

**Chesapeake Bay Preservation Area
Board Agenda
December 20, 2023**



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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Wednesday, December 20, 2023** at 10:00 a.m. in the City Council Chamber - 2401 Courthouse Drive, Building 1, Second Floor, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in room 2034, City Manager's Conference Room - 2401 Courthouse Drive, Building 1, Second Floor, Virginia Beach, VA. During the informal session, Staff briefs the Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing that follows. For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-4621 or go to virginiabeach.gov/cbpa or visit the Department of Planning and Community Development, 2875 Sabre Street, Suite 500, Virginia Beach, Virginia by appointment.

The Staff reviews all the items on this agenda and offer recommendation for consideration by the Board, in the event they should approve the application. However, it should not be assumed that those conditions constitute all the conditions that will ultimately be attached to the project. Staff agencies may impose further conditions and requirements applicable to city ordinances.

Those members of the public interested in attending the public hearing should be advised that, for reasons the Board deems appropriate, certain items on the agenda may be heard out of order and that it should not be assumed that the order listed below will be exactly followed during the public hearing.

THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

(IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT A STAFF MEMBER VIA EMAIL (pscully@vbgov.com) OR CALL THE DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT AT 757-385-4621).

- 1. DEFERRALS:** The first order of business is the consideration of requests to defer an item. The Board will ask those in attendance at the hearing if there are any requests to defer an item that is on the agenda. PLEASE NOTE THE REQUESTS THAT ARE MADE, AS ONE OF THE ITEMS BEING DEFERRED MAY BE THE ITEM THAT YOU HAVE AN INTEREST IN.

If an item is deferred, a deferral date will be determined at the public hearing. Typically, deferrals range from thirty (30) to sixty (60) days or may be deferred indefinitely. The Board will vote on all the items deferred individually. It is important, therefore, if you have an objection to an item being deferred to note your objection as the Board goes through the items being considered for deferral.

- 2. CONSENT AGENDA:** The second order of business is consideration of the "consent agenda." The consent agenda contains those items:

- a. that the Board believes are unopposed and
- b. which have a favorable Staff recommendation.

If an item is placed on the Consent Agenda, that item will be heard with other items on the agenda that appear to be unopposed and have a favorable staff recommendation. The Board will vote on all the items at one time. Once the Board has approved the item as part of the Consent Agenda, the variance request is granted and will not be discussed any further. It is important, therefore, if you have an objection to an item being placed on the Consent Agenda to note your objection as the Board goes through the items being considered for the Consent Agenda.

Process for the Consent Agenda:

- The Board will announce the item number and item title being considered for inclusion on the Consent Agenda.
- The Board will ask if there is anyone in the audience representing the item, and if so, ask them to go up to the podium and state their name for the record.
- The Board will ask the representative of the item if they are aware of the conditions and if they agree to the conditions.
- The Board will then ask if there is anyone in the audience in opposition to the item. If you are opposed to the item, stand or raise your hand to let the Board know.
- If the item is opposed, it will be removed from the consent agenda and heard in its normal place on the agenda.
- After the Board has gone through all the items that it believes should be on the Consent Agenda, it will vote at one time for all the items, announcing the number of each item being voted on. Pay attention to the list of items being voted on.

3. REGULAR AGENDA: The Board will then proceed with the remaining items on the agenda, according to the following process:

- a. The applicant or applicant's representative will have 10 minutes to present its case.
- b. Next, those who wish to speak in support to the application will have 3 minutes to present their case.
- c. If there is a spokesperson for the opposition, he or she will have 10 minutes to present their case.
- d. All other speakers not represented by the spokesperson in opposition will have 3 minutes.
- e. The applicant or applicant's representative will then have 3 minutes for rebuttal of any comments from the opposition.
- f. There is then discussion among the Board members. No further public comment will be heard at that point. The Board may, however, allow additional comments from the opposition if a member of the Board sponsors the opposition. Normally, you will be sponsored only if it appears that new information is available, and the time will be limited to 3 minutes.
- g. The Board does not allow slide or computer-generated projections other than those prepared by the Department of Planning and Community Development Staff.

The Board asks that speakers not be repetitive or redundant in their comments. Do not repeat something that someone else has already stated. Petitions may be presented and are encouraged. If you are part of a group, the Board requests, in the interest of time, that you use as a spokesperson, and the spokesperson is encouraged to have his or her supporters stand to indicate their support.

Those members of the public interested in speaking in support or in opposition to an agenda item shall be limited to 3 minutes in which to address the Board. At the discretion of the Board Chair, this time may be increased to 5 minutes. Speakers will be electronically timed.

If you require reasonable accommodation for this meeting due to a disability, please call the Department of Planning and Community Development at (757) 385-4621. If hearing impaired, you may contact Virginia Relay at 711 for TDD services.



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **December 20, 2023**

- 9:00 AM** INFORMAL STAFF BRIEFING OF PUBLIC HEARING AGENDA ITEMS.
- 10:00 AM** FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS.

Please be advised that copies of the proposed plans, ordinances, amendments and/or resolutions associated with this public hearing are also on file and may be examined by appointment at the Department of Planning & Community Development located at 2875 Sabre St, Suite 500, Virginia Beach, VA 23452 or online at virginiabeach.gov/cbpa. For information call (757) 385-4621.

ADMINISTRATIVE BUSINESS

- 1. Election of 2024 CBPA Board Officers**
Staff Report – page 7

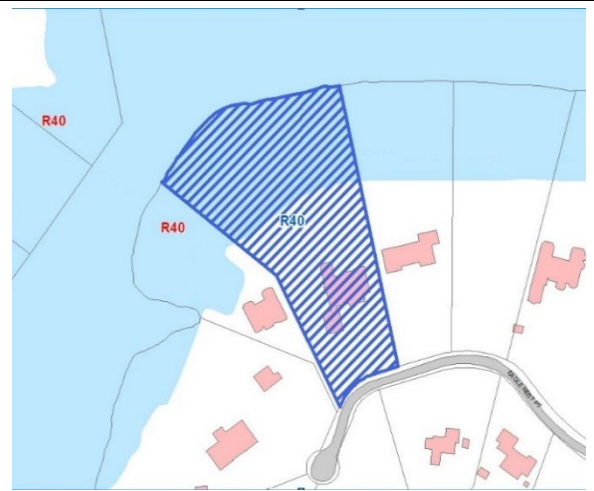
NEW BUSINESS AGENDA ITEMS

- 2. John & Maria Motta**
[Applicants & Property Owners]

3380 Eagle Nest Pt
GPIN 1489-81-4025
City Council District: District 8
Accela Record: 2023-CBPA-00057

Variance Request – Encroachment into the RPA to construct a tiered retaining walls and permeable paver patio.

Staff Planner – Cole Fisher
Staff Report – page 9



- 3. John & Tracey Owens**
[Applicants & Property Owners]

1508 Layden Cove Way
GPIN 1499-80-7265
City Council District: District 8
Accela Record: 2023-CBPA-00058

Variance Request – Encroachment into the RPA to construct permeable paver landings and retaining wall.

Staff Planner – Cole Fisher
Staff Report – page 11



NEW BUSINESS AGENDA ITEMS (CONTINUED)

4. Russell Tye

[Applicant & Property Owner]

1573 Quail Point Rd

GPIN 2408-93-2004

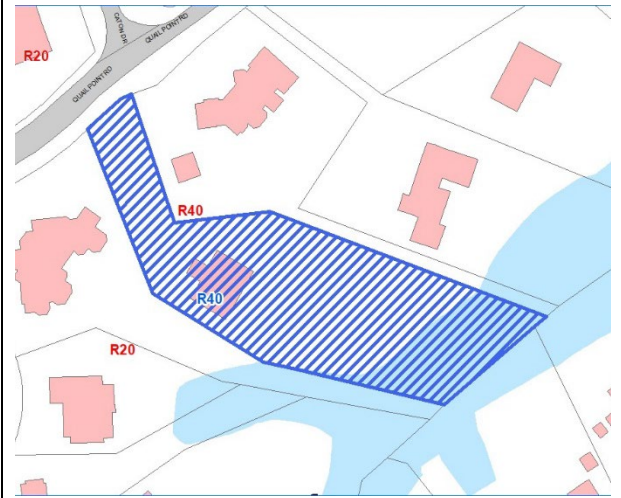
City Council District: District 6

Accela Record: 2023-CBPA-00059

Variance Request – Encroachment into the RPA to remove 12 canopy trees.

Staff Planner – Cole Fisher

Staff Report – page 23



5. Scott Sachs & Jillian Reynolds

[Applicants & Property Owners]

2484 Haversham Ct

GPIN 1499-84-9776

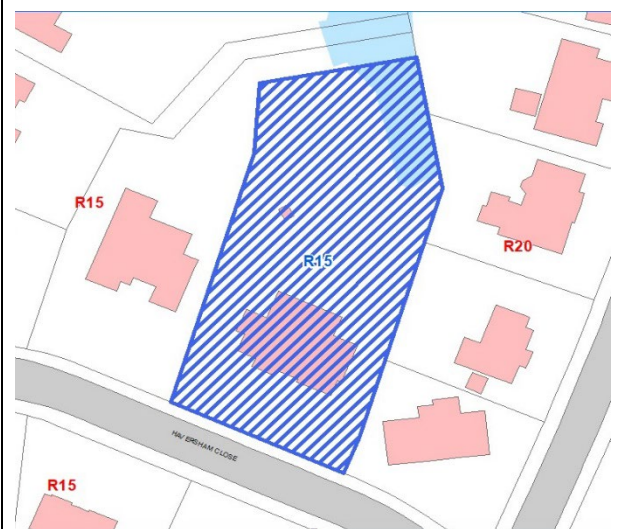
City Council District: District 8

Accela Record: 2023-CBPA-00061

Variance Request – Encroachment into the RPA to rebuild and expand a swimming pool and pool deck.

Staff Planner – Cole Fisher

Staff Report – page 25



6. Matthew & Shannon Winters

[Applicant & Property Owner]

1847 Duke of York Quay

GPIN 1499-85-9222

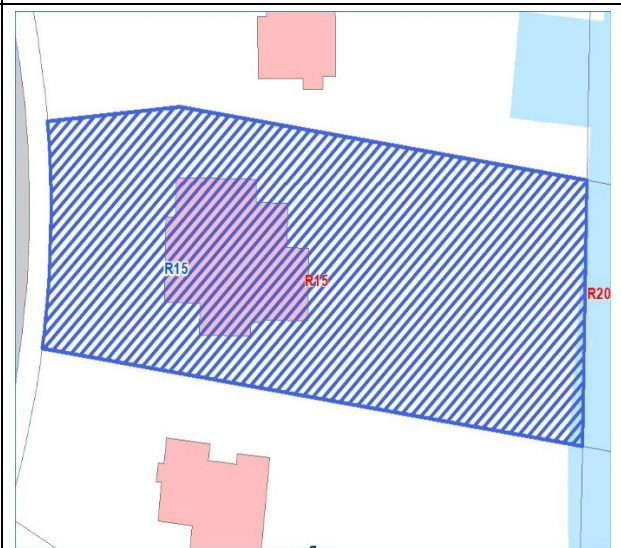
City Council District: District 8

Accela Record: 2023-CBPA-00062

Variance Request – Encroachment into the RPA to construct a swimming pool, pool deck, and pool house.

Staff Planner – Cole Fisher

Staff Report – page 41



NEW BUSINESS AGENDA ITEMS (CONTINUED)

7. Gerasimos & Teresa Andreatos
[Applicants & Property Owners]

917 Holladay Pt

GPIN 2418-53-3712

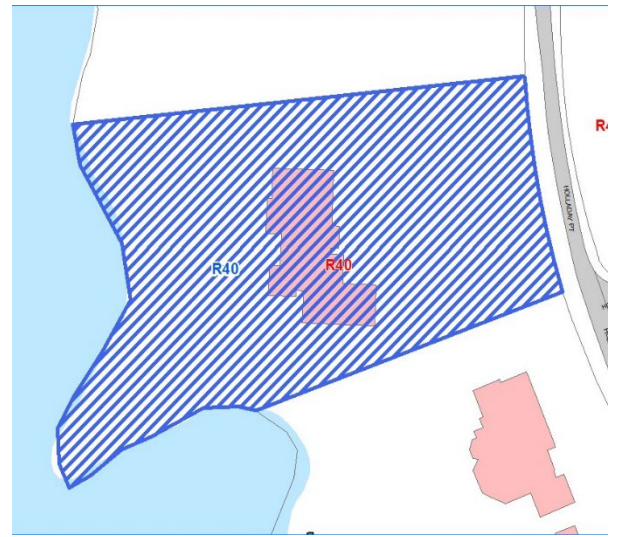
City Council District: District 6

Accela Record: 2023-CBPA-00063

Variance Request – Encroachment into the RPA to construct an attached garage and replace and expand driveway.

Staff Planner – Cole Fisher

Staff Report – page 53



8. Shane & Maria Sullivan
[Applicants & Property Owners]

1508 McCullough Ln

GPIN 2409-91-7263

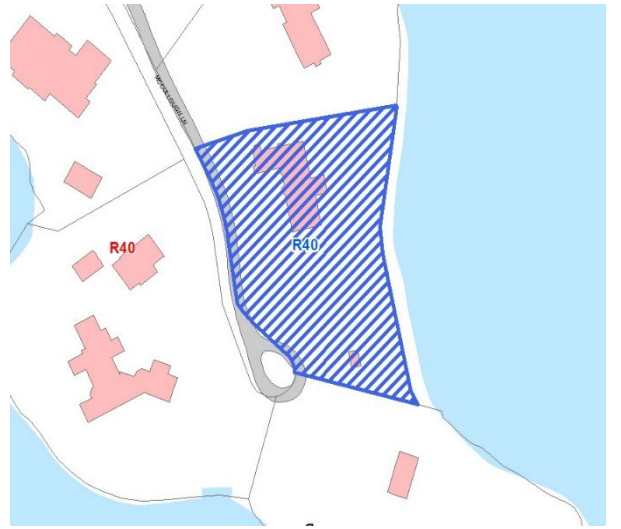
City Council District: District 6

Accela Record: 2023-CBPA-00066

Variance Request – Encroachment into the RPA to construct a tiki par with associated patio area.

Staff Planner – Cole Fisher

Staff Report – page 65



9. Randolph Hoover
[Applicant & Property Owner]

1500 McCullough Ln

GPIN 2409-90-8955

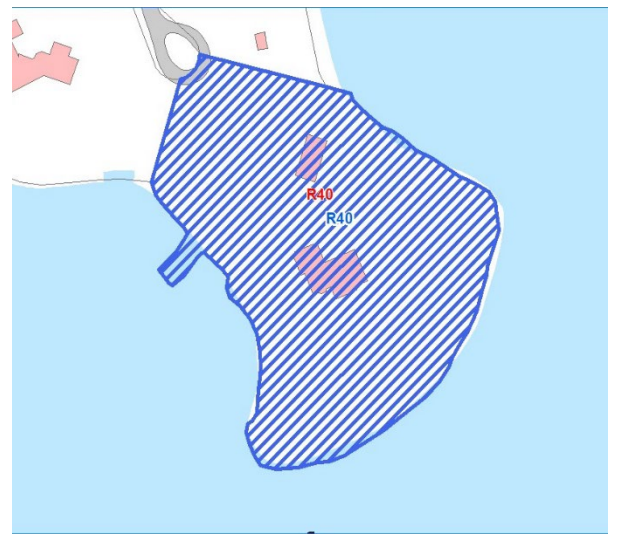
City Council District: District 6

Accela Record: 2023-CBPA-00064

Variance Request – Encroachment into the RPA to construct a two-story single-family residence with associated accessory structures.

Staff Planner – Cole Fisher

Staff Report – page 77



RESTORATION HEARING

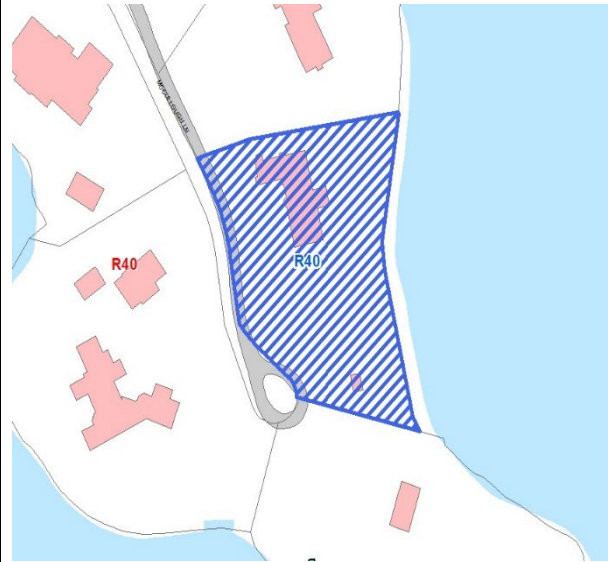
10. Shane & Maria Sullivan
[Applicants & Property Owners]

1508 McCullough Ln
GPIN 2409-91-7263
City Council District: District 6

Accela Record: 2023-CBPV-00004

Statement of Noncompliance – Encroachment into the RPA to construct a tiki par with associated patio area.

Staff Planner – Cole Fisher
Staff Report – page 93



2024 CBPA BOARD PUBLIC HEARING DATES

Monday	January 22	Monday	July 22
Monday	February 26	Monday	August 26
Monday	March 25	Monday	September 23
Monday	April 22	Monday	October 28
Monday	May 30	Monday	November 25
Monday	June 24	Thursday	December 19



2023 CBPA Board Members

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

POLICIES AND RULES OF PROCEDURES

Chesapeake Bay Preservation Area Board

Article I, Section 3.5

The Board shall hold election of Officers on the last meeting of the year for the following year. The Board shall elect a Chair, Vice-Chair and Secretary for one-year terms. Officers may succeed themselves. The Board may elect to combine the offices of Vice-Chair and Secretary by a majority vote of those present and voting.

2024 CBPA Board Election of Officers

- Chairman
- Vice Chairman
- Secretary

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Applicant & Property Owner **John & Maria Motta**
 Address **3380 Eagle Nest Point**
 Public Hearing **December 20, 2023**
 City Council District **District 8**

Agenda Item

2

The applicant is requesting a deferral of this application to the Monday, January 22, 2024 CBPA Board Public Hearing to allow additional time to address Staff’s concerns. Staff supports the request to defer.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct tiered retaining walls and a permeable paver patio.

Applicant’s Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 23, Page 31
 Recorded 09/20/1948

GPIN

1489-81-4025

SITE AREA

103,807 square feet or 2.38 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

58,098 square feet or 1.34 acres

EXISTING IMPERVIOUS COVER OF SITE

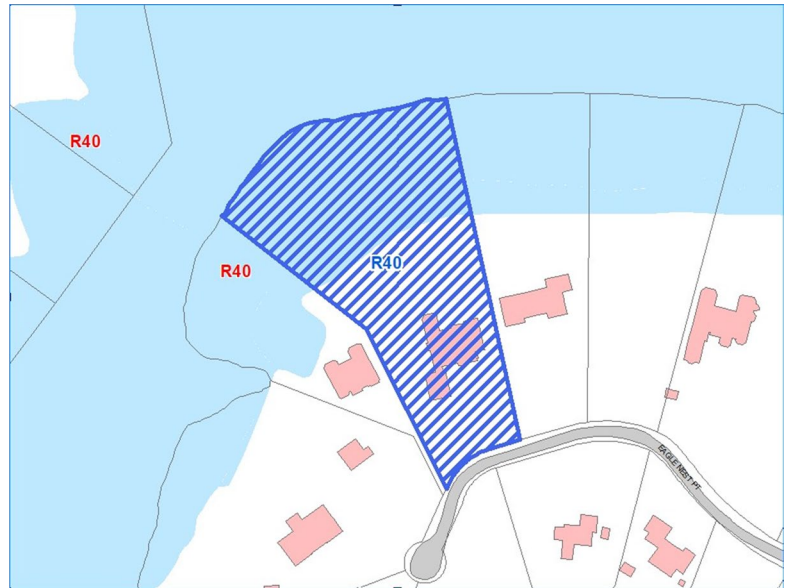
13,211 square feet or 23 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

14,138 square feet or 24 percent of site

Variance Request History

This variance request was deferred at the following CBPA Public Hearings
 - November 27, 2023.



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Applicant & Property Owner **John & Tracey Owens**
 Address **1508 Layden Cove Way**
 Public Hearing **December 20, 2023**
 City Council District **District 8**

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct permeable paver landings and retaining wall.

Applicant's Agent

Mark Pierce
 Earthscapes Lawn & Land Service, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 181, Page 01
 Recorded 07/02/1984

GPIN

1499-80-7265

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

126 square feet

Area of New Development in RPA

494 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

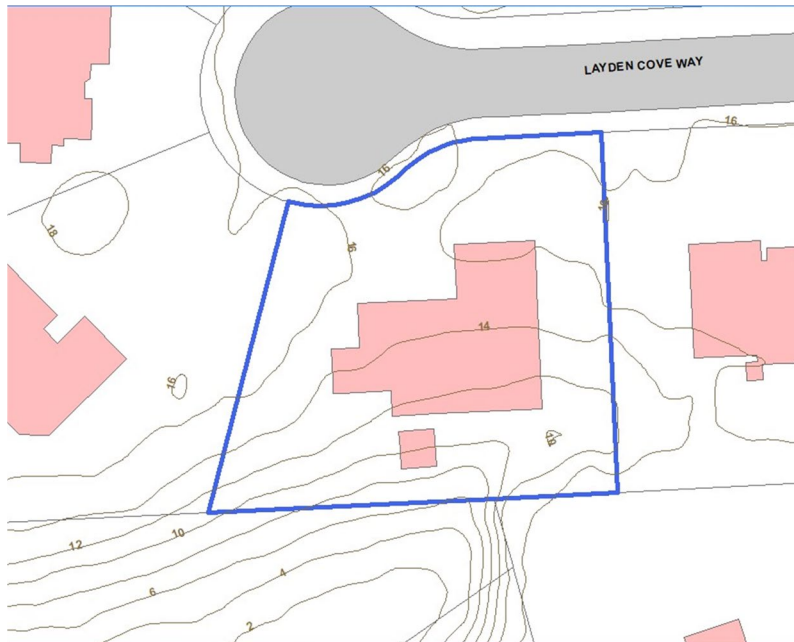
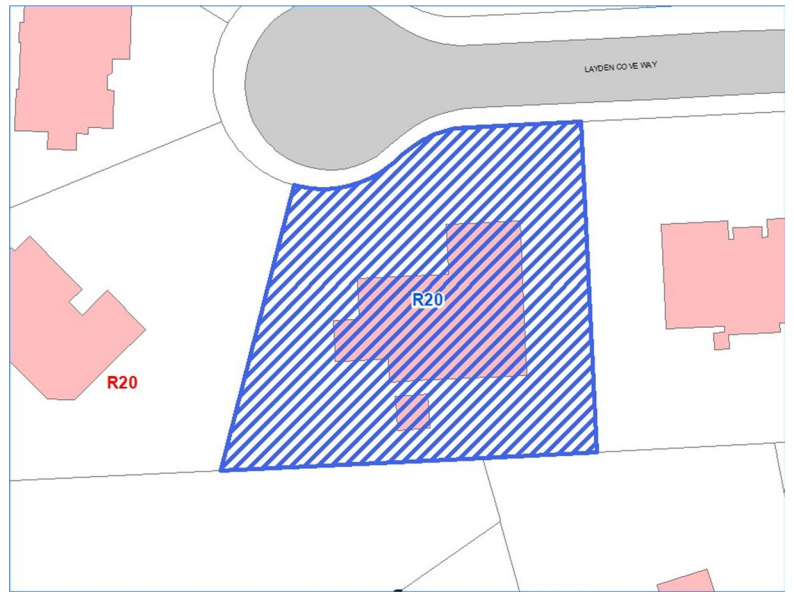
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Permeable paver step landings
- Terraced garden walls with associated backfill material and landscaping

CBPA Ordinance Variance History

No Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Rumford Series (highly erodible soils) located below the top of bank

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

The land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required.

Evaluation and Recommendation

The Chesapeake Bay Preservation Area (CBPA) variance request includes the construction of a series of landings with permeable paver stones along the side of the existing single-family residence with multiple retaining walls and associated landscaping to aid in preventing any future sedimentary erosion on the lot. In addition to the proposed improvements located along the side of the existing residence, a retaining wall is proposed at the rear of the residence as well. The rear and side yards of this property are moderately sloped, and the applicant has indicated that the project is necessary due to safety concerns on the lot and evidence of continuing erosion due to drainage and runoff issues. Staff is of the opinion that this variance request will provide a better soil condition with the proposed backfill that aids infiltration of rainwater and runoff. Staff is of the opinion that the location of the proposed improvements is acceptable given that the layout will ensure rainwater infiltration on a lot that currently does not provide a means towards stormwater management. As submitted, Staff commends the applicant and their agent for providing a means of

redevelopment on the lot towards abating run-off and soil erosion without extensively impacting existing vegetation given the tight parameter of the lot.

Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"by correcting the eroding grade on the east side of the house and planting required trees and shrubs as well as mulching with leaf litter mulch in the RPA adjacent areas of the yard we will be reducing the amount of sedimentary runoff into the RPA."*
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the area of mitigation is the existing slope that has not been able to establish turfgrass or other groundcover due to the existing grade and mature tree canopy."*
- 3) The variance is the minimum necessary to afford relief because *"this variance is needed to mitigate water infiltration into the main structure and soil erosion because of denuded slope, making it unsafe for foot traffic and non-point sedimentary infiltration into RPA."*
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this variance request will mitigate non-point and point sedimentary pollution by creating areas of infiltration upslope of the RPA using light terracing, plant material rain garden stormwater capture and leaching."*
- 5) *"During construction the area of disturbance will have a silt fence perimeter, coir logs where needed and a single construction access point. Light terracing and significant retention planting will be installed in the east and south sides of the yard to increase infiltration of stormwater above the RPA. All hard surfaces will be permeable pavement"* as a means to manage towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following **7** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 2,400 square feet of buffer restoration shall be installed on the lot.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 12 large shrubs, and 8 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

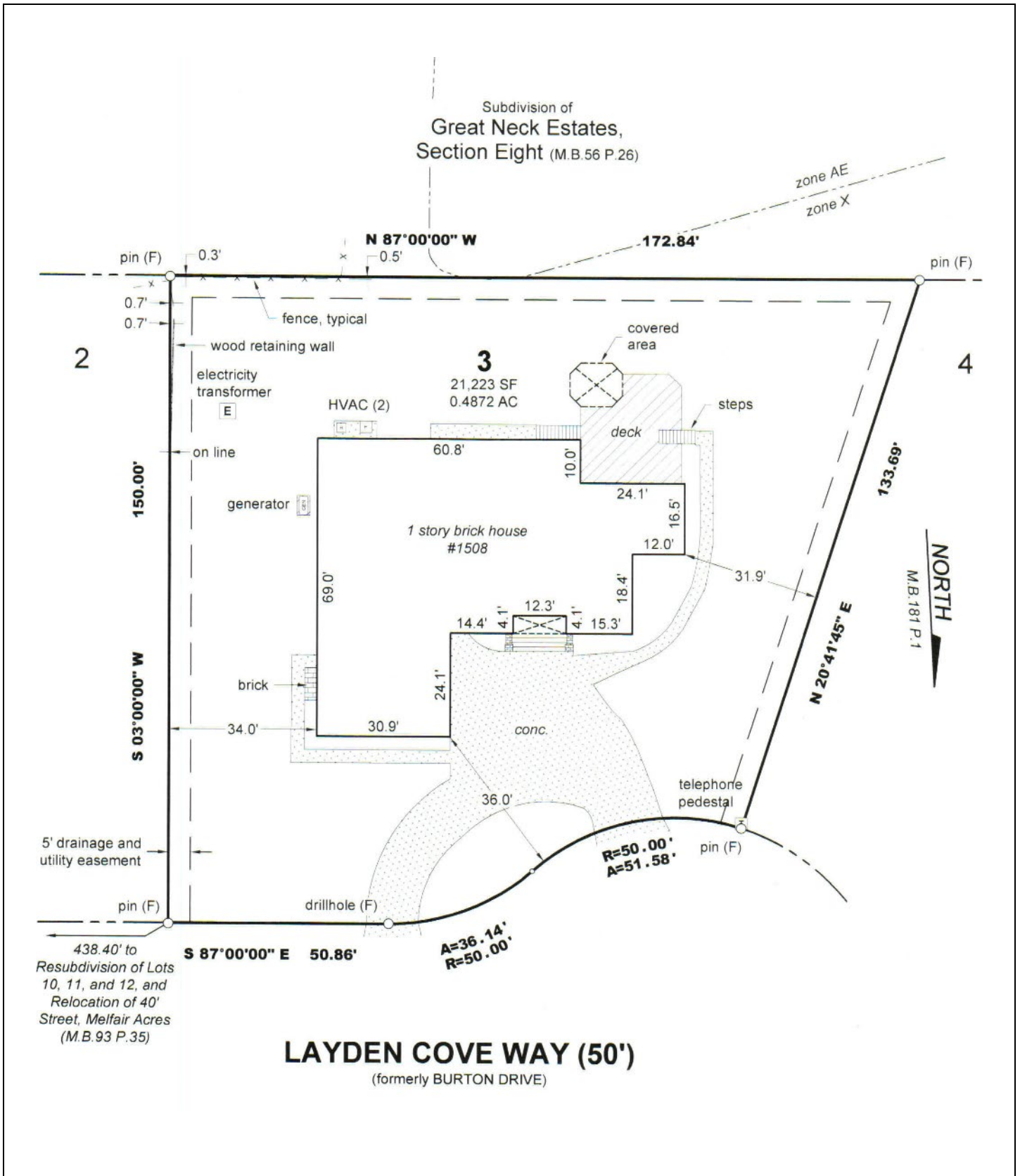
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

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

Site Aerial



CBPA Exhibit – Existing Conditions





Disclosure Statement

Disclosure Statement

VB
City of Virginia Beach
Planning & Community
Development

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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Tracey Owens

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? Yes No

- If yes, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)
- If yes, list the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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.

Revised 11.09.2020 1 | Page

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc) or are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the financial institutions providing the service.

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property? Yes No

- If **yes**, identify the company and individual providing the service.

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

_____ *Earthscapes Lawn & Land Service*

5. Is there any other **pending or proposed purchaser** of the subject property? Yes No

- If **yes**, identify the purchaser and purchaser's service providers.

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the company and individual providing the service.

7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

Continue to Next Page for Owner Disclosure

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.

Tracy Owens

Applicant Signature

Tracy Owens, Owner

Print Name and Title

10/18/23

Date

Is the applicant also the owner of the subject property? Yes No

- If **yes**, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications

<input type="checkbox"/>	No changes as of	Date	Signature	Print Name

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Applicant & Property Owner **Russell Tye**
 Address **1573 Quail Point Road**
 Public Hearing **December 20, 2023**
 City Council District **District 6**

Agenda Item

4

The applicant is requesting a deferral of this application to the Monday, January 22, 2024 CBPA Board Public Hearing to allow additional time to address Staff’s concerns. Staff supports the request to defer.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to remove 12 canopy trees.

Applicant’s Agent

Self-represented

Staff Planner

Cole S. Fisher

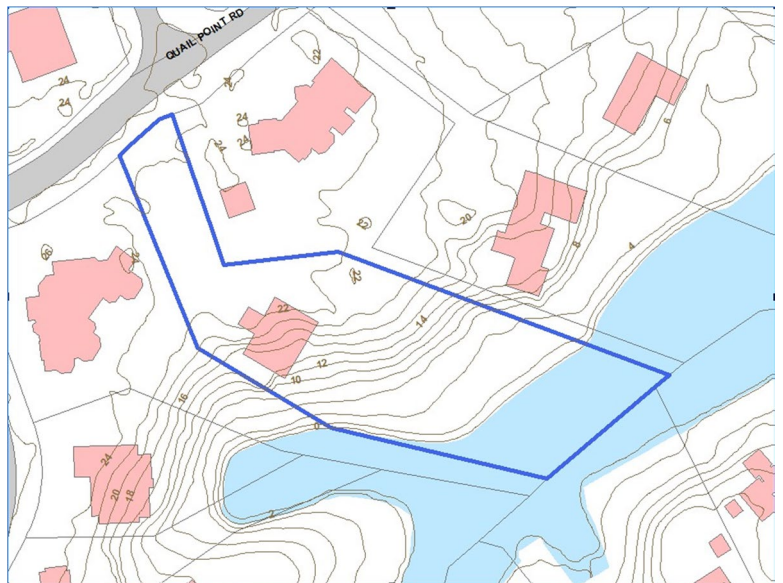
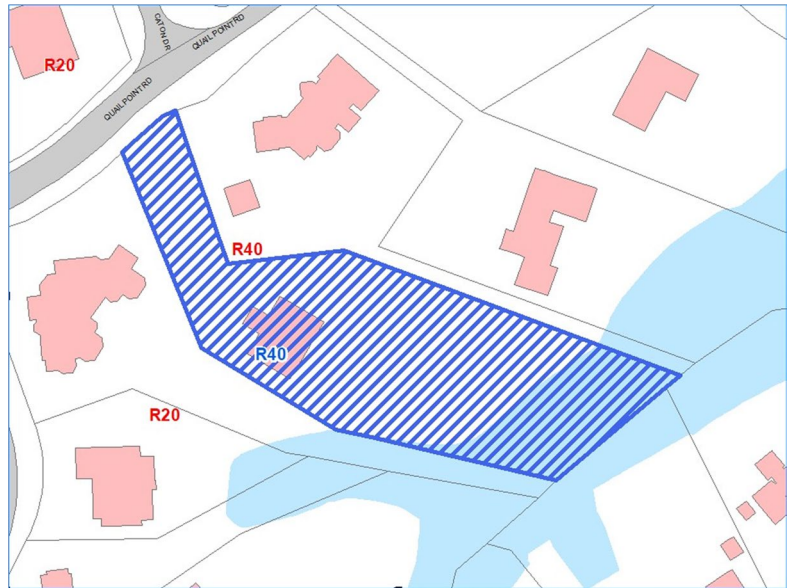
Lot Recordation

Map Book 2818, Page 0668

Recorded 04/13/1989

GPIN

2408-93-2004



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Applicant & Property Owner **Scott Sachs & Jillian Reynolds**

Agenda Item

Address **2484 Haversham Close**

Public Hearing **December 20, 2023**

City Council District **District 8**

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to rebuild and expand a swimming pool and pool deck.

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Instr. No 20060303000340150

Recorded 03/03/2006

GPIN

1499-84-9776

SITE AREA

40,352 square feet or 0.93 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,604 square feet or 0.84 acres

EXISTING IMPERVIOUS COVER OF SITE

9,806 square feet or 27 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,234 square feet or 31 percent of site

Area of Redevelopment in RPA

2,185 square feet

Area of New Development in RPA

1,547 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

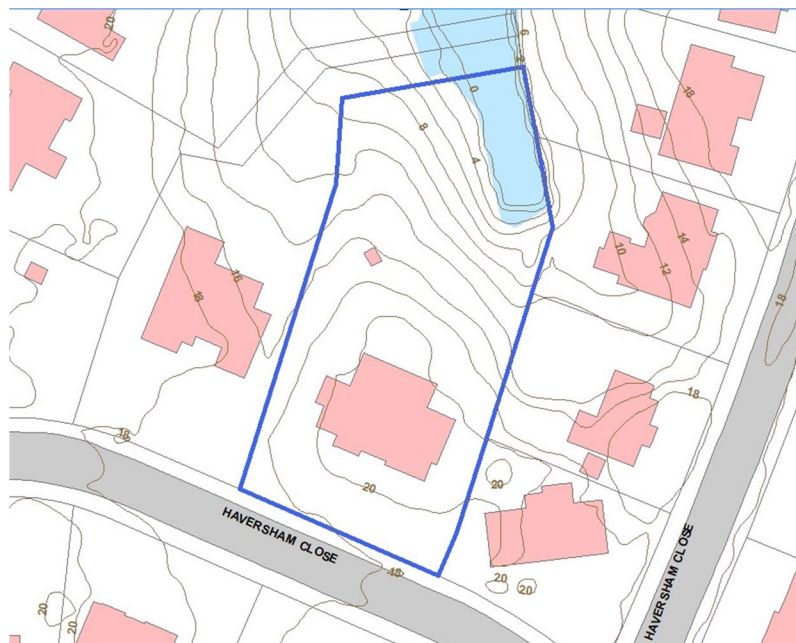
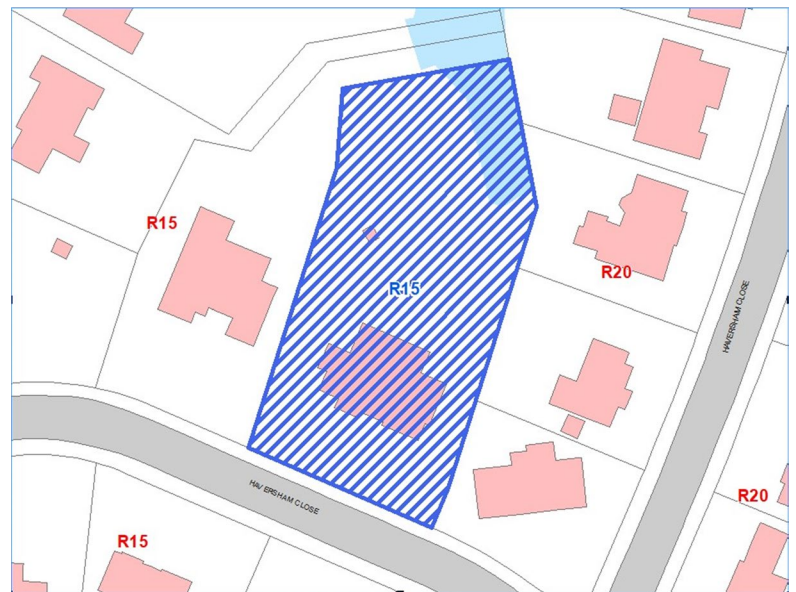
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing swimming pool with associated pool deck

Construction Details

- Swimming pool with associated pool decking

CBPA Ordinance Variance History

November 28, 2005, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence with concrete driveway, walkway, covered and screened porches, and an 18' x 36' pool with concrete decking with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *A wire reinforced silt fence shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 15' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from proposed impervious cover shall be conveyed to stormwater management facilities. The need for the bio-retention planting bed along the western portion of the project shall be addressed during detailed site plan review. The planting bed along the northern portion of the project shall be installed near the 12' contour.*
7. *The pool and associated decking shall be built into the slope with no perimeter fill permitted. A retaining wall shall be installed if needed. The pool shall be built prior to or concurrent with the residence.*
8. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$1,035.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 1,130 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
9. *The applicant shall vacate the property line between Lot A-1 and Lot 55 creating a single lot.*
10. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
11. *Buffer restoration totaling 5,648 sq. ft. shall be installed which is equal to 125% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. In addition to the aforementioned buffer restoration, a minimum of twenty (20) trees shall be installed.*

The required trees shall be evenly distributed throughout the lot in areas currently devoid of tree canopy to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.

12. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
13. *The conditions and approval associated with this variance are based on the site plan dated October 11, 2005, prepared by Gallup Surveyors & Engineers, LTD.*
14. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The November 28, 2005 Board granted variance has been acted upon and the associated improvements constructed.

June 27, 2016, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a paver patio area with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
4. *Wire reinforced 36" silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 15' from improvements and shall denote the construction limits.*
5. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3:1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
6. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
7. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
8. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: 460 sq. ft. x 200% = 920 sq. feet.*

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: 3 canopy trees, 6 understory, and 9 shrubs.

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

9. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$105.42 and is based on 25% of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 115 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
10. *This variance and associated conditions are in addition to the conditions of the Board variance granted November 25, 2005.*
11. *A retaining wall shall be installed outboard of the proposed paver patio. No perimeter fill.*
12. *The conditions and approval associated with this variance are based on the exhibit dated March 9, 2016, prepared by the applicant and presented to the Board. Permits and Inspections may require additional information that may affect the release of a building permit.*

The June 27, 2016 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank
Rumford Series (highly erodible soils) located below the top of bank

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that rainwater harvesting and bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The existing single-family home and accessory structures were damaged due to the tornado storm event that affected the Great Neck area of Virginia Beach. The applicant desires to construct the proposed improvements in the rear yard of the lot contiguous to a manmade canal of Broad Bay, which includes the construction of a new swimming pool and pool patio with an associated retaining wall system. This request increases the overall impervious cover of the lot from 27 percent to 31 percent with 1,547 square feet of new development within the RPA all of which has been situated within the 50-foot landward buffer of the Resource Protection Area (RPA). Additionally, the site layout includes redevelopment to the greatest extent practicable approximately 2,185 square feet with the proposed improvements primarily in the footprint of the existing swimming pool and pool patio area. The encroachment within the RPA with this request is due to the 85 linear foot long retaining wall seaward of the proposed pool and patio surround that will help to stabilize portions of the backyard and prevent erosion into the waterway. Staff is of the opinion that the applicant has brought forth a reasonable request and will not be of harm to the water quality of the Chesapeake Bay.

Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

1. Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this property is similar to others in the haversham / broad bay point greens / greenhill farms neighborhoods - many of which have similarly situated pools."* Staff is of the opinion that similar improvements are found throughout the neighborhood and would not confer a special privilege to the owner given the location of the proposed improvements on the lot and the location of the 100-foot buffer.
2. Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
3. The variance is the minimum necessary to afford relief because *"the property owner has avoided the 50' seaward buffer and is requesting a reasonable amount of outdoor living space, in the proposed deck area around the proposed pool."* Staff is of the opinion that the variance request is the minimum necessary to afford relief given the size and location of the proposed improvements situated on the lot and within the RPA.
4. The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this redevelopment project is similar to other properties in the neighborhood and will result in improved water quality since stormwater management is required."* Staff is of the opinion that given the location of the proposed improvements and the recommended conditions in this staff report, the variance request will not be of substantial detriment to water quality of the Chesapeake Bay.
5. *"The stormwater runoff will be directed to and treated by bioretention planting beds or other bmp's, which will reduce pollution in the post-development stormwater runoff"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **16** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) 3,200 square feet of buffer restoration shall be installed within the RPA on the lot.

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

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

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

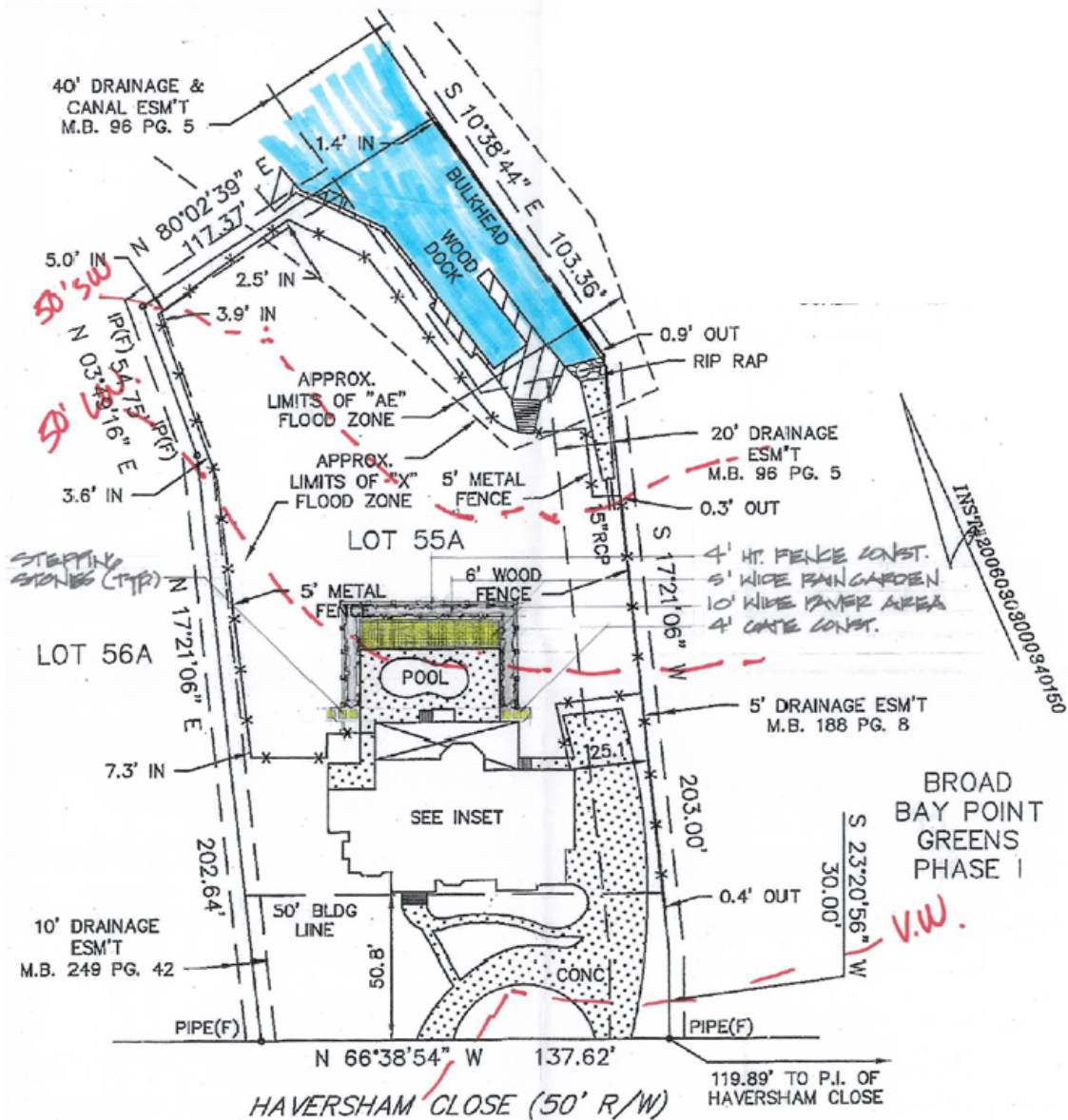
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$354.52 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted June 27, 2016 except for the following conditions.
 7. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
 8. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: 460 sq. ft. x 200% = 920 sq. feet.*
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated November 1, 2023, prepared by WPL, signed November 1, 2023 by Brad Martin. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Site Aerial





PPR EXHIBIT

MARCH 7, 2016

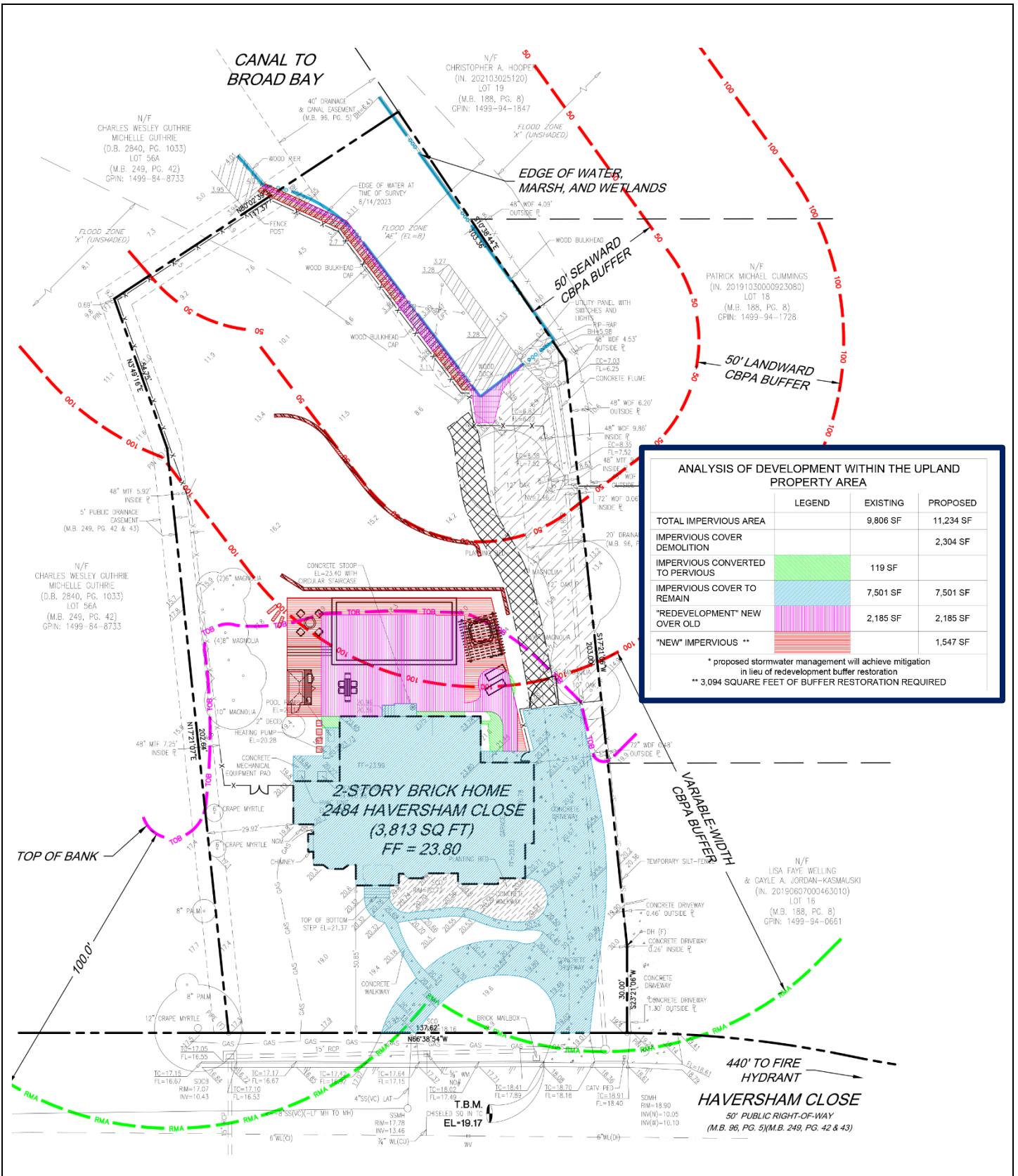
PHYSICAL SURVEY OF LOT 55A

RESUBDIVISION OF LOT 55 CHELSEA & PARCEL A-1 RESUBDIVISION OF LOTS 56, 58 AND PARCEL A CHELSEA VIRGINIA BEACH, VIRGINIA

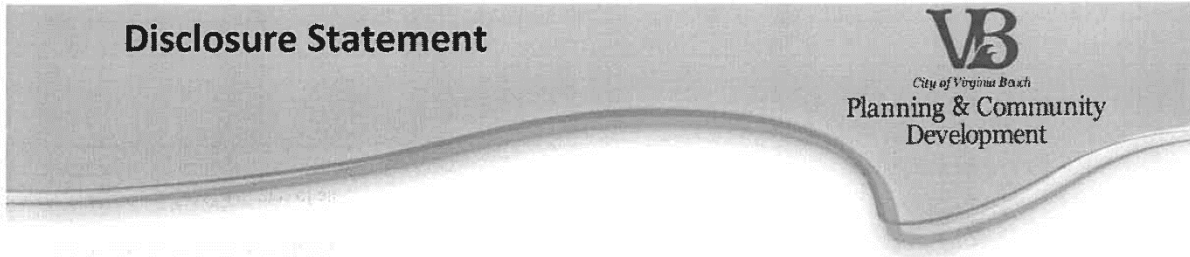
FOR JILLIAN REYNOLDS AND SCOTT M. SACHS

DATE: AUG. 27, 2015
 SCALE: 1" = 25'
 NOTE: FOR PLAT SEE INST #20060303000340150 VIRGINIA BEACH, VA

CBPA Exhibit – Proposed Improvements



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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Jillian Reynolds and Scott Sachs

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? Yes No

- If yes, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

- If yes, list the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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.

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc)** or **are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property?

Yes No

- If **yes**, identify the financial institutions providing the service.

Mortgage - Chase

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property?

Yes No

- If **yes**, identify the company and individual providing the service.

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

5. Is there any other **pending or proposed purchaser** of the subject property? Yes No

- If **yes**, identify the purchaser and purchaser's service providers.



Disclosure Statement





6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? Yes No
- If yes, identify the company and individual providing the service.
-
7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? Yes No
- If yes, identify the firm and individual providing the service.
-
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No
- If yes, identify the firm and individual providing the service.
-

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.


 Applicant Signature 


 Print Name and Title *Jillian Reynolds Scott Sachs (Homeowners)*


 Date *10/29/2023*

- Is the applicant also the owner of the subject property? Yes No
- If yes, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications				
<input type="checkbox"/>	No changes as of	Date	Signature	
			Print Name	

AS NEEDED, PAGE LEFT BLANK



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, pool deck, and pool house.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 96, Page 5
 Recorded 03/28/1972

GPIN

1499-85-9222

SITE AREA

23,730 square feet or 0.545 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

23,316 square feet or 0.598 acres

EXISTING IMPERVIOUS COVER OF SITE

6,862 square feet or 29.4 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,900 square feet or 38.2 percent of site

Area of Redevelopment in RPA

2,467 square feet

Area of New Development in RPA

2,685 square feet

Location of Proposed Impervious Cover

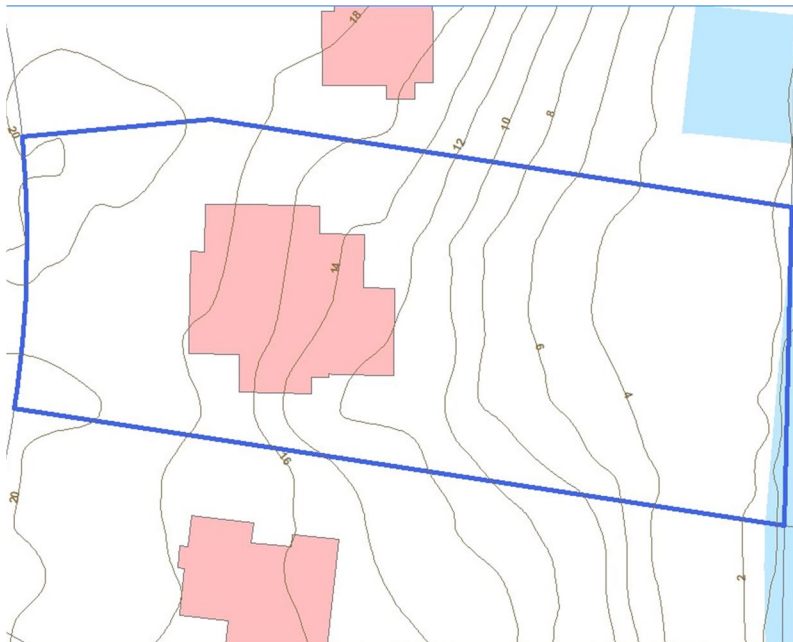
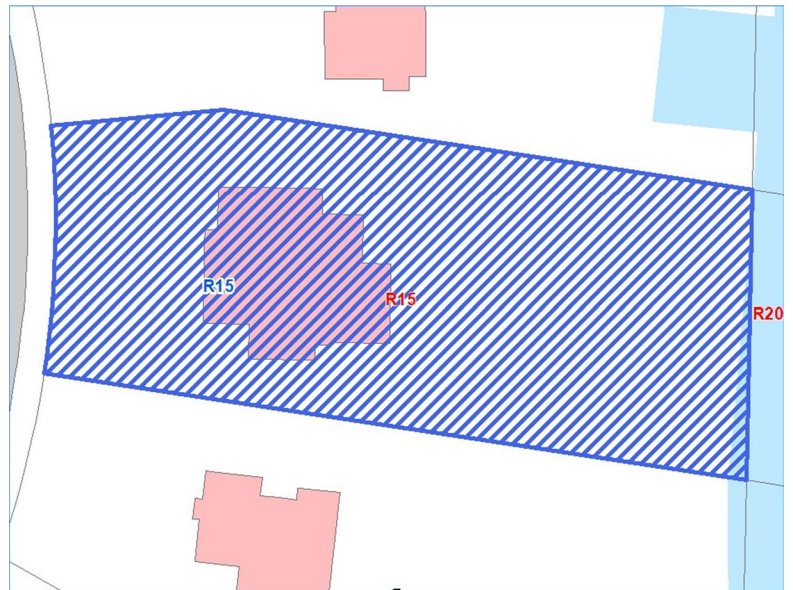
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with associated pool decking

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank
Rumford Series (highly erodible soils) located below the top of bank

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 6
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the conditioned limits of construction and the footprint of the proposed improvements, specifically the proposed pool decking. Staff is of the opinion that removal of these trees is warranted given the layout of the proposed improvements.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that gravel downspout intercepts, at grade gravel drip intercepts, and bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The homeowners recently purchased the property within the last two years and desire to redevelop portions of the lot with the construction of a swimming pool with associated patio, pool house, permeable paver basketball court, steppingstone walkway, and retaining walls within the 50-foot landward buffer and the City's variable width buffer of the Resource Protection Area (RPA).

As submitted, the dimensions of the proposed swimming pool (16 feet by 40 feet) are slightly larger than the average residential swimming pool (16 feet by 32 feet) and this proposal increases the overall impervious cover of the lot from

6,862 square feet to 8,900 square feet or from 29 percent to 38 percent of the lot above water and wetlands. In addition, on the south side of the lot, extending into the side and rear yard and connecting to the existing driveway, the applicant proposes a permeable paver basketball court for the recreational use of the family. Of the 2,685 square feet of new impervious cover introduced with this request, approximately 1,866 square feet constitutes solely patio area, with the total impervious cover from both the swimming pool and patio being approximately 2,498 square feet. In addition, Staff adds that approximately 3,775 square feet of the existing impervious cover on the lot directly from the primary residence, which was constructed over a decade prior to the adoption of the Chesapeake Bay Preservation Area Ordinance (CBPAO).

Upon receipt of the initial variance request submittal, Staff expressed concern to the applicant's agent regarding the initial proposed impervious cover numbers of the site. The applicant's agent revised the Chesapeake Bay Preservation Area (CBPA) plan to reduce and remove portions of the project, including the proposed pool house and portions of the driveway expansions, to reduce the proposed impervious cover of the site to approximately 38 percent impervious cover on the lot above water and wetlands. Furthermore, Staff still has concern with the extent of the square footage devoted to the proposed patio space with this request and provides the recommended conditions – specifically recommended condition 1 below to address Staff's concern with the proposed square footage of patio space with the request. Staff is of the opinion that the recommended conditions will ensure the opportunity for the applicant to achieve a necessary space to enjoy the proposed improvements, while also ensuring the request is the minimum necessary to afford relief given the existing conditions of the site.

To further support the variance request the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance specific to this variance request for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated *"many of the nearby homes in the neighborhood have pools and outdoor living in the CBPA buffer without encroaching into the 50' seaward buffer; this will be similar."* Staff is of the opinion that the variance request, subject to the recommended conditions in the staff report, will not confer upon the applicant any special privilege or convenience not accord to others who are subject to the provisions of the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed project shows a reasonable amount of outdoor living space and avoids the 50' seaward buffer."* Staff is of the opinion that the variance request is the minimum necessary to afford relief subject to the recommended conditions.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed project will provide a suitable measure of stormwater management which does not exist today, which improves the water quality."* Staff offers that the proposed best management practices coupled with the required buffer restoration and recommended conditions will ensure that the variance request will not be of substantial detriment to water quality.
- 5) *"The proposed stormwater management bmp's will provide water quality improvements versus the existing situation with no stormwater management"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **17** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) The overall impervious cover of the lot above water and wetlands shall not exceed 36.5 percent.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,685 square feet x 200 percent = 5,370 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

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

- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$500.72 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated December 7, 2023, prepared by WPL, signed December 7, 2023 by Brad Martin. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Site Aerial



Disclosure Statement

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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Matthew A Winters

Does the applicant have a representative? Yes No

- If **yes**, list the name of the representative.

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? Yes No

- If **yes**, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

- If **yes**, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "Parent-subsiary 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-subsiary 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.

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc) or are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property?

Yes No

- If **yes**, identify the financial institutions providing the service.

Truist Bank

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property?

Yes No

- If **yes**, identify the company and individual providing the service.

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

Covington Hendrix Anderson Architects (Wayne Anderson) / WPL Landscape Architecture

5. Is there any other **pending or proposed purchaser** of the subject property? Yes No

- If **yes**, identify the purchaser and purchaser's service providers.

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the company and individual providing the service.

Atlantis Pools (Pool Contractor)

7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm and individual providing the service.

WPL

8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm and individual providing the service.

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.

Applicant Signature

Matthew A Winters, Owner

Print Name and Title

10/30/23

Date

Is the applicant also the owner of the subject property? **Yes** **No**

- If **yes**, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications

<input type="checkbox"/>	No changes as of	Date	Signature
			Print Name



Applicant & Property Owner **Gerasimos & Teresa Andreatos**
 Address **917 Holladay Point**
 Public Hearing **December 20, 2023**
 City Council District **District 6**

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct an attached garage and replace/expand driveway.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 005, Page 0151

Recorded 11/29/1916

GPIN

2418-53-3712

SITE AREA

81,893 square feet or 1.88 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

79,163 square feet or 1.81 acres

EXISTING IMPERVIOUS COVER OF SITE

16,462 square feet or 21 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

20,173 square feet or 26 percent of site

Area of Redevelopment in RPA

5,450 square feet

Area of New Development in RPA

3,660 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

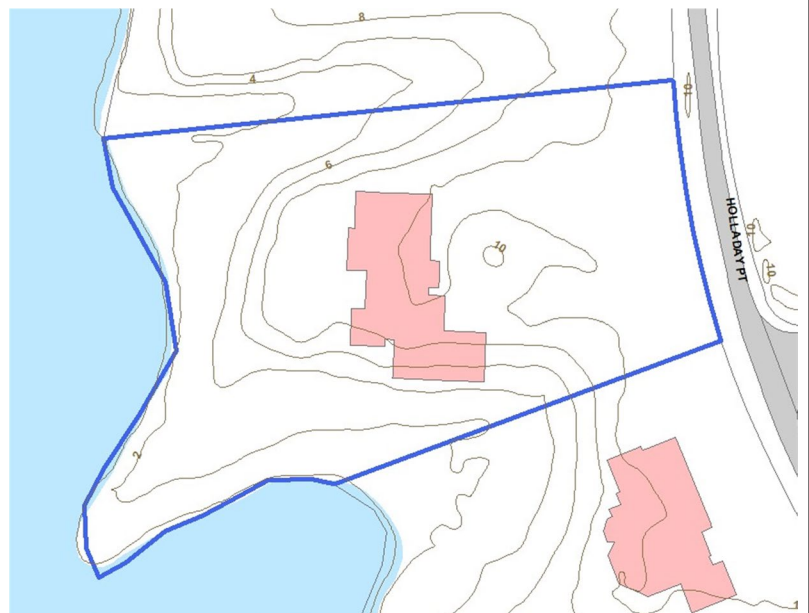
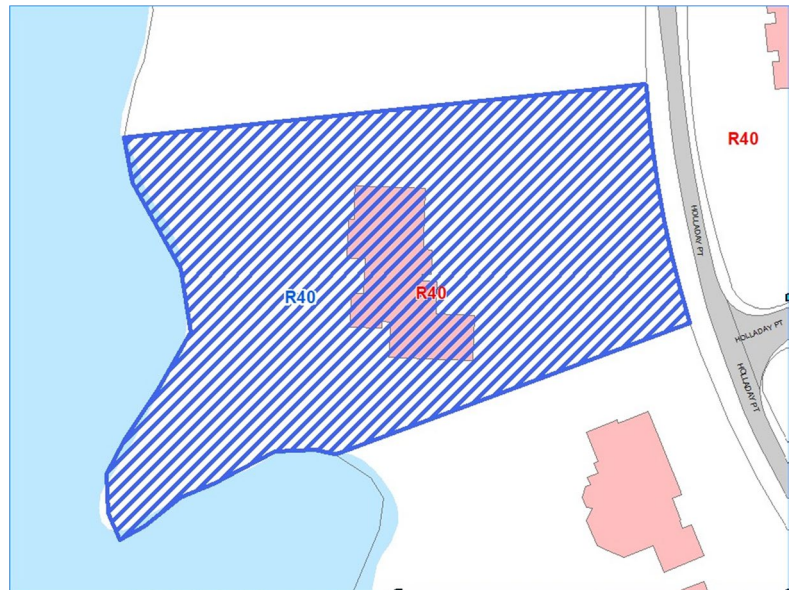
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete driveway and pavers

Construction Details

- New permeable paver driveway
- Two-story attached garage with pool bathhouse

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 7

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank

Rumford Series (highly erodible soils) located below the top of bank

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Staff is of the opinion that three of the four trees proposed for removal are warranted given being within the footprint of the proposed improvements. Staff is of the opinion that the 24" maple as shown situated to the south of the existing driveway can be preserved.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that permeable pavers will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The applicant proposes to construct a detached garage to the north of the existing residence and redevelop the existing concrete driveway with permeable pavers. With the redevelopment of the existing driveway, slight expansions are proposed adjacent to the detached garage to provide access to the structure. Overall, the variance request increases the impervious cover of the lot area above water and wetlands from 16,462 square feet to 20,173 square feet or from 21 to

26 percent. Said new impervious cover is situated within the 50-foot landward buffer and variable width buffer of the Resource Protection Area (RPA) and also the Resource Management Area (RMA) of the Chesapeake Bay Preservation Area (CBPA). Staff is of the opinion that this proposal is in harmony with the purpose and intent of the CBPA Ordinance given the location of the proposed impervious cover on the lot and use of permeable pavers with the driveway redevelopment and new portions of the driveway expansions proposed. Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff concurs and adds that similar improvements of attached or detached garages are found throughout the neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff is of the opinion that given the size and location of the proposed improvements that the variance request is the minimum necessary to afford relief within the upper reach of the 100-foot Resource Protection Area (RPA) buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. most of these homes currently have no storm water treatment on site. as a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the lynnhaven oyster heritage program all to benefit water quality."* Staff is of the opinion that given the use of materials and location of the proposed improvements on the lot that the variance request is in harmony with the purpose and intent of the CBPA Ordinance and will not be of substantial detriment to the water quality of the Chesapeake Bay.
- 5) *"Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the usage of permeable pavers coupled with the required buffer restoration will ensure a no net increase in nonpoint source pollution load with this variance request.

Given the above comments, Staff recommends the following **16** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,660 square feet x 200 percent = 7,320 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **9 canopy trees, 9 understory trees, 36 large shrubs, and 54 small shrubs.**

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

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

These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$838.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated October 24, 2023, prepared by Gallup Surveyors & Engineers, signed October 24, 2023 by David Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

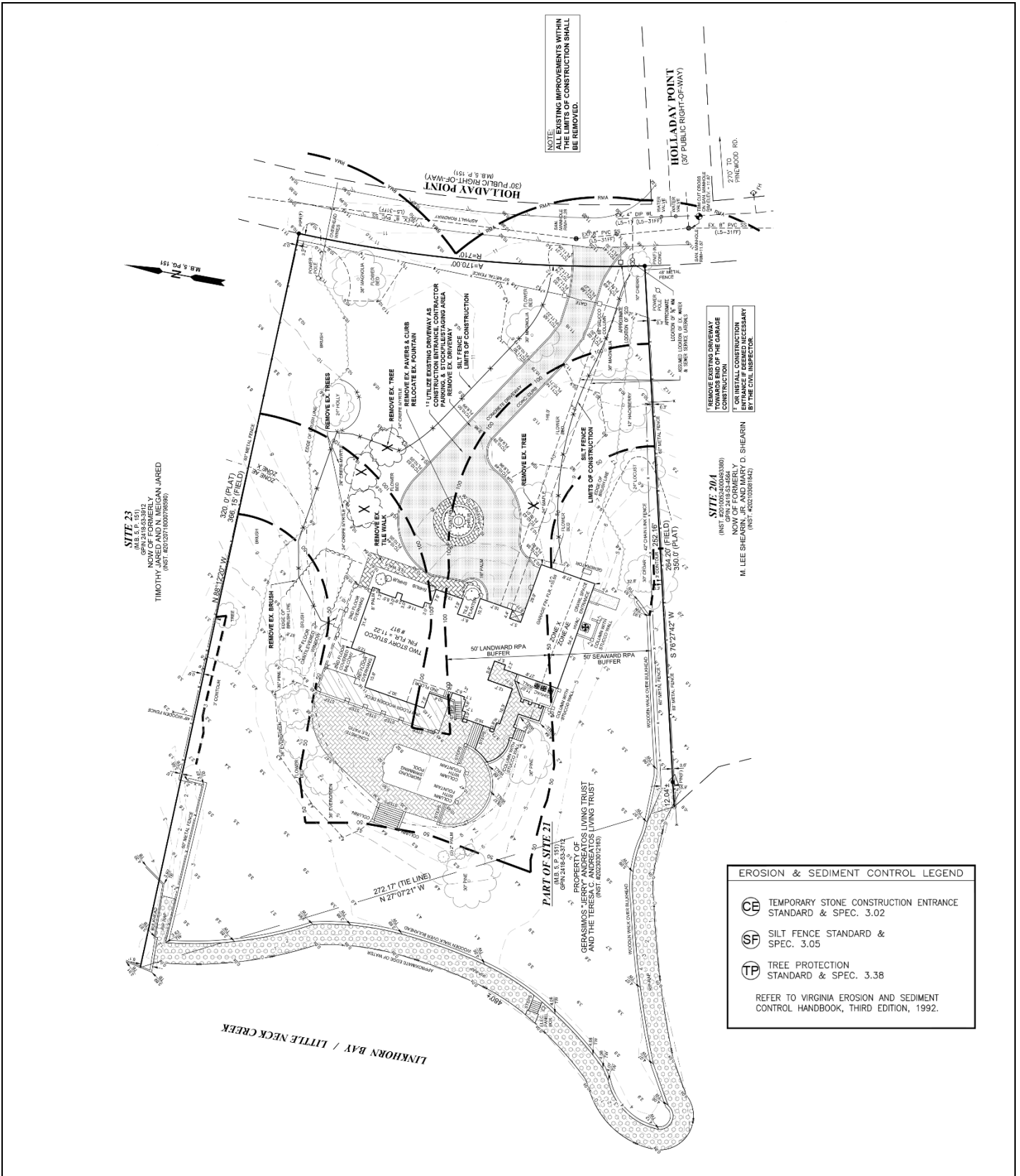
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

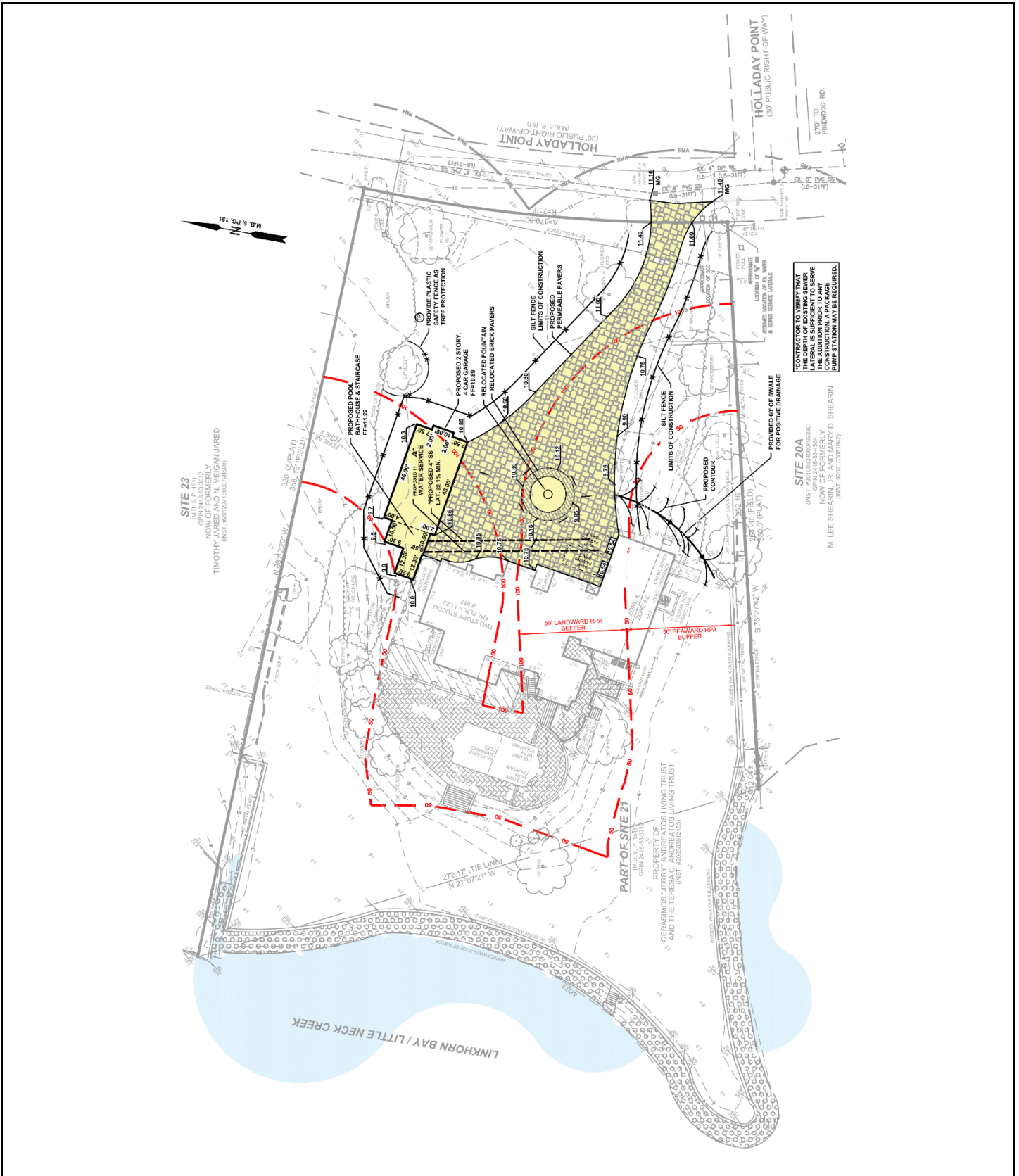
Site Aerial



CBPA Exhibit – Existing Conditions and Demolition Plan



CBPA Exhibit – Proposed Improvements



Disclosure Statement

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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Jerry & Teresa Andreatos

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? Yes No

- If yes, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

- If yes, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "Parent-subsiary 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-subsiary 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.

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?
-

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc) or are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property?

Yes No

- If **yes**, identify the financial institutions providing the service.
-

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property?

Yes No

- If **yes**, identify the company and individual providing the service.
-

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.
-

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.
-

5. Is there any other **pending or proposed purchaser** of the subject property? Yes No

- If **yes**, identify the purchaser and purchaser's service providers.
-

Disclosure Statement



- 6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the company and individual providing the service.
Borte Construction Company, Inc.

- 7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the firm and individual providing the service.

- 8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the firm and individual providing the service.

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.

Jerry Andreatos / Teresa Andreatos
Applicant Signature
Jerry Andreatos / Teresa Andreatos
Print Name and Title
10.26.2023
Date

- Is the applicant also the owner of the subject property? **Yes** **No**
 - If **yes**, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications				
<input type="checkbox"/>	No changes as of	Date	Signature	
			Print Name	

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Applicant & Property Owner **Maria & Shane Sullivan**
 Address **1508 McCullough Lane**
 Public Hearing **December 20, 2023**
 City Council District **District 6**

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a tiki bar with associated patio area.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 126, Page 20
 Recorded 4/17/1978

GPIN

2409-91-1726

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,090 square feet

Location of Proposed Impervious Cover

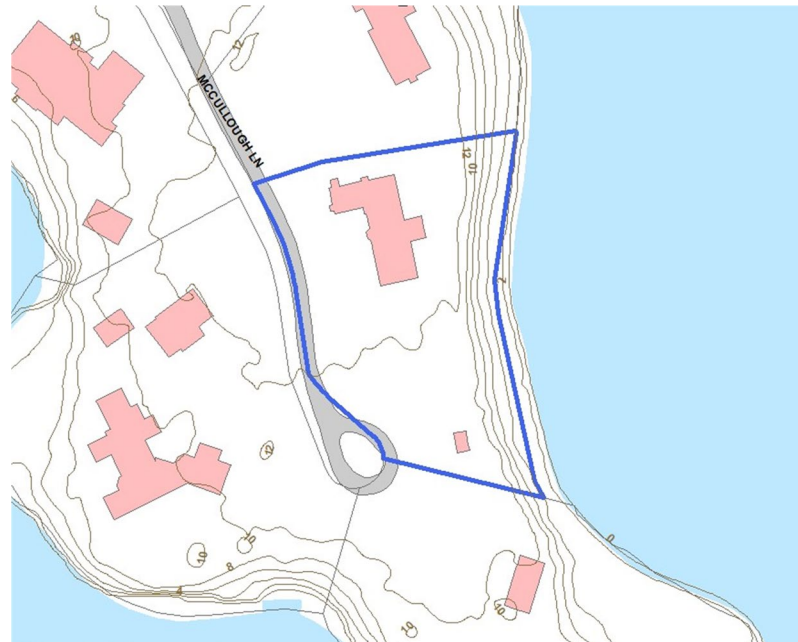
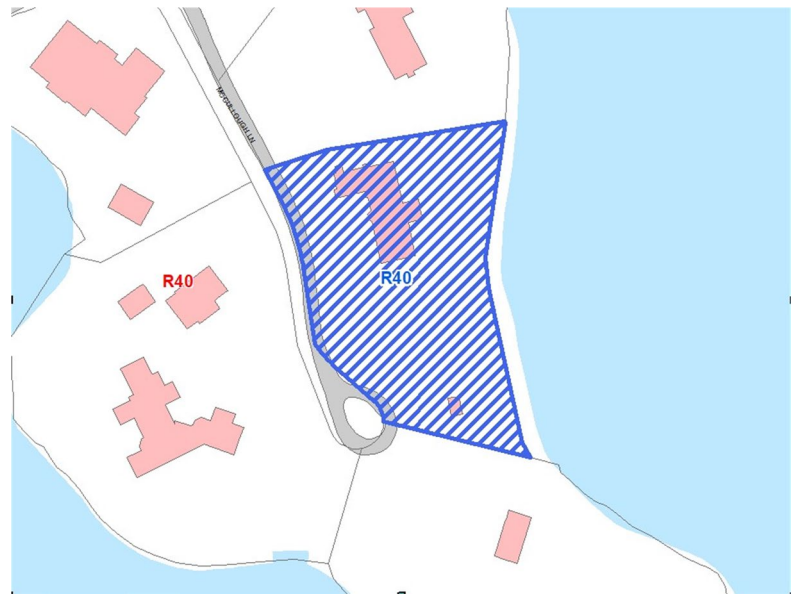
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- After-the-Fact construction of a tiki bar/pavilion with associated patio surround and hot tub area

CBPA Ordinance Variance History

No Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

The land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required.

Evaluation and Recommendation

The variance request is for an after-the-fact approval of the constructed tiki bar pavilion with an associated patio surround. The proposed improvements fall within the 50-foot landward buffer and variable width buffer portions of the Resource Protection Area (RPA) on the lot. As submitted, this proposal adds approximately 1,090 square feet of new impervious cover within the riparian buffer with no existing vegetation or canopy cover impacted with the request.

To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance and believes that the construction of the after-the-fact improvements are not a detriment to water quality and that the submitted Master Buffer Plan offers infiltration opportunity for rainwater and stormwater run-off.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of

this Ordinance and are similarly situated because *“the property was platted in 1968 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff concurs.

- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“although the structure was started without approvals, the location of the pavilion and patios are in compliance with the front yard setback and they are located in an area that is flat and does not appear to cause any erosion or any detrimental impacts to the bay.”* Staff concurs and adds that the location of the proposed improvements fall within the upper limits of the 50-foot landward buffer of the RPA and avoids encroachment within the environmentally sensitive 50-foot seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate treatment from the new improvement prior to reaching the bay.”* Staff concurs and adds that the required buffer restoration will enhance any denuded areas on the lot and rain barrels are proposed to harvest rainwater from the new structure.
- 5) *“The existing planting areas will be enhanced and expanded upon to compliment the site. Rain barrels will be connected to the pavilion roof and Bioretention beds will be installed between the improvements and the waterway to achieve stormwater management requirements prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **8** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated September 28, 2023, prepared by WPL, signed November 8, 2023 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. A buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted and approved by the CBPA staff. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

3. Buffer restoration shall be installed in substantial compliance with the Master Buffer Plan submitted with the Chesapeake Bay Preservation Area (CBPA) variance exhibit.

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

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. Rain barrels shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.

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

Site Aerial



CBPA Exhibit – Master Buffer Plan



Disclosure Statement

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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Maria Sullivan & Shane D Sullivan

Does the applicant have a representative? **Yes** **No**

- If **yes**, list the name of the representative.

Billy Garrington, GPC, Inc

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? **Yes** **No**

- If **yes**, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

- If **yes**, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "Parent-subsiary 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-subsiary 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.

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc) or are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property?

Yes **No**

- If **yes**, identify the financial institutions providing the service.

Atlantic Bay Mortgage Group, LLC

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property?

Yes **No**

- If **yes**, identify the company and individual providing the service.

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm and individual providing the service.

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm and individual providing the service.

WPL

5. Is there any other **pending or proposed purchaser** of the subject property? **Yes** **No**

- If **yes**, identify the purchaser and purchaser's service providers.

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the company and individual providing the service.

7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

WPL

8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the firm and individual providing the service.

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.

Applicant Signature

Shane Sullivan

Print Name and Title

10/31/2023

Date

Is the applicant also the owner of the subject property? Yes No

- If **yes**, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications

<input type="checkbox"/>	No changes as of	Date	Signature
			Print Name

AS NEEDED, PAGE LEFT BLANK



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story single-family residence with multiple associated accessory structures.

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 126, Page 20

Recorded April 17, 1978

GPIN

2409-90-8955

SITE AREA

94,332 square feet or 2.17 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

94,093 square feet or 2.16 acres

EXISTING IMPERVIOUS COVER OF SITE

11,389 square feet or 12 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

21,896 square feet or 23 percent of site

Area of Redevelopment in RPA

6,317 square feet

Area of New Development in RPA

15,144 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

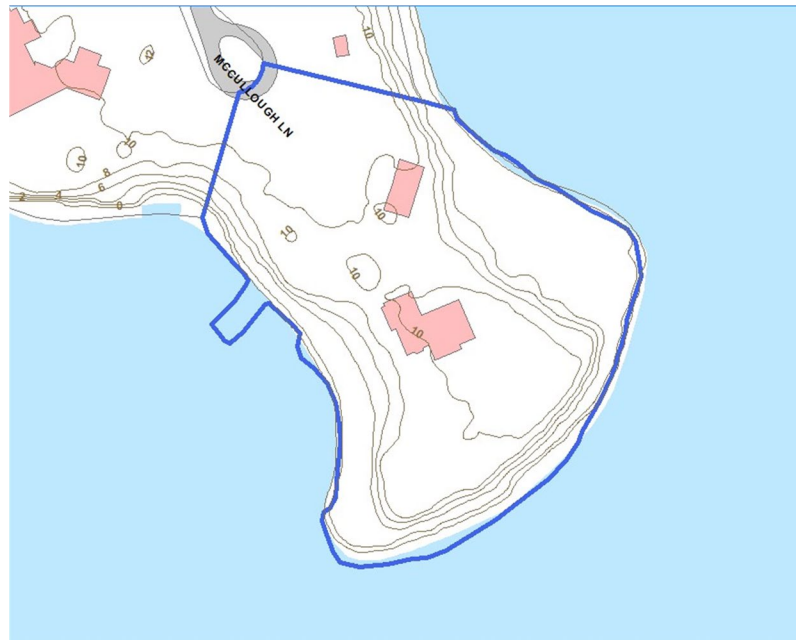
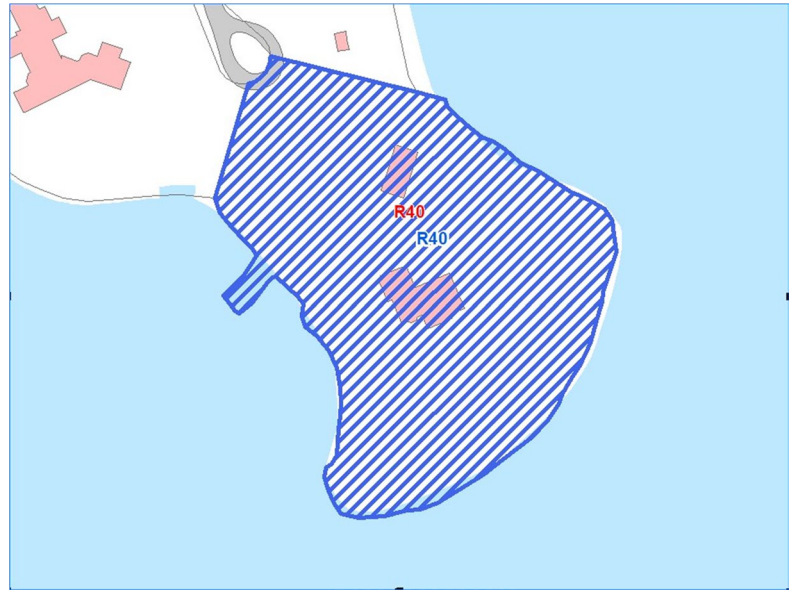
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing single-family residence and associated accessory structures and gravel driveway

Construction Details

- New two-story single-family residence with associated covered porches, swimming pool, stone pool deck
- Guest house, three-car garage, pergola, and detached garage
- Gravel driveway with paver border and paver parking court and gravel parking area

CBPA Ordinance Variance History

June 27, 1994, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of additions to the existing single-family home and detached garage with the following conditions:

1. *Pool decking shall be 6 feet wide at the side, 8 feet wide at the diving board end, and 12 feet wide in other areas.*
2. *A revised site plan must be submitted to the Planning Department for a plan of development review and approval and appropriate bonds posted prior to issuance of a building permit.*

The June 27, 1994 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 20
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: As shown on the submitted demolition plan, trees being requested for removal are within the delineated limits of construction and footprint of the proposed residence and associated accessory structures.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds, gravel downspout intercepts, shoreline tree limb management, and sand/gravel underdeck treatment will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The applicant is proposing to demolish the existing single-family residence and associated accessory structures to construct a new two-story single-family home with associated accessory structures. The variance request includes a swimming pool with stone pool deck, two covered porches off the front and rear of the residence, a deck off the rear of the residence, a guest house, a three-car attached garage, a detached garage/barn, and an associated gravel driveway and paver parking court. As submitted, this variance request will increase the overall impervious cover of the lot from 11,389 square feet to 21,896 square feet (12 percent to 23 percent) of the total lot area above water and wetlands. This lot currently does not provide any stormwater mitigation for the Chesapeake Bay Watershed and if approved, the applicant is proposing multiple best management practices (BMPs) including bioretention planting beds, gravel downspout intercepts, shoreline tree limb management to encourage wetland vegetation growth, and sand/gravel underdeck treatment. Coupled with the required buffer restoration, Staff is of the opinion that these measures provide merit towards a no net increase in nonpoint source pollution load as well as given the existing topographic elevations of the lot with minimal slope to slow the time of concentration of stormwater run-off. Although the request consists of multiple accessory structures in addition to the primary residence and the lot being entirely encompassed by the Resource Protection Area (RPA), Staff is of the opinion that the proposed redevelopment on this lot will not be of substantial detriment to water quality and is in harmony with the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance. Staff is of the opinion that the location of the proposed improvements and avoidance of introducing new impervious cover within the environmentally sensitive 50-foot seaward buffer portion of the Resource Protection Area (RPA) provides merit towards the request being in harmony with the intent of the Ordinance.

To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements are in keeping with similar redevelopment projects in the Alanton subdivision."* Staff is of the opinion that the CBPA Exhibit provided coupled with the use of materials and stormwater methodology integrating multiple best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood based off the extent of redevelopment proposed to the existing conditions of this lot.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been located on the site*

to minimize site impacts, and to avoid new impervious area in the 50' seaward portion of the site." Staff acknowledges that the placement of the proposed residence minimizes encroachment into the 50-foot seaward buffer and utilize the redevelopment of impervious cover on the lot to the greatest extent practicable.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay."* Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality and the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds, gravel downspout intercepts, shoreline tree limb management, and sand/gravel underdeck treatment.
- 5) *"The existing planting beds will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and acknowledges that the site currently offers no stormwater management and as stated above, the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed through the use multiple BMPs coupled with the introduction of approximately 30,288 square feet of buffer restoration that replaces the tree canopy cover required for removal for the variance request. Staff is of the opinion that the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **21** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) 30,288 square feet of buffer restoration shall be planted on the lot as depicted on the submittal conceptual landscape plan.

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

shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$3,470.50 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including

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

- 16) This variance and associated conditions **will supersede** the conditions of the Board variance granted June 27, 1994.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated October 27, 2023, prepared by WPL. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

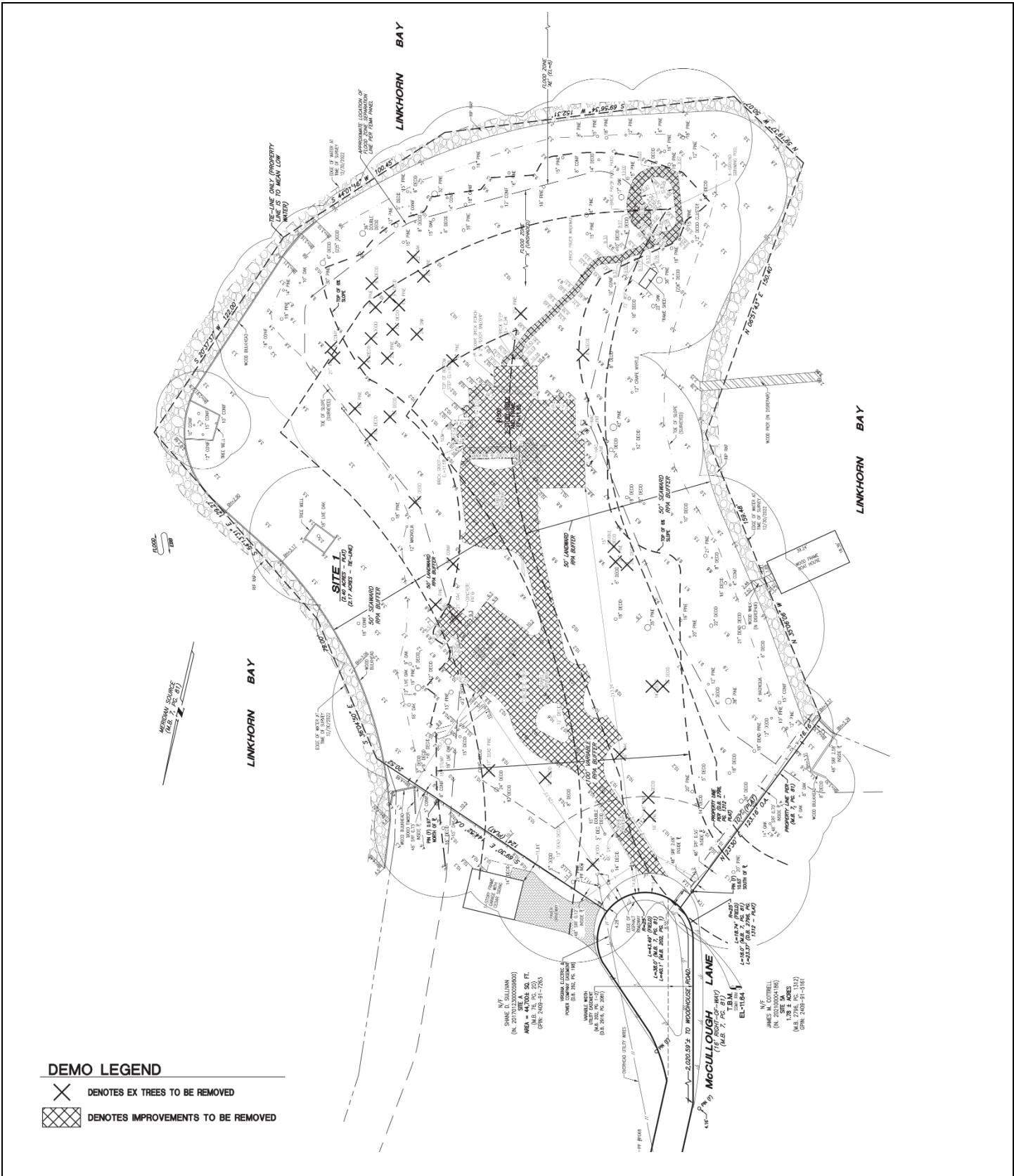
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

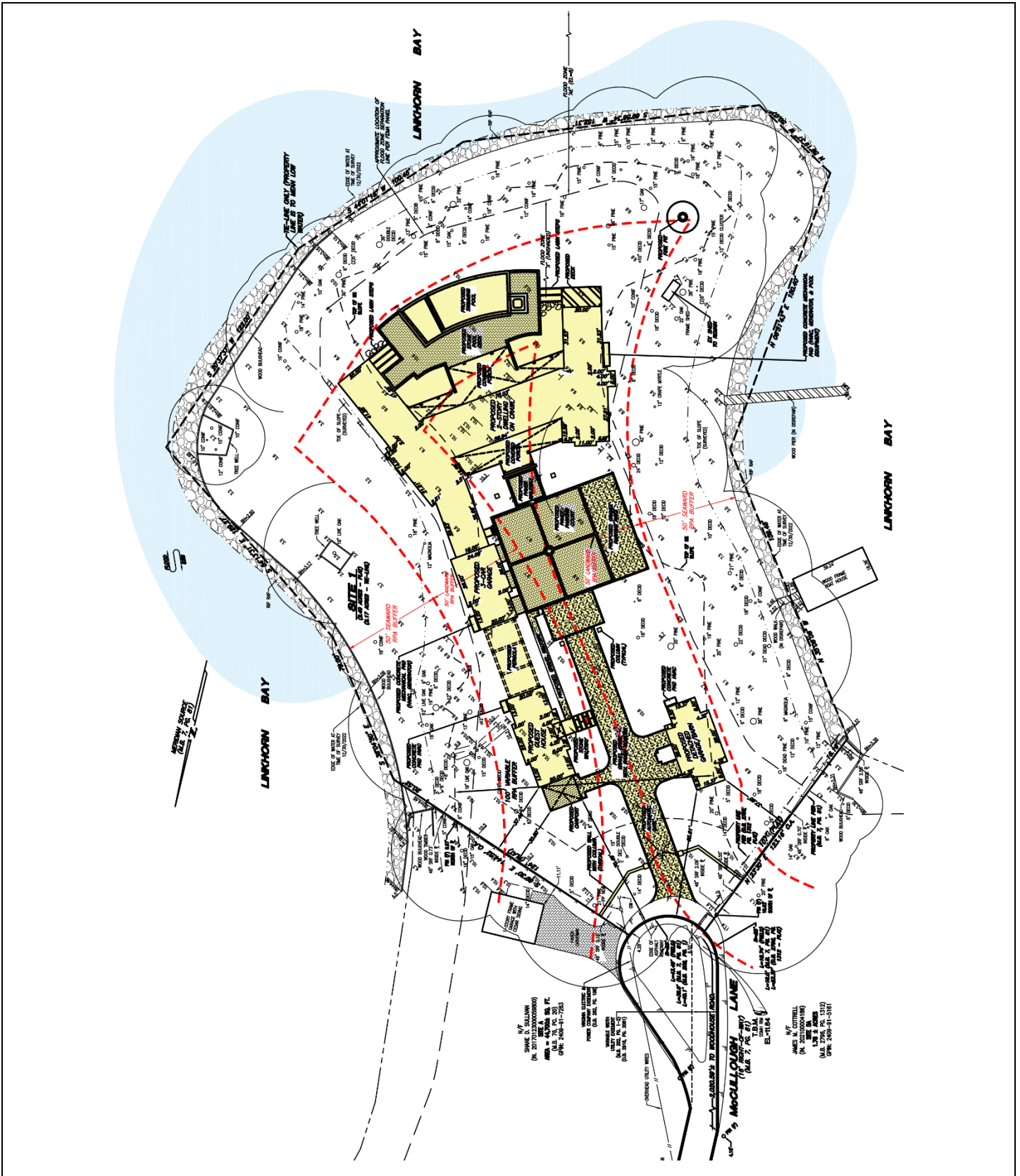
Site Aerial



CBPA Exhibit – Demolition Plan



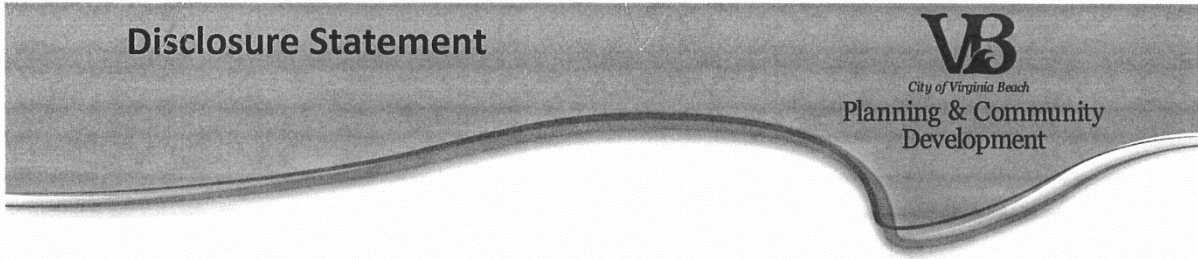
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Conceptual Landscape Plan



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. The 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 or a City board, commission or other body.

Applicant Disclosure

Applicant Name Randolph Hoover

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington, GPC, Inc

Is the applicant a corporation, partnership, firm, business, trust or an unincorporated business? Yes No

- If yes, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

- If yes, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "Parent-subsiary 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-subsiary 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.

Disclosure Statement



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**, what is the name of the official or employee and what is the nature of the interest?
-

Applicant Services Disclosure

1. Does the applicant have **any existing financing (mortgage, deeds of trust, cross-collateralization, etc) or are they considering any financing** in connection with the subject of the application or any business operating or to be operated on the property?

Yes **No**

- If **yes**, identify the financial institutions.
-

2. Does the applicant have a **real estate broker/agent/realtor** for current and anticipated future sales of the subject property?

Yes **No**

- If **yes**, identify the real estate broker/realtor.
-

3. Does the applicant have services for **accounting and/or preparation of tax returns** provided in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm or individual providing the service.
-

4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

- If **yes**, identify the firm or individual providing the service.

Cardello Architects (Robert Cardello & Sarah Finch) & Siska Aurand (John Watson)

5. Is there any other **pending or proposed purchaser** of the subject property? **Yes** **No**

- If **yes**, identify the purchaser and purchaser's service providers.
-

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the construction contractor.

7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the engineer/surveyor/agent.

WPL

8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- If **yes**, identify the name of the attorney or firm providing legal services.

Applicant Signature

I certify that all of the information contained in this Disclosure Statement 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 two 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.

Applicant Signature

Randolph Hoover

Print Name and Title

10/31/2023

Date

Is the applicant also the owner of the subject property? Yes No

- If **yes**, you do not need to fill out the owner disclosure statement.

FOR CITY USE ONLY/ All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the applications

<input type="checkbox"/>	No changes as of	Date	Signature	
			Print Name	



Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Description

1508 McCullough Lane

Lot Recordation

Map Book 126, Page 20

Recorded 4/17/1978

GPIN

2409-91-1726

Statement of Noncompliance Unauthorized development within the Resource Protection Area (RPA) buffer for the construction of a tiki bar/pavilion.

Show Cause Hearing

A Show Cause hearing was held on October 23, 2023 and a matter of noncompliance found. The extent of noncompliance was based off the following degree of deviation or noncompliance and environmental impacts matrix.

Degree of Deviations or Noncompliance

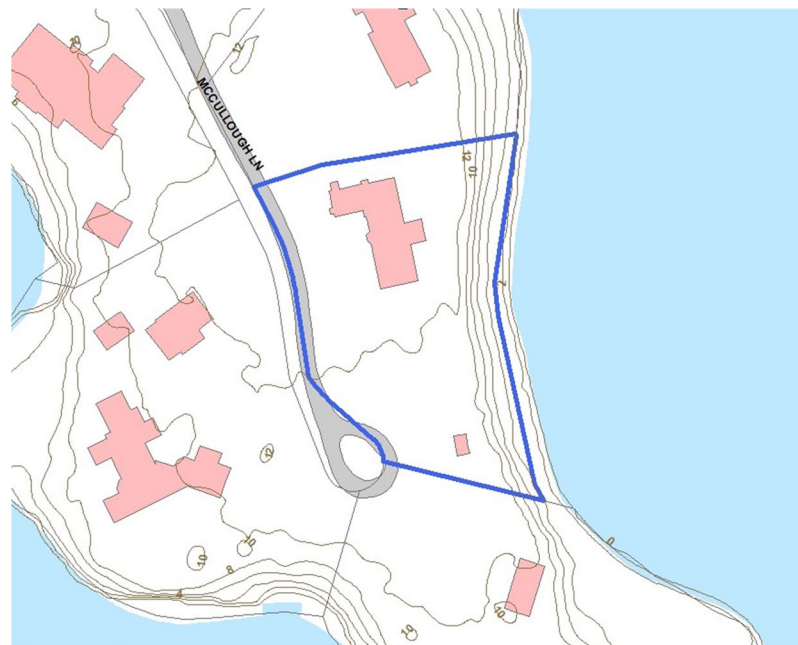
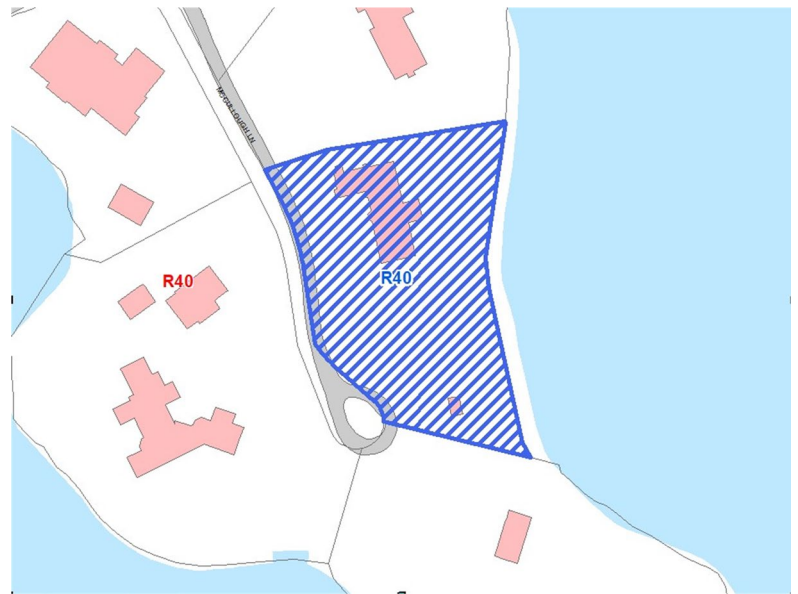
- High

Environmental Impacts

- Low

A civil charge of \$1,500.00 was imposed to the property owner and a Restoration Hearing ordered by the Chesapeake Bay Preservation Area (CBPA) Board to be heard at the December 20, 2023 CBPA Board Public Hearing for the Property Owner – Maria & Shane Sullivan.

The civil charge has been paid.



Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank

Shoreline

Shoreline is stabilized by a rip rap revetment

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

History of Noncompliance

Staff's knowledge, Christina Minton has no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot.

Chronology of Noncompliant Event

July 7, 2023	Permits & Inspections Staff observed the construction of a detached structure being performed on the property located at 1508 McCullough Lane while conducting a scheduled inspection request for an adjacent property. Field research was performed, and no permits were found filed with the Department of Planning & Community Development for the improvements on the lot. The lot was posted with a Stop Work Order.
July 7, 2023	The property owner uploaded documents through the City's Accela Citizen Access (ACA) online permitting portal to obtain a building permit for the unauthorized improvements on the lot. The application associated with the building permit submittal stated <i>"I am building a Tiki shed at my property on McCullough Lane. I was issued a stop work order and I have a wedding at my home on 7/15/23. How do I proceed so I can be ready for my son's wedding. I was not aware that I needed permits for a shed. We did decide last minute to add a toilet for and tied that into the sewer system with a grinder pump. I could really use some help here. I have over built it so far as I want it to be hurricane proof! I am very sorry. Please call me."</i>
July 20, 2023	Permits & Inspections Staff left a Notice of Violation informing property owner that the necessary compliant plans need to be submitted to the Department for review and approval with all permits obtained for the unauthorized improvements.

July 21, 2023 The property owner uploaded documents through the City's ACA online permitting portal to obtain a plumbing permit for a toilet and sink associated with the unauthorized improvements on the lot.

August 1, 2023 Permits & Inspections Staff performed a status check on the property and reported "no changes have occurred." The lot was posted with a second Stop Work Order.

August 7, 2023 Permits & Inspections Staff performed a status check on the property and reported "gave the daughter a Notice of Violation stating that the Permits & Inspections Office needs to be contacted for information regarding pending permits."

August 7, 2023 Property owner emails the Department of Planning & Community Development, Zoning Division to obtain information regarding the necessary guidance to obtain approval for the unauthorized improvements on the lot.

August 8, 2023 Property owner sends a second email to Zoning to confirm receipt of previous email.

August 8, 2023 Zoning responded to the property owner stating "*I hope this email finds you well! Your property is located within the RPA. I will need the Chesapeake Bay board to approve the project prior to my approval. Please contact PJ Scully or Cole Fisher at 757-385-4621. I have CC'd both on this email. Thank you for your time and patience!*"

August 8, 2023 Property owner emailed Chesapeake Bay Preservation Area (CBPA) Staff to obtain guidance regarding CBPA approval process stating "*My wife and I need your help in navigating the RPA issue. Any chance we could meet at our home to discuss the possibility of this being approved administratively. Our home's impervious area, even with the tiki bar, has got to be only approximately 10%. When we bought the house in 2017, we decided to fix this cottage style home up, because it is so small and easy to maintain, (except the yard!, it kicks my butt every weekend. 😊👉)*"

August 9, 2023 CBPA Staff responded to the property owner inquiry stating that "*Given the location of the proposed improvements being within the 100-foot Resource Protection Area (RPA) buffer of the Chesapeake Bay watershed, Staff is unable to approve administratively. Encroachment into the 100-foot RPA buffer requires a variance to the city's Chesapeake Bay Preservation Area (CBPA) Ordinance which may only be granted by the CBPA Board. Typically, in these types of situations a Show Cause letter is issued to the property owner and contractor. Did your contractor obtain a building permit from Permits & Inspections or inquire with the city regarding the proposed improvements?*"

August 14, 2023 CBPA Staff received an email from a consultant stating that they have been retained by the property owner to assist with submitting the necessary documentation to go through the CBPA Variance process for the unauthorized improvements on the lot.

August 17, 2023 Permits & Inspections Staff performed a status check on the property and reported "no changes have occurred."

August 30, 2023 CBPA Staff emailed the consultant inquiring on the unauthorized improvements and the status of document preparation. Staff was informed that a contract was signed and surveying the lot is scheduled.

- September 14, 2023 CBPA Staff sent a Show Cause letter to the property owner to serve as written notice to appear before the CBPA Board at the public hearing scheduled Monday, September 25, 2023.
- September 25, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 1508 McCullough Lane to the October 23, 2023 CBPA Board public hearing. The motion passed.
- October 23, 2023 At the October 23, 2023 CBPA Public Hearing, the property owner appeared before the CBPA Board for the Show Cause Hearing for the construction of the unauthorized improvements on the lot. A motion was made, with a second provided, to find the property owner in non-compliance with a civil charge of \$1,500.00 and a restoration hearing ordered for the December 20, 2023 CBPA Public Hearing.

Evaluation and Recommendation

The subject area of unauthorized construction of a tiki bar pavilion occurred within the 50-foot landward buffer and variable width buffers of the Resource Protection Area (RPA) of the Chesapeake Bay watershed. The applicant's agent provided a site plan that indicates 1,090 square feet of unauthorized new impervious cover was introduced into the RPA feature due to the tiki bar and associated gravel surrounding it. As stated with the after-the-fact variance request, the applicant is proposing to keep the unauthorized improvements and replace the gravel area with a paver surround and hot tub pad.

Given the extent of information provided with this restoration order, Staff is of the opinion that the restoration hearing for the property located at 1508 McCullough Lane and the after-the-fact CBPA Variance request, agenda item 8 of this Staff report for the December 20, 2023, CBPA Board public hearing should be heard in conjunction. Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives.

Site Aerial



