA BEACH	<h1 style="margin: 0;">Disclosure Statement</h1>	
<p><i>The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law. Completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council, boards, commissions, or other bodies.</i></p>			
SECTION 1: APPLICANT DISCLOSURE			
APPLICANT INFORMATION			
Applicant Name: <u>Solid Structures</u> <small>as listed on application</small>			
Is Applicant also the Owner of the subject property? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<small>If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).</small>			
Does Applicant have a Representative? Yes <input checked="" type="radio"/> No <input type="radio"/>			
<small>If yes, name Representative:</small> <u>Carl W Adkins II / Project Manager , Solid Structures</u>			
Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes <input checked="" type="radio"/> No <input type="radio"/>			
<small>If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)</small>			
<div style="border: 1px solid black; min-height: 30px;"><u>Scott Prunty / Owner , Solid Structures</u></div>			
Does the subject property have a proposed or pending purchaser? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<small>If yes, name proposed or pending purchaser:</small> _____			
KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE			
Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<small>If yes, name the official or employee, and describe the nature of their interest.</small>			
<div style="border: 1px solid black; min-height: 30px;"></div>			
APPLICANT SERVICES DISCLOSURE			
<small>READ: The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)</small>			
SERVICE	YES	NO	SERVICE PROVIDER <small>(Name entity and/or individual)</small>
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>	
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	

Disclosure Statement | rev. May-2024page 1 of 3

DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input checked="" type="radio"/>	<input type="radio"/>	Solid Structures
Engineer/Surveyor/Agent	<input checked="" type="radio"/>	<input type="radio"/>	Rouse-Sirine Associates, LTD
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

Carl W AdkinsII		06/24/2025
Applicant Name (Print)	Applicant Signature	Date

¹ "Parent-subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): _____

**Unknown if still up to date.
No response from applicant when asked by staff via email.**

_____	_____	_____
Staff Name (Print)	Staff Signature	Date

DISCLOSURE STATEMENT:

SECTION 2: PROPERTY OWNER DISCLOSURE

PROPERTY OWNER INFORMATION

Property Owner Name:

as listed on application Mike Handlon

Is the Owner a corporation, partnership, firm, business, trust, or unincorporated business? Yes ☐ No ☒

If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent-subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)

Does the subject property have a proposed or pending purchaser? Yes ☐ No ☒

If yes, name proposed or pending purchaser: _____

KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes ☐ No ☒

If yes, name the official or employee, and describe the nature of their interest.

PROPERTY OWNER SERVICES DISCLOSURE

READ: The Owner must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity or individual providing such services must be identified. (Attach list if necessary.)

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>	
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input checked="" type="radio"/>	<input type="radio"/>	Solid Structures
Engineer/Surveyor/Agent	<input type="radio"/>	<input checked="" type="radio"/>	
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

PROPERTY OWNER CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

Mike Handlon

Property Owner Name (Print)



Property Owner Signature

6/26/2025

Date

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CASE: 2025-BZA-00061 - David S. BrisBois

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

6233 Pocahontas Club Road

REPRESENTATIVE:

Davis S. BrisBois, Property owner

VARIANCE REQUEST(S) (ABBREVIATED):

A variance to the minimum required yard for a proposed accessory building.

VARIANCE REQUEST(S) (DETAILED):

The following variance is requested pursuant to Article 2, Section 201(d) and Article 4, Section 402(a) of the City Zoning Ordinance:

SIDE YARD (NORTHWEST): A side yard variance to 5 feet instead of 20 feet as required for the construction of a one-story storage building.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2317-64-9294

LOT AREA:

- 63,162 square feet (1.45 acres)

AICUZ:

Less than 65 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Southern Rivers
- X (area determined to be outside the 500-year flood)

VOTING DISTRICT:

District 2

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

None found

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Single-family (built in 2013)
- AG-2 (agricultural district)
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Residential and Agricultural (single-family, farm), AG-1/AG-2
- South: Residential (single-family, no apparent farm use), AG-1/AG-2
- East: Residential and Agricultural (single-family, farm), AG-1/AG-2
- West: Residential (single-family, no apparent farm use), AG-1/AG-2

EXISTING CONDITIONS:

- Dwelling: 77.4 feet from front property line (northeast)
- Dwelling: 43.2 feet from side property line (west)
- Dwelling: 91.8 feet from side property line (southeast)
- Dwelling: Greater than 20 feet from rear property line rear (southwest)

EXTENT OF PROJECT:

Storage Building (variance requested)

Proposed new outbuilding located 5 feet from the side property line instead of 20 feet as required.

BACKGROUND INFORMATION:

According to City records, the existing home was constructed in 2013. At the time of construction, the subject property was located within an AG-2 zoning District, which is also the current designation.

Since 1954, the Rural Residential District, which is now called the Agricultural District, has required 20-foot side yard setbacks for all accessory buildings associated with residentially used properties (note: from 1954 to 1973 there was an exception to this requirement for certain lots less than 30,000 square feet).

The applicant is requesting a variance to allow a proposed 900 square foot (i.e., 30 feet by 30 feet) storage building to be located 5 feet from the side property line on their 1.45-acre tract of land.

In the subject zoning district, the minimum required lot size is 1 acre or more. Additionally, the minimum required side yard (a.k.a., required setback) for these larger agriculturally zoned parcels is 20 feet. This required setback distance typically results in a minimum separation of 40 feet between structures on abutting properties.

A 1,500 square foot 85-year-old home, addressed as 6225 Pocahontas Club Road, is located adjacent to the northwest boundary of the subject property. Due to its age, the home encroaches into the required side yard setback by varying amounts. For instance, at its closest point to the property line shared with the subject parcel, this home sits about 14 feet; however, it sits roughly 18 feet from the same property line at a point closest to the corner of the proposed neighboring storage building. As a result, the subject 900 square foot storage building would only sit about 23 feet from the neighboring home. To put this another way, the variance request is equivalent to a 75% reduction in the required minimum 20-foot side yard setback and a 42.5% reduction of the typical 40-foot distance between neighboring structures. Because of this, it is arguable that the granting of the variance may be of substantial detriment to current or future owners of the abutting agricultural property addressed as 6225 Pocahontas Club Road.

Staff recognizes that the subject parcel could be described as oddly shaped, whereas the northwest border is a 120° obtuse angle. Nevertheless, it must also be recognized that many agriculturally zoned tracts of land contain boundaries that may be referred to as 'oddly' shaped or 'atypically' angled. As a result, it could be argued that such need for a variance is generally shared by other 'oddly' shaped properties within the agricultural zoning district.

As stated, the subject property is 1.45 acres, which is .45 acres larger than a standard 1 acre agriculturally zoned parcel. Accordingly, alternative locations for the proposed building appear to be available within the site. Moreover, such areas would seemingly stay clear of the existing onsite septic system/drain field, while also meeting the minimum required distances from the property lines.* It is staff's understanding from the applicant that the chosen location is the least expensive option when compared to their overall goals.

Staff emailed their concerns regarding this variance request to the applicant on August 1, 2025. Nevertheless, the applicant chose to move forward with the request as presented in this report.

**State Administrative Code 12VAC5-610-592(C) (setback distances, absorption area) and 12VAC5-610-597 (Table 4.2) note the minimum setback distance from a building foundation to an on-site sewage system absorption area (i.e., drain field) as 10 feet (note: greater setbacks may be required by the system design engineer).*

KEY CONSIDERATIONS:

- The granting of the variance appears to be of substantial detriment to the current, and/or future, property owners of the abutting parcel addressed as 6225 Pocahontas Club Road.
- There seems to be alternative locations for the proposed structure, so the hardship is arguably self-imposed.
- Because alternative building locations seem to be available on the property, requiring that the proposed structure meet minimum setbacks does not appear to restrict the utilization of the subject parcel.

LETTERS OF SUPPORT AND OPPOSITION (09-22-2025):

- Letters of Support: 0
- Letters of Opposition: 0

APPLICANT STATED HARDSHIP:

"This request for variance is based on four factors contributing to identified hardships.

1.) The opposite side (Southeast) of the property does not currently have an existing driveway that would be required to support vehicles entering and exiting the property and proposed detached shed.

2.) The opposite side (Southeast) of the property contains the home's traditional septic system (tank, distribution box and drain field). Any construction and/or vehicle traffic in the area would increase the risk for damage to the septic system.

3.) Lot size/dimensions- The lot is a triangle shaped (right/scalene) lot with the North-northwest side of the lot being the non-90-degree side of the triangle which goes back from the road in a Southerly direction limiting the overall size of the North-northwest side yard; the area of the lot requesting a variance.

4.) Any development of the Southeast side of the lot would require removal of trees, shrubs and miscellaneous other vegetation degrading the land's ability to absorb water from any rain event that could create a potential impact to the existing drain field for the septic system. Any subsequent removal of trees would disrupt the natural barrier that exists between the current neighbor to the Southeast.

The proposal being requested would be fitting and complimentary for the spirit of the neighborhood which is an agrarian environment. The surrounding landscape of homes is accompanied by out buildings such as garages and barns; building a detached shed would not deviate from the current norms already accepted and in place."

RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, "Physical Improvements Survey of The Remainder of Parcel B," dated August 15, 2022, and prepared by Warren and Associates, PC, Land Surveyors (shown as Exhibit 'A' in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. The detached storage building shall meet all City Zoning Ordinance requirements for use.
3. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other relevant authority.

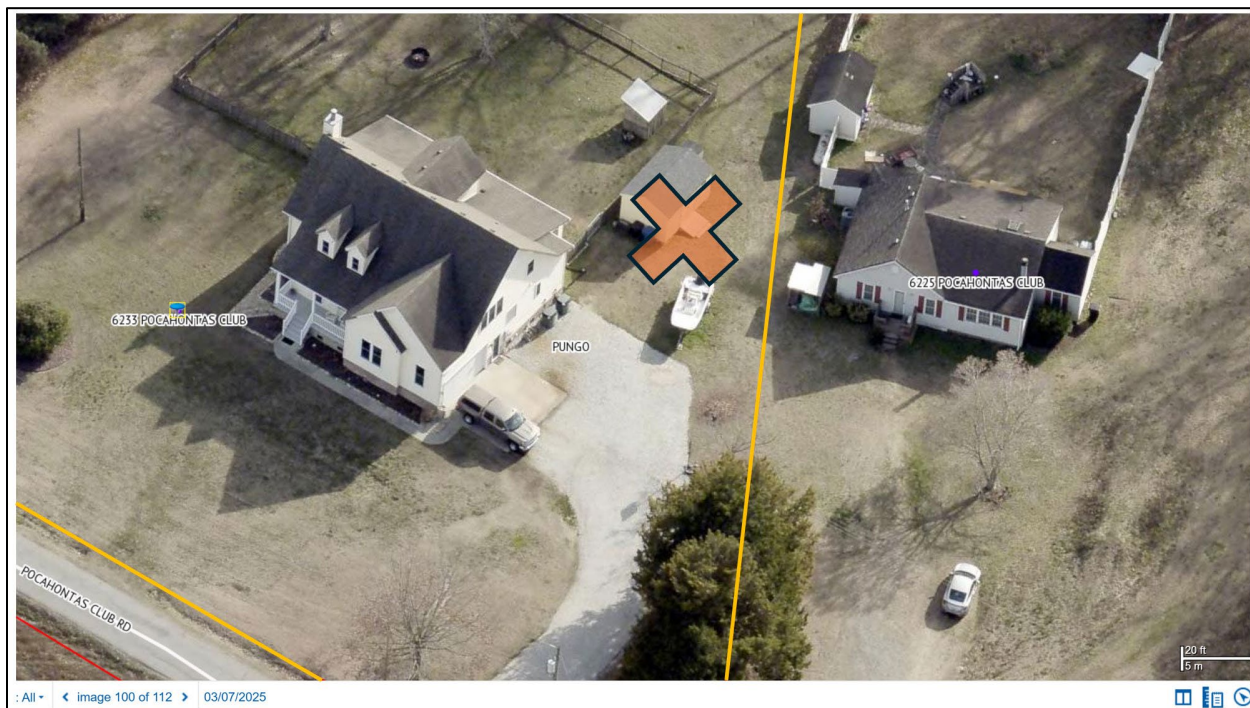
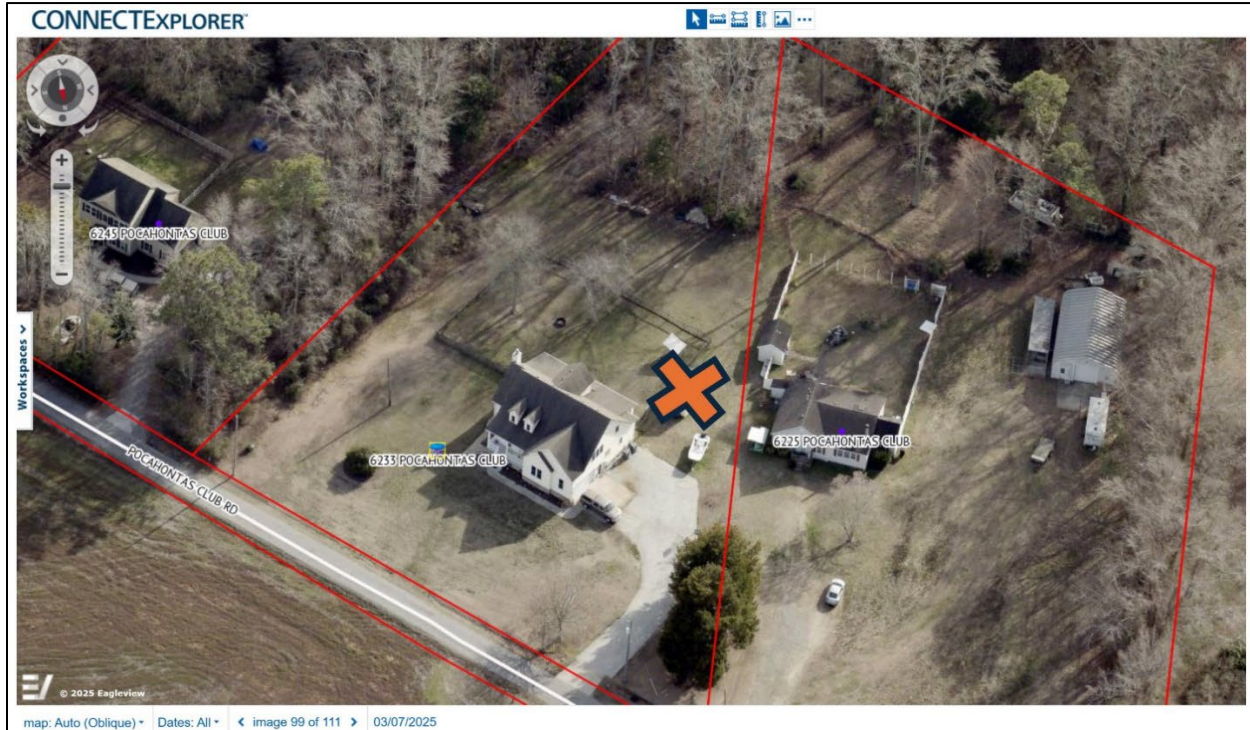
LOCATION MAPS:



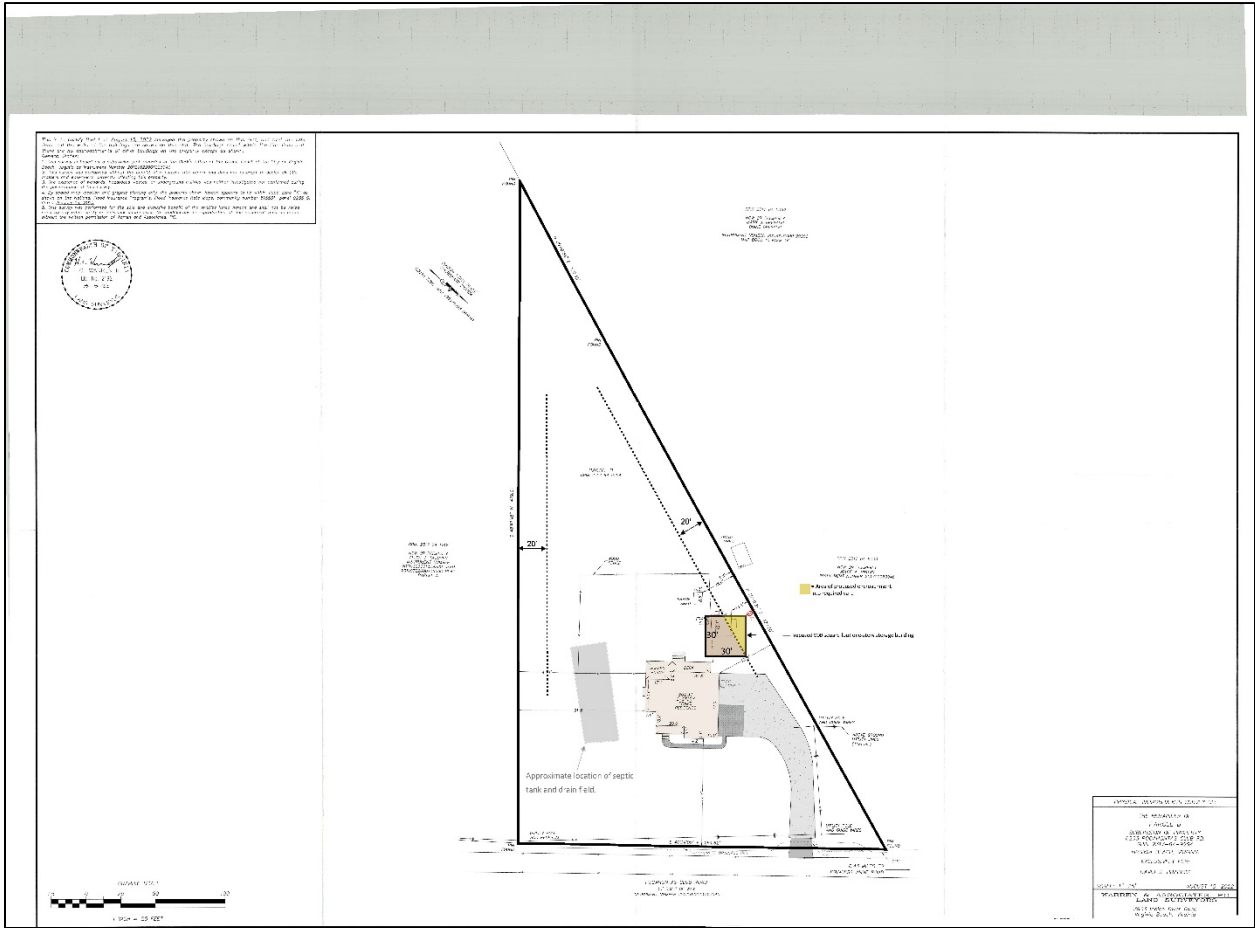
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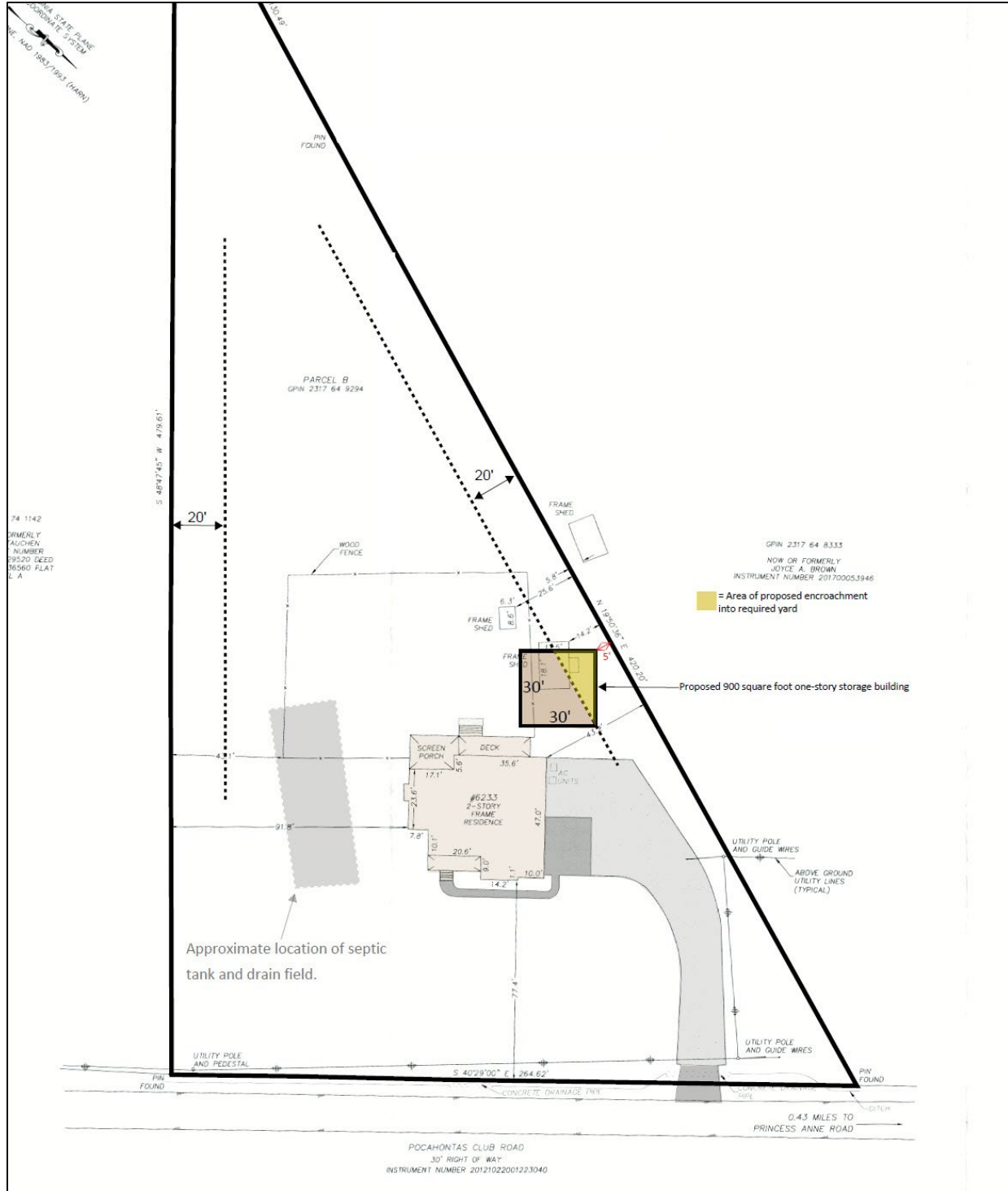
AERIAL (DETAIL):



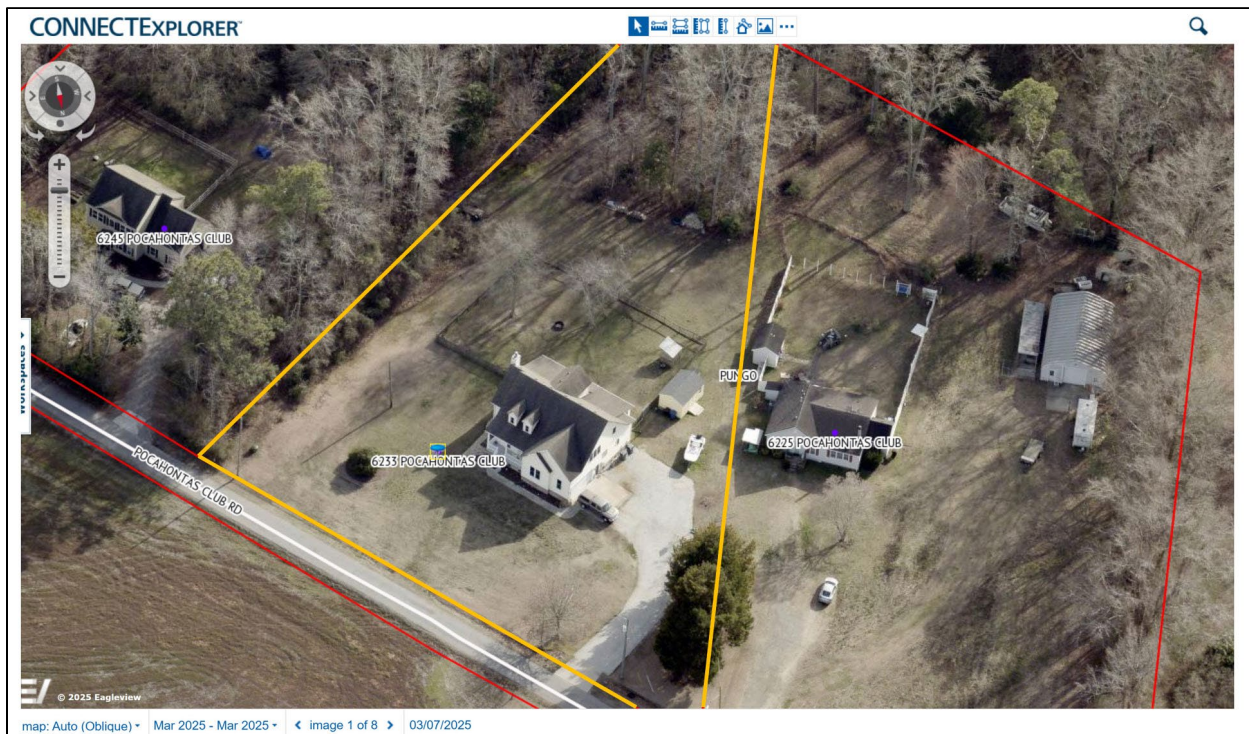
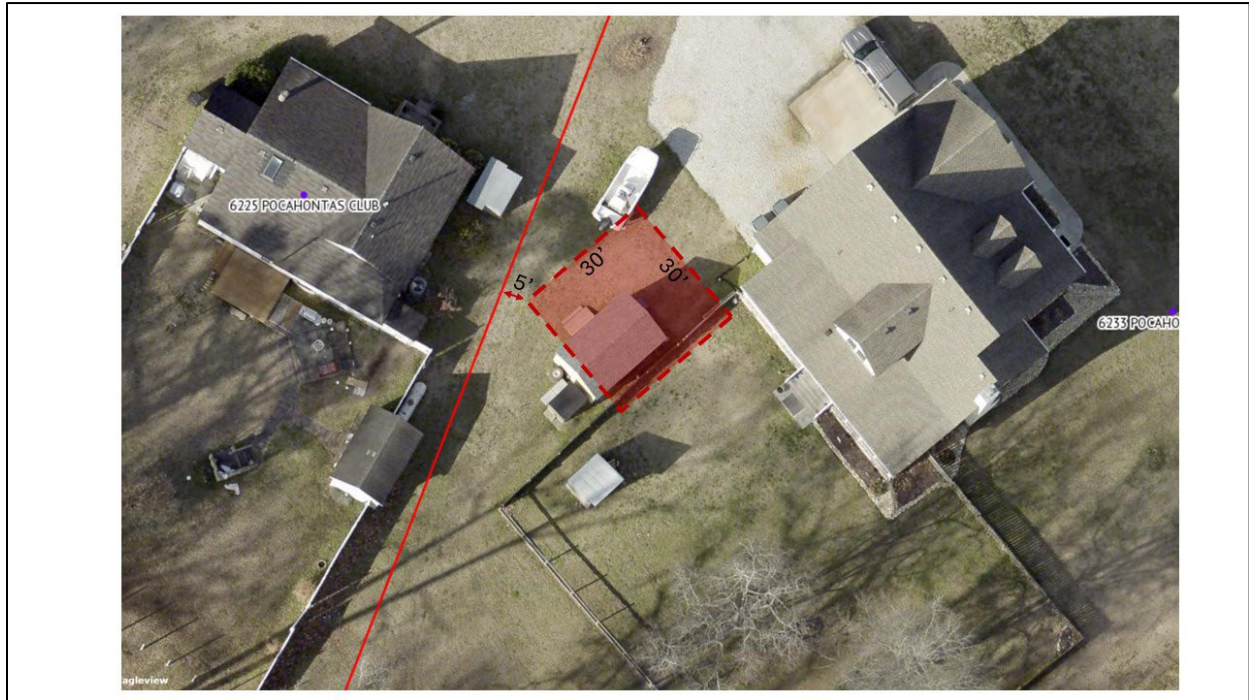
SITE PLAN (EXHIBIT A):



SITE PLAN DETAIL (EXHIBIT A):



ADDITIONAL AERIAL IMAGES:



Site Plan Details:

- Property Lines:**
 - Top Left: S 48°47'45" W 479.61'
 - Top Right: N 18°30'36" E 428.20'
 - Bottom: S 40°29'00" E 1264.62'
- Structures and Features:**
 - Residence:** #6233 2-STORY FRAME RESIDENCE, 35.6' x 47.0'.
 - Sheds:** FRAME SHED (6.3' x 8.6'), FRAME SHED (18.1' x 14.2'), FRAME SHED (5.8' x 25.6').
 - Other:** WOOD FENCE, SCREEN PORCH (17.1' x 23.6'), DECK (35.6' x 10.1').
- Setbacks and Distances:**
 - 20' setback from top left corner.
 - 20' setback from top right corner.
 - 4.1' setback from left side of residence.
 - 91.8' distance from left side of residence to septic tank area.
 - 7.9' distance from residence to septic tank area.
 - 14.2' distance from residence to bottom right corner.
 - 77.4' distance from residence to bottom right corner.
 - 10.0' distance from residence to bottom right corner.
 - 1.1' distance from residence to bottom right corner.
 - 14.2' distance from residence to bottom right corner.
- Other Features:**
 - Approximate location of septic tank and drain field.
 - UTILITY POLE AND PEDESTAL.
 - UTILITY POLE AND GUIDE WIRES.
 - ABOVE GROUND UTILITY LINES (TYPICAL).
 - CONCRETE DRAINAGE INFE.
 - CONCRETE DRAINAGE.
 - DITCH.
 - 0.43 MILES TO PRINCESS ANNE ROAD.
- Notes:**
 - Area behind subject home where a storage building could be constructed in compliance with the zoning ordinance.
 - GPIN 2317 64 8333
 - NOW OR FORMERLY JOYCE A. BROWN
 - INSTRUMENT NUMBER: 201700053946

PHOTOGRAPHS:



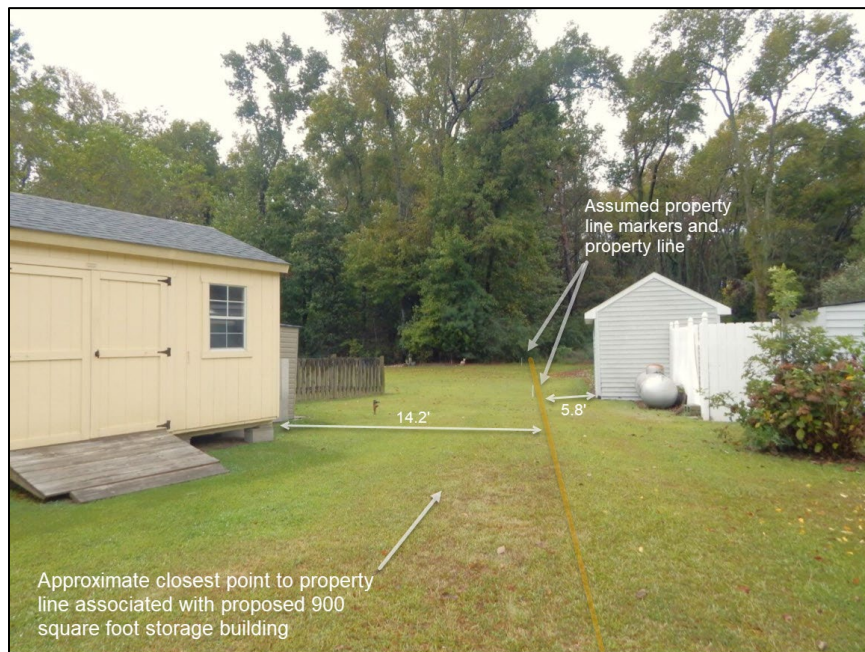
PHOTOGRAPHS:



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PHOTOGRAPHS:



DISCLOSURE STATEMENT:

	CITY OF VIRGINIA BEACH	<h1>Disclosure Statement</h1>
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The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law. Completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council, boards, commissions, or other bodies.

SECTION 1: APPLICANT DISCLOSURE

APPLICANT INFORMATION

Applicant Name: _____
as listed on application David Scott BrisBois

Is Applicant also the Owner of the subject property? Yes ☒ No ☐

If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).

Does Applicant have a Representative? Yes ☐ No ☒

If yes, name Representative: _____

Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes ☐ No ☒

If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)

Does the subject property have a proposed or pending purchaser? Yes ☐ No ☒

If yes, name proposed or pending purchaser: _____

KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes ☐ No ☒

If yes, name the official or employee, and describe the nature of their interest.

APPLICANT SERVICES DISCLOSURE

READ: The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>	
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	

Disclosure Statement | rev. May-2024page 1 of 3

DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

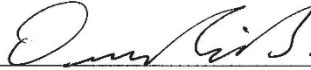
SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input type="radio"/>	<input checked="" type="radio"/>	
Engineer/Surveyor/Agent	<input type="radio"/>	<input checked="" type="radio"/>	
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

David Scott BrisBois

Applicant Name (Print)



Applicant Signature

07/09/2025

Date

¹ "Parent-subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): 09-16-2025

Wilissa Blair-Miller

Staff Name (Print)



Staff Signature

09-16-2025

Date



CASE: 2025-BZA-00069 - Cameron and Rachael Miller

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

1808 Cooper Road

REPRESENTATIVE:

Cameron Miller, Property owner

VARIANCE REQUEST(S) (ABBREVIATED):

A variance to the minimum required yard for a proposed accessory building.

VARIANCE REQUEST(S) (DETAILED):

The following variance is requested pursuant to Article 2, Section 201(d) and Article 5, Section 502(a) of the City Zoning Ordinance:

FRONT YARD (WEST – ABUTTING COOPER CIRCLE): A front yard variance to 27 feet instead of 50 feet as required for the construction of a one-story detached garage.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2408-59-9326

LOT AREA AND CREATION:

- 21,985 square feet (.5 acres)

AICUZ:

Less than 65 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Chesapeake Bay Preservation Area (Resource Management Area)
- X (area determined to be outside the 500-year flood)

VOTING DISTRICT:

District 6

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

November 3, 1975

A front yard variance adjacent to Cooper Circle was granted for a room addition (36 feet instead of 50 feet as required).

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Single-family (built in 1967)
- R-20 (Residential District)
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Residential (single-family), R-20
- South: Residential (single-family), R-20
- East: Residential (single-family), R-20
- West: Residential (single-family), R-20

EXISTING CONDITIONS:

- Dwelling: 33.1 feet from front property line (west - Cooper Circle)
- Dwelling: 32.5 feet from side corner property line (south - Cooper Road)
- Dwelling: 48.7 feet from side property line (north)
- Dwelling: 26.1 feet from rear property line rear (east)

EXTENT OF PROJECT:

Detached garage (variance requested)

Proposed one-story detached garage located 27 feet from the front property line (Cooper Circle) instead of 50 feet as required.

BACKGROUND INFORMATION:

According to City records, the existing home was constructed in 1967. At the time of construction, the subject property was located within an RS1 Zoning District. In 1973, the RS1 Zoning District was renamed to R3. In 1988, the R3 Zoning District was renamed to R-20, which is the current designation.

The applicant is requesting a variance to allow a detached garage to be constructed 27 feet from the front property line adjacent to Cooper Circle instead of 50 feet as required. It should be underscored that the proposed improvements would stay 'in-line' with the existing home, which also presently encroaches into the required 50-foot yard adjacent to Cooper Circle. Such existing encroachment is due to both a 1978 Board of Zoning Appeals variance for a room addition and the overall age of the home (i.e., area not covered by variance is nonconforming to required setbacks).

The City Zoning Ordinance currently limits the amount of accessory structure floor area on residentially zoned properties, with the subject parcel permitted to contain up to 711.6 square feet. Based on the floor area of the proposed one story detached garage (384 square feet) and an existing shed (195 square feet), the subject property will not exceed its 711.6 square foot limit.

As mentioned, a 195 square foot shed is located on the subject property. This structure presently encroaches into the 15-foot required side and rear yards by 11.5 feet and 9.8 feet respectively. In other words, the shed is located 3.5 feet from the side property line and 5.2 feet from the rear property line instead of 15 feet from each as required. *Connect Explorer* satellite imagery shows what appears to be the subject shed at that same location since at least 2005, which is the limit of visually clear historic satellite images associated with this property. Nevertheless, minimum side and rear yard setbacks have been applicable to such accessory buildings since the subject property was developed in 1967. In fact, the minimum required yards over time for such accessory structures are as follows; 1) Side 16 feet and rear 12 feet from 1954 to 1973; 2) Side and rear 15 feet from 1974 to 1988; and 3) Side and rear 15 feet from 1988 to present. As no previous variance or other city approvals were found associated with the shed, and no City taxes appear to have been assessed on the structure, a condition mandating that it be brought into compliance with minimum yard requirements was added to this report for Board consideration.

KEY CONSIDERATIONS:

- The proposed detached garage would stay 'in-line' with an existing home that already encroaches into the required front yard adjacent to Copper Circle.
- Because the proposed improvements would stay 'in-line' with the existing house, it seems the variance would not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

LETTERS OF SUPPORT AND OPPOSITION (AS OF 09-19-2025):

- Letters of Support: 0
- Letters of Opposition: 0

APPLICANT STATED HARDSHIP:

"1. Reasonable Utilization of Property - Existing Condition & Prior Renovations: When I purchased this home, it lacked a garage due to renovation decisions made by previous owners. The property was not designed to accommodate a garage without a variance. - Strict Enforcement Causes Undue Hardship: Adherence to the 30 ft side-yard setback would force any garage to be located in the backyard, which is inaccessible from the driveway and thus renders the garage functionally useless. This limitation unreasonably restricts my use of the property.

2. Unique Property Circumstances - Corner Lot Configuration: The subject property is a corner lot situated on narrow streets, which eliminates feasible garage placement without violating setbacks or access constraints. - Driveway Constraints: Placing a detached garage that will meet the setbacks requirements would disconnect it from the driveway, making vehicular access impossible and converting it into mere storage. This would be impracticable for a functional garage.

3. Family and Safety Considerations - Growing Family Needs: We have two young boys, with a third arriving in August. A garage is vital to safely store vehicles, bicycles, lawn equipment, and other necessities—protecting these items from weather, theft, ensuring privacy, and providing organized family space.- Parking & Safety Benefits: Expanding both the driveway and adding a garage will reduce the need for road parking—especially hazardous on a corner lot—thereby lowering risks for our children who frequently use the street to ride bikes and skateboards.

4. Not a Self-Created Hardship - Compliance with Good Faith Acquisition: The hardship arises from the property's layout and prior renovation—not any action taken by me. I purchased in good faith and am not seeking special privilege, but rather a reasonable use of my property.

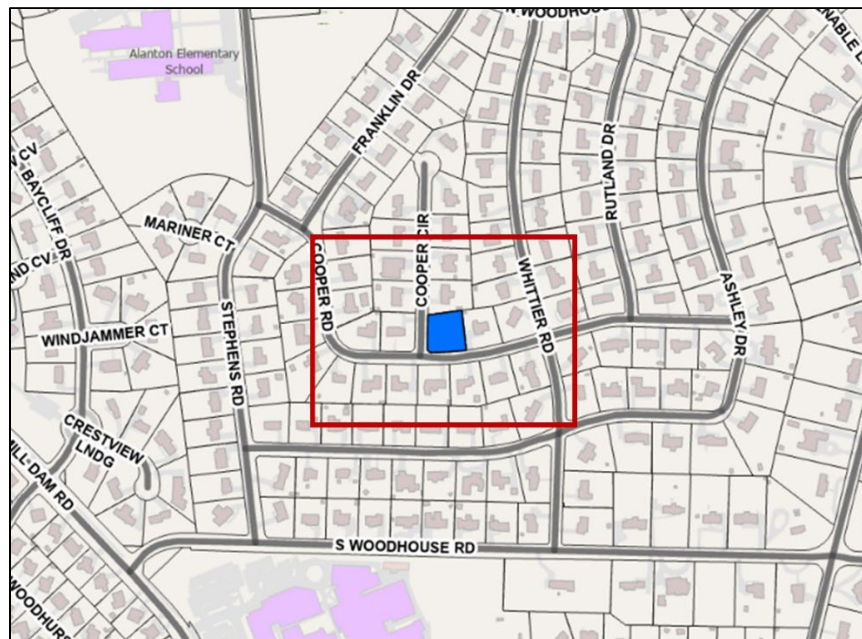
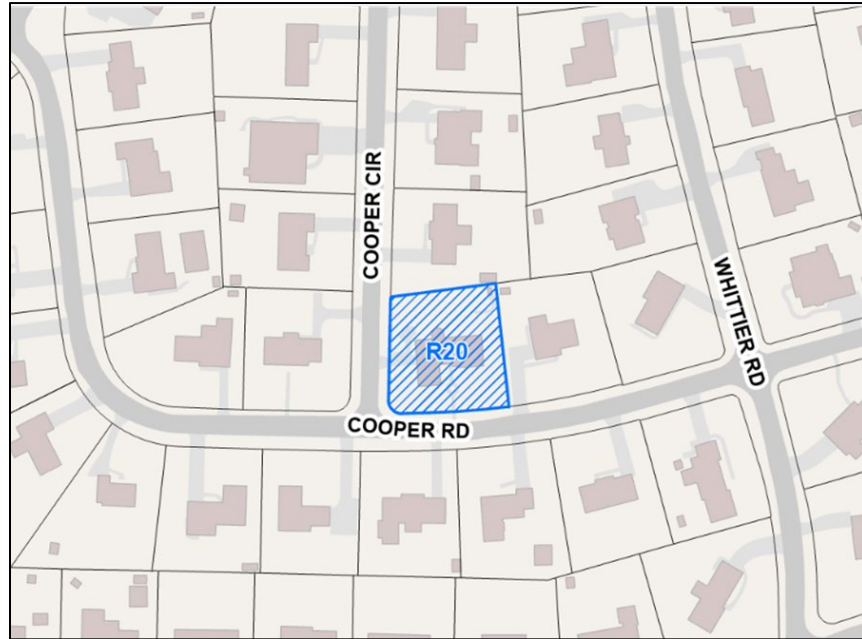
5. No Adverse Impact - Neighborhood Character and Safety Maintained: The garage will be constructed to match the existing home's style and scale. It will be located behind the front façade and will not obstruct views or overshadow adjacent homes.- Compliance with Zoning Purpose: Granting this variance aligns with the ordinance's intent—to allow reasonable property use while preserving the character and safety of residential neighborhoods.

Summary - Strict application of the side-yard setback will unreasonably restrict the use of my property by making a functional garage impossible. - The situation is not shared generally by neighboring residences; other lots can accommodate garages without a variance. - The variance poses no significant detriment to neighbors and aligns with the ordinance's purpose. For these reasons, I respectfully request that the Board grant a variance from the 30 ft side-yard setback to allow a detached garage—connected to an expanded driveway—for safety, function, and reasonable use by my growing family."

RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, "Physical Improvements Survey of Lot 12, Section two, West Alanton," dated July 8, 2025, and prepared by Warran and Associates, PC, Land Surveyors (shown as Exhibit 'A' in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. The existing 12.3 x 16.1 shed located in the northeast corner of the subject property shall either be moved to meet minimum City Zoning Ordinance requirements or removed from the subject property. This shall occur prior to the final inspection of any building permits issued for the subject improvements, or one year from this Boards action, whichever occurs first.
3. The proposed one-story detached garage shall meet all City Zoning Ordinance requirements for use.
4. The proposed one-story detached garage shall not exceed the height of the principal structure.
5. The proposed one-story detached garage, in combination with any other applicable accessory buildings on the subject property, shall not exceed the maximum permissible square footage of floor area allowed by the City Zoning Ordinance.
6. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other relevant authority.

LOCATION MAPS:



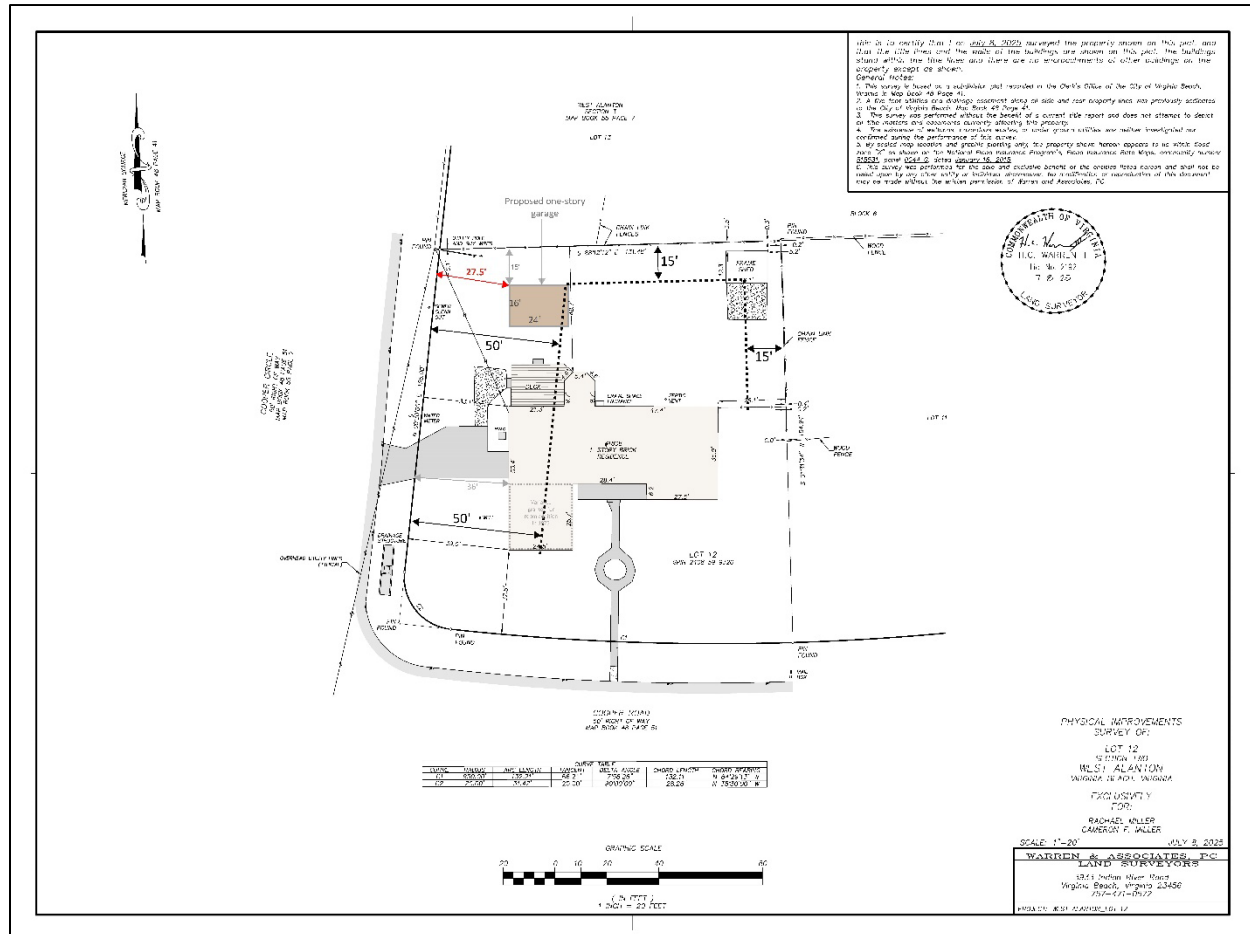
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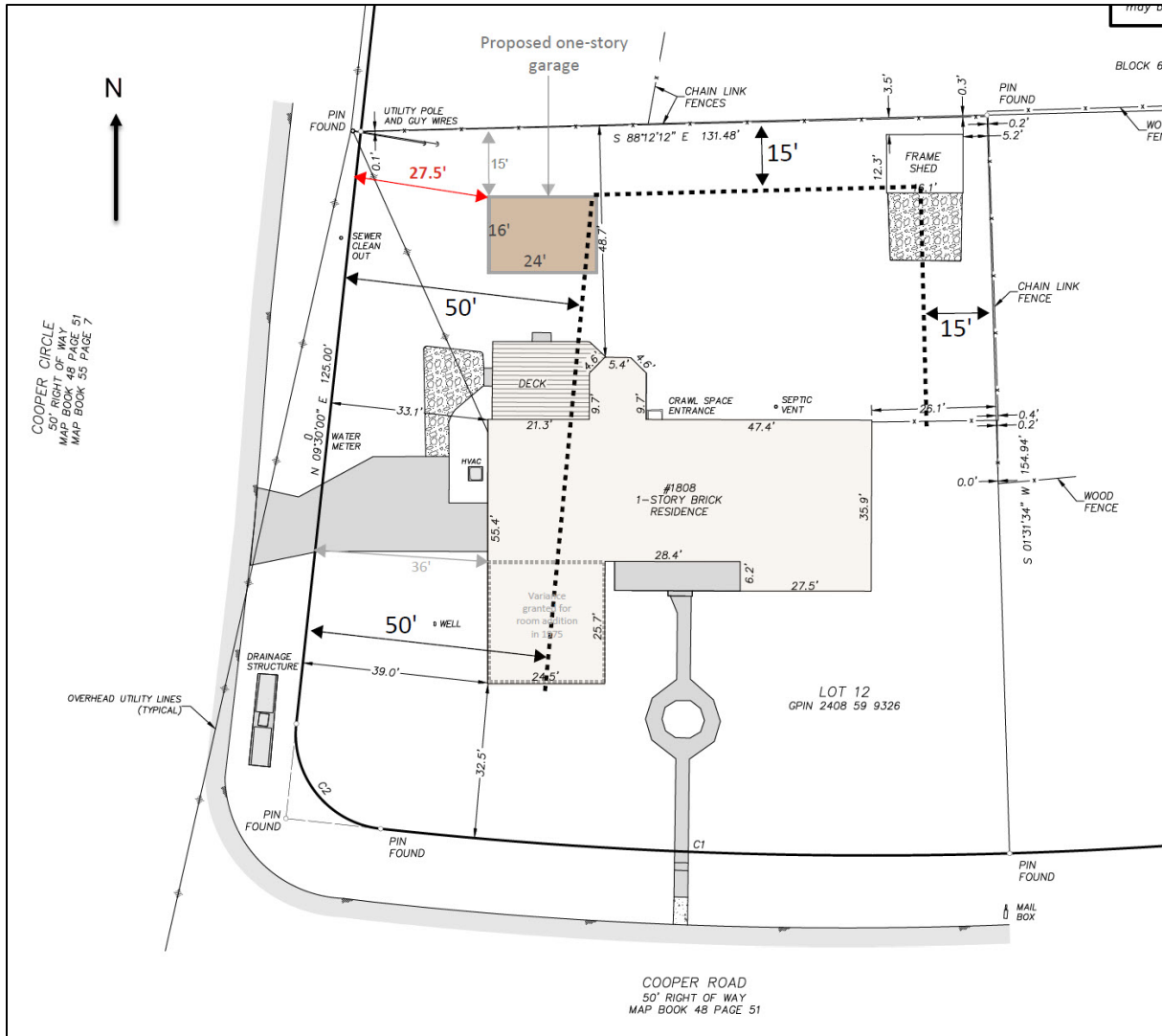
AERIAL (DETAIL):



SITE PLAN (EXHIBIT A):



SITE PLAN DETAIL (EXHIBIT A):



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:




PHOTOGRAPHS:



PHOTOGRAPHS:



DISCLOSURE STATEMENT:

	CITY OF VIRGINIA BEACH	<h2>Disclosure Statement</h2>	
<p><i>The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law. Completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council, boards, commissions, or other bodies.</i></p>			
SECTION 1: APPLICANT DISCLOSURE			
APPLICANT INFORMATION			
Applicant Name: as listed on application <u>Cameron Miller</u>			
Is Applicant also the Owner of the subject property? Yes <input checked="" type="radio"/> No <input type="radio"/>			
<i>If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).</i>			
Does Applicant have a Representative? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, name Representative:</i> _____			
Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)</i>			
Does the subject property have a proposed or pending purchaser? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, name proposed or pending purchaser:</i> _____			
KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE			
Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, name the official or employee, and describe the nature of their interest.</i>			
APPLICANT SERVICES DISCLOSURE			
READ: <i>The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)</i>			
SERVICE	YES	NO	SERVICE PROVIDER <small>(Name entity and/or individual)</small>
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>	
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	

Disclosure Statement | rev. May -2024page 1 of 3


DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input type="radio"/>	<input checked="" type="radio"/>	
Engineer/Surveyor/Agent	<input type="radio"/>	<input checked="" type="radio"/>	
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

Cameron Miller  07/28/2025
Applicant Name (Print) Applicant Signature Date

¹ "Parent-subsidary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): 09-16-2025

Wilissa Blair-Miller  09-16-2025
Staff Name (Print) Staff Signature Date



CASE: 2025-BZA-00070 - Lucky and Elizabeth Peterson

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

1109 York Lane

REPRESENTATIVE:

Billy Garrington of GPC, Inc.

VARIANCE REQUEST(S) (ABBREVIATED):

A variance to the minimum required yard for a proposed pergola.

VARIANCE REQUEST(S) (DETAILED):

The following variance is requested pursuant to Article 5, Section 502(a) of the City Zoning Ordinance:

SIDE YARD (SOUTH): A side yard setback variance to 5 feet instead of 15 feet as required for the construction of a pergola.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2418-56-0383

LOT AREA:

- 22,614 square feet (.5 acres)

AICUZ:

65-70 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Chesapeake Bay Preservation Area (Resource Protection Area)
- AE (1% annual chance flood hazard) and X (area determined to be outside the 500-year flood)

Please Note: On August 8, 2025, Planning Department, Environmental Unit Staff, noted that the proposal *“is in compliance with the 2024 CBPA variance and it appears no changes have been made.”*

VOTING DISTRICT:

District 6

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

December 4, 2024 (granted)

A side yard setback variance (south) to 5 feet instead of 15 feet as required for the construction of a deck over 16 inches in height from grade.

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Single-family (built in 1964)
- R-30 (Residential District)
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Residential (single-family), R-30
- South: Residential (single-family), R-30
- East: Residential (single-family), R-30
- West: Residential (single-family), R-30

EXISTING CONDITIONS:

- Dwelling: Greater than 50 feet from front property line (east)
- Dwelling: 19.3 feet from side property line (south)
- Dwelling: 38.10 feet from side property line (north)
- Dwelling: 37.73 feet from rear property line rear (west)
- Attached Raised Deck: 5 feet from the side property line (south)

EXTENT OF PROJECT:**Pergola** (variance requested)

Proposed pergola 5 feet from the front property line instead of 15 feet as required.

BACKGROUND INFORMATION:

According to City records, the existing home was constructed in 1964. At the time of construction, the subject property was located within an RR(3A) Zoning District (Rural Residential, District 3A). In 1973, the RR(3A) district was renamed to R2. In 1988, the R2 district was renamed to R-30, which is the current designation.

The applicant is requesting a variance to allow the placement of a modestly sized pergola atop a raised deck (note: the deck is presently under construction and received a Board of Zoning Appeals variance in 2024). It is staff's understanding that the pergola would have a footprint around 111 square feet, an eave height of 8 feet, and an overall height of 12.5 feet (with heights measured from the walking surface of the raised deck).

The noted deck is located within an area of the subject property with pronounced elevation challenges. Specifically, the terrain around the deck contains an elevation drop of approximately 6 feet (11.8 feet to 5.8 feet above sea level). Such topographic difficulties were likely considered when the deck was granted an encroachment variance into the required side yard in 2024. Because the planned pergola would sit atop the approved raised deck, its height would exceed the maximum allowed by the City Zoning Ordinance, which is applicable to such small accessory structures. For clarity, the City Zoning Ordinance allows accessory structures of 150 square feet or less to be located as close as 5 feet from certain property lines, as long as the eave heights do not exceed 8 feet. As per long-standing Zoning Administration guidance, such eave heights are measured from the approved grade (i.e., the ground/earth). In this instance, the roof design of the proposed pergola calls for open web framing incorporated into a gable style, which would comply with the maximum eave height regulation if the measurement was taken from the top of the walking surface of the raised deck instead of the approved grade. If such eave height is taken from the approved grade, the measurement would exceed the maximum allowed, thus the structure would not qualify for the reduced side yard setback. To put all this in simpler terms, if the proposed pergola were built on flat ground/earth, it would be allowed to sit 5 feet from the subject side property line without the need for a variance, but since it will be on a raised deck, it no longer enjoys a by-right reduced setback allowance.

It should be underscored that the lot area associated with the subject property is substandard in multiple ways. First, the property is deficient by 3,903 square feet of area outside water, wetlands, and marsh, with the modern standard being 24,000 square feet. Second, the parcel is deficient by 9,903 square feet of overall lot area, with the modern standard being 30,000 square feet.

KEY CONSIDERATIONS:

- The topography challenges seem to be a hardship associated with a physical condition of subject property.
- The overall lot area of the subject property is substandard when compared to modern R-30 zoned parcels.
- The subject lot area outside water, wetlands, or march is substandard when compared to modern R-30 zoned parcels.
- The proposed pergola will not encroach into the required yard any further than the under constriction raised deck.
- If the proposed pergola were placed directly on flat ground/earth, it would enjoy a minimal 5-foot side yard setback; however, since it is proposed for construction on a raised deck, this same structure is arguably penalized with a required 15-foot side yard setback.

LETTERS OF SUPPORT AND OPPOSITION (AS OF 09-22-2025):

- Letters of Support: 0
- Letters of Opposition: 0

APPLICANT STATED HARDSHIP:

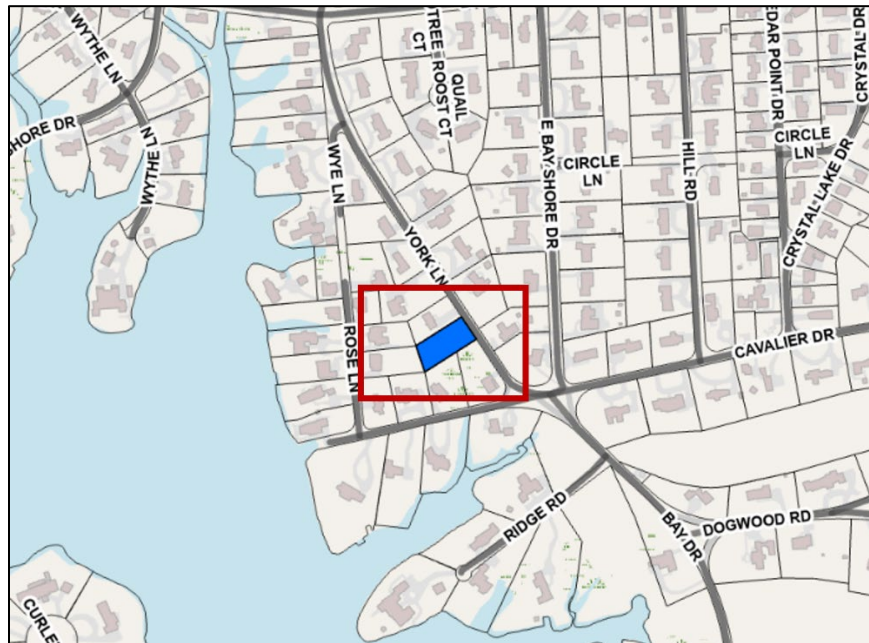
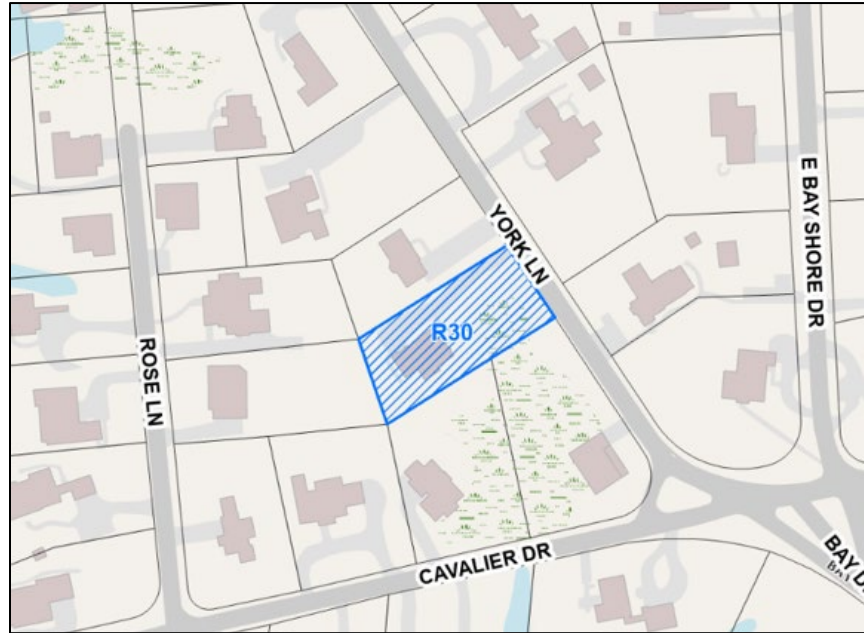
"The existing parcel was created in 1927 and has marsh and low-lying elevations situated on the site. These conditions create environmental challenges and with the City's adoption of the Chesapeake Bay Preservation Area Ordinance in 1991, restrict the development and impacts to the existing property. The home was built in 1964 and was placed on the lot to avoid the existing marsh and low-lying elevations and over the years the existing wood deck is reaching its life expectancy. The owner is seeking to replace the wood deck (in a similar footprint, retreating 6" from the existing deck encroachment). The deck and pergola would be built near ground level, however due to the existing topographic relief and the environmental constraints with filling the area, there is a 6.3' slope and thus making this an elevated deck and being non-compliant with the side yard setback.

Based on the environmental and topographic hardships and existing non-conformities, granting these variances for this proposed redevelopment will be in keeping with the current setbacks and alignments of the existing improvements. The proposed quality of development will be in keeping with the surrounding neighbors and will not have an adverse effect on the subject area."

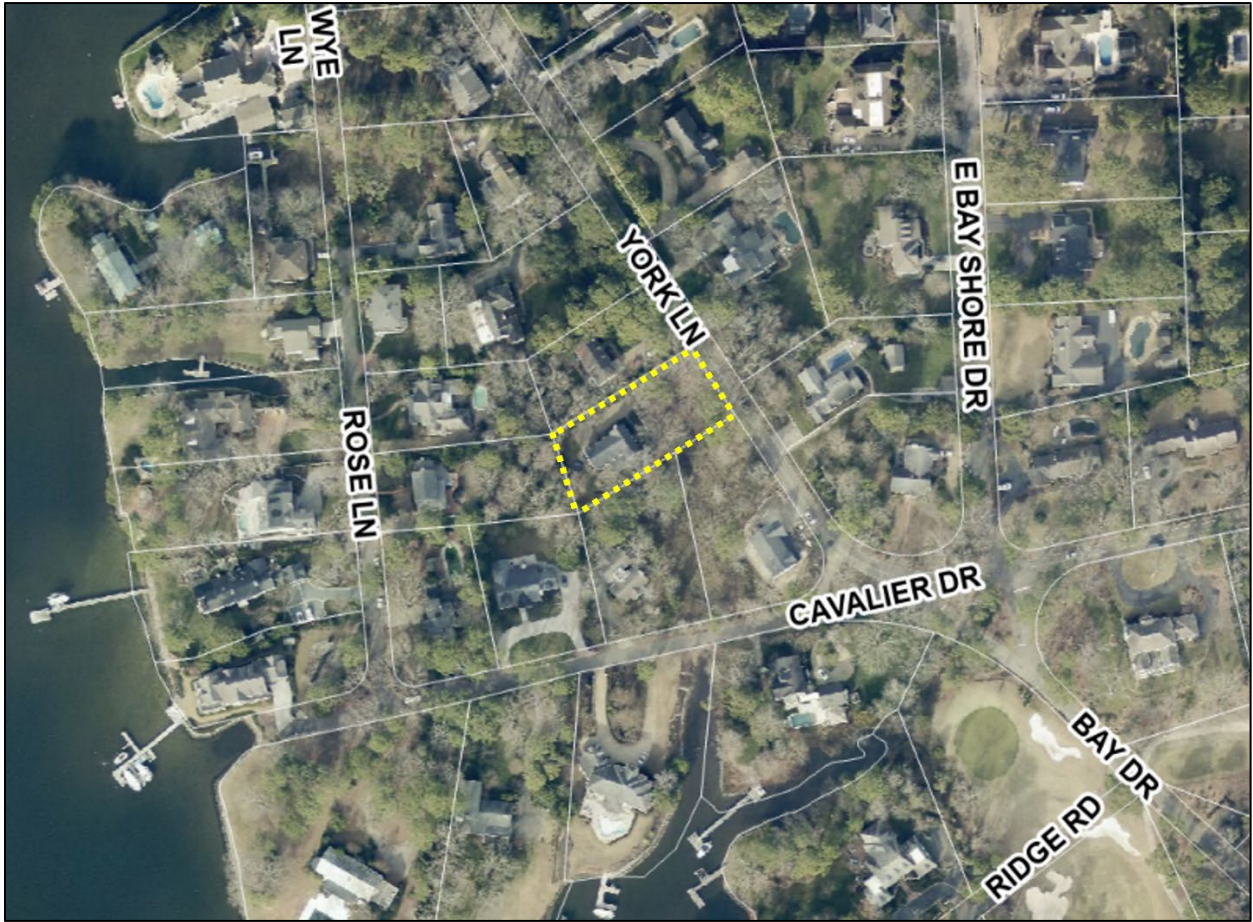
RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, "Single Family Site Plan in RPA," dated January 6, 2025, and July 19, 2025, and prepared by WPL Landscape Architecture, Surveying, and Engineering (shown as Exhibit 'A' in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. The proposed improvements shall be constructed in substantial conformance to the submitted elevation and rendering drawings found in this staff report titled. This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
3. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other applicable authority.

LOCATION MAPS:



AERIAL:



AERIAL (DETAIL):



SINGLE FAMILY SITE PLAN IN 1/4"
NORTH LAKESIDE PARK EXTENDED
VIRGINIA BEACH, VIRGINIA
PROJECT NO. 229-0887
DATE: 7/20/2026

SITE IMPROVEMENT PLAN

GRAPHIC SCALE
 0 10 20 30 Feet

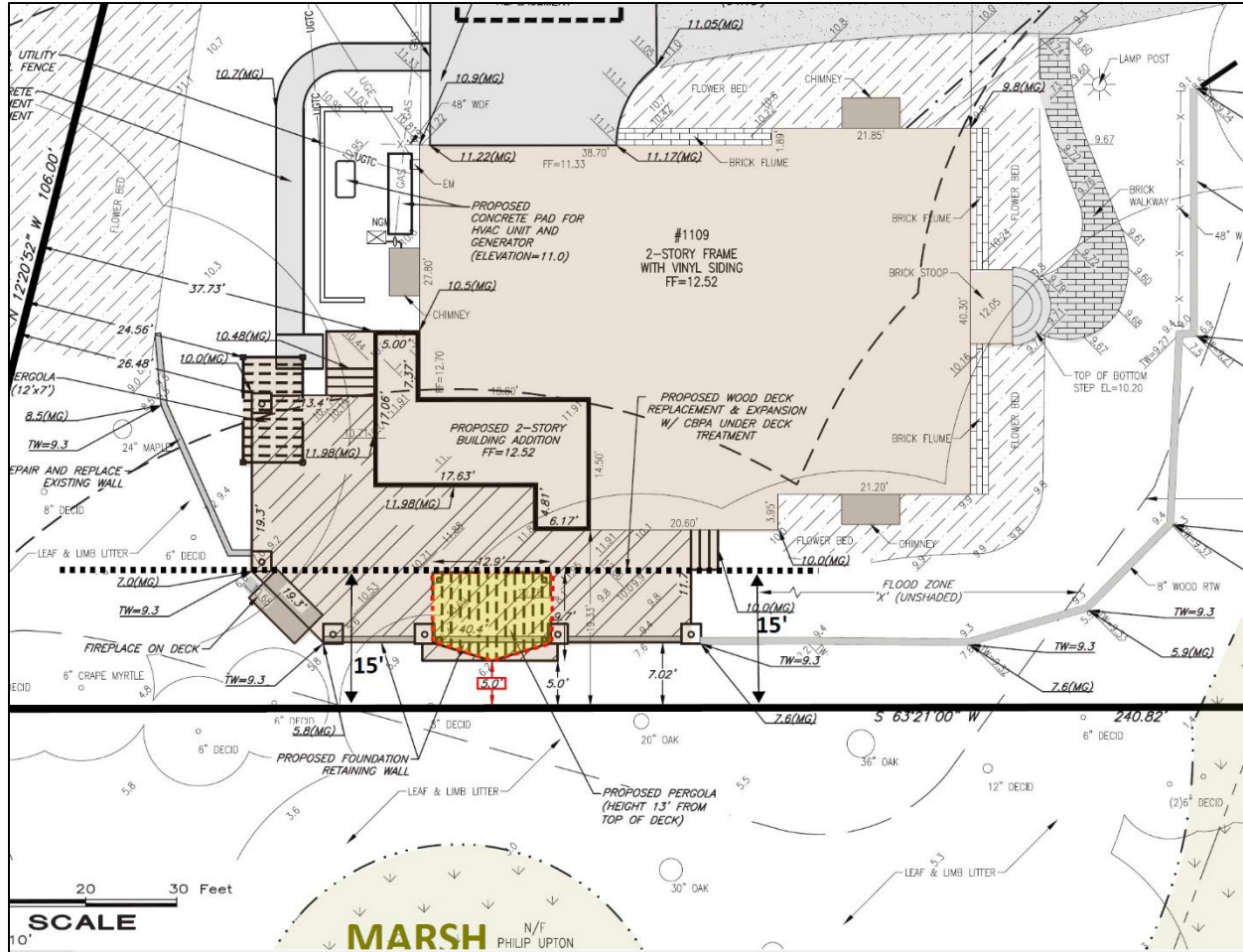
SITE IMPROVEMENT PLAN

2

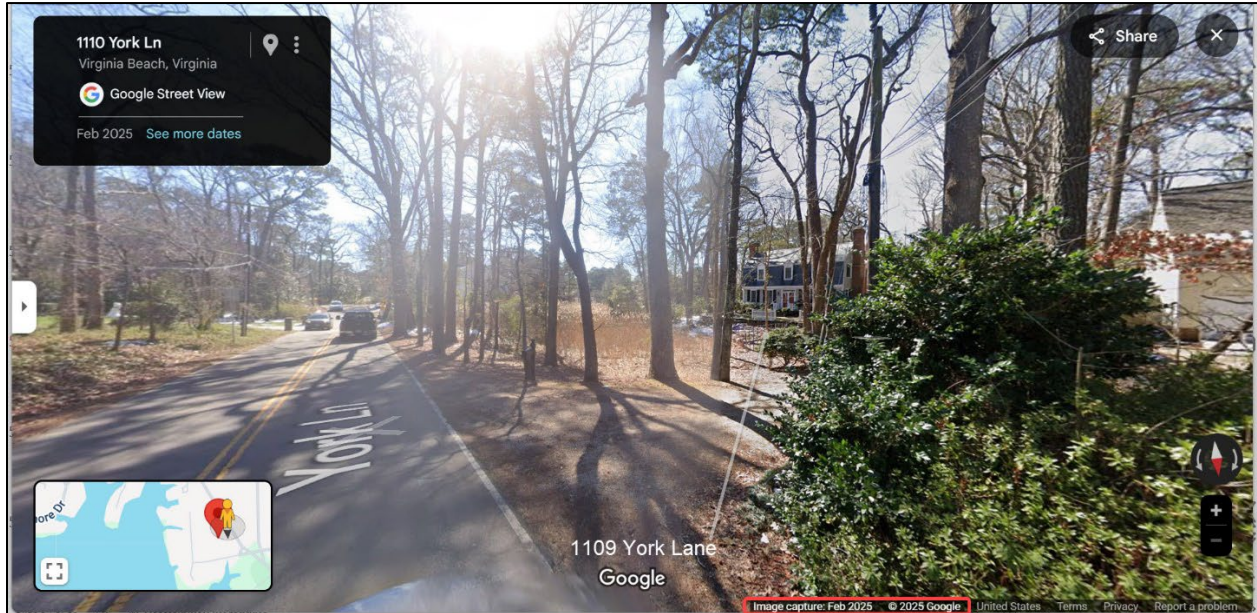
PLAN DATE: JULY 20, 2026

PLAN STATUS: CITY SUBMITTAL

SITE PLAN DETAIL (EXHIBIT A):



PHOTOGRAPHS:



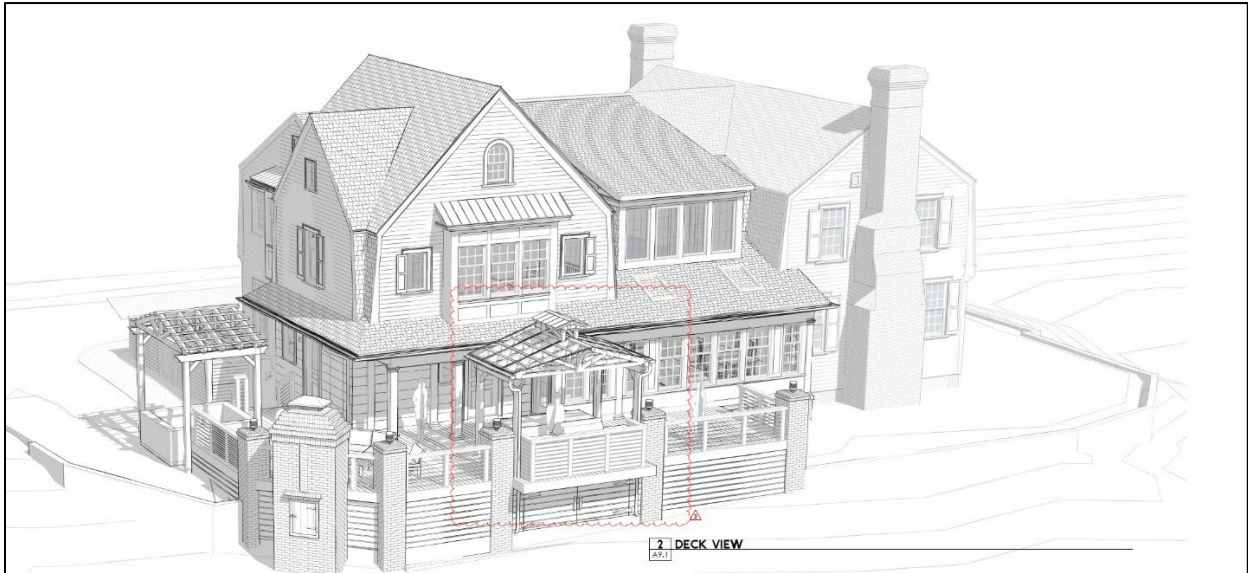
PHOTOGRAPHS:



PHOTOGRAPHS:



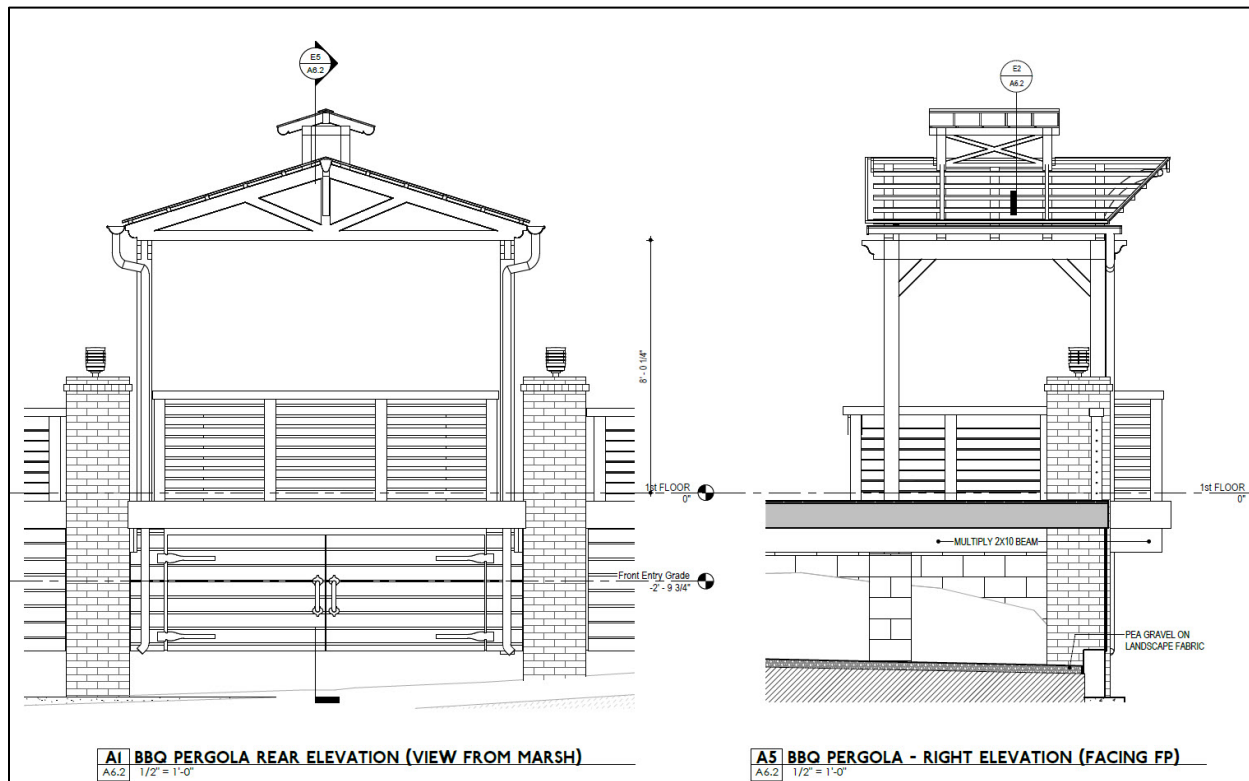
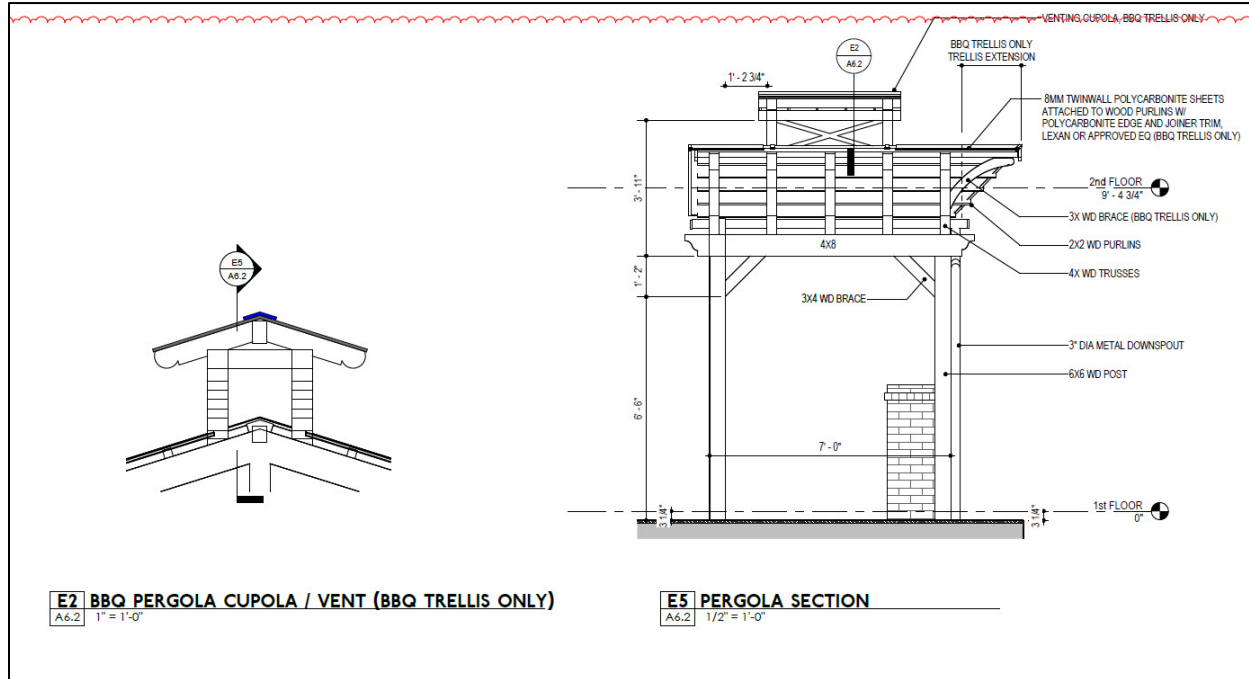
ELEVATION DRAWINGS AND RENDERINGS:




ELEVATION DRAWINGS AND RENDERINGS:



ELEVATION DRAWINGS AND RENDERINGS:



DISCLOSURE STATEMENT:

	CITY OF VIRGINIA BEACH	Disclosure Statement	
<p><i>The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law. Completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council, boards, commissions, or other bodies.</i></p>			
SECTION 1: APPLICANT DISCLOSURE			
APPLICANT INFORMATION			
Applicant Name: <u>Lucky C. Peterson & Elizabeth D. Peterson</u> <i>as listed on application</i>			
Is Applicant also the Owner of the subject property? Yes <input checked="" type="radio"/> No <input type="radio"/>			
<i>If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).</i>			
Does Applicant have a Representative? Yes <input checked="" type="radio"/> No <input type="radio"/>			
<i>If yes, name Representative:</i> <u>Billy Garrington - GPC, Inc</u>			
Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)</i>			
Does the subject property have a proposed or pending purchaser? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, name proposed or pending purchaser:</i> _____			
KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE			
Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes <input type="radio"/> No <input checked="" type="radio"/>			
<i>If yes, name the official or employee, and describe the nature of their interest.</i>			
APPLICANT SERVICES DISCLOSURE			
READ: <i>The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)</i>			
SERVICE	YES	NO	SERVICE PROVIDER <small>(Name entity and/or individual)</small>
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input checked="" type="radio"/>	<input type="radio"/>	TowneBank
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	

Disclosure Statement | rev. May -2024page 1 of 3

DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input checked="" type="radio"/>	<input type="radio"/>	Wermers Design & Architecture, PLC
Construction Contractor	<input checked="" type="radio"/>	<input type="radio"/>	JM Froehler Construction
Engineer/Surveyor/Agent	<input checked="" type="radio"/>	<input type="radio"/>	WPL
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

Lucky C. Peterson

Elizabeth D. Peterson

Applicant Name (Print)

Elizabeth D. Peterson

Applicant Signature

7/14/25

7/14/25

Date

¹ "Parent-subsidary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): 09-16-2025

Wilissa Blair-Miller

Staff Name (Print)

Wilissa Blair-Miller

Staff Signature

09-16-2025

Date



CASE: 2025-BZA-00071 - Beach Framing and Drywall, LLC.

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

1920 Gum Bridge Road

REPRESENTATIVE:

R. Edward Bourdon, Jr. Esq., of Sykes, Bourdon, Ahern, & Levy, PC.

VARIANCE REQUEST(S) (ABBREVIATED):

Variances to the minimum required yards for a proposed single-family dwelling.

VARIANCE REQUEST(S) (DETAILED):

The following variances are requested pursuant to Article 4, Section 402(a) of the City Zoning Ordinance:

FRONT YARD (SOUTHWEST): A front yard variance to 35 feet instead of 50 feet as required for the construction of a single-family dwelling with covered porches.

SIDE YARD (EAST): A side yard variance to 18 feet instead of 20 feet as required for the construction of a single-family dwelling with covered porches.

SIDE YARD (NORTHWEST): A side yard variance to 10 feet instead of 20 feet as required for the construction of a single-family dwelling with covered porches.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2411-26-2101

LOT AREA:

- 9,516 square feet (.21acres)

AICUZ:

Less than 65 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Southern Rivers
- X (area determined to be outside the 500-year flood)

VOTING DISTRICT:

District 2

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

None found

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Vacant Lot (built in N/A) (Note: Lot previously contained a mobile home)
- AG-2
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Agricultural Land (single-family with possible agricultural land use), AG-2
- South: Agricultural Land (single-family with possible agricultural land use), AG-2
- East: Agricultural Land (single-family with agricultural land use), AG-2
- West: Agricultural Land (single-family with no apparent agricultural land use), AG-2

EXISTING CONDITIONS:

- N/A (mobile home on subject property was removed)

EXTENT OF PROJECT:

Proposed single-family dwelling (variance requested)

Proposed single-family dwelling located 35 feet from the front property line instead of 50 feet as required, 18 feet from the side property line (east) instead of 20 feet as required, and 10 feet from the side property line (northwest) instead of 20 feet as required.

BACKGROUND INFORMATION:

According to City records, the subject parcel was legally created and recorded on May 22, 2025.

The applicant is requesting multiple variances to allow encroachments into the required front and side yards for a proposed single-family dwelling.

City Council recently approved a subdivision variance associated with the subject parcel. Generally, the need for such variance stemmed from an improper land division in 1960. The following brief explanation comes directly from the Planning Department, Subdivision Unit, staff report provided to City Council on October 15, 2024:

- *“The applicant is seeking a subdivision variance to replace an existing mobile home on the subject property with a new single-family dwelling. The subject property was created by deed on January 29, 1988 (Deed Book 2706, Page 2068), which constituted an improper subdivision of land as a subdivision plat was required in 1988 to legally create the parcel.*
- *The deed that created the parcel was originally written and notarized in 1960. The property was zoned Agricultural Unrestricted at the time. This zoning allowed for lots of any size to be created so long as residential structures were setback 75 feet from rights-of-way under 50 feet in width. The deed was not recorded with the City until 1988, at which point the Zoning for the subject parcel had changed to AG-2.*
- *The property is located within the AG-2 Agricultural Zoning District, which requires a minimum of one acre in lot size and 150 feet in lot width for residential lots. The subject parcel is only 0.22 acres in size and 74 feet wide when measured at the front setback. These dimensional deficiencies necessitate the need for a variance for plat approval.”*

There are two important matters pertaining to the approved subdivision variance that must be disclosed. They are as follows:

1. City Council members were provided an exhibit showing the structure and layout found in the *Site Plan* section of this staff report, minus newly added highlights and setback lines/arrows; and,
2. Section 9.3 of the City Subdivision Ordinance (authorization of City Council to grant subdivision variances) does not provide Council with the authority to grant variances associated with the City Zoning Ordinance. Consequently, the subject request to deviate from the requirements of the City Zoning Ordinance may only be heard and decided by the Board of Zoning Appeals.

Notwithstanding the information above, the now legally recorded 9,516 square foot subject parcel contains substantially less lot area and width than a modern AG-2 zoned property. For clarity, the minimum required lot width abutting a city street is 150 feet for newly divided agriculturally zoned parcels, with the minimum size of such tracts dependent on the age of the ‘mother parcel.’ For simplicity, 1-acre may be generally referred to as the minimum lot size of an agriculturally zoned property.*

As shown in the *Site Plan* section of this staff report, part of this request includes a covered porch on the southeast side of the proposed new home. Staff acknowledges that such structures are typically good candidates for future enclosures, such as screen rooms, sunrooms, and the like. Accordingly, staff added a condition for Board consideration that would allow future conversion of the proposed side yard porch into a screen room, sunroom, or similar use, with the added stipulation that any conversion stay within the footprint of the covered porch.

It should be recognized that the modestly sized covered entryway proposed for this project does not enjoy the by-right front yard encroachment allowance described in Section 201(a)(7) of the City Zoning Ordinance (i.e., small covered front porches). This is because such allowance is only applicable to homes constructed before May 12, 2009.

** Note: In the AG zoning district, density of dwelling units cannot be less than one unit per 15 acres of land. EXCEPTION: Tracts of 15 acres or larger lawfully created before June 14, 1994, may be subdivided into no more than two building sites, with each containing the minimum lot width and lot size required by the City Zoning ordinance (i.e., 150 feet of width, 1-acre, and 14-acres). So, tracts of agriculturally zoned land created after 1994 cannot typically be divided again if such division would result in a dwelling unit density of less than one unit per 15 acres of land.*

KEY CONSIDERATIONS:

- The property is deficient in overall lot area by at least 34,044 square feet.
- The property is deficient in lot width by 78.1 linear feet.
- The proposed dwelling appears to be positioned just beyond the State mandated minimum required 10-foot setback from the on-site sewer system, with seemingly no available suitable alternative building location on the lot (note: distance regulated by Virginia Administrative Codes 12VAC5-610-592(C)(setback distances, absorption area) and 12VAC5-610-597 (Table 4.1)).
- The boundaries of the subject parcel were approved by City Council through the granting of a subdivision variance.

LETTERS OF SUPPORT AND OPPOSITION (AS OF 09-22-2025):

- Letters of Support: 0
- Letters of Opposition: 0

APPLICANT STATED HARDSHIP:

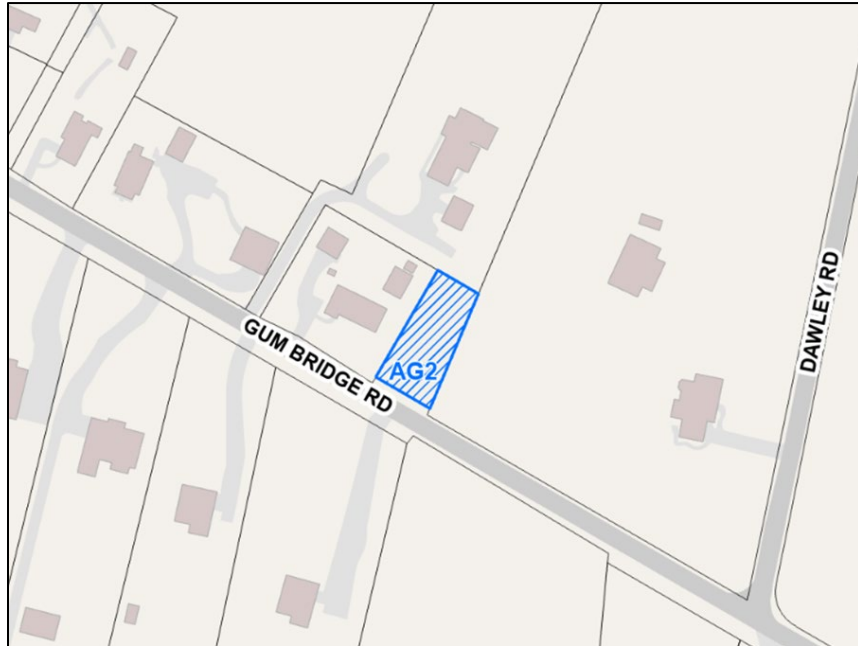
"The lot is non-conforming to the required minimum square footage (43,560 sf) and lot width (150') and the owner, at the request of the City, dedicated to the City 575+ square feet of additional Gum Bridge Road right of way upon which none of us will ever see a paved portion of Gum Bridge Road.

The variances are the minimum necessary to afford relief and were clearly anticipated and welcomed by the neighbors and by our City's governing body."

RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, "Single Family Site Plan of Lot G-1," dated February 23, 2024/April 27, 2025, and prepared by Fox Land Surveying (shown as Exhibit 'A' in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. Future conversion of the proposed side yard (southeast) covered porch into a sunroom, or similar, is permitted without returning to the Board of Zoning Appeals for a modification of this approval; however, such conversion must remain within the footprint of the side yard (southeast) covered porch as shown in the *Site Plan (Exhibit A)* section of this report. In addition, such conversion allowance does not include a second story room addition or second story deck/balcony/porch. The Zoning Administrator shall have the right to determine conformance with the condition.
3. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other applicable authority.

LOCATION MAPS:



AERIAL:



AERIAL (DETAIL):



[illegible]

[illegible]

PHOTOGRAPHS:




PHOTOGRAPHS:



PHOTOGRAPHS:



DISCLOSURE STATEMENT:

	CITY OF VIRGINIA BEACH	<h2 style="margin: 0;">Disclosure Statement</h2>												
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SECTION 1: APPLICANT DISCLOSURE														
<p>APPLICANT INFORMATION</p> <p>Applicant Name: <u>Beach Framing and Drywall, LLC, a Virginia limited liability company</u> <i>as listed on application</i></p> <p>Is Applicant also the Owner of the subject property? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p><i>If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).</i></p> <p>Does Applicant have a Representative? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p><i>If yes, name Representative:</i> <u>R. Edward Bourdon, Jr., Esq., Sykes, Bourdon, Ahern & Levy, P.C.</u></p> <p>Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p><i>If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)</i></p> <div style="border: 1px solid black; padding: 5px; min-height: 30px;"><u>Michael J. Wilson, Jr., Managing Member/Owner</u></div> <p>Does the subject property have a proposed or pending purchaser? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p><i>If yes, name proposed or pending purchaser:</i> _____</p> <p>KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE</p> <p>Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p><i>If yes, name the official or employee, and describe the nature of their interest.</i></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p>APPLICANT SERVICES DISCLOSURE</p> <p>READ: <i>The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th style="width: 40%;">SERVICE</th><th style="width: 10%;">YES</th><th style="width: 10%;">NO</th><th style="width: 40%;">SERVICE PROVIDER <small>(Name entity and/or individual)</small></th></tr></thead><tbody><tr><td>Financing (mortgage, deeds of trust, cross-collateralization, etc.)</td><td style="text-align: center;"><input type="radio"/></td><td style="text-align: center;"><input checked="" type="radio"/></td><td></td></tr><tr><td>Real Estate Broker/Agent/Realtor</td><td style="text-align: center;"><input type="radio"/></td><td style="text-align: center;"><input checked="" type="radio"/></td><td></td></tr></tbody></table>			SERVICE	YES	NO	SERVICE PROVIDER <small>(Name entity and/or individual)</small>	Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>		Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	
SERVICE	YES	NO	SERVICE PROVIDER <small>(Name entity and/or individual)</small>											
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>												
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>												

DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input checked="" type="radio"/>	<input type="radio"/>	The applicant
Engineer/Surveyor/Agent	<input checked="" type="radio"/>	<input type="radio"/>	Travis Fox, Fox Land Surveying
Legal Services	<input checked="" type="radio"/>	<input type="radio"/>	R. Edward Bourdon, Jr., Esq., Sykes, Bourdon, Ahern & Levy, P.C.

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application. Beach Framing and Drywall, LLC

Michael J. Wilson, Jr.,

Michael J. Wilson
Michael J. Wilson (Jul 29, 2025 18:53:04 EDT)

07/29/2025

Applicant Name (Print)

Applicant Signature

Date

¹ "Parent-subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): 09-16-2025

Wilissa Blair-Miller

Wilissa Blair-Miller

09-16-2025

Staff Name (Print)

Staff Signature

Date

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CASE: 2025-BZA-00076 - Richard D. Swift

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH VARIANCE REQUEST:

1932 Sunrise Drive

REPRESENTATIVE:

Richard D. Swift, Property owner

VARIANCE REQUEST(S) (ABBREVIATED):

Variances to the minimum required yard and maximum allowable accessory structure floor area for existing accessory structures (shed and outbuilding).

VARIANCE REQUEST(S) (DETAILED):

The following variances are requested pursuant to Article 5, Section 501(b) and Article 5, Section 502(a) of the City Zoning Ordinance:

SIDE YARD (SOUTHEAST): A side yard setback variance to 4.4 feet instead of 10 feet as required for an existing storage shed.

FLOOR AREA: A variance to permit 1,210 square feet of accessory building floor area instead of a maximum 500 square feet as allowed.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

1469-46-3802

LOT AREA:

- 24,512 square feet (.56 acres)

AICUZ:

Less than 65 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Chesapeake Bay Preservation Area (Resource Management Area)
- X (area determined to be outside the 500-year flood) and 0.2% (area of moderate flood hazard, usually the area between the limits of the 100-year and 500-year floods)

VOTING DISTRICT:

District 9

PREVIOUS BOARD OF ZONING APPEALS VARIANCE(S):

None found

EXISTING LAND USE, ORIGINAL BUILD DATE, ZONING DISTRICT, STRATEGIC GROWTH AREA:

- Single-family (built in 1955)
- R-10 (Residential District)
- Not in a Strategic Growth Area

SURROUNDING LAND USES/ZONING DISTRICTS:

- North: Preservation land abutting Little Creek Reservoir (City of VB park land), P-1
- South: Residential (single-family), R-10
- East: Residential (single-family), R-10
- West: Residential (single-family), R-10

EXISTING CONDITIONS:

- Small shed: 4.4 feet from side property line (southeast)
- Larger outbuilding: 19.4 feet from side property line (west)

EXTENT OF PROJECT:**Two-story outbuilding and shed** (variance requested)

The applicant is requesting variances to permit the total amount of accessory structure floor area on the subject property to exceed the maximum allowed by the City Zoning Ordinance, and to retain an existing shed located closer than allowed to a side property line.

BACKGROUND INFORMATION:

According to City records, the subject property was located within an RS4 zoning district when it was developed in 1955. In 1973, it was in an R5 zoning district, and in 1988 it was in an R-10 zoning district, which is the current designation.

The applicant is requesting a variance to permit a greater amount of accessory structure floor area on the property than allowed by the City Zoning Ordinance. The floor area request includes an existing outbuilding and shed. The applicant is also requesting a variance to allow the shed to remain within a required side yard.

City record data shows a construction permit for the subject outbuilding issued to the previous homeowner on January 17, 2006, with a final inspection occurring on December 9, 2008 (inspection passed). The permit allowed 495 square feet of overall floor area associated with the outbuilding, which is slightly less than the structure's current 521 square foot as-built footprint shown on the submitted physical survey. *Connect Explorer* satellite imagery confirms the construction of the permitted outbuilding during those noted dates, with such imagery appearing to also confirm that no alterations to the footprint or roof design occurred between December 2008 and March 2025. It must be underscored that only 495 square feet of overall floor area associated with the subject outbuilding construction was approved, with *Connect Explorer* satellite imagery seemingly verifying that all calculable floor area was concentrated at ground level. In other words, based on the 2006 building permit, the 2008 passed final inspection, and historic satellite imagery, the original building was seemingly constructed to meet the requirements associated with a one-story structure.

An explanation pertaining to the 2006 building permit approval is warranted, which at first blush may seem like the subject property was permitted to exceed the overall maximum accessory structure floor area without a variance. Notably, the City Zoning Ordinance began limiting the total allowable accessory structure floor area on residentially zoned properties in 1988. Since that time, the subject property has been limited to 500 square feet of overall accessory structure floor area. *Connect Explorer* satellite imagery confirmed the existence of the still present 168 square foot shed on the subject property when the noted 495 square foot outbuilding construction permit was issued in 2006. Back then, it was common practice for zoning staff to temporarily permit more accessory structure floor area on a property than allowed, but just during the construction of a larger outbuilding. Such allowance was only granted if the permit holder agreed to bring the property's accessory structure floor area into compliance once the larger outbuilding was completed, which typically resulted in the removal of smaller storage sheds. Such agreements allowed property owners to keep outside belongings stored in existing smaller sheds, until transferring the items into a newly constructed larger outbuilding. Unfortunately, there was no consistent mechanism to ensure compliance with the conditions of such agreements. This has undoubtedly led to certain properties now containing more overall accessory structure floor area than permitted by the City Zoning Ordinance. It is presumed by staff that such an arrangement caused the subject lot to exceed the maximum allowable accessory building floor area, subsequent to the issuance of the noted 2006 building permit.

A brief explanation of floor area calculation is also warranted. The City Zoning Ordinance gages floor area as the sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls, provided that the following areas shall be excluded from the determination of floor area:

- Attic spaces with headroom of less than 7 feet; and,
- Unenclosed stairs of fire escapes; and,
- Elevator structures on the roof; and,
- Areas devoted exclusively to air conditioning, ventilating and other building machinery and equipment; and
- Parking structures, which does not include residential garages or residential detached garages.

(Note: A parking structure is defined by the zoning ordinance as [emphasis added] “A building or structure, or portion thereof, designed or used for temporary parking of motor vehicles and consisting of more than one (1) parking level or containing retail sales establishments and parking at different levels.”)

For additional clarity, it should also be noted that the larger subject outbuilding was originally approved by the City with a rather unique shallow roof design. It is presumed such design was specifically chosen to address maximum floor area regulations, which seemingly resulted in an attic space headroom height of less than 7 feet. Thus, maximizing the footprint of the structure to keep it below the 500 square foot floor area threshold (please see roof measurements found in this staff report for details – please also note that the roof framing shown in those photos was demolished sometime after March 2025).

On May 12, 2025, the Permits and Inspection Division of the Planning Department received the following anonymous complaint:

- *“Received a call about a two-story shed being built in the back yard late at night without a permit. Keeping the neighbors up at night.”*

On May 13, 2025, a stop work order was issued by a Permits and Inspections Division inspector, and on May 28th a notice of violation was posted by the same inspector.

It is staff's understanding from the property owner that the original uniquely designed roof framing began to fail. The property owner advised that he altered such roof to make the structure safe, albeit with no approved building permit. In doing so, the entirety of the previous roof framing covering the first floor was removed and replaced with a newly constructed full height second floor. Over the newly created second floor, construction of a shallow pitched gable roof was added. Because the newly added second floor must be calculated as floor area, the subject outbuilding now contains 1,042 square feet instead of the originally permitted 495 square feet (calculation based on building footprint times two, or $33.6' \times 15.5' \times 2 = 1,041.6$). When combined with the existing 168 square foot shed, and a slightly larger than originally approved outbuilding footprint, the subject property now exceeds the overall allowable accessory structure floor area by 710 square feet. To put it another way, the subject property now contains 1,210 square feet of accessory structure floor area instead of the maximum 500 square feet as allowed.

It must be disclosed that Section 15.2-2307(D) of the Code of Virginia may be applicable to the first floor of the subject outbuilding. This is based on the issuance of the previously described 2006 building permit and 2008 passed final inspection, although such permit was only for a 495 square foot one-story structure instead of the current 521 square foot first floor footprint, which is now associated with a 1,042 square foot two-story building. The noted code section states as follows:

"....if the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure."

In other words, if 521 square feet of one-story outbuilding was inspected and approved by City staff instead of 495 square feet as noted on the 2006 building permit, such matter is seemingly allowed under section 15.2-2307(D) of the Code of Virginia. Nevertheless, it must be underscored that such allowance would only be applicable to the existing first floor of the subject outbuilding and is not applicable to the newly added, and unpermitted, second floor.

As *Connect Explorer* satellite imagery does not typically contain images before 2003, staff are unclear precisely when the small 168 square foot shed was placed on the property. Still, historic imagery does confirm its existence at the subject location in 2003. Notwithstanding, minimum side yard setbacks have been applicable to accessory buildings since the subject property was developed in 1955. In fact, the minimum required side yard setbacks over time for such accessory buildings are as follows; 1) 6 feet from 1954 to 1973; 2) 10 feet from 1974 to 1988; and 3) 10 feet from 1988 to present. As a result, the applicant is also requesting a variance to allow the subject shed to remain within the required side yard.

KEY CONSIDERATIONS:

- Arguably, the strict application of the zoning ordinance does not restrict the utilization of the property, as 500 square feet of accessory building is still allowed, just as it was when the original outbuilding was permitted for construction in 2006.
- The variance request is seemingly shared by other property owners in the vicinity of the subject property and throughout the City.
- The variance appears to be contrary to the purpose of the 1988 City Zoning Ordinance text amendment adopted by City Council to regulate accessory structure floor area in residential zoning districts.

LETTERS OF SUPPORT AND OPPOSITION (09-22-2025):

- Letters of Support: 0
- Letters of Opposition: 0

APPLICANT STATED HARDSHIP:

"This request meets the criteria for an area variance because:

The hardship is due to a pre-existing condition. I did not construct the building. My involvement has been limited to essential structural repairs.

The hardship is not self-imposed. The building and its second-level framing existed at the time of purchase.

Relief requested is the minimum necessary to allow the building to be safely secured. I have not expanded the footprint, increased the height, or added new structures. Repairs simply restore structural integrity. An exterior stairway is proposed for safe access to the second level, as no internal stairway was provided.

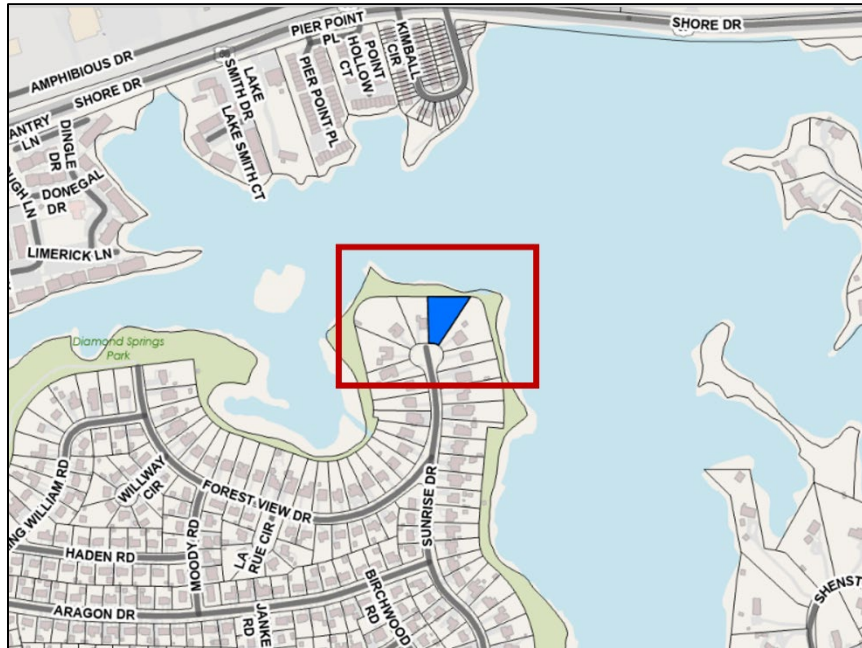
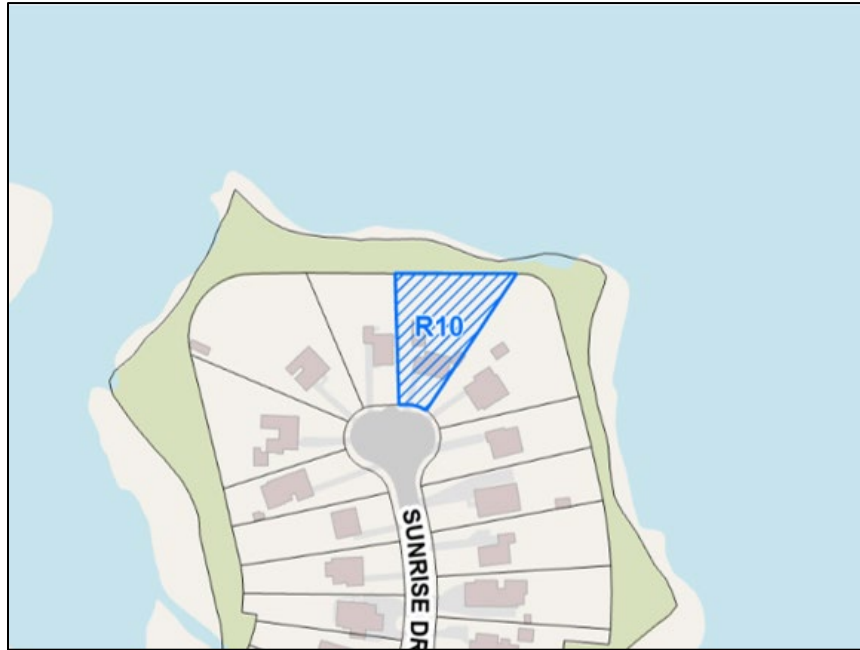
No substantial detriment to neighbors or the character of the district will result. Neighbors support the repairs, and appreciate the aesthetic change from the previous structure. There are several similar or larger accessory buildings with second floor levels that exist within a ¼-mile radius of me — including one directly adjacent to my property. See attached photos.

Strict application of the ordinance would unreasonably restrict the safe use of existing improvements. The only alternative would be the demolition of an otherwise structurally salvageable accessory building. This variance request seeks only to bring the building into safe and functional condition."

RECOMMENDED CONDITIONS IF APPROVED:

1. The proposed improvements shall be constructed in substantial conformance to the marked submitted site plan titled, “Physical Survey of Lot 23, Block 9, Amended Plat of Diamond Springs Homes,” dated June 26, 2025, and prepared by Alphatec Surveyors LTD. (shown as Exhibit ‘A’ in this staff report). This condition does not permit deviations from any applicable laws, codes, policies, or interpretations not specifically requested by the applicant and granted by the Board of Zoning Appeals. Nevertheless, this condition shall grant the Zoning Administrator the right to interpret substantial conformance with the Board approved plan.
2. The subject accessory structures depicted on *Exhibit ‘A’* in this staff report shall meet all City Zoning Ordinance requirements for use.
3. The subject accessory structures depicted on *Exhibit ‘A’* in this staff report shall not exceed the height of the principal structure.
4. The subject property and accessory structures depicted on *Exhibit ‘A’* in this staff report shall not exceed the maximum permissible square footage of floor area granted by the Board.
5. All applicable permits shall be obtained from the City of Virginia Beach Planning Department and/or any other relevant authority.

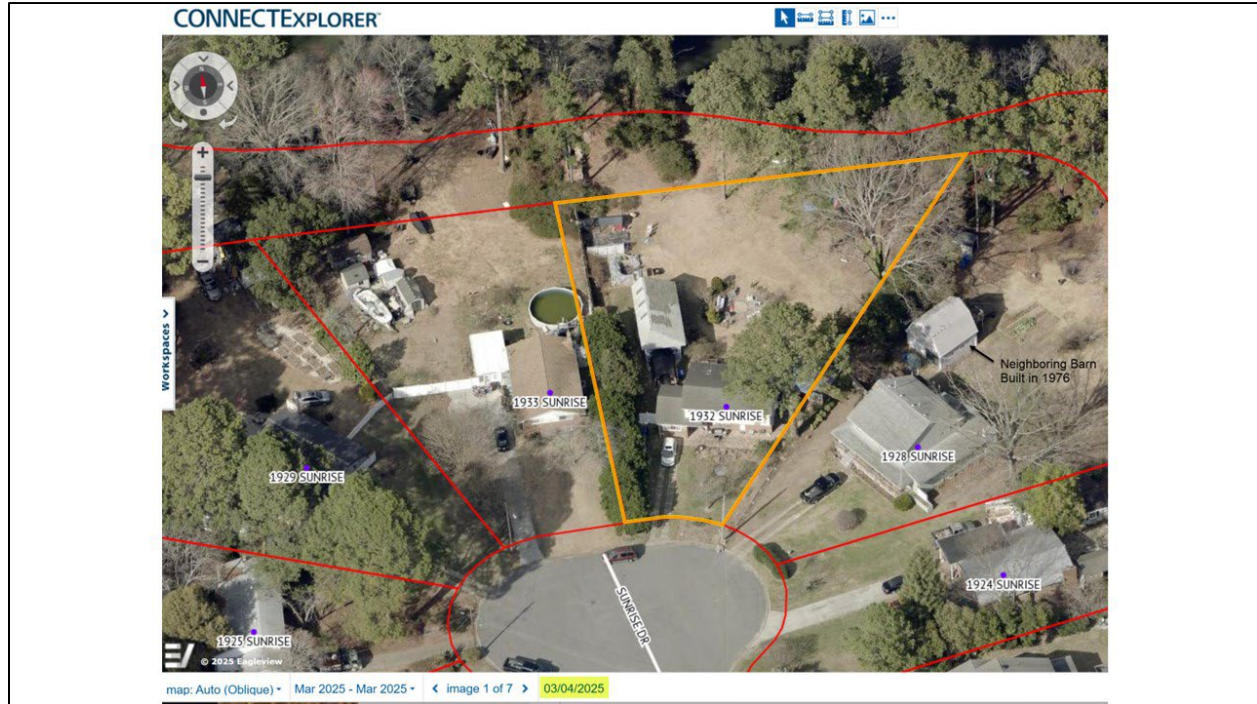
LOCATION MAPS:



AERIAL:



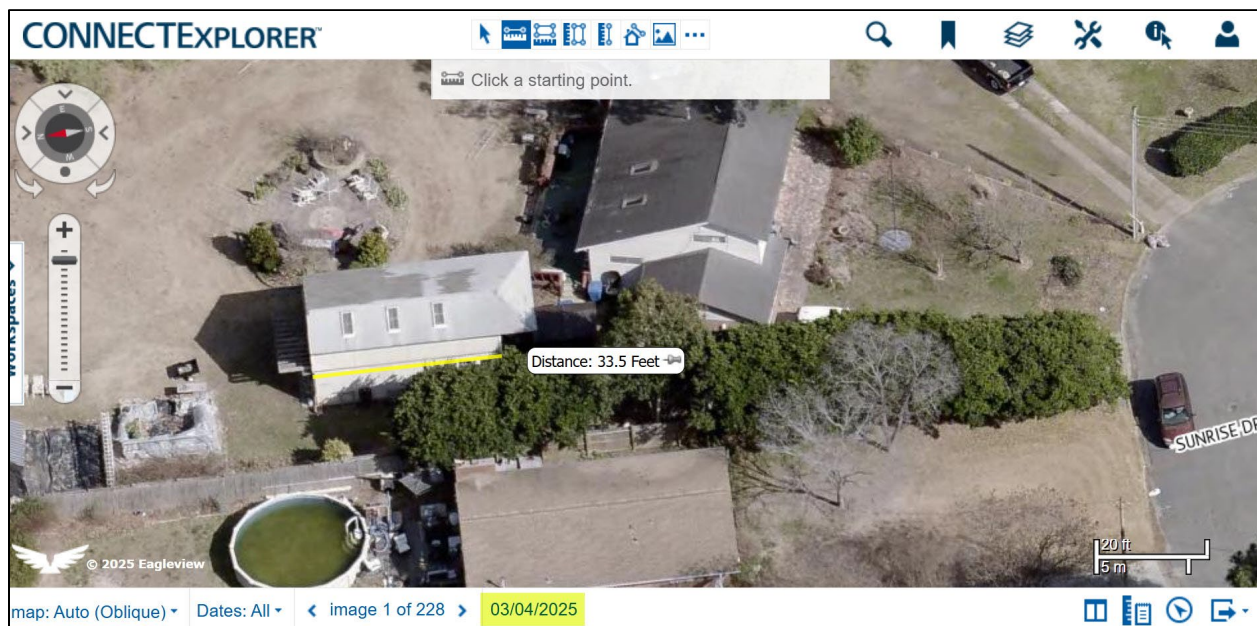
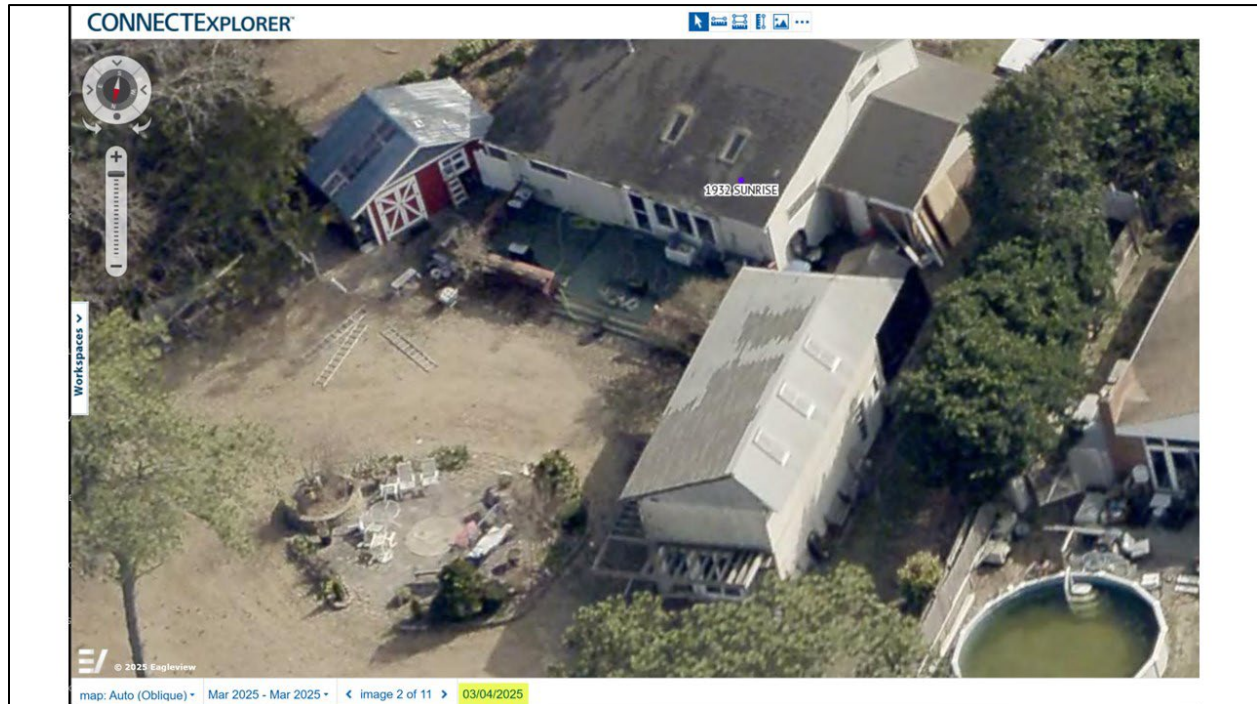
AERIAL (DETAIL):



AERIAL (DETAIL):



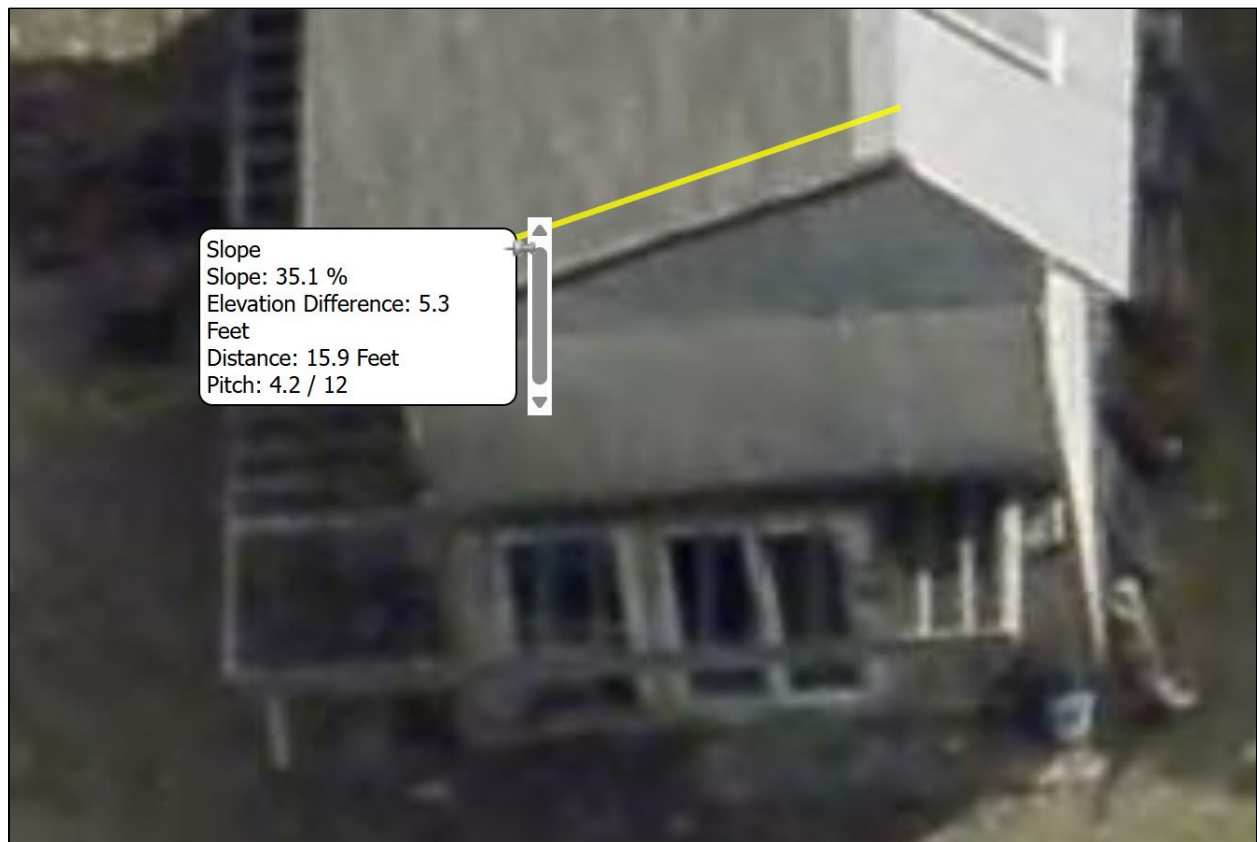
AERIAL (DETAIL AND MEASUREMENTS):



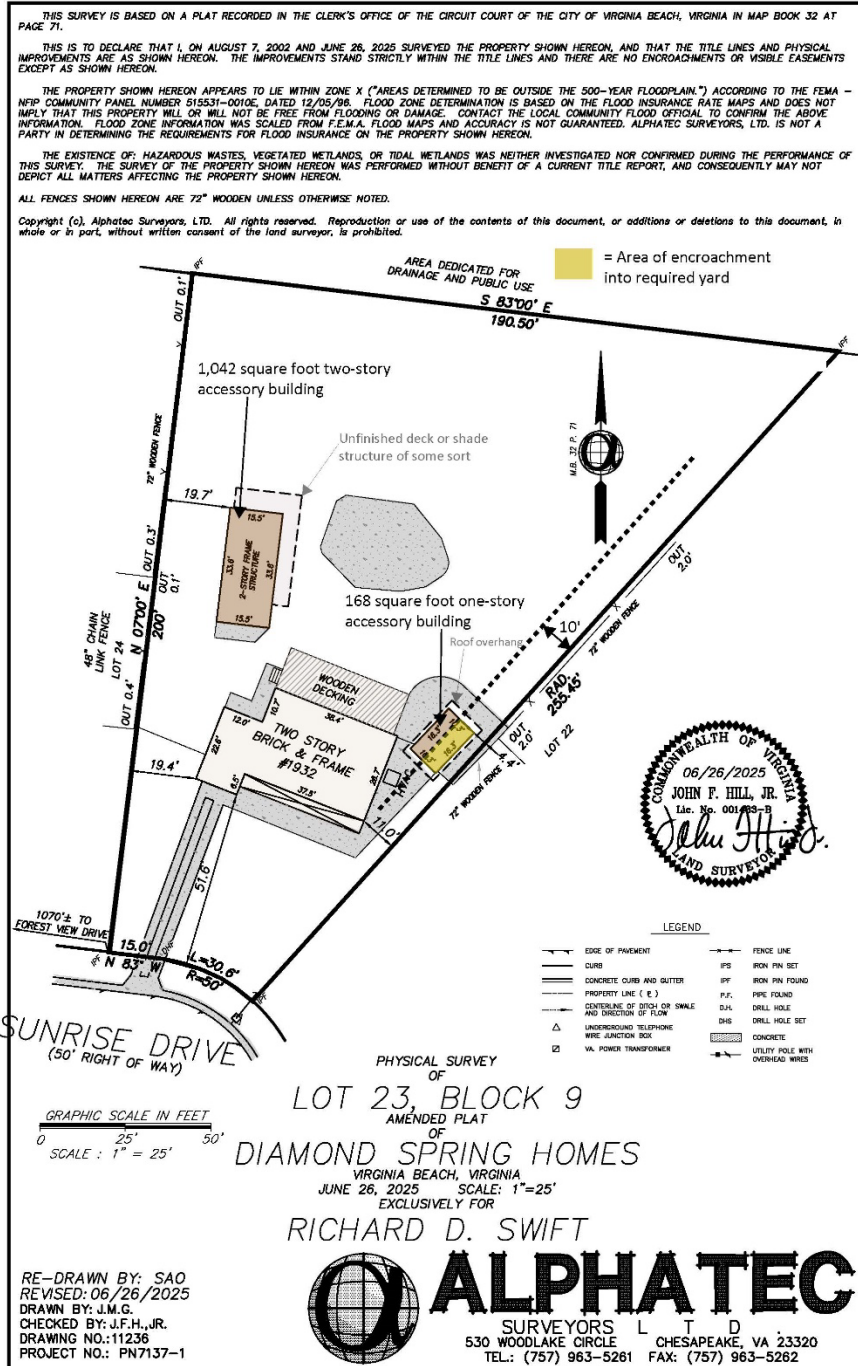
AERIAL (MEASUREMENTS):



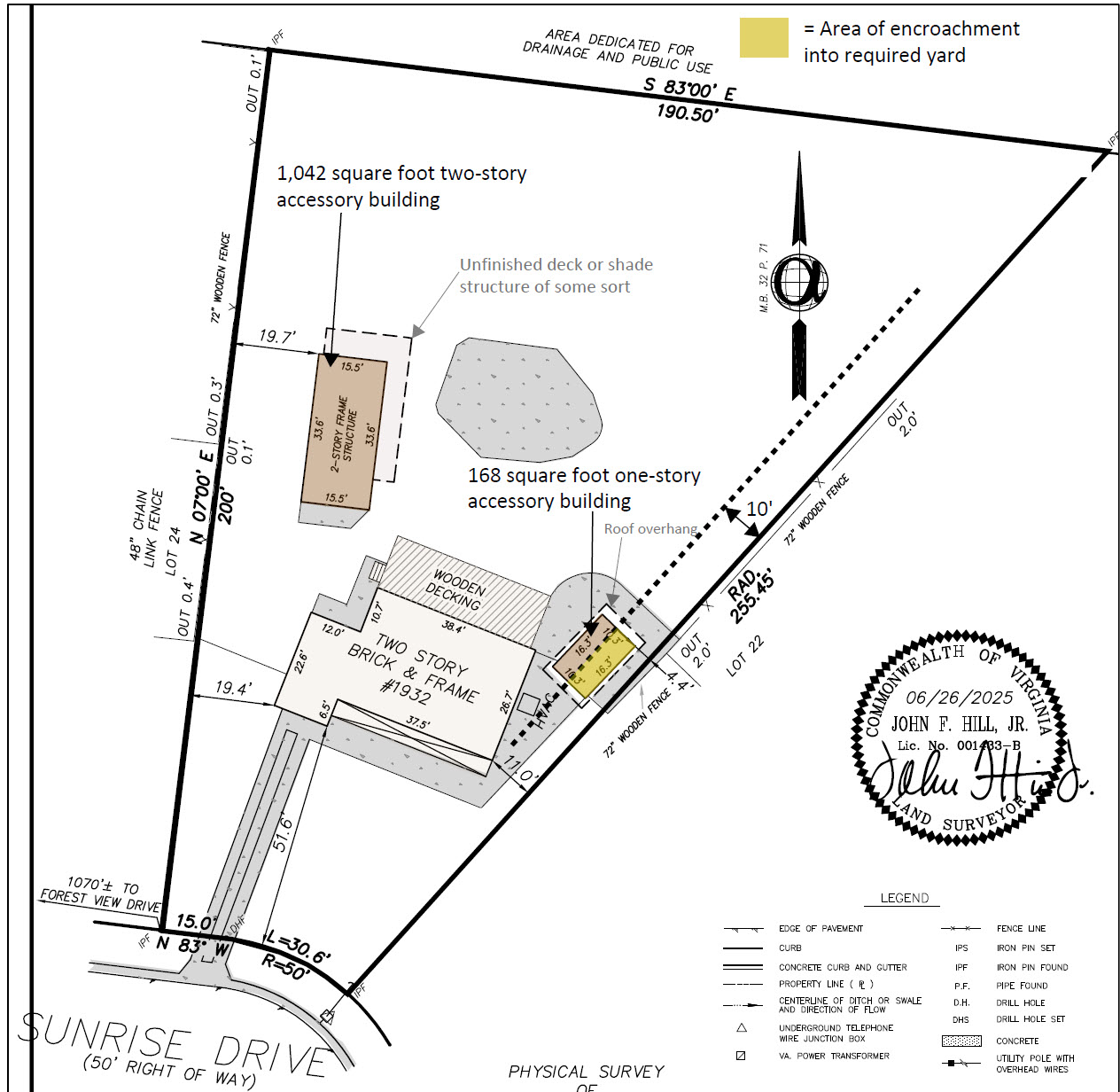
AERIAL (MEASUREMENTS):



SITE PLAN (EXHIBIT A):



SITE PLAN DETAIL (EXHIBIT A):



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:



PHOTOGRAPHS:



DISCLOSURE STATEMENT:



CITY OF
**VIRGINIA
BEACH**

Disclosure Statement

The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law. Completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council, boards, commissions, or other bodies.

SECTION 1: APPLICANT DISCLOSURE

APPLICANT INFORMATION

Applicant Name:

as listed on application Richard D Swift

Is Applicant also the Owner of the subject property? Yes ☒ No ☐

If no, Property Owner must complete SECTION 2: PROPERTY OWNER DISCLOSURE (page 3).

Does Applicant have a Representative? Yes ☐ No ☒

If yes, name Representative: _____

Is Applicant a corporation, partnership, firm, business, trust or unincorporated business? Yes ☐ No ☒

If yes, list the names of all officers, directors, members, or trustees below AND businesses that have a parent- subsidiary ¹ or affiliated business entity ² relationship with the applicant. (Attach list if necessary.)

--

Does the subject property have a proposed or pending purchaser? Yes ☐ No ☒

If yes, name proposed or pending purchaser: _____

KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes ☐ No ☒

If yes, name the official or employee, and describe the nature of their interest.

--

APPLICANT SERVICES DISCLOSURE

READ: The Applicant must certify whether the following services are being provided in connection to the subject application or any business operating or to be operated on the property. The name of the entity and/or individual providing such services must be identified. (Attach list if necessary.)

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Financing (mortgage, deeds of trust, cross-collateralization, etc.)	<input type="radio"/>	<input checked="" type="radio"/>	
Real Estate Broker/Agent/Realtor	<input type="radio"/>	<input checked="" type="radio"/>	

DISCLOSURE STATEMENT:

SECTION 1: APPLICANT DISCLOSURE *continued*

SERVICE	YES	NO	SERVICE PROVIDER (Name entity and/or individual)
Accounting/Tax Return Preparation	<input type="radio"/>	<input checked="" type="radio"/>	
Architect/Designer/Landscape Architect/Land Planner	<input type="radio"/>	<input checked="" type="radio"/>	
Construction Contractor	<input type="radio"/>	<input checked="" type="radio"/>	
Engineer/Surveyor/Agent	<input checked="" type="radio"/>	<input type="radio"/>	Alphatec Surveyors Ltd. 757.963.5261
Legal Services	<input type="radio"/>	<input checked="" type="radio"/>	

APPLICANT CERTIFICATION

READ: I certify that all information contained in this Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein three weeks prior to the meeting of Planning Commission, City Council, VBDA, CBPA, Wetlands Board or any public body or committee in connection with this application.

Richard D. Swift

Applicant Name (Print)

RD Swift

Applicant Signature

08/01/2025

Date

¹ "Parent-subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

FOR CITY USE ONLY:

No changes as of (date): 09/23/2025

Wilissa Blair-Miller

Staff Name (Print)

Wilissa Blair-Miller

Staff Signature

09/23/2025

Date

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CASE: 2025-BZA-00072 - Dawn Hrelc, Joshua A. Kinas, and The Dawn Hrelc Revocable Trust

HEARING DATE: October 1, 2025

TO: Chairman, Board of Zoning Appeals

FROM: Hannah Sabo, Zoning Administrator and Wilissa Blair-Miller, Planner III

ADDRESS ASSOCIATED WITH REQUEST:

1212 York Lane

REPRESENTATIVE:

Kevin Martingayle of Bischoff Martingayle, P.C.

GEOGRAPHIC PARCEL INFORMATION NUMBERS (GPIN):

2418-48-4048

LOT AREA:

13,260 square feet (.30 acres)

AICUZ:

65-70 decibels

REGULATORY WATERSHED AND FLOOD ZONE:

- Chesapeake Bay Preservation Area (Resource Management Area)
- X (area determined to be outside the 500-year flood)

VOTING DISTRICT:

District 6

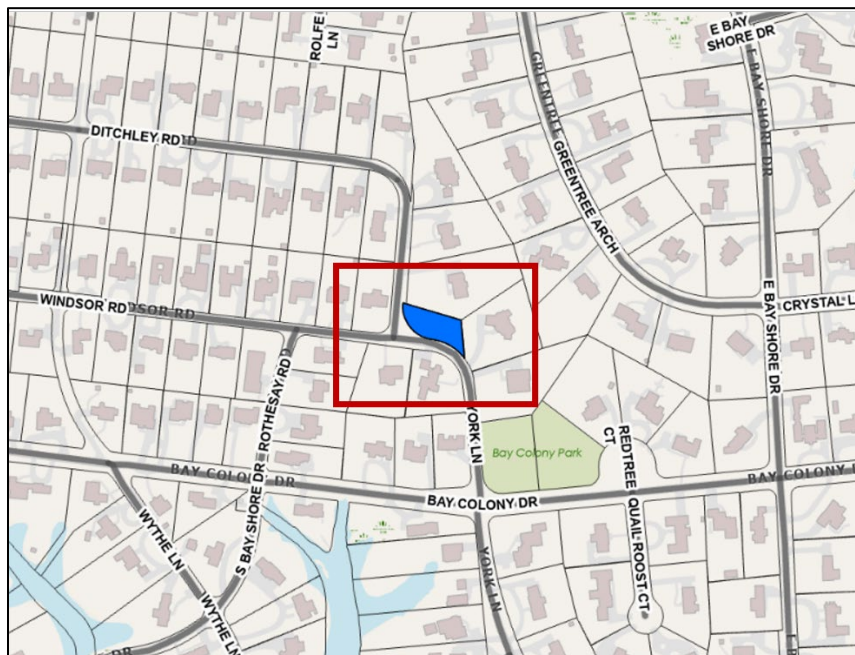
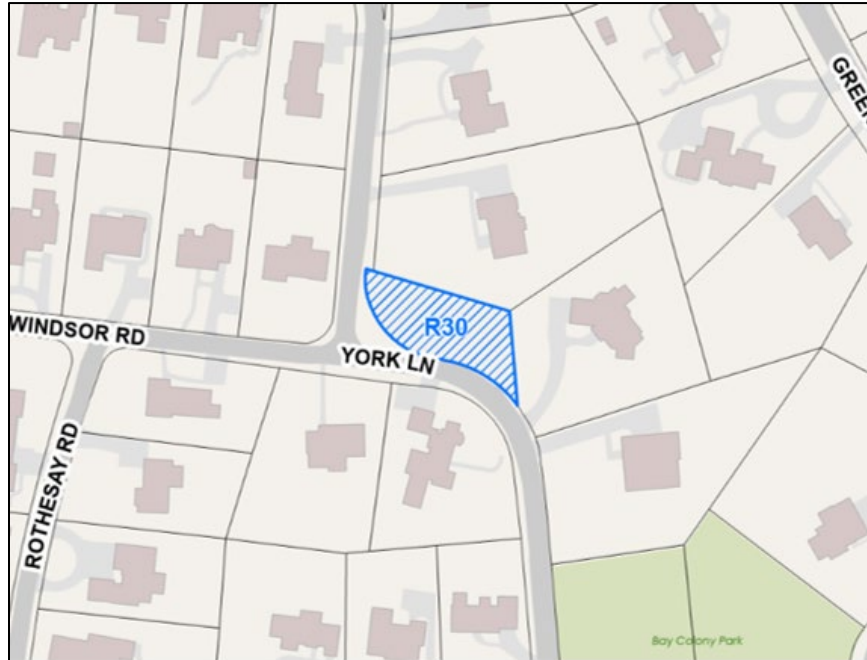
APPLICANT’S CURRENT GENERAL REQUEST:

“Pursuant to Va. Code§ 15.2-2311, we hereby file this formal appeal on behalf of the Appellants from zoning determinations issued by zoning administrator Kevin Kemp on July 16, 2025, in response to our formal request dated July 3, 2025, attached hereto as Exhibit A. Mr. Kemp's response is attached as Exhibit B. The appeal arises from multiple zoning determinations that directly affect the Appellants' property rights and interests and would allow the construction of a single-family dwelling on the Lot---construction which would cause significant harm to the Appellants and their property.”

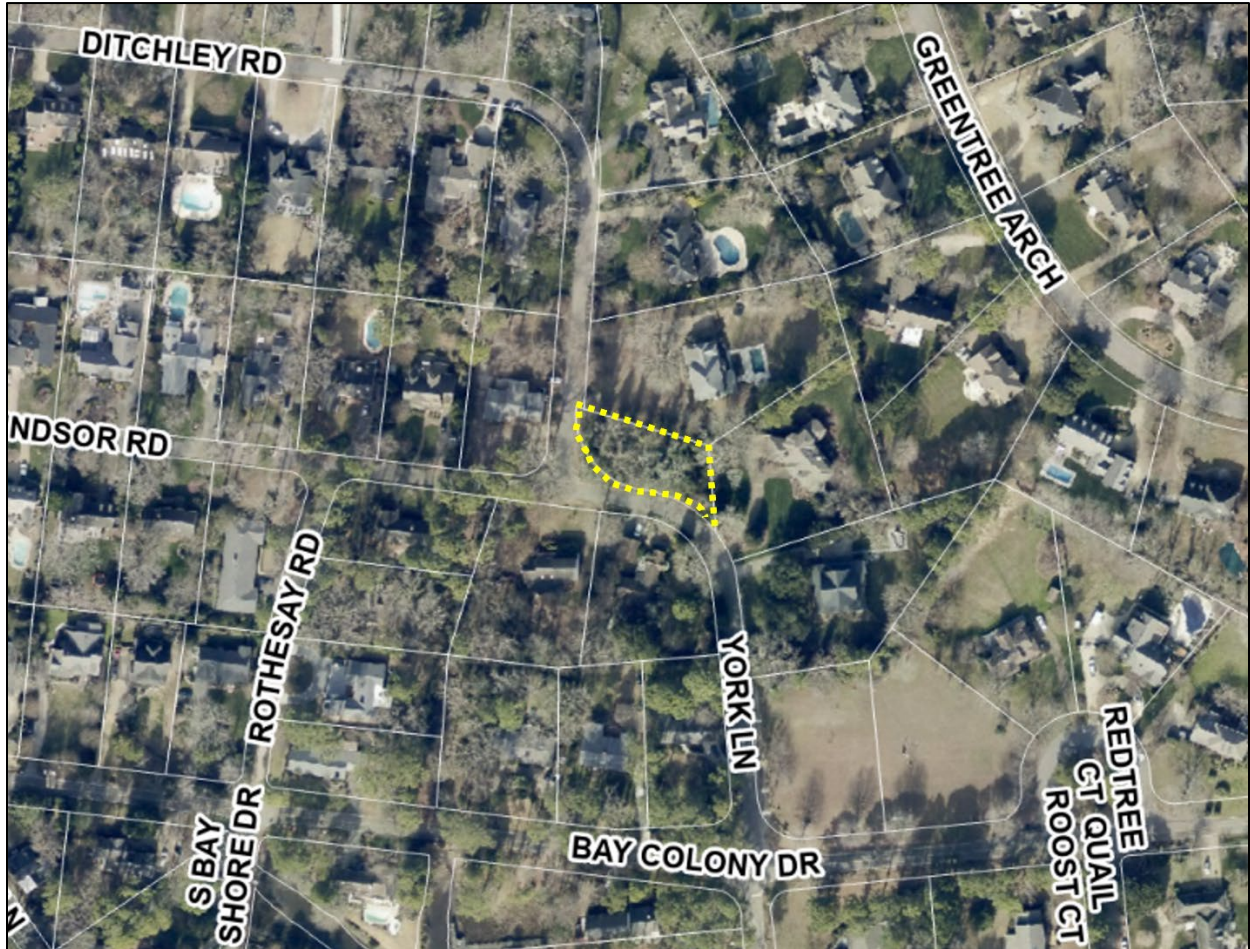
CITY’S POSITION:

The document the appellant is seeking to appeal does not constitute an appealable determination under Virginia Code 15.2-2311.

LOCATION MAPS:



AERIAL:





BISCHOFF MARTINGAYLE

A REPUTATION FOR RESULTS™

Direct Dial: 757-416-6009
Direct Fax: 757-428-6982
martingayle@bischoffmartingayle.com
*Reply to Virginia Beach office

July 31, 2025

Via online application portal

Board of Zoning Appeals
c/o Department of Planning & Community Development
City of Virginia Beach
Municipal Center, Building 2
Virginia Beach, VA 23456

**In re: July 2, 2025 decision of the Board of Zoning Appeals
Of the City of Virginia Beach**

Dear Members of the Board:

We represent Dr. Luke Kohan, Dr. Dawn Hrelc, and The Dawn Hrelc Revocable Trust (collectively, "Appellants"). The Dawn Hrelc Revocable Trust is the record owner of 1220 York Lane, Virginia Beach, Virginia 23451. As trustees, Dr. Luke Kohan and Dr. Dawn Hrelc reside at 1220 York Lane. The property is directly adjacent to the property located at 1212 York Lane (the Lot"), which is the subject of this appeal. The Lot is owned by South Linkhorn Bay Trust. As trustees, Josh A. Kinas and Carrie G. Kinas reside at the property.

Pursuant to Va. Code § 15.2-2311, we hereby file this formal appeal on behalf of the Appellants from zoning determinations issued by zoning administrator Kevin Kemp on July 16, 2025, in response to our formal request dated July 3, 2025, attached hereto as Exhibit A. Mr. Kemp's response is attached as Exhibit B. The appeal arises from multiple zoning determinations that directly affect the Appellants' property rights and interests and would allow the construction of a single-family dwelling on the Lot—construction which would cause significant harm to the Appellants and their property.

Background

This appeal follows a previous attempt by Dr. Dawn Hrelc, in her individual capacity, to challenge zoning determinations affecting the Lot, which was dismissed by this Board on July 2, 2025, as untimely under the 30-day appeal window pursuant to Va. Code § 15.2-2311. That prior appeal challenged two determinations:

bischoffmartingayle.com



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July 31, 2025
Page 2

1. A May 24, 2022 letter from then-zoning administrator Kevin Hershberger to attorney John W. Richardson, Esq., which classified the Lot as a “legal nonconforming lot” eligible for a “Single Family Dwelling.” Dr. Dawn Hrelc did not receive notice of this determination until late April 2025.
2. A May 14, 2024 email “determination” by current zoning administrator Kevin Kemp, redesignating the Lot as a “corner lot” and concluding that it met all required setbacks, after Mr. Kinas withdrew a setback variance application amid significant public opposition. Dr. Dawn Hrelc likewise had no notice of this determination until late April 2025.

Following the dismissal of Dr. Hrelc’s individual appeal as time-barred, counsel for the Appellants requested new determinations, to be addressed specifically to all Appellants, on July 3, 2025. Mr. Kemp’s written responses dated July 16, 2025 now serve as the basis for this timely appeal.

Grounds for Appeal

The Appellants raise the following grounds for appeal, which are non-exclusive and include other property ownership and boundary-related disputes that remain ongoing:

1. Failure to Articulate Applicable Standards for “Corner Lot” Determination

In response to our requests, Mr. Kemp stated that the “standard used to determine the setbacks regarding this lot has been in practice by the zoning division since prior to [his] employment in June 2011.” (See Exhibit A, Response #6). However, Mr. Kemp fails to identify or articulate the specific standard or method used to reach the “corner lot” determination. Without a clear standard—let alone a written policy—there is no basis upon which to evaluate whether the “determination” was correctly or lawfully made. The absence of transparency renders the “determination” arbitrary and capricious and warrants reversal.



July 31, 2025

Page 3

2. The “Corner Lot” Determination is Legally Invalid and Void

Any time a locality, Board of Zoning Appeals or zoning administrator acts in violation of its own zoning ordinances, such action is void. *Renkey v. County Bd.*, 272 Va. 369, 376 (2006); *Hurt v. Caldwell*, 222 Va. 91, 97-98 (1981). In this instance, nothing in the Virginia Beach zoning ordinances supports the zoning administrator’s redesignation of the subject lot as a “corner lot” and the weight of the authority defining a “corner lot” is against the determination.

3. Improper Redesignation as “Corner Lot” – Estoppel Applies

In his initial application to the Board of Zoning Appeals for setback variances (filed March 4, 2024), Mr. Kinas did not classify the Lot as a “corner lot.” Only after significant public resistance caused him to withdraw the application did he seek a reclassification of the Lot as a “corner lot.” Under Virginia law, a party may not take a position that contradicts a prior position relied upon by others, particularly in zoning and land use disputes. Mr. Kinas’ new position is legally inconsistent with his original representations and should be barred by estoppel.

4. Procedural Irregularities and Lack of Notice

The May 14, 2024 “determination” was issued privately and without notice to any affected parties other than Mr. Kinas and his counsel. This “email determination” followed in-person meetings between Mr. Kemp and Mr. Kinas and/or his representatives around April 12, 2025, during which the same setback issues previously raised in the variance application were discussed. Mr. Kemp acknowledged in an email that the determination was made through “conversations,” yet he failed to issue a formal written explanation, despite indicating he would. The deliberate choice to bypass standard procedures and public notice—especially in the face of known community opposition—was inappropriate and prejudicial. Notice is a fundamental requirement of due process in administrative zoning actions. The failure to provide it renders the determination procedurally defective and legally voidable.



July 31, 2025

Page 4

5. Ambiguity as to Whether the “Determination” is Official

There remains serious doubt as to whether the May 14, 2024 email constitutes a valid “official” determination under Va. Code § 15.2-2311(A). Though Mr. Kemp’s email asserts that it is an “official determination of the zoning administrator,” his email signature block states the opposite:

“This is not an official order, requirement, decision, or determination issued pursuant to Va. Code § 15.2-2311(A).”

This contradiction renders the “determination” invalid or at best legally ambiguous, and therefore unfit to serve as a basis for any construction activity or for depriving Appellants of appeal rights.

Conclusion and Requested Relief

For the foregoing reasons, the appellants respectfully request that the Board of Zoning Appeals:

1. Vacate the May 14, 2024 “determination” that redesignated the Lot as a “corner lot”;
2. Reverse any conclusions contained in the July 16, 2025 determinations that rely on this invalid designation;
3. Bar any construction permits or zoning approvals based on the improper classification of the Lot as a “corner lot”; and
4. Provide all further relief that is just, equitable, and necessary to protect the rights and interests of the Appellants.



BISCHOFF MARTINGAYLE

July 31, 2025
Page 5

We thank the Board for its attention to this matter and stand ready to present evidence and argument in support of our clients' position at the hearing on this appeal.

Respectfully submitted,

Kevin E. Martingayle, Esq.
*Counsel for Dr. Luke Kohan, Dr. Dawn Hrelac, and
The Dawn Hrelac Revocable Trust*

Enclosures:

Exhibit A – Determination Letters from Kevin Kemp, dated July 16, 2025

Kevin E. Martingayle

From: Kevin E. Martingayle
Sent: Thursday, July 3, 2025 3:14 PM
To: Kevin P. Kemp
Cc: Katherine L. Seabright
Subject: GPIN 2418-48-4048-0000, street address 1212 York Lane, Virginia Beach
Attachments: York Lane - Letter City of VB 2022.pdf; June 10 2024 email corner lot designation.pdf

Importance: High

Kevin,

I am writing to request information from you and to obtain your zoning determinations and decisions regarding the real property referenced in the attached documents (GPIN 2418-48-4048-0000, with a street address of 1212 York Lane). My inquiries are on behalf of Dr. Luke Kohan and Dr. Dawn Hrelac, who reside at 1220 York Lane in Virginia Beach, and on behalf of The Dawn Hrelac Revocable Trust, which is the record owner of 1220 York Lane.

The attached May 24, 2022 letter makes a determination that the lot is a “legal nonconforming lot” and is “eligible to have a Single Family Dwelling” built on it. My clients have learned information since the date of that letter that prompts these questions:

- 1) Was this lot created legally? If so, when and how? If not created legally or if that is unknown, do you agree that it is not a “legal nonconforming lot” or that you cannot make such a determination either way?
- 2) Has title and survey work been done by your office or shown to you to support your determination that the lot is a “legal nonconforming lot?” If so, when? If not, why not?
- 3) Are you aware of any ownership and boundary disputes regarding this lot, and does that affect any conclusions in your 2022 letter?
- 4) In 2022 when you issued the letter, was the lot considered a “corner lot?”
- 5) In 2022 when you issued your letter, was it your conclusion that a “Single Family Dwelling” could be built on that property in compliance with applicable zoning and without the need for any variances?
- 6) To whom (specifically) was the 2022 letter sent, and was a copy sent to the lot owner?

In the attached email thread, there is a May 14, 2024 email stating that you determined that the lot “is a corner lot.” That raises these issues and questions:

- 1) Your email states that it “an official decision by the Zoning Administrator.” However, you also state below your signature block that “[t]his response is not an official order, requirement, decision or determination issued pursuant to Virginia Code Section 15.2-2307.” Will you please explain the contradiction and state whether your email should be treated as an “official decision?”
- 2) The May 14 email states that you would provide a “formal response to [Kinas] as soon as possible if needed.” Was one ever provided? Do you expect to provide one?

- 3) As a general matter and policy, when you issue emails with the language “[t]his response is not an official order, requirement, decision or determination issued pursuant to Virginia Code Section 15.2-2307,” is it your intent that it is to be regarded as an appealable decision?
- 4) Before the May 14 email, Josh Kinas (or someone for him) filed an application for one or more variances and that matter was set to be heard by the BZA. At the time, the lot was regarded as a three-sided lot with continuous frontage along York Lane. The application was later withdrawn and then Mr. Kinas pursued having the lot declared as a corner lot, with York Lane being the sole road to form the alleged corner. Was Mr. Kinas’ prior BZA application’s recognition of this as NOT being a corner lot taken into consideration in later stating the opposite in the May 14 email?
- 5) Does the City have or use a definition of what constitutes a “corner lot?”
- 6) What standards and precedents were used to determine that the subject lot is a “corner lot,” and are those standards and precedents still applicable and in effect?

I appreciate your attention and look forward to receiving your response as soon as possible.

Thank you.

Kevin E. Martingayle, Esquire

Bischoff Martingayle, P.C.

2101 Parks Avenue, Suite 500

Virginia Beach, Virginia 23451

www.bischoffmartingayle.com

www.va-appeals.com

Direct Dial: (757) 416-6009

Direct Facsimile: (757) 428-6982

Eastern Shore Local Phone: (757) 787-7788



City of Virginia Beach

VBgov.com

PLANNING DEPARTMENT
ZONING DIVISION
(757)385-8074

2875 BARRIE STREET, SUITE 500
VIRGINIA BEACH, VA 23452

May 24, 2022

Wolcott/ River/ Gates

Re: York Ln.
Virginia Beach, VA
GPIN: 2418-48-4048-0000

To whom it may concern,

The above referenced property is zoned (R-30) Residential. This zoning allows Single-Family Dwellings. The referenced lot is legally created. It is nonconforming to the current Zoning Ordinance. As a legal nonconforming lot it is eligible to have a Single Family Dwelling on it. All other uses for this zoning can be viewed at www.municode.com.

At present, staff is unaware of any outstanding zoning violations. Therefore, staff believes this site is in compliance with all applicable zoning ordinance requirements.

No Board of Zoning Appeals variances were found for the referenced site.

No conditional use permits, proffers, special exceptions or conditions were found for the site.

These determinations are based in whole or in part from the information provided, official zoning maps and current City Zoning Ordinance. For your convenience, I have provided a copy of the official zoning maps as it pertains to the referenced site. Further zoning and/or use requirements for this Zoning District can be found at the following website: www.vbgov.com/government/departments/planning/zoning

To obtain copies of a certificate of occupancy and information regarding building code violations, please contact the Permits and Inspections Division at (757) 385-4211 (prompt #3) for assistance.

In accordance with Section 15.2-2311 of the Code of Virginia, you have the right to appeal this decision/Notice of Violation to the Board of Zoning Appeals within 30 days. The appeal application and additional information regarding the filing of an appeal may be obtained at the Zoning Division located at 2875 Sabre Street, Suite 500, Virginia Beach, VA 23452, from the City's Web Site at <http://www.vbgov.com/BZA>, or by calling the Zoning Division at (757) 385-8074. The application, along with a filing fee in the amount of **\$400.00** for residential uses (includes costs of notification and advertising) and **\$500.00** for commercial uses (includes costs of notification and advertising), payable to the Treasurer, City of Virginia Beach, must be filed with the Zoning Division. If you do not appeal, this decision/Notice of Violation shall be final and unappealable.

If I can be of further assistance, please give me a call at (757) 385-5067 or email khershbe@vbgov.com.

Sincerely,

Kevin Hershberger

Zoning Supervisor
khershbe@vbgov.com

C: Property Owner

EXHIBIT A (PROVIDED BY APPLICANT OR THEIR AGENT):

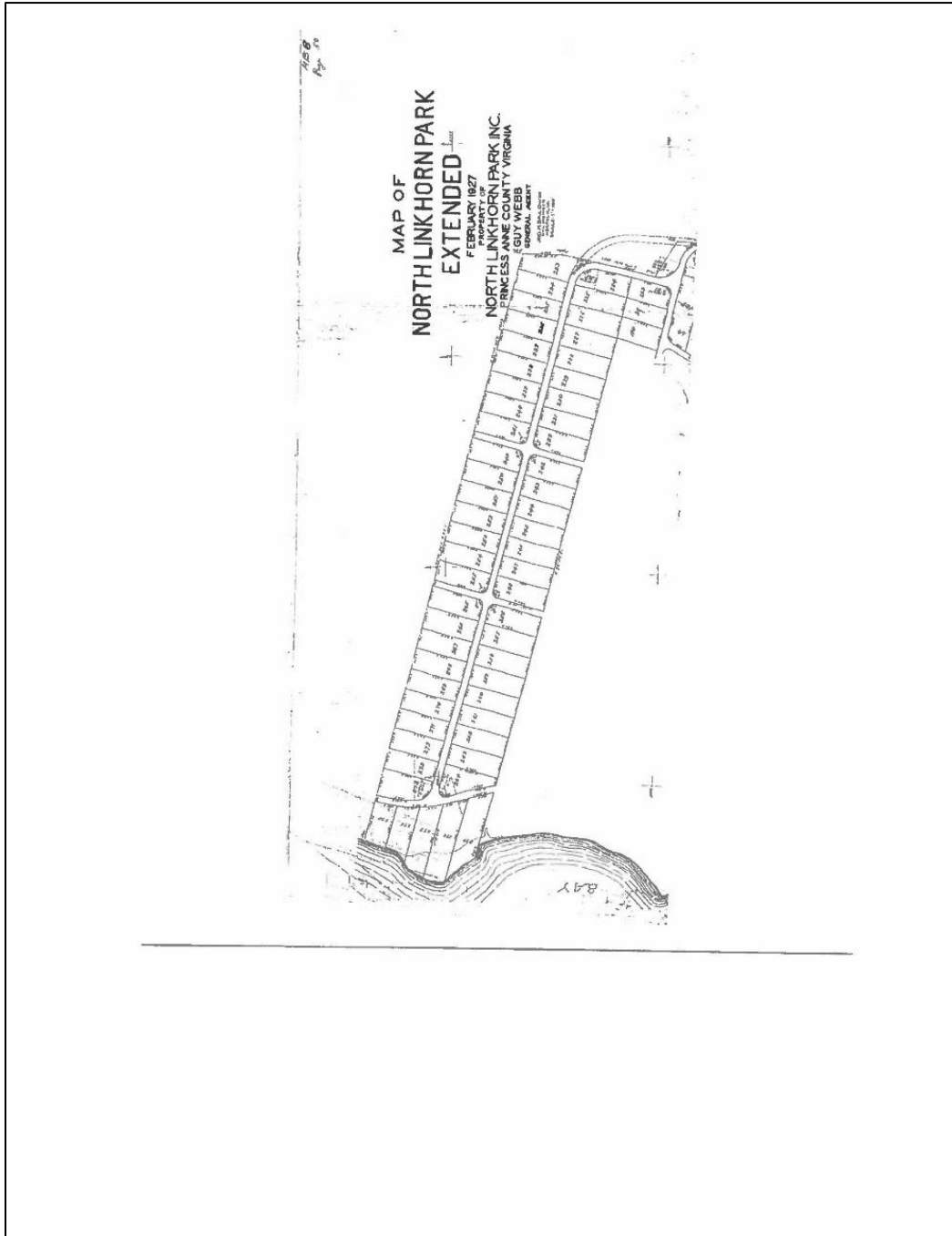


EXHIBIT A (PROVIDED BY APPLICANT OR THEIR AGENT):

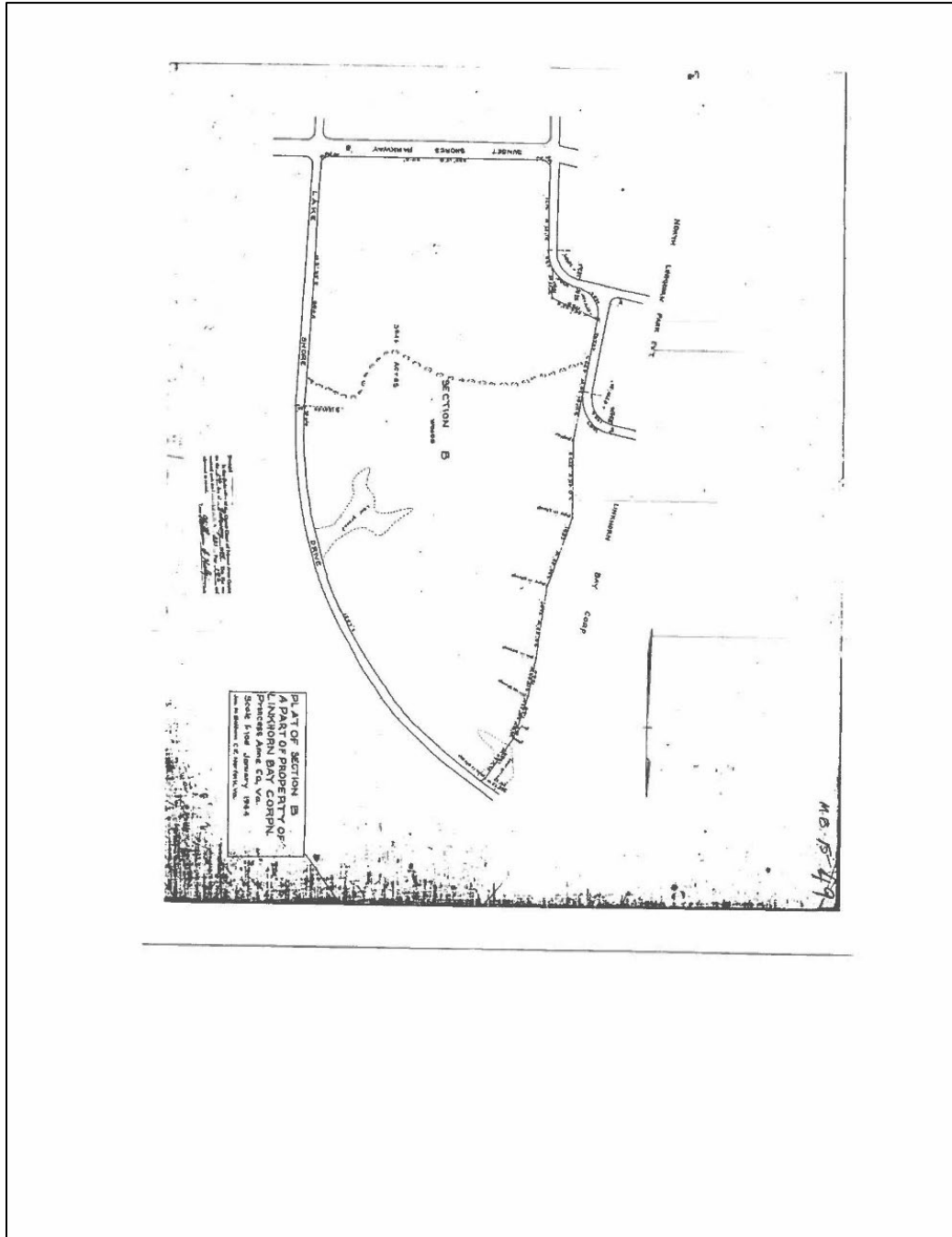
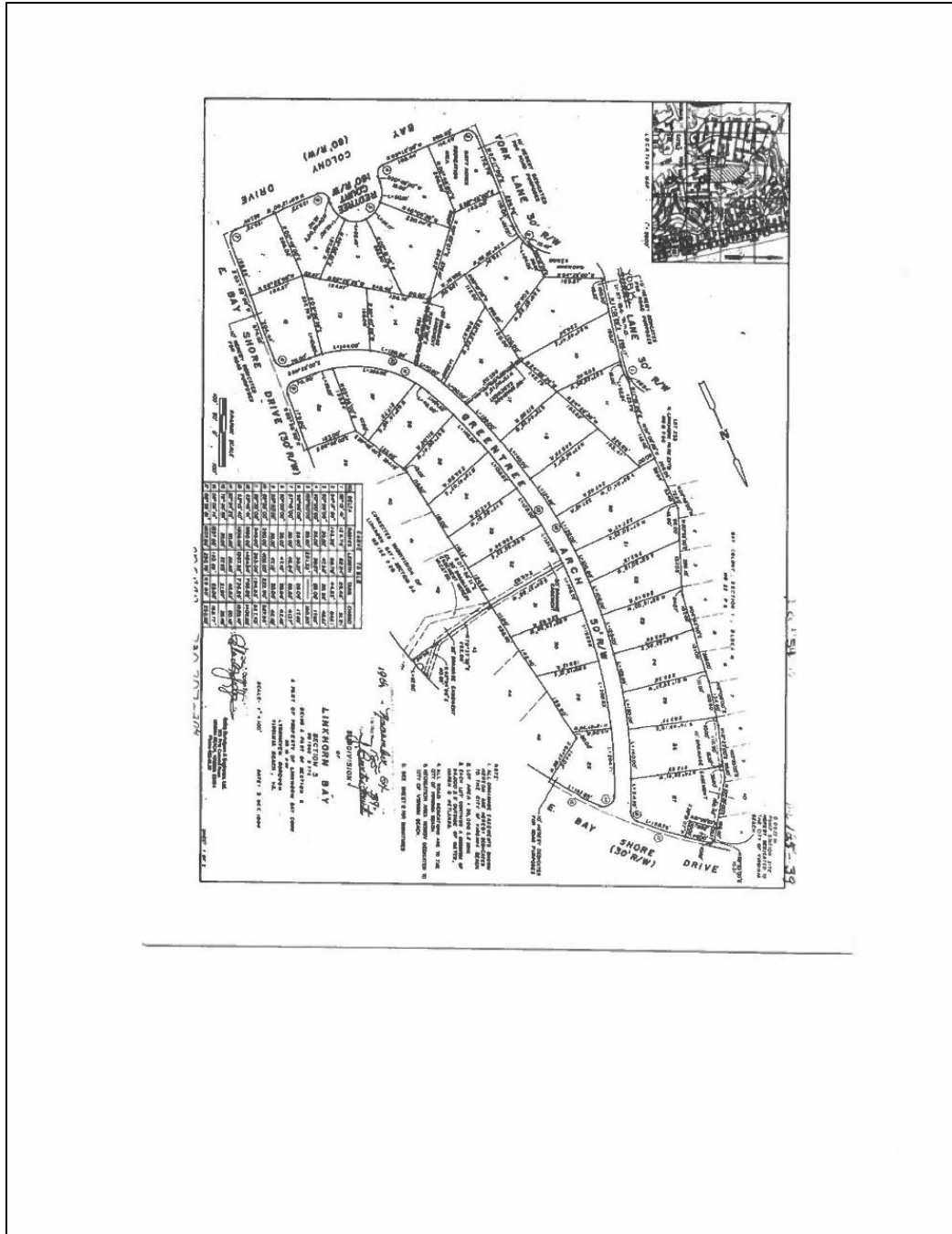


EXHIBIT A (PROVIDED BY APPLICANT OR THEIR AGENT):



[illegible]

**BISHARD
HOMES**



Cc: Rosa, Tyler <trosaj@williamsmullen.com>; Palmer, Grady <gpalmer@williamsmullen.com>; Victoria R. Eisenberg <VEisenberg@vnetv.com>

Subject: RE: York Lane Corner Lot Discussion

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

Hey Kevin,

Hope you had a good Mother's Day! I wanted to follow up on this parcel on York Lane as being considered a corner lot. I'm getting pressure from the seller for answers, but I haven't heard back from you yet. Would you mind giving me an update on this?

Thanks,

Josh Kinas Director of Sales and Marketing



4104 Holly Rd
Virginia Beach, VA 23451
Office: (757) 333-8750
Fax: (866) 281-7880
Email: jkinas@bushardhomes.com
Website: www.bushardhomes.com

From: Josh Kinas
Sent: Monday, May 6, 2024 3:56 PM
To: Kevin P. Kemp <KPKemp@vb.gov>
Cc: Rosa, Tyler <trosa@williamsmullen.com>, Palmer, Grady <gpalmer@williamsmullen.com>, Victoria R. Eisenberg <VEisenberg@vb.gov>
Subject: RE: York Lane Corner Lot Discussion

Hey Kevin,

Hope you had a great weeker! I wanted to follow up with you regarding our corner lot discussion. Do you feel it's possible to get an answer this week?

Thanks,

Josh Kinas

From: Josh Kinas
Sent: Tuesday, April 30, 2024 9:25 AM
To: Kevin P. Kemp <KPKemp@vb.gov>
Cc: Rosa, Tyler <trosa@williamsmullen.com>, Palmer, Grady <gpalmer@williamsmullen.com>, Victoria R. Eisenberg <VEisenberg@vb.gov>
Subject: RE: York Lane Corner Lot Discussion

Good morning, Kevin!

Just wanted to follow up on this. Please let me know if I can be of assistance!

Thanks,

Josh Kinas

From: Josh Kinas
Sent: Thursday, April 18, 2024 3:30 PM
To: Kevin P. Kemp <KPKemp@vb.gov>
Cc: Rosa, Tyler <trosa@williamsmullen.com>, Palmer, Grady <gpalmer@williamsmullen.com>, Victoria R. Eisenberg <VEisenberg@vb.gov>
Subject: RE: York Lane Corner Lot Discussion

Thanks Kevin. Enjoy the rest of your day!

Josh Kinas

From: Kevin P. Kemp <KPKemp@vb.gov>
Sent: Thursday, April 18, 2024 3:20 PM
To: Josh Kinas <jkinas@bushardhomes.com>
Cc: Rosa, Tyler <trosa@williamsmullen.com>, Palmer, Grady <gpalmer@williamsmullen.com>, Victoria R. Eisenberg <VEisenberg@vb.gov>
Subject: RE: York Lane Corner Lot Discussion

Thank you for following up.
I did receive your email and am in the process of reviewing the issue. I will respond soon.

Thanks,
Kevin

Kevin Kemp
PLANNING & COMMUNITY DEVELOPMENT
Zoning Administrator

757-385-8548 | kkemp@vb.gov
www.vb.gov/planning

2875 Sabre Street, Suite 500
Virginia Beach, VA 23452



This response is not an official order, requirement,
decision or determination issued pursuant to
Virginia Code Section 15.2-2307

From: Josh Kinas <skinas@bshardhomes.com>
Sent: Thursday, April 18, 2024 3:06 PM
To: Kevin P. Kemp <kkemp@vb.gov>
Cc: Rosa, Tyler <trosta@williamsmullen.com>; Palmer, Grady <gpalmer@williamsmullen.com>
Subject: RE: York Lane Corner Lot Discussion

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

Hey Kevin,

Hope you're having a great week! Just wanted to follow up and make sure you received this email.

Thanks,

Josh Kinas

From: Josh Kinas
Sent: Friday, April 12, 2024 8:56 AM
To: 'KPKemp@vb.gov' <kkemp@vb.gov>
Cc: Rosa, Tyler <trosta@williamsmullen.com>; Palmer, Grady <gpalmer@williamsmullen.com>
Subject: York Lane Corner Lot Discussion

Hey Kevin,

Thanks again for taking the time to meet with us today! Here is the information we discussed.

PLATS

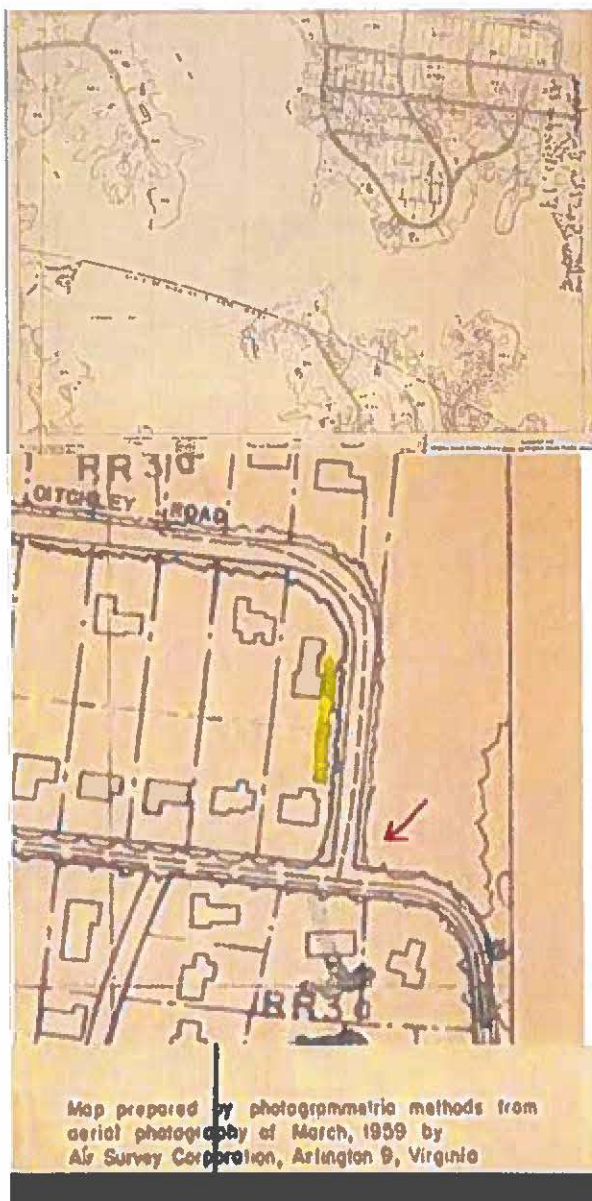
I have attached the 1927 plat. I believe this is the plat that created this lot.



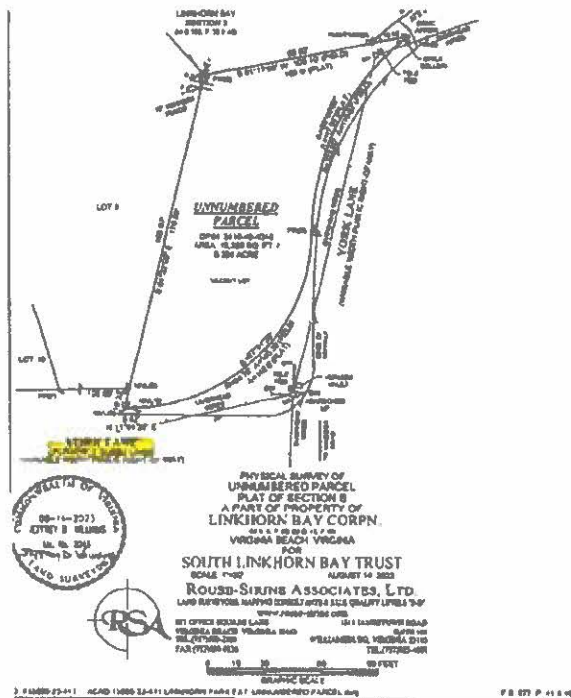
Here is a Planning Commission Master Zoning Plan from 1940. Unfortunately, someone circled a portion of this map and one of the lines covers the top of "Surrey". It is clearer in person, but you can still make this out in the photo below:



Here is a map that was created in 1959:



Here is a 2023 survey of this land showing this road was formerly names Surry Lane.



SETBACKS AND ADDITIONAL INFO.

I have attached "York Lane Corner Lot Setback Model". Eric Garner put this together for me before putting this lot under contract when we were under the assumption this was a corner lot for reference.

I found several homes on the corner of 2 streets with the same name that appear to have been granted corner lot setbacks (one is in Bay Colony). Please click the link to see the addresses and details: https://docs.google.com/document/d/1d-6Pm18C818ghm_0zheYZarYINp2Moa/X5QdQd8m8U/edit?usp=sharing

Here are a few photos of the area:





Thanks again for your time and consideration. I look forward to hearing what you determine.

Thanks,

Josh Kinas

Katherine L. Seabright

Subject: FW: Reply- GPIN 2418-48-4048-0000, street address 1212 York Lane, Virginia Beach
Attachments: 2025_05_13-Memo to Remick.York Lane.pdf; 2022_05_24-Zoning Verification York Lane.pdf

From: Kevin P. Kemp <KPKemp@vbgov.com>
Sent: Wednesday, July 16, 2025 12:20 PM
To: Kevin E. Martingayle <martingayle@bischoffmartingayle.com>
Cc: Victoria R. Eisenberg <VEisenberg@vbgov.com>
Subject: Reply- GPIN 2418-48-4048-0000, street address 1212 York Lane, Virginia Beach

Mr. Matingayle,

Please see my responses to your questions below in blue, in addition to the two attached documents (zoning verification letter (2022) and memo from City Attorney (2025)). No new zoning determination or decision has been made in answering the questions posed below.

Sincerely,
Kevin

Kevin Kemp
PLANNING & COMMUNITY DEVELOPMENT
Zoning Administrator

(757) 385-8548 | Kpkemp@vbgov.com
Planning.VirginiaBeach.gov/Zoning
2403 Courthouse Drive, Building 3 | Virginia Beach, VA 23456



This response is not an official order, requirement, decision or determination issued pursuant to Virginia Code Section 15.2-2307

From: Kevin E. Martingayle <martingayle@bischoffmartingayle.com>
Sent: Thursday, July 3, 2025 3:14 PM
To: Kevin P. Kemp <KPKemp@vbgov.com>
Cc: Katherine L. Seabright <katie@bischoffmartingayle.com>
Subject: GPIN 2418-48-4048-0000, street address 1212 York Lane, Virginia Beach
Importance: High

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

Kevin,

I am writing to request information from you and to obtain your zoning determinations and decisions regarding the real property referenced in the attached documents (GPIN 2418-48-4048-0000, with a street address of 1212 York Lane). My inquiries are on behalf of Dr. Luke Kohan and Dr. Dawn Hrelac, who reside at 1220 York Lane in Virginia Beach, and on behalf of The Dawn Hrelac Revocable Trust, which is the record owner of 1220 York Lane.

The attached May 24, 2022 letter makes a determination that the lot is a “legal nonconforming lot” and is “eligible to have a Single Family Dwelling” built on it. My clients have learned information since the date of that letter that prompts these questions:

- 1) Was this lot created legally? If so, when and how? If not created legally or if that is unknown, do you agree that it is not a “legal nonconforming lot” or that you cannot make such a determination either way?

The zoning determination letter from Kevin Hershberger, dated May 24, 2022, determined that the lot was legally created, and thus is nonconforming to the requirements of the current zoning ordinance. This determination was further upheld by the City Attorney’s office in a memo, which has been made public, from Mark Stiles to Councilman Robert W. “Worth” Remick, dated May 13, 2025. This memo is attached.

- 2) Has title and survey work been done by your office or shown to you to support your determination that the lot is a “legal nonconforming lot?” If so, when? If not, why not?

Please see attached memo from Mark Stiles, City Attorney, dated May 13, 2025.

- 3) Are you aware of any ownership and boundary disputes regarding this lot, and does that affect any conclusions in your 2022 letter?

This is not a zoning matter and was not subject to the determination letter by my office.

- 4) In 2022 when you issued the letter, was the lot considered a “corner lot?”

This information was not included in the zoning determination by Kevin Hershberger, dated May 24, 2022.

- 5) In 2022 when you issued your letter, was it your conclusion that a “Single Family Dwelling” could be built on that property in compliance with applicable zoning and without the need for any variances?

The determination letter from Kevin Hershberger, dated May 24, 2022, stated that the lot was nonconforming and is thus eligible for development with a single-family dwelling, as that use is permitted in the R-30 zoning district. It does not include a determination on the dimensional requirements for a single-family home.

- 6) To whom (specifically) was the 2022 letter sent, and was a copy sent to the lot owner?

The letter was addressed to Wolcott Rivers Gates. The Accela record indicates that the request for the letter of determination was submitted by John W. Richardson, Esq. The property owner was sent a copy of the letter.

In the attached email thread, there is a May 14, 2024 email stating that you determined that the lot “is a corner lot.” That raises these issues and questions:

- 1) Your email states that it “an official decision by the Zoning Administrator.” However, you also state below your signature block that “[t]his response is not an official order, requirement, decision or determination issued pursuant to Virginia Code Section 15.2-2307.” Will you please explain the contradiction and state whether your email should be treated as an “official decision?”

This language was added to the email signature when it was created and is automatically generated when an email is sent. The content of the subject email clearly speaks to its intent to be construed as an official decision by the Zoning Administrator.

- 2) The May 14 email states that you would provide a “formal response to [Kinas] as soon as possible if needed.” Was one ever provided? Do you expect to provide one?

A formal response in the form of a letter was not requested by the property owner and therefore was not provided. There were subsequent emails discussing plan submission that clarified the applicable setbacks for the lot.

- 3) As a general matter and policy, when you issue emails with the language “[t]his response is not an official order, requirement, decision or determination issued pursuant to Virginia Code Section 15.2-2307,” is it your intent that it is to be regarded as an appealable decision?

See response to #1 above.

- 4) Before the May 14 email, Josh Kinas (or someone for him) filed an application for one or more variances and that matter was set to be heard by the BZA. At the time, the lot was regarded as a three-sided lot with continuous frontage along York Lane. The application was later withdrawn and then Mr. Kinas pursued having the lot declared as a corner lot, with York Lane being the sole road to form the alleged corner. Was Mr. Kinas’ prior BZA application’s recognition of this as NOT being a corner lot taken into consideration in later stating the opposite in the May 14 email?

At the request of the property owner, their engineer, and attorney, I reviewed the lot for the applicable setback requirements. Upon my review, I clearly found the lot to be a corner lot located at an intersection of two streets, regardless of the name of the streets. Having an intersection where the street names are the same and a lot is deemed a corner lot is a situation that exists elsewhere in the city. I found the initial setbacks reflecting the lot as not a corner lot to be incorrect and not consistent with how planning has evaluated lots.

- 5) Does the City have or use a definition of what constitutes a “corner lot?”

The zoning ordinance does not have a specific definition of a corner lot. Corner lots are noted in the definition of “lot, front of” (shown below.)

Lot, front of. The front of a lot shall be considered to be that boundary of the lot which abuts on a street. In the case of corner lot, the narrowest boundary fronting on a street shall be considered to be the front of the lot. In case the corner lot has equal frontage on two (2) or more streets, the lot shall be considered to front on the principal street on which the greatest number of lots have been platted within the same block.

- 6) What standards and precedents were used to determine that the subject lot is a “corner lot,” and are those standards and precedents still applicable and in effect?

The standard used to determine the setbacks regarding this lot has been in practice by the zoning division since prior to my employment in June 2011. The zoning staff has used this method since my employment with the city in June 2011 and continues to use it.

I appreciate your attention and look forward to receiving your response as soon as possible.

Thank you.

Kevin E. Martingayle, Esquire

Bischoff Martingayle, P.C.

2101 Parks Avenue, Suite 500

Virginia Beach, Virginia 23451

www.bischoffmartingayle.com

www.va-appeals.com

Direct Dial: (757) 416-6009

Direct Facsimile: (757) 428-6982

Eastern Shore Local Phone: (757) 787-7788

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CITY OF VIRGINIA BEACH
INTER-OFFICE CORRESPONDENCE

Confidential: Attorney-Client Privilege.
Do not forward or release.

In reply reference: 0095104

DATE: May 13, 2025

TO: Councilman Robert W. "Worth" Remick

FROM: Mark D. Stiles *MDS*

DEPT: City Attorney

RE: Planning Approvals for 1212 York Lane; GPIN: 2418-48-4048

You asked us to give an opinion as to whether the Planning approvals were properly given for the legal status of the lot known as 1212 York Lane (the "Lot") owned by Joshua A. and Carrie G. Kinas and located in the North Linkhorn Park/Bay Colony neighborhood. Our Real Estate and Planning and Zoning attorneys have reviewed the history of the lot, which is complex and dates to prior to Princess Anne County's first zoning ordinance and subdivision ordinance. In short, this memo evaluates (1) whether the Lot was legally created and is a legally nonconforming lot that would be entitled to be developed notwithstanding its size not meeting the current City Zoning Ordinance ("CZO") requirements for its zoning district, and (2) whether the Planning Department followed current law with respect to the public processes that are required for granting the approvals allowing the Lot to be developed. This memo also addresses whether there are other substandard lots in the vicinity that would be susceptible to someone developing them without a public process.

A. Planning's Determination That The Lot Was A Legally Created Nonconforming Lot.

Typically, for a lot to be developed, it must meet all the dimensional requirements for its zoning district. An exception exists for lots that were legally created prior to the adoption of the CZO. CZO §501(g). The Lot is zoned R-30, which requires the lot be a minimum of 30,000 square feet (SF) unless the lot is a legally nonconforming lot. The Lot is 13,260 SF.

In a letter dated May 24, 2022, a Zoning Supervisor determined that the Lot was a "legally nonconforming lot eligible to have a Single Family Dwelling on it." A copy of the letter is attached as **Exhibit 1**. The letter has three plats attached to it, as follows:

- “Map of North Linkhorn Park Extended” Map Book (MB) 8, page (P.) 50 recorded in 1928 (the “**Linkhorn Extended Plat**”), attached as **Exhibit 2**.
- “Plat of Section B A part of Property of Linkhorn Bay Corp’n” MB 15, P. 49 recorded in 1944 (the “**Section B Plat**”), attached as **Exhibit 3**.
- “Subdivision of Linkhorn Bay Section 3” MB 185, P. 39-40, recorded in 1984 (the “**Linkhorn Bay Plat**”), attached as **Exhibit 4**.

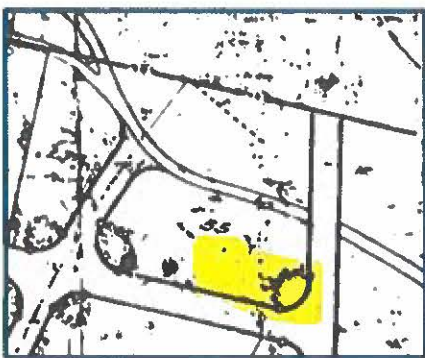
The Zoning Supervisor based his determination on the information provided to him, the three plats listed above, official zoning maps and the City Zoning Ordinance.

In approximately March of 2024, a second determination was made as to the Lot’s legal status. This determination was made by the Board Of Zoning Appeals Coordinator prior to the Lot being put on the BZA agenda. This determination was not documented, but it is evident from the acceptance of the application and placement on the agenda, because only a legal lot would have been allowed to proceed with this process. Because the determination is not documented, we do not know what documents the reviewer relied on to make his determination, although the Linkhorn Extended Plat was listed in the application.

History of the Lot and Plat Analysis

1. The 1926 Plat (MB 7, P 144)

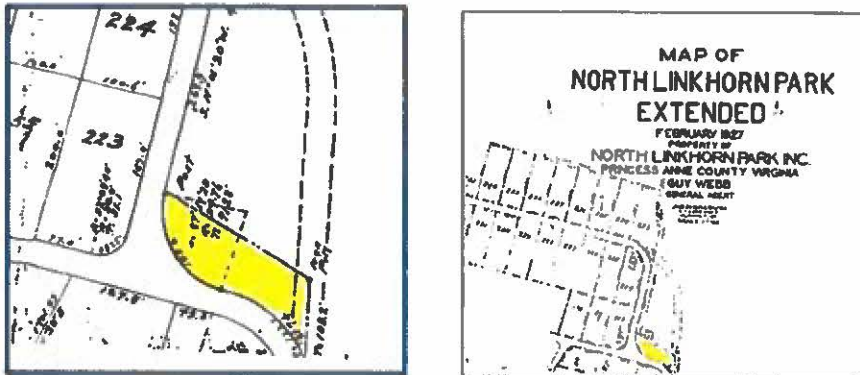
A development company named North Linkhorn Park, Inc. recorded a subdivision plat entitled “Map of North Linkhorn Park” on April 26, 1926, in MB 7, P 144 (the “1926 Plat”). A copy of the 1926 Plat is attached as **Exhibit 5**. The Lot is not shown on the 1926 Plat, but the area that would become the Lot is located in the northeast corner of this plat and includes a portion of Lot 55.



2. The Linkhorn Extended Plat (MB 8, P 50)

In or around April of 1928, North Linkhorn Park, Inc. recorded the Linkhorn Extended Plat (MB 8, P 50). The Linkhorn Extended Plat was prepared and signed by a surveyor “JNO. M. Baldwin, Civil Engineer.” Not only was the subdivision extended northward, but a portion of

North Linkhorn Park was also resubdivided by the Linkhorn Extended Plat, including the area in question. Additionally, the depiction of the streets in the northeast portion of the 1926 Plat (MB 7, P.144) changed, and the Lot appears to be the result of the resubdivision and realignment of a previous street in this location.

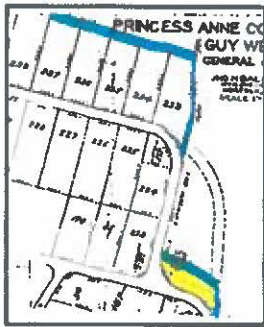


The former road to the east (right) of the Lot is moved west, and the Lot's eastern boundary is the centerline of the former road.

The Linkhorn Extended Plat shows the Lot "closes," meaning it has contiguous boundaries along all outer edges with no open sides. An "iron pin" is noted as marking the Lot's northeast corner in the center line of former relocated road, and a "post" is noted as marking the northwest corner of the Lot on the eastern side of the new right of way line. There are calculations showing the curves of the boundary along the western and southern boundaries. Its pin and post markings mark the corners of the rear boundary line, and the front and side boundary lines are represented by the road right of way lines.

Most of the lots created or shown on the Linkhorn Extended Plat have solid lines marking their boundaries. The northern boundary line of the Lot, however, is marked with solid-dash-solid marking pattern, which is also used to mark the northern property lines of Lots 233-241, 249-255, and 264-275, the northernmost lots on the Linkhorn Extended Plat. This solid-dash-solid line marking pattern appears to mark the boundaries of all the property included in the area being subdivided by the Linkhorn Extended Plat, except for boundaries that are platted roads or edges of water. The Lot appears to be created because it lies along the edge of the subdivided land and fronts on a street.

The Lot is shown in yellow in the image below, and the solid-dash-solid lines are marked in blue.

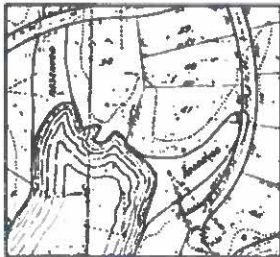


For the portions of the Linkhorn Extended Plat (MB 8 P. 50) that resubdivided portions of the 1926 Plat (MB 7 144), lot designation numbers 223-225 and 55 were given to the resulting lots. However, the Lot was not given a lot number designation or marked with any stated purpose. For example, the Lot shows no designation such as being “reserved,” a “park site”, a “pump station site”, “not a building site” or any other designation that would show the developer’s intention as to how the Lot would be used or restricted, which designations were typical of plats of that time. For example, the 1926 Plat shows several notations for nonstandard parcels, such as:

“Park” sites



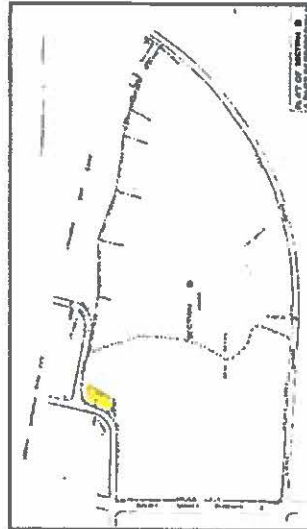
and “Reserved” areas for waterways:



The Linkhorn Extended Plat was recorded prior to the Princess Anne County Zoning Ordinance, adopted in 1954 and Subdivision Ordinance, adopted in 1953. There are no requirements on the plat restricting development to a minimum lot size or separately designating numbered lots from the Lot, an unnumbered parcel.

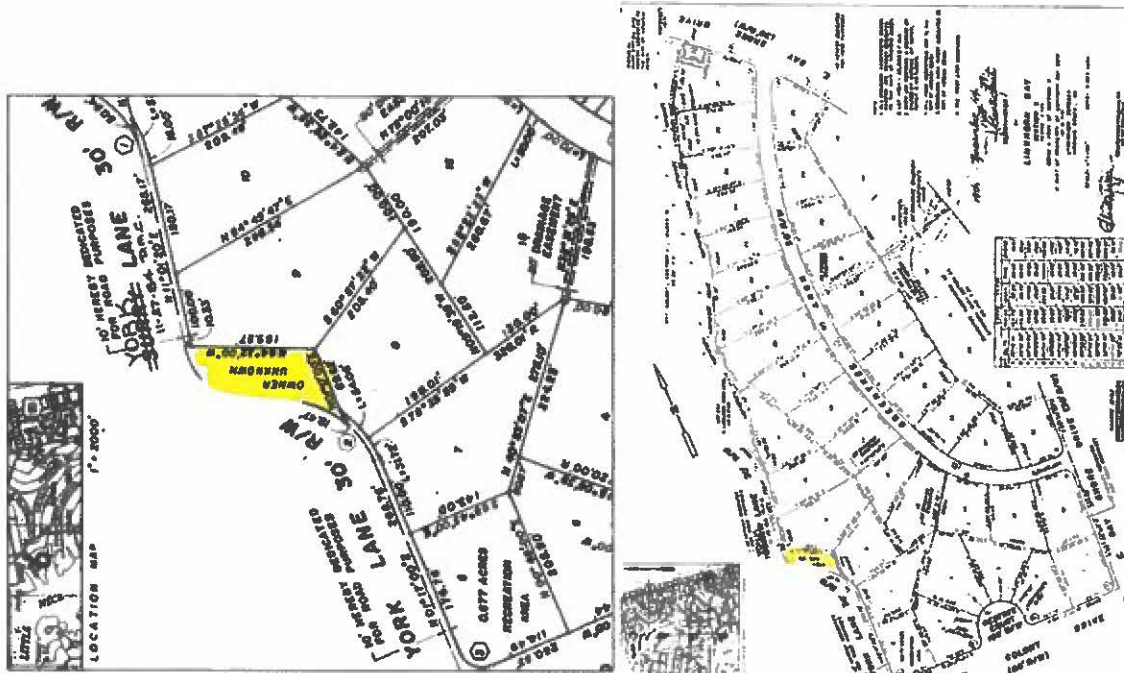
3. The Section B Plat (MB 15, P 49)

The Lot next appeared on the “Section B Plat” recorded in 1944, which was prepared by the same surveyor who prepared the Linkhorn Extended Plat. This plat showed the Lot as an existing parcel and shows three posts or iron pins marking the corners, and this time showing



The Lot also appeared on the “Linkhorn Bay Plat” recorded on November 19, 1984. The purpose of this lot is to subdivide into lots all remaining land of the property shown as “Section B” on the Section B Plat. The Lot is shown only as adjacent land and is marked “Owner Unknown.” An indicator that it is included as adjacent land is that the full boundary of the Lot is not shown along the right of way line along York Lane. The surveyor did not include the full boundaries for any of the adjacent parcels, such as the lots marked in faint print as lots 1-11 in the adjacent land marked as “Bay Colony, Section 1 – Block M MB 22, P 5” along the northwestern boundary of Section B and the previously platted lots numbered 39-45 marked as “Corrected Subdivision of Linkhorn Bay – Section 3A MB 162 P 28” along the eastern boundary of Section B.

5



Definition of a Legally Nonconforming Lot

The City Zoning Ordinance (“CZO”) provides that “[a]ny conforming principal or accessory use, conditional use or conforming structure housing such use may be enlarged, extended, constructed, located, or moved on any lot created prior to the effective date of this ordinance regardless of the size or dimensions of such lot, provided that other requirements of this ordinance are met.” CZO Sec. 501(g) (emphasis added).

A “lot” is defined in the CZO as “[a] piece or parcel of land abutting on a street and created by proper legal instrument.” CZO 111.

Based on these two provisions, for the Lot to meet the test of a legally nonconforming lot, it must meet the following elements:

- It is a “piece or parcel of land”
- “abutting on a street”
- “created by a proper legal instrument” and
- created “prior to the effective date” of the Zoning Ordinance (1954)

The Lot is a parcel of land. It closes and its dimensions are noted on the Linkhorn Extended Plat and the Section B plat. The Lot abuts on two streets, Windsor Road/York Lane and York Lane. The Lot was created as a parcel, with the dimensions shown on the two above-referenced plats, even though the developer’s intent was probably not to sell it as a developable lot. The solid-dash-

solid line marking and the absence of a lot number on the Lot suggest that his land was likely viewed as not desirable for development, perhaps because it was set apart from the other lots. But the developer's intentions are irrelevant, since the developer created a parcel with clear boundaries on a street and did not mark it with a stated purpose or restriction. The Lot was created by a recorded subdivision plat, which is a proper legal instrument. The Linkhorn Extended Plat is used today to reference the numbered lots on the plat, and it was validly recorded prior to the adoption of the CZO. Accordingly, the Lot appears to be legally created prior to the creation of the CZO, and it therefore enjoys status as a legally nonconforming lot.

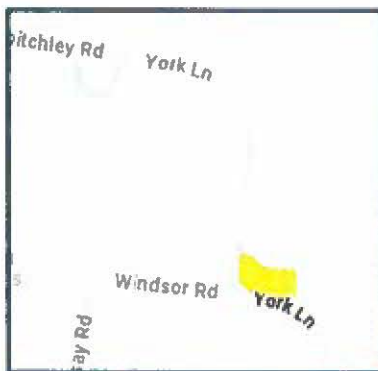
Because the Lot does not meet the current size and dimensions required for its R-30 Residential zoning district, it may be developed by-right, only so long as all the other zoning requirements can be met, such as setbacks, building height, lot coverage, etc. This means that so long as a structure can be built on the Lot while meeting the other requirements of the CZO, then the Planning Department must allow it as a by-right use.

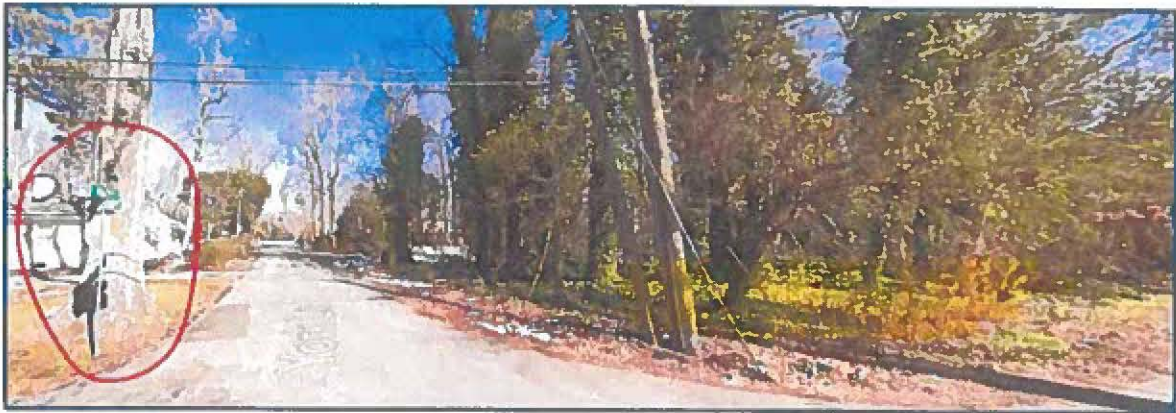
B. Planning's Determination That the Lot is a Corner Lot.

The Lot was approved for development as a corner lot, which requires a 50' front yard setback and a 30' side corner yard setback. Initially, the Lot appeared on the Board of Zoning Appeals' agenda for a variance for setbacks. The Planning Department initially determined in March 2024 that the Lot fronted entirely on York Lane and required a 50' setback along the entire front of the house. The Zoning Administrator later reviewed the Lot and determined it to be a corner lot requiring a 50' setback from York Lane, and a 30' setback along the portion of York Lane that is Windsor Road extended.

The Lot was created at the intersection of two roads on the Linkhorn Extended Plat when an unnamed road was vacated and relocated west. The western boundary of the Lot is a north-south road, now known as the northern portion of York Lane (and in the 1980s called "Surry Lane" as evidenced by the Linkhorn Bay Plat). The intersecting road forming the Lot's southern boundary, now known as Windsor Road/York Lane, runs east-west. Although there is a rounded curve to the roadway at this corner, the Lot nevertheless lies at the intersection of these two roads.

Google Maps shows a clear "T" intersection marked as York Lane and Windsor Road (shown below) and there is a stop sign facing traffic on York Lane as it heads south to Windsor Road.





In our office's opinion, based on the factors above, the Lot was created at the intersection of two separately identified roads, which are treated today as an intersection of two separate streets. Accordingly, we find that the Zoning Administrator's determination that the Lot is a corner lot appears to be appropriate. A corner lot requires a 50' front yard setback and a 30' setback for a side yard adjacent to a street. That is what has been approved for this Lot, and the plans for the proposed house report that the house meets these setback requirements.

C. Public Process.

It is within Planning's discretion to approve the development of the Lot because it is a legally nonconforming lot. No variances ultimately were required because the applicant demonstrated the plan complied with applicable regulations.

There is no requirement under state or local law for adjacent property owners ("APOs") to be notified of informal Zoning decisions or interpretations made, so no adjacent property owners were notified that the permit had been issued.

However, in March of 2024, the APOs were notified that the Lot would be heard on by the Board of Zoning Appeals' agenda on April 3, 2024, for variances on the setbacks. The application for the BZA was later withdrawn. Copies of the letters that were sent out to the APOs are attached as **Exhibit 6**. The notices stated that setback variances were required, so it is reasonable to assume that the APOs believed that they would be notified in the future if the applicant chose to proceed with the development of a house on the Lot. Instead, the Planning Department later determined that the Lot was a corner lot and did meet the setbacks as proposed and no BZA hearings would be required. Therefore, APOs were likely surprised when advised the development was moving forward without any public hearing being forthcoming.

We recommend exploring ways to inform the public when a reconsideration has the effect of changing a development from needing a public hearing to not needing any further public approval, so the APOs are not caught by surprise and have an opportunity to appeal such determinations when the requirements are changed.

D. Likelihood Of Other Lots In The Vicinity Being Developed If They Do Not Meet R-30 Minimum Lot Size.

In the North Linkhorn Park/Bay Colony neighborhood and beyond, the City has a number of lots that were created prior to the creation of the City Zoning Ordinance. Princess Anne County and the Town of Virginia Beach had several neighborhoods platted prior to the 1950s when the Zoning and Subdivision Ordinances were adopted. When the Lot was platted, there was ample land in Princess Anne County, and the developer may have considered the Lot unlikely to be desired by anyone to build on. But as Virginia Beach has developed in the 100 years since the neighborhood was started, developers and builders are taking interest in these parcels. Therefore, it is possible that similar development could occur.

Planning staff evaluated the North Linkhorn Park/Bay Colony neighborhood for lots that did not meet the minimum lot size for their district. A copy of their map is attached as Exhibit 7, with the darker lots representing lots that are smaller than the minimum lot size. Many of these lots are already developed with houses, although we have not researched whether any of them had to go before the BZA or City Council prior to development. This neighborhood also has several lots that appear to be of unusual width and shape, which may be nonconforming as to other dimensional requirements. These lots would need to be evaluated, as the Lot was, to determine their legal status and capacity for development without variances.

Planning has advised that there will be a process change to send substandard lots through the Development Services Plat and Legal Document Team to review in the future, rather than relying on the staff Zoning reviewers. Planning is also reviewing the processes in neighboring cities to see if there are other process and notice practices that may provide more notice to adjacent property owners as zoning determinations are made.

Conclusion

In conclusion, we believe the Planning Department made the correct determinations on the issue of whether the Lot was a legally nonconforming lot and on the issue of whether it was a corner lot. We do understand why the APOs were surprised by the development proceeding after they had been advised a public hearing at the BZA would be required. We agree with Planning's proposed process change to send all lots preliminarily determined to be legal nonconforming lots to the Development Services Plat and Legal Document Team to review and recommend exploring ways to notify APOs if a Planning determination changes from requiring a hearing to not requiring a hearing.

Please let me know if you have any questions.

EXHIBIT 1



City of Virginia Beach

PLANNING DEPARTMENT
ZONING DIVISION
(757) 385-8074

vbgov.com

2875 GATES STREET, SUITE 800
VIRGINIA BEACH, VA 23462

May 24, 2022

Wolcott/ River/ Gates

Re: York Ln.
Virginia Beach, VA
GPIN: 2418-48-4048-0000

To whom it may concern,

The above referenced property is zoned (R-30) Residential. This zoning allows Single-Family Dwellings. The referenced lot is legally created. It is nonconforming to the current Zoning Ordinance. As a legal nonconforming lot it is eligible to have a Single Family Dwelling on it. All other uses for this zoning can be viewed at www.municode.com.

At present, staff is unaware of any outstanding zoning violations. Therefore, staff believes this site is in compliance with all applicable zoning ordinance requirements.

No Board of Zoning Appeals variances were found for the referenced site.

No conditional use permits, proffers, special exceptions or conditions were found for the site.

These determinations are based in whole or in part from the information provided, official zoning maps and current City Zoning Ordinance. For your convenience, I have provided a copy of the official zoning maps as it pertains to the referenced site. Further zoning and/or use requirements for this Zoning District can be found at the following website: www.vb.gov/government/departments/planning/zoning

To obtain copies of a certificate of occupancy and information regarding building code violations, please contact the Permits and Inspections Division at (757) 385-4211 (prompt #3) for assistance.

In accordance with Section 15.2-2311 of the Code of Virginia, you have the right to appeal this decision/Notice of Violation to the Board of Zoning Appeals within 30 days. The appeal application and additional information regarding the filing of an appeal may be obtained at the Zoning Division located at 2875 Sabre Street, Suite 500, Virginia Beach, VA 23452, from the City's Web Site at <http://www.vbgov.com/BZA>, or by calling the Zoning Division at (757) 385-8074. The application, along with a filing fee in the amount of **\$400.00** for residential uses (includes costs of notification and advertising) and **\$500.00** for commercial uses (includes costs of notification and advertising), payable to the Treasurer, City of Virginia Beach, must be filed with the Zoning Division. If you do not appeal, this decision/Notice of Violation shall be final and unappealable.

If I can be of further assistance, please give me a call at (757) 385-5067 or email khershbe@vbgov.com.

Sincerely,

Kevin Hershberger

Zoning Supervisor
khershbe@vbgov.com

C: Property Owner

EXHIBIT B (PROVIDED BY APPLICANT OR THEIR AGENT):

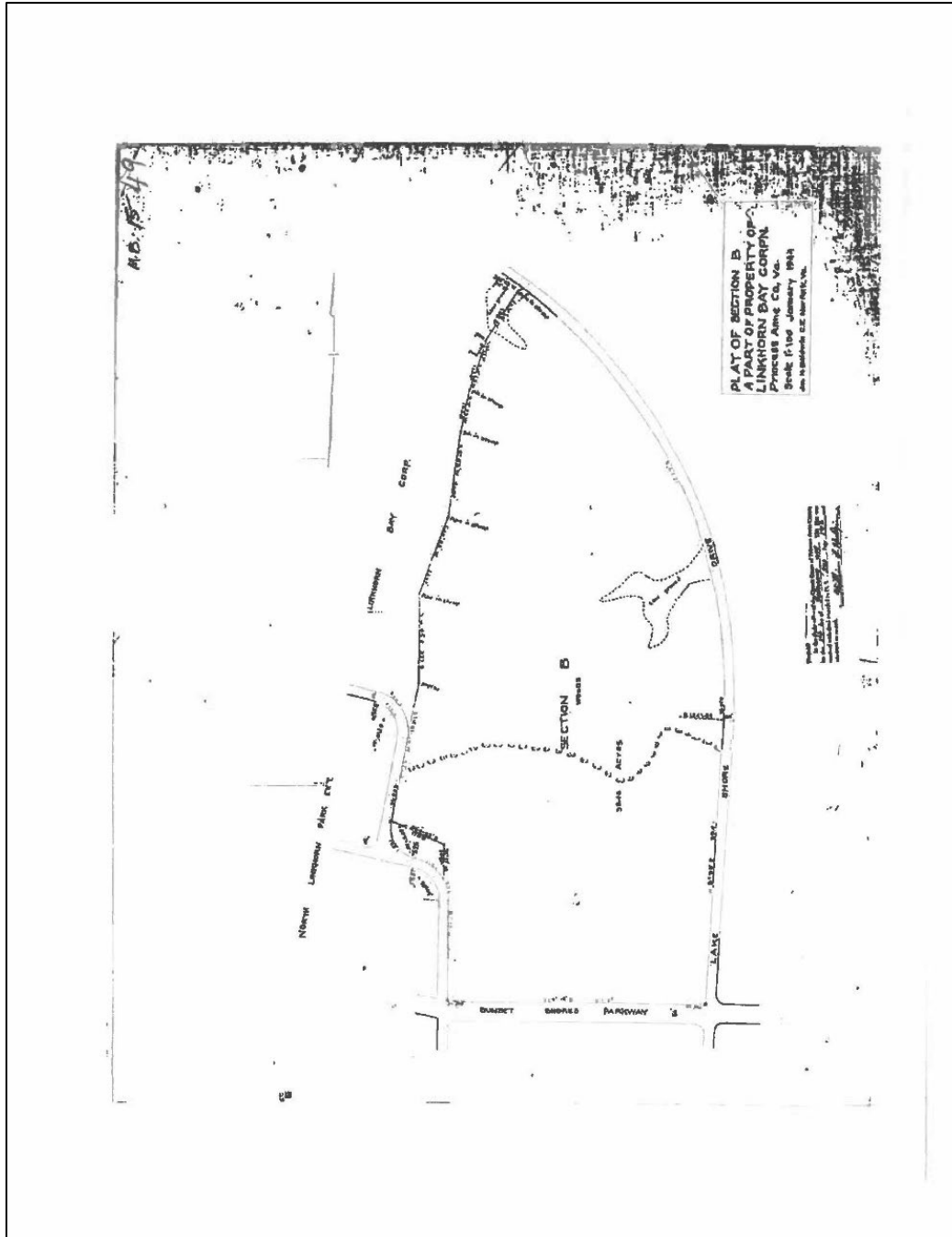


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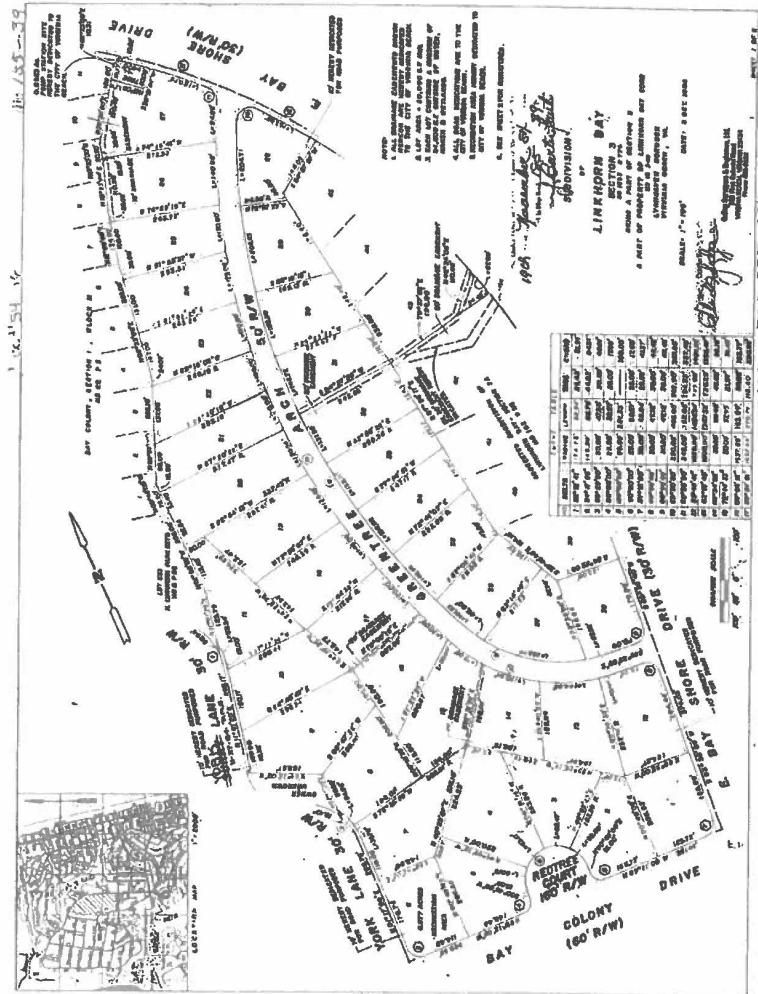


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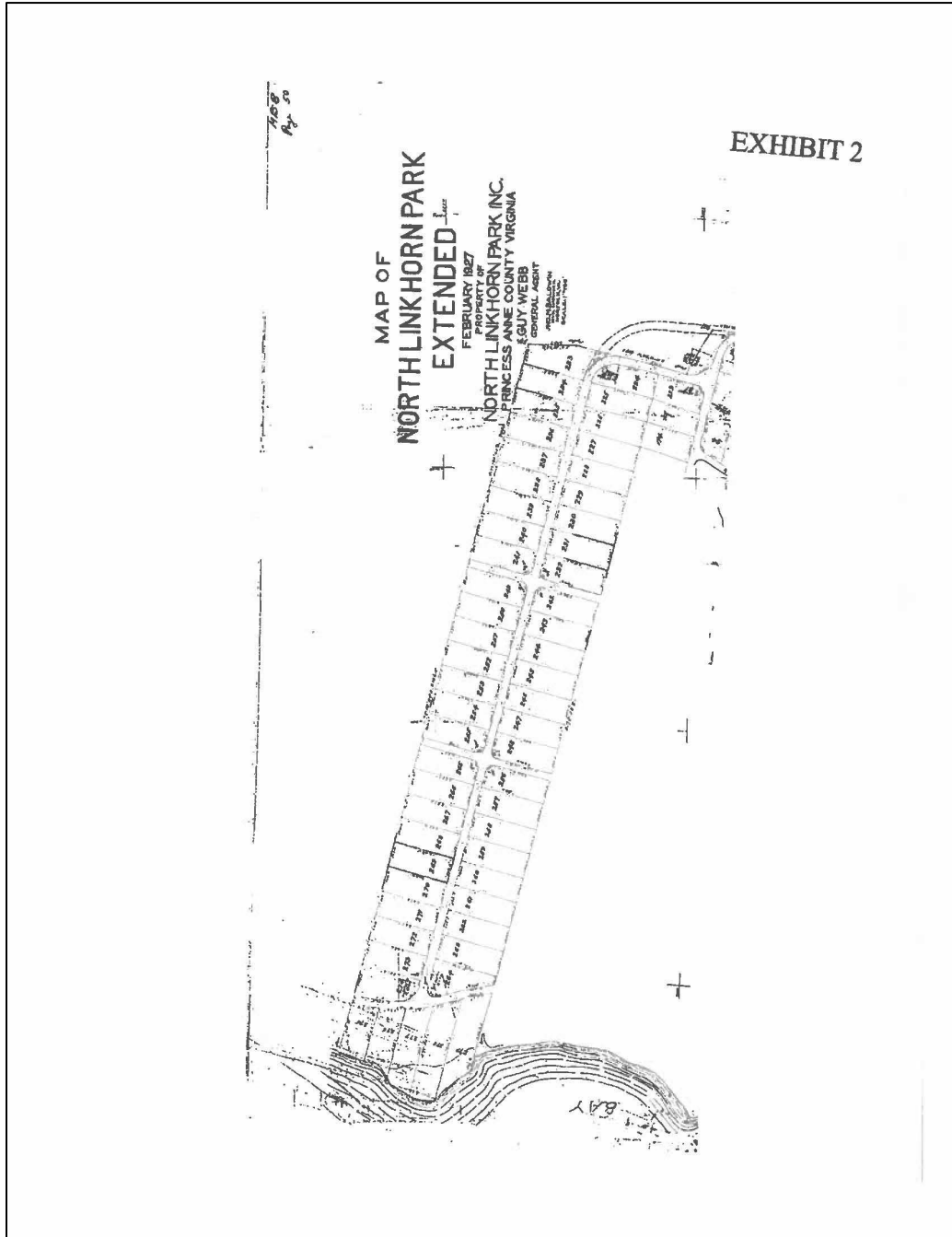


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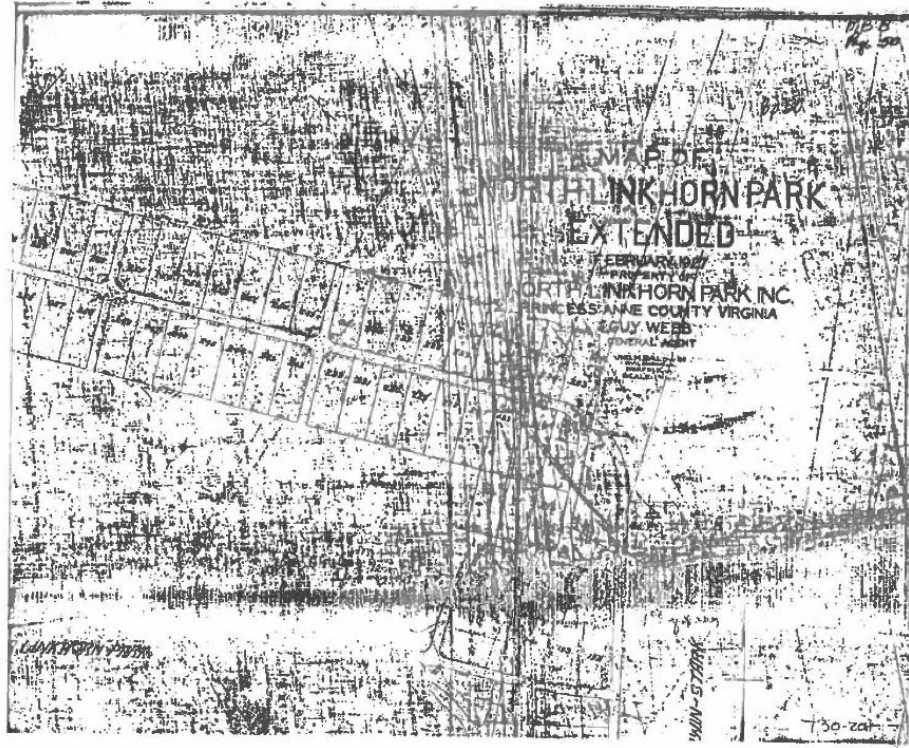


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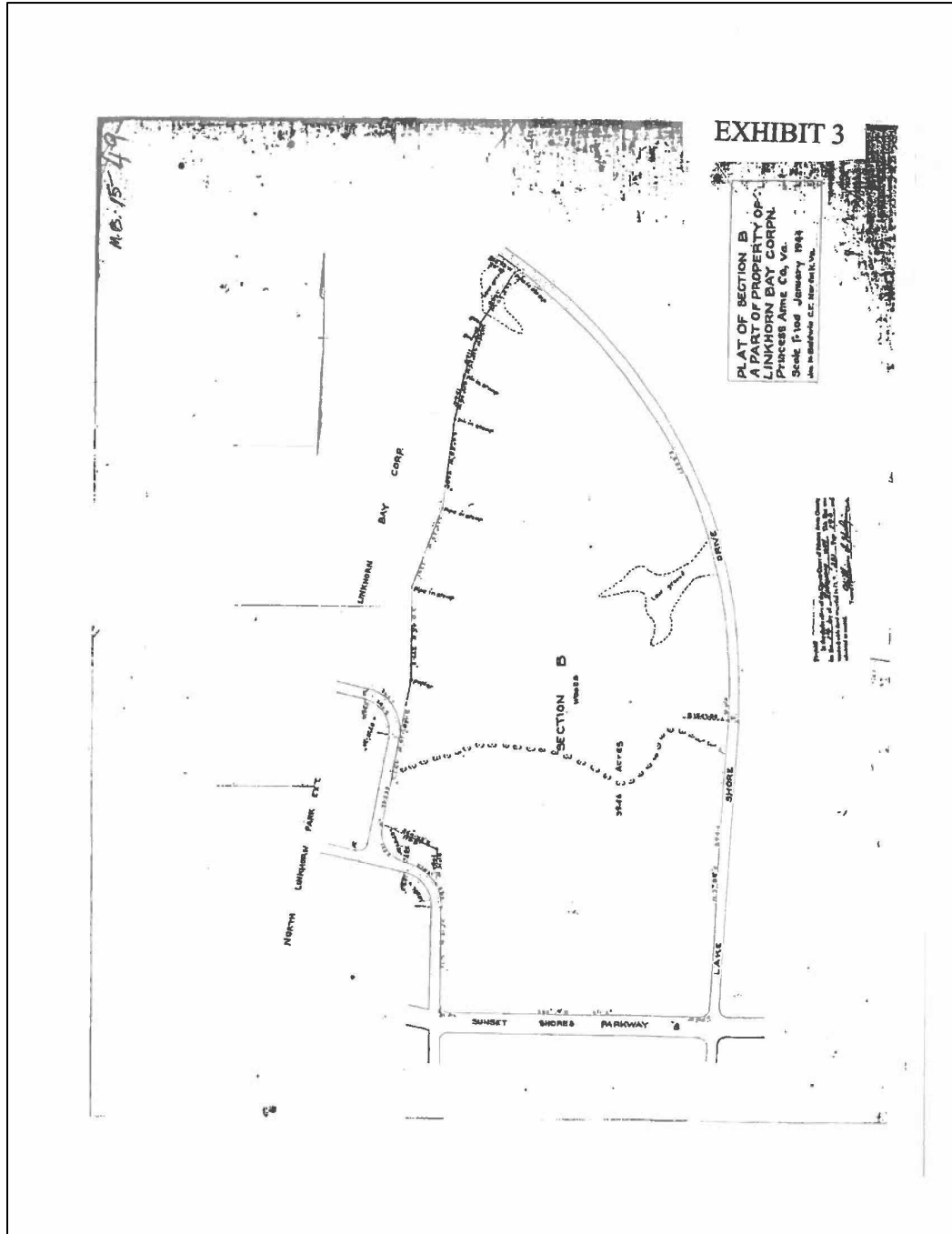


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EXHIBIT B (PROVIDED BY APPLICANT OR THEIR AGENT):

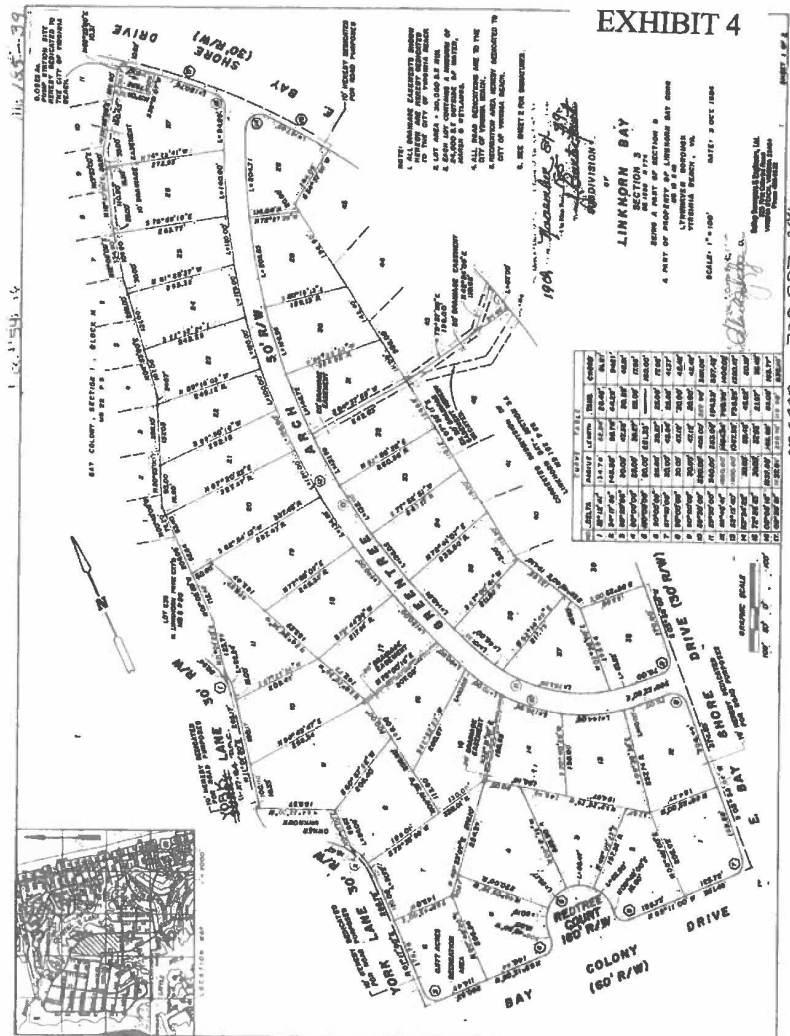


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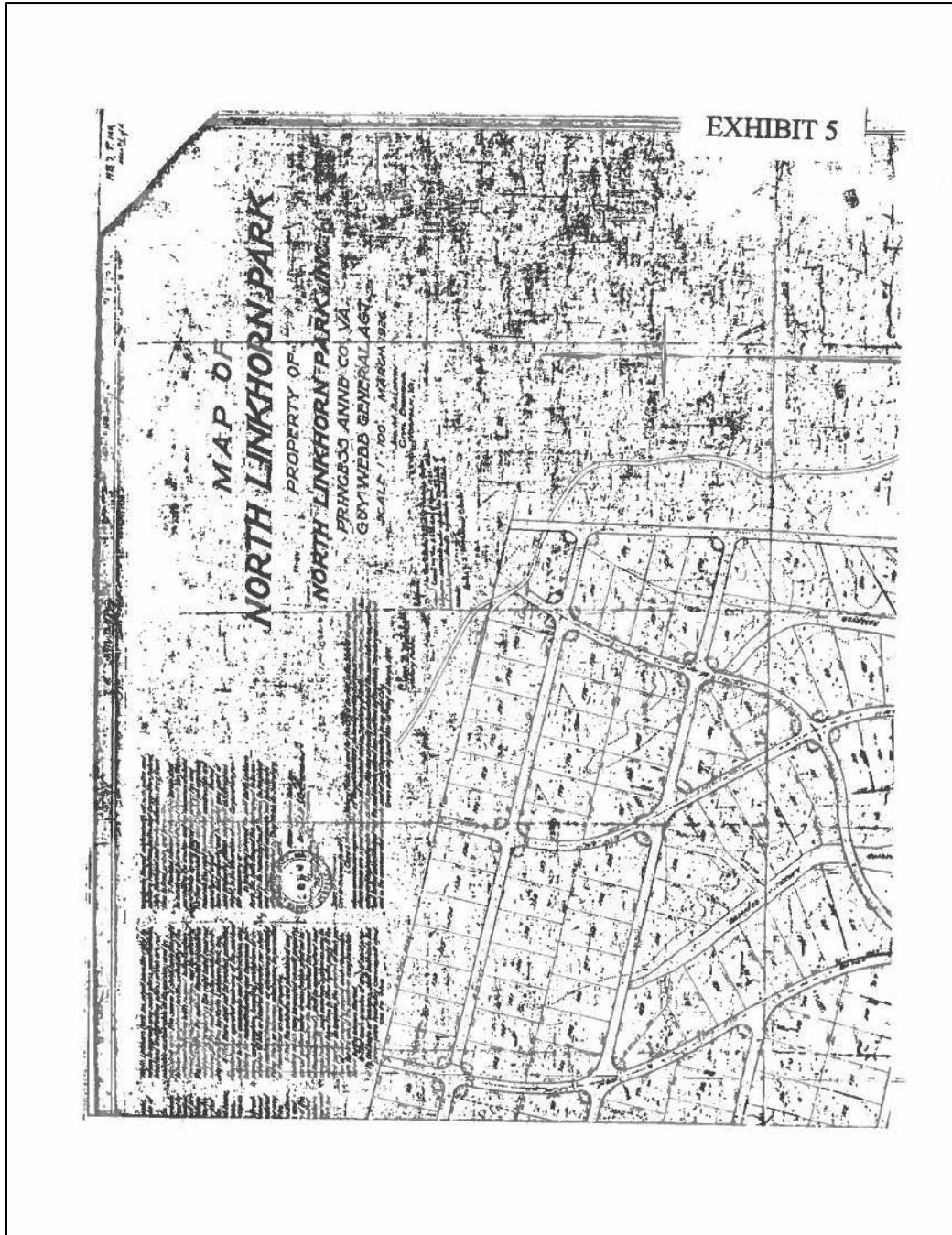


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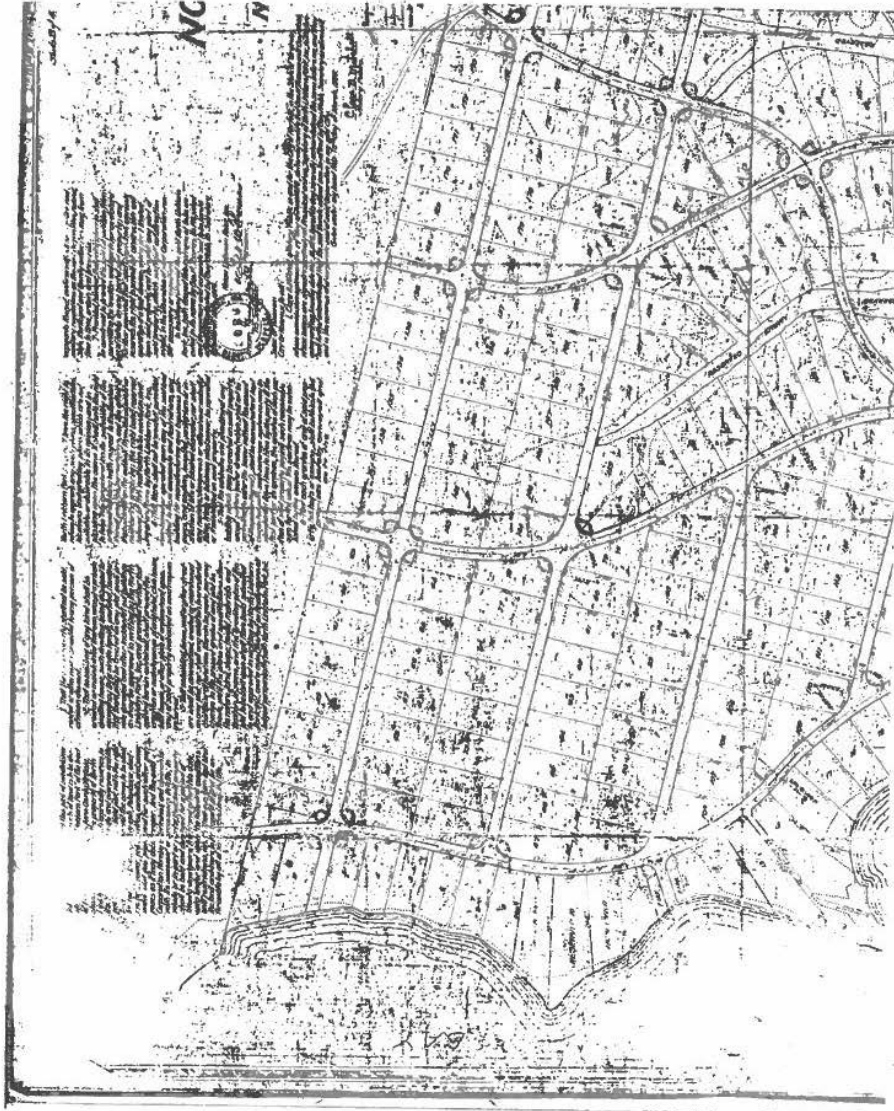


EXHIBIT B (PROVIDED BY APPLICANT OR THEIR AGENT):





EXHIBIT 6

Planning
Zoning Division

2875 Sabre Street, Suite 500
Virginia Beach, VA 23452

PLEASE READ CAREFULLY

March 4, 2024

Dear Adjacent Property Owner:

An application has been submitted for public hearing before the Virginia Beach Board of Zoning Appeals (BZA) for the following request:

Case 2024-BZA-00010: South Linkhorn Bay Trust Variances to a 20.6-foot front yard setback, instead of 50-feet as required; and to an 18.2-foot east side yard setback, instead of 15-foot as required; and to a 15.1-foot rear yard setback, instead of 20-foot as required for a proposed two-story single-family dwelling; and to a 23.7-foot front yard setback instead of 50-foot as required for proposed fence 6-foot in height **1212 York Ln Zoning: R-30 GPIN: 2418-48-4048**



You are being sent this letter because our records indicate that you own property directly adjacent to or directly across the street from the parcel described above. In accordance with State law, we are notifying you of the above application and advising you of your right to have your opinions on this request known to the BZA. You may (1) attend and speak at the public hearing described below, (2) submit or email a letter to the BZA at the address above in reference to this application, or (3) attend and speak at the hearing and submit or email a letter. Attendance is not mandatory.

The BZA public hearing will be held on **Wednesday, April 3, 2024 at 2:00 p.m.**, in the City Council Chambers, City Hall Building, 2nd Floor at 2401 Courthouse Drive, Building 1, Virginia Beach, VA. There is a staff briefing held at 1:00 pm in Room 2034, Building 1. All interested parties are invited to observe. You can also email bza@vb.gov with any comments and/or concerns.

The BZA agenda staff reports are available on the City's Internet site on the Friday prior to the date of the public hearing. The agendas are located at <https://planning.virginiabeach.gov>.



Adjacents Notified for April 3, 2024 BZA

Case 2024-BZA-00010: South Linkhorn Bay Trust Variances to a 20.6-foot front yard setback, instead of 50-feet as required; and to an 18.2-foot east side yard setback, instead of 15-foot as required; and to a 15.1-foot rear yard setback, instead of 20-foot as required for a proposed two-story single-family dwelling; and to a 23.7-foot front yard setback instead of 50-foot as required for proposed fence 6-foot in height 1212 York Ln Zoning: R-30 GPIN: 2418-48-4048



CASE 10 at 1212 York Ln

2418478830000 Case 10 April 3 PARNELL JOSHUA STILES & PARNELL AMANDA TIERNEY
24184880490000 Case 10 April 3 RIEDLER JOHN F & RIEDLER SYLVIA H
24184749730000 Case 10 April 3 DUBOIS SCOTT H & DUBOIS CRYSTAL
24184852410000 Case 10 April 3 DAWN HRELJC REVOCABLE TRUST
24184881680000 Case 10 April 3 STRUFFLER PETER C & STRUFFLER ALICE H
24184872980000 Case 10 April 3 MCDONALD BRYAN M & MCDONALD ANNE K

1202 YORK LN
1208 YORK LN
1208 YORK LN
1220 YORK LN
813 GREENTREE ARCH
817 GREENTREE ARCH

VIRGINIA BEACH 23451-3758
VIRGINIA BEACH 23451-3758
VIRGINIA BEACH 23451-3758
VIRGINIA BEACH 23451-3757
VIRGINIA BEACH 23451-3787
VIRGINIA BEACH 23451-3787



Planning
Zoning Division

2875 Sabre Street, Suite 500
Virginia Beach, VA 23452

REVISED LETTER

March 18, 2024

Dear Adjacent Property Owner:

The applicant for the below Board of Zoning Appeals variance application has requested that this application be withdrawn from the agenda. Please note that this case will not be heard on April 3, 2024. Should the applicant decide to go back to the Board of Zoning Appeals, all new advertisement will occur (yellow sign posted, adjacent letters mailed, and advertisement in the paper under legal notices).

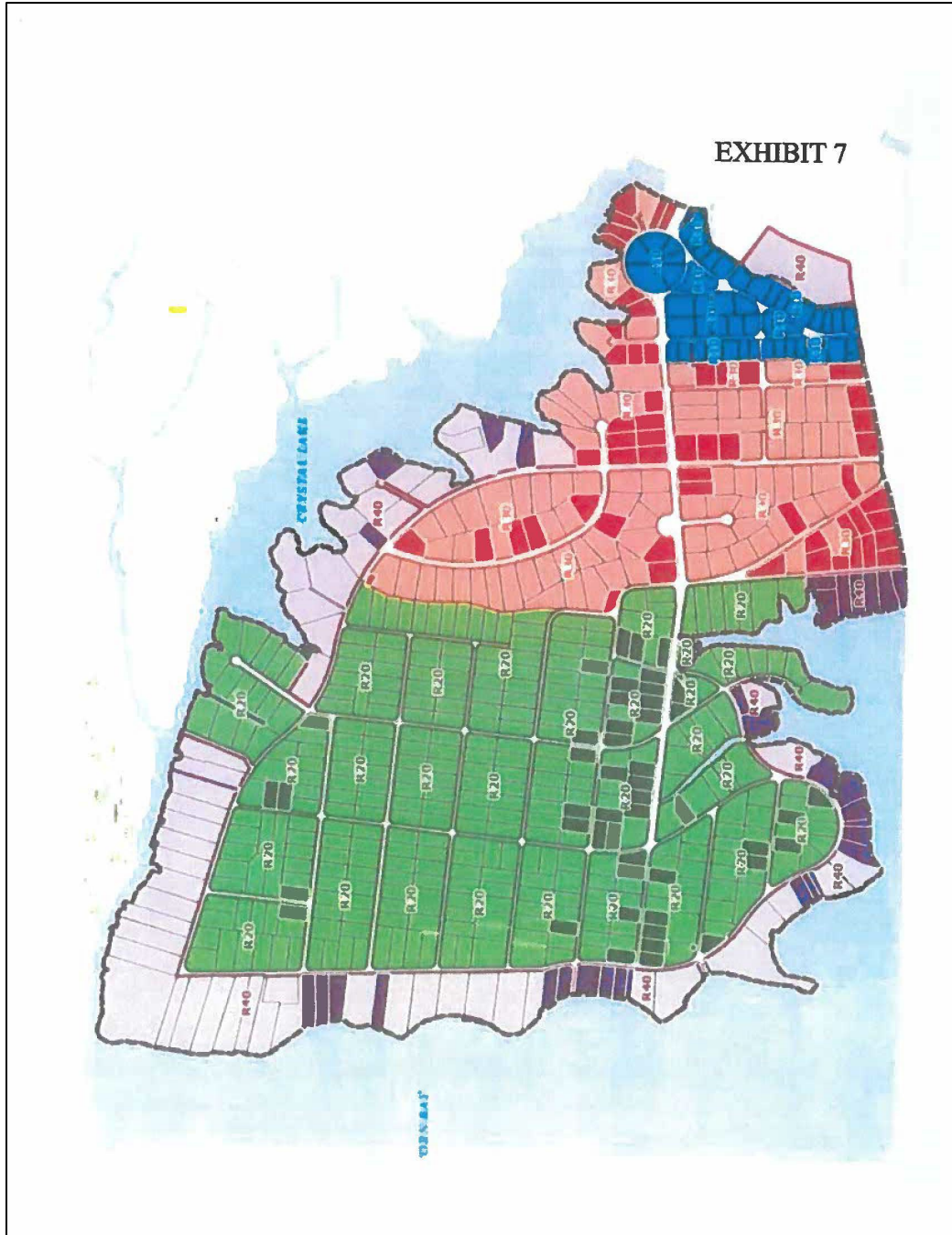
Case 2024-BZA-00010: South Linkhorn Bay Trust Variances to a 20.6-foot front yard setback, instead of 50-feet as required; and to an 18.2-foot east side yard setback, instead of 15-foot as required; and to a 15.1-foot rear yard setback, instead of 20-foot as required for a proposed two-story single-family dwelling; and to a 23.7-foot front yard setback instead of 50-foot as required for proposed fence 6-foot in height **1212 York Ln** Zoning: R-30 GPIN: 2418-48-4048



If you have any question, please contact Chris Langaster,
Board of Zoning Appeal Coordinator at (757) 385-5093.



EXHIBIT B (PROVIDED BY APPLICANT OR THEIR AGENT):





City of Virginia Beach

VBgov.com

PLANNING DEPARTMENT
ZONING DIVISION
(757)385-8074

2875 SABRE STREET, SUITE 500
VIRGINIA BEACH, VA 23452

May 24, 2022

Wolcott/ River/ Gates

Re: York Ln.
Virginia Beach, VA
GPIN: 2418-48-4048-0000

To whom it may concern,

The above referenced property is zoned (R-30) Residential. This zoning allows Single-Family Dwellings. The referenced lot is legally created. It is nonconforming to the current Zoning Ordinance. As a legal nonconforming lot it is eligible to have a Single Family Dwelling on it. All other uses for this zoning can be viewed at www.municode.com.

At present, staff is unaware of any outstanding zoning violations. Therefore, staff believes this site is in compliance with all applicable zoning ordinance requirements.

No Board of Zoning Appeals variances were found for the referenced site.

No conditional use permits, proffers, special exceptions or conditions were found for the site.

These determinations are based in whole or in part from the information provided, official zoning maps and current City Zoning Ordinance. For your convenience, I have provided a copy of the official zoning maps as it pertains to the referenced site. Further zoning and/or use requirements for this Zoning District can be found at the following website: www.vbgov.com/government/departments/planning/zoning

To obtain copies of a certificate of occupancy and information regarding building code violations, please contact the Permits and Inspections Division at (757) 385-4211 (prompt #3) for assistance.

In accordance with Section 15.2-2311 of the Code of Virginia, you have the right to appeal this decision/Notice of Violation to the Board of Zoning Appeals within 30 days. The appeal application and additional information regarding the filing of an appeal may be obtained at the Zoning Division located at 2875 Sabre Street, Suite 500, Virginia Beach, VA 23452, from the City's Web Site at <http://www.vbgov.com/BZA>, or by calling the Zoning Division at (757) 385-8074. The application, along with a filing fee in the amount of **\$400.00** for residential uses (includes costs of notification and advertising) and **\$500.00** for commercial uses (includes costs of notification and advertising), payable to the Treasurer, City of Virginia Beach, must be filed with the Zoning Division. If you do not appeal, this decision/Notice of Violation shall be final and unappealable.

If I can be of further assistance, please give me a call at (757) 385-5067 or email khershbe@vbgov.com.

Sincerely,

Kevin Hershberger

Zoning Supervisor
khershbe@vbgov.com

C: Property Owner

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