

Chesapeake Bay Preservation Area Board Agenda

October 4, 2021

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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area Board will be held on **Monday, October 4, 2021** at 10:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, 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 www.vbgov.com/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.

Due to the ongoing Covid-19 Pandemic, please check the Chesapeake Bay Preservation Area Board website at www.vbgov.com/cbpa for the most updated meeting information.



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **October 4, 2021**

- 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 www.vbgov.com/cbpa. For information call (757) 385-4621.

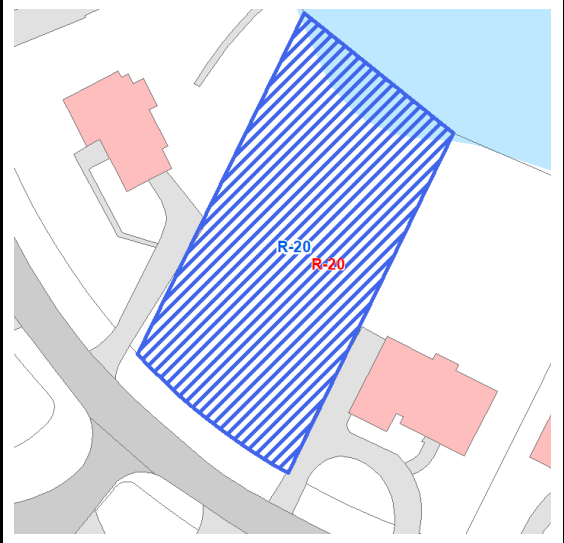
OLD BUSINESS AGENDA ITEMS

1. Timothy D. Siviter
[Applicant & Property Owner]

Leeward Shore Drive
GPIN 2409-19-8659
Council District – Lynnhaven
Accela Record 2021-CBPA-00059

Variance Request – Encroachment into the RPA to construct a single-family home and swimming pool.

Staff Planner – Cole Fisher
Staff Report – page 7



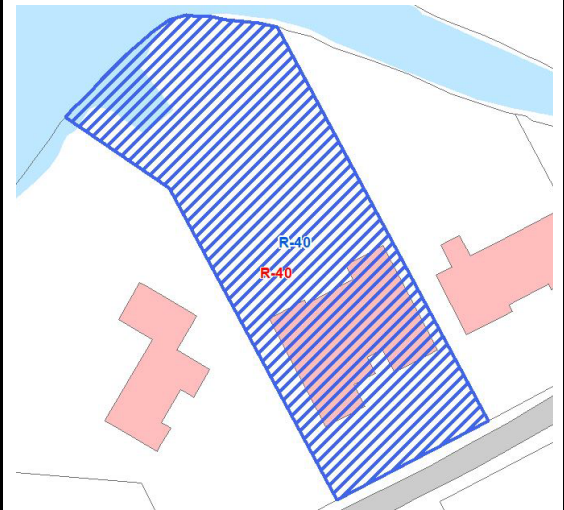
NEW BUSINESS AGENDA ITEMS

2. Joel & Emily Nied
[Applicant & Property Owner]

1308 Kildeer Ct
GPIN 2418-30-6917
Council District – Lynnhaven
Accela Record 2021-CBPA-00054

Variance Request – Encroachment into the RPA to construct a swimming pool.

Staff Planner – Cole Fisher
Staff Report – page 21



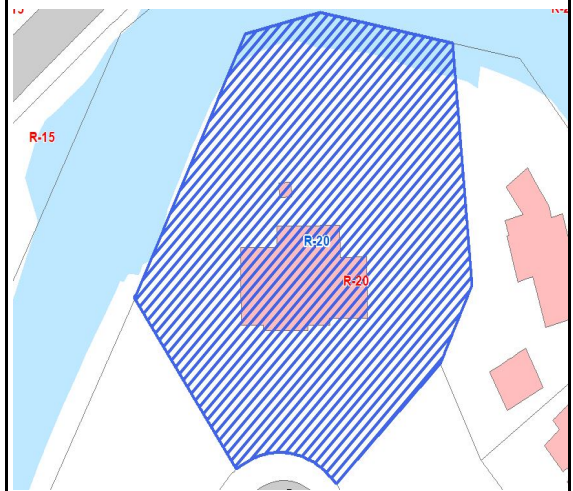
NEW BUSINESS AGENDA ITEMS

3. William & Louise Donigan
[Applicant & Property Owner]

452 Discovery Rd
GPIN 2419-51-6852
Council District – Lynnhaven
Accela Record 2021-CBPA-00057

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

Staff Planner – Cole Fisher
Staff Report – page 23

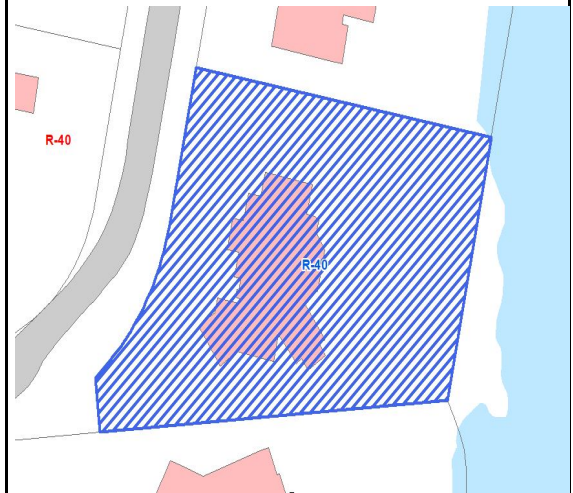


4. Kathleen M. Blough
[Applicant & Property Owner]

1841 Windy Ridge Pt
GPIN 2409-62-0551
Council District – Lynnhaven
Accela Record 2021-CBPA-00058

Variance Request – Encroachment into the RPA to construct a patio, retaining wall, and paver walkway.

Staff Planner – Cole Fisher
Staff Report – page 35

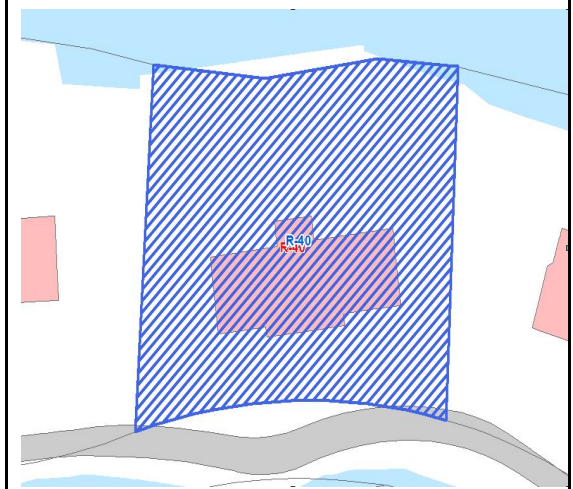


5. Ron Tesnow
[Applicant & Property Owner]

3004 Island Ln
GPIN 1499-17-4498
Council District – Lynnhaven
Accela Record 2021-CBPA-00060

Variance Request – Encroachment into the RPA to construct a swimming pool.

Staff Planner – Cole Fisher
Staff Report – page 49



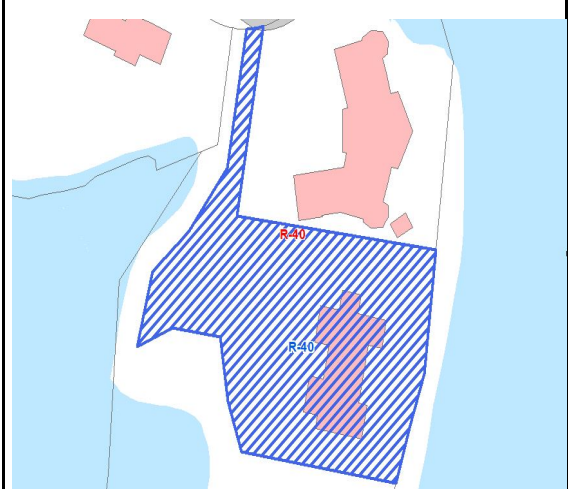
NEW BUSINESS AGENDA ITEMS

6. Jason & Jaclyn Barnes
[Applicant & Property Owner]

1502 Duke of Windsor Rd
GPIN 2418-06-2743
Council District – Lynnhaven
Accela Record 2021-CBPA-00061

Variance Request – Encroachment into the RPA to construct a swimming pool.

Staff Planner – Cole Fisher
Staff Report – page 51

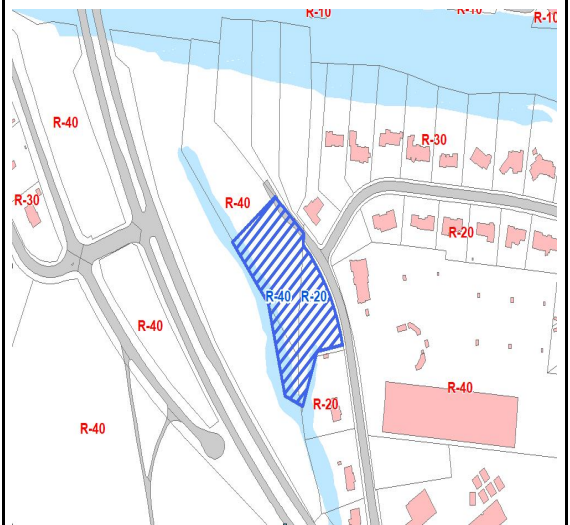


7. Virginia Beach Racquet Club, Etc.
[Applicant & Property Owner]

1951 Thomas Bishop Ln
GPIN 1499-46-9576
Council District – Lynnhaven
Accela Record 2021-CBPA-00063

Variance Request – Encroachment into the RPA with the subdivision of the existing lot into 3 residential lots.

Staff Planner – PJ Scully
Staff Report – page 65

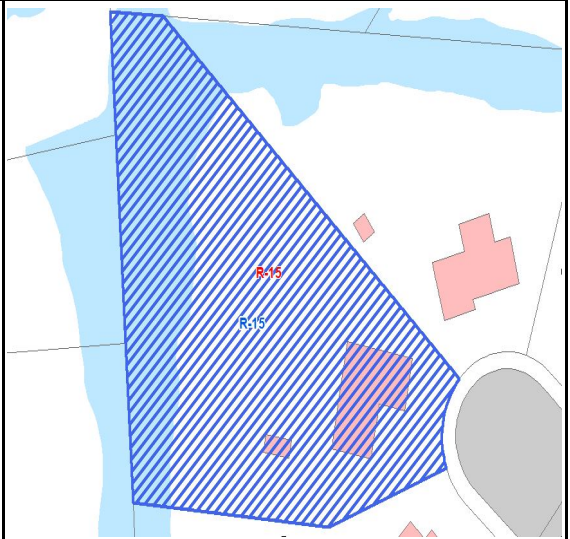


8. Thet Kyaw & Yin May
[Applicant & Property Owner]

621 W Kingston Cir
GPIN 1488-50-7952
Council District – Lynnhaven
Accela Record 2021-CBPA-00062

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the expansion of a wood deck

Staff Planner – Cole Fisher
Staff Report – page 79



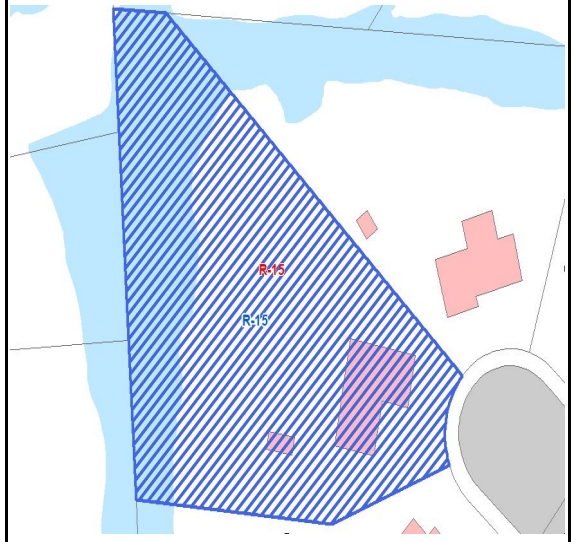
RESTORATION HEARING AGENDA ITEMS

9. Thet Kyaw & Yin May
[Applicant & Property Owner]

621 W Kingston Cir
GPIN 1488-50-7952
Council District – Lynnhaven
Accela Record 2021-CBPA-00062

Statement of Noncompliance – Deviation
from the July 22, 2019 CBPA Board variance
conditions with the construction of a wood deck

Staff Planner – Cole Fisher
Staff Report – page 91



Due to the ongoing Covid-19 Pandemic, please check the Chesapeake Bay Preservation Area (CBPA) Board website at www.vbgov.com/cbpa for the most updated meeting information.



Applicant & Property Owner **Timothy D. Siviter**
 Address **2220 Leeward Shore Drive**
 Public Hearing **October 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a new single-family residence and swimming pool.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 070, Page 0047
 Recorded 02/28/1966

GPIN

2409-19-8659

SITE AREA

21,418 square feet or 0.49 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,682 square feet or 0.45 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet

PROPOSED IMPERVIOUS COVER OF SITE

6,397.6 square feet or 29.9 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,126.2 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

- Undeveloped lot

Construction Details

- Single family residence with associated front porch and lanai
- Driveway and parking pad
- Swimming pool with pool patio and associated retaining wall
- Stepping-stone walkway

CBPA Ordinance Variance History

A CBPA variance request to develop this property was indefinitely deferred at the July 6, 2020 public hearing. The property has since changed ownership and the applicant has brought forth a new request to the CBPA Board for consideration.

Environmental Conditions

Flood Zone

This property is entirely within the Flood Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Lakehurst Series (deep, moderately drained sandy marine and eolian sediment soils)

Shoreline

Shoreline is in a natural state and this variance request includes stabilizing the shoreline with a rip rap revetment. The rip rap revetment will require a Joint Permit Application (JPA) to be submitted to the Virginia Marine Resource Commission (VMRC). Given the minor erosion occurring along the shoreline additional vegetation may be removed. Staff offers that an evaluation of the shoreline regarding the retention and removal of existing vegetation will be conducted during the JPA review.

Riparian Buffer

Undeveloped lot – heavily wooded

- Number of existing canopy trees requested for removal within the RPA: 39 as shown on the CBPA Exhibit
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 3 of the 39 as marked to be removed on the CBPA Exhibit
- Evaluation of existing canopy tree removal request: All but 5 trees – trees numbered 101, 109, 130, 132 and 133 on the Existing Site Conditions Exhibit are within the delineated limits of construction as recommended by Staff in the conditions, specifically condition 3 and 7 below. Staff offers that the proposed improvements requested with this variance application provides merit towards developing this lot given the overall square footage of the proposed impervious cover and location of those proposed improvements on the lot. Staff is of the opinion that the recommended conditions for limits of construction and tree preservation offers merit towards limiting land disturbance, which enables the preservation of as much of the existing mature canopy tree cover as reasonable.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation. Staff offers that the use of bioretention planting beds is appropriate for this lot given the underlying soil conditions; however, Staff recommends that these beds be located within the conditioned limits of construction. Staff is of the opinion that excavation for the bioretention planting beds within the trees' critical root zone could have long term negative impacts on the trees slated to be preserved. Staff has provided recommended conditions below, specifically conditions 5 and 9, that requires all stormwater best management practices to be within the conditioned limits of construction.

Evaluation and Recommendation

The applicant desires to develop this vacant lot with one single-family residence with an in-ground pool, pool house and associated retaining walls. Additionally, through the Joint Permit Application (JPA) process, the shoreline will be hardened with a rip rap revetment as well as a private pier. This portion of the proposal will be reviewed by the Wetlands Board.

Since the July 2020 CBPA Board public hearing deferral request, Staff has discussed the potential development of this lot several times with the applicant's agent. These discussions focused on the sensitive environmental features specific to the 50-foot seaward buffer and undeveloped shoreline, the elevation of the lot and associated base flood elevations for the area, and the retention of existing canopy trees to the greatest extent practicable. From those discussions, the applicant has provided a revised CBPA Exhibit that depicts a 1,656 square foot reduction in the overall amount of impervious cover proposed on the lot, of which 492 square feet of the overall reduction in impervious cover occurs within the Resource Protection Area (RPA) buffer.

	Overall Impervious Cover	Percent of Site	Proposed impervious cover in the RPA
2020 CBPA Exhibit	8,053 square feet	37.6 percent	3,618 square feet
2021 CBPA Exhibit	6,397 square feet	29.9 percent	3,126 square feet

As shown on the CBPA Exhibit plan, the majority of the proposed residence is situated in the Resource Management Area (RMA) with the proposed swimming pool and patio within the landward buffer of the RPA. A steppingstone walkway leading from the pool and patio area to the proposed pier will be installed within the seaward portion of the buffer. The house is designed with a front-loading garage that results in a reduction in the amount of land disturbance, as compared to a side-loading garage, and incorporates a retaining wall along the proposed swimming pool and associated patio area, thereby limiting encroachment into the 50-foot seaward buffer. Staff is of the opinion that these design concepts that include a reduction in impervious cover over the initial submittal, coupled with the recommended conditions, specifically for limits of construction and tree preservation and the use of both structural and nonstructural best management practices for mitigating stormwater offers merit towards the project addressing the elements of the performance standards set forth in the CBPA Ordinance.

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 is the last infield lot to be developed on Bay Island and other properties have recently been developed in similar fashion."* Staff concurs and provides that this exception is intended to make sure that the variance request would not give the applicant something that

has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. CBPA Variance records indicate that approximately 16 CBPA Variances have been granted to properties located along Leeward Shore Drive with similar improvements.

- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“this site has never been developed and the CBPA ordinance now impacts over half the upland of the site.”* Staff concurs that this lot was platted in 1966 before the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, thereby placing portions of the site in the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the variance allows for the development of the property in keeping with other properties for size and coverage.”* Staff concurs and is of the opinion that the owners have designed the improvements to minimize site impacts in the critical buffer areas of the Chesapeake Bay Preservation Area. In addition, Staff’s recommended conditions specifically address post-plan approval implementation of the proposed improvements to preserve existing conditions of the seaward buffer of the RPA and mature canopy trees on the lot beyond the limits of construction.
- 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 have been moved forward to avoid the most sensitive portion of the site. A BZA variance has been requested.”* Staff is of the opinion that the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality subject to the recommended conditions provided in this Staff report that include the installation of both structural and nonstructural best management practices to promote infiltration of stormwater.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the site currently has no BMPs, and all stormwater runoff continues to erode the unprotected shoreline. The proposed rip rap and installation of BMPs will halt erosion and achieve a no additional non-point source pollution load.”* Staff is of the opinion that the BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following 19 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) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 3) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.

- Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 4) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
 - 5) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.
 - 6) All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that “All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence.”
 - 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
 - 8) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
 - 9) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
 - 10) A certified arborist report shall be provided for review during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
 - 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
 - 12) 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.
 - 13) A maximum of 2,500 square feet of turf is permitted for this lot. Said turf shall not be permitted within the 50-foot seaward buffer or outboard of the conditioned limits of construction (conditioned as 10 feet outboard the proposed improvements). All remaining pervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by

Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable consisting of **12 understory trees, 32 large shrubs, and 48 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. 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.

- 14) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located within the conditioned limits of construction.
- 15) 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.
- 16) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 17) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the limits of construction.
- 18) ** 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 \$716.37 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.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated August 10, 2021, prepared by Chesapeake Bay Site Solutions. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

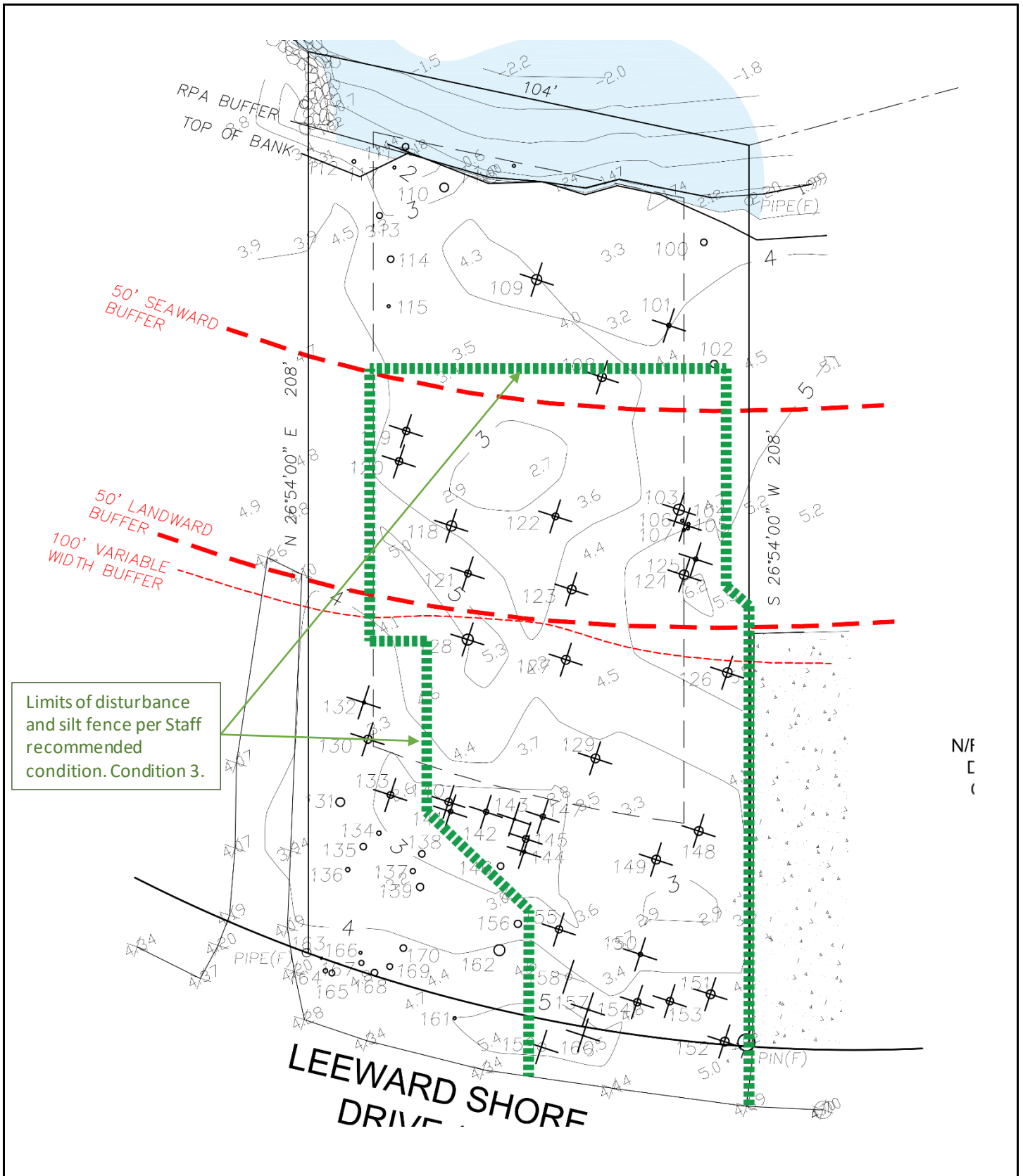
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

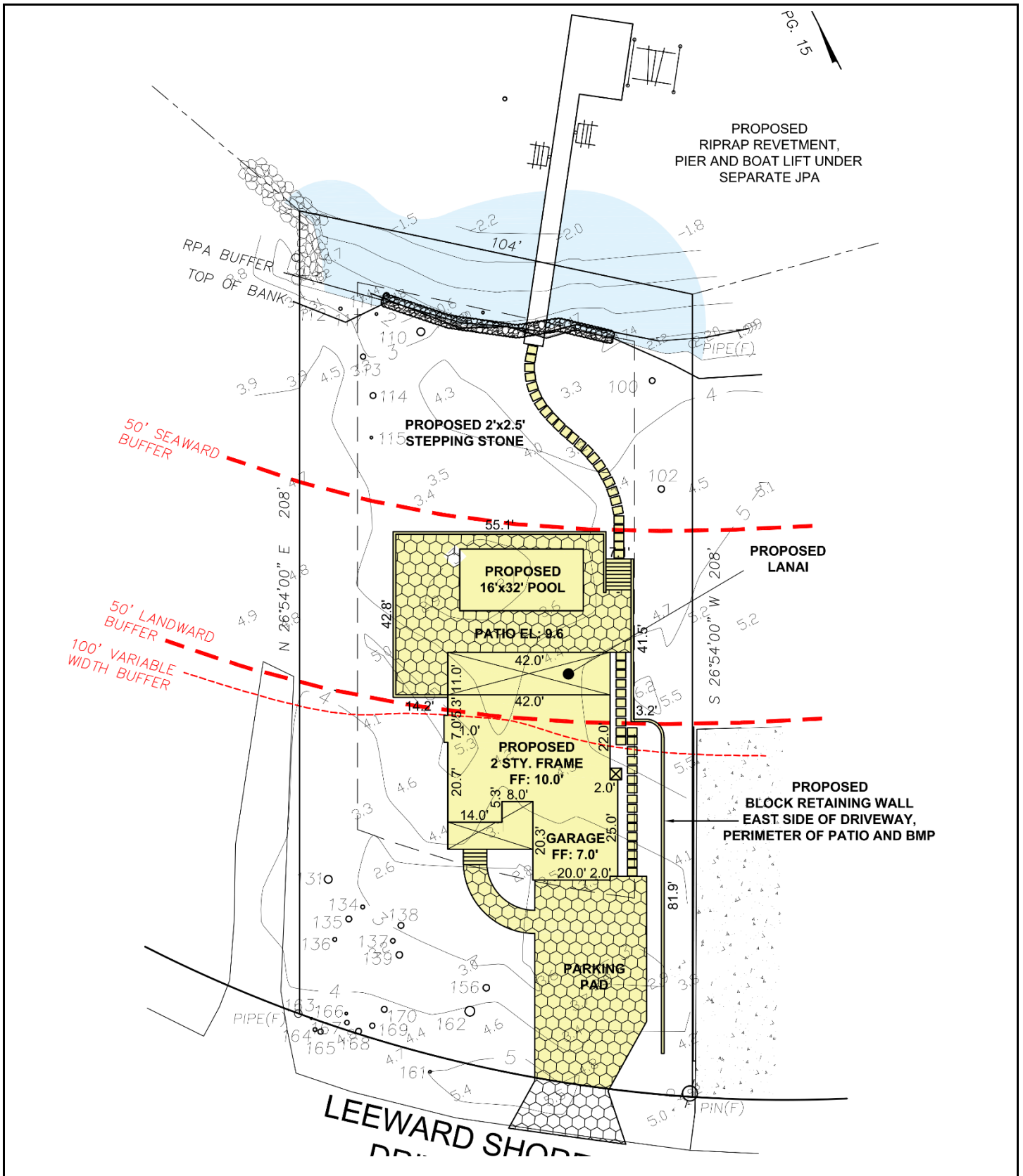
Site Aerial



Existing Conditions



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 Timothy D. Siviter

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

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

Robert Simon, Waterfront Consulting, 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.

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.

Stephen Alexander Homes

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.

Waterfront Consulting, Inc and Chesapeake Bay Site Solutions

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

Timothy D. Siviter

Print Name and Title

Timothy D. Siviter

Date

9/20/21

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



Applicant & Property Owner **Joel R. & Emily C. Nied**
 Address **1308 Kildeer Court**
 Public Hearing **October 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

2

**The applicant is requesting a deferral of this application to the December 6, 2021 CBPA Board Public Hearing.
 Staff supports the request to defer.**

Variance Request

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

Applicant's Agent

Robert Simon
 Waterfront Consulting, LLC

Staff Planner

Chuck Payne

Lot Recordation

Map Book 7, Page 192
 Recorded 7/30/1926

GPIN

2418-30-6917

SITE AREA

32,092 square feet or 0.74 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

28,216 square feet or 0.65 acre

EXISTING IMPERVIOUS COVER OF SITE

8,353 square feet or 29.6 percent of site



Site Aerial





Applicant & Property Owner **William & Louise Donigan**
 Address **452 Discovery Road**
 Public Hearing **October 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

3

Variance Request

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

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 054, Page 0042
 Recorded 11/05/1961

GPIN

2419-51-6852

SITE AREA

43,494 square feet or 0.998 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

40,481 square feet or 0.929 acres

EXISTING IMPERVIOUS COVER OF SITE

10,253 square feet or 23.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,162 square feet or 28 percent of site

Area of Redevelopment in RPA

1,194 square feet

Area of New Development in RPA

2,740 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

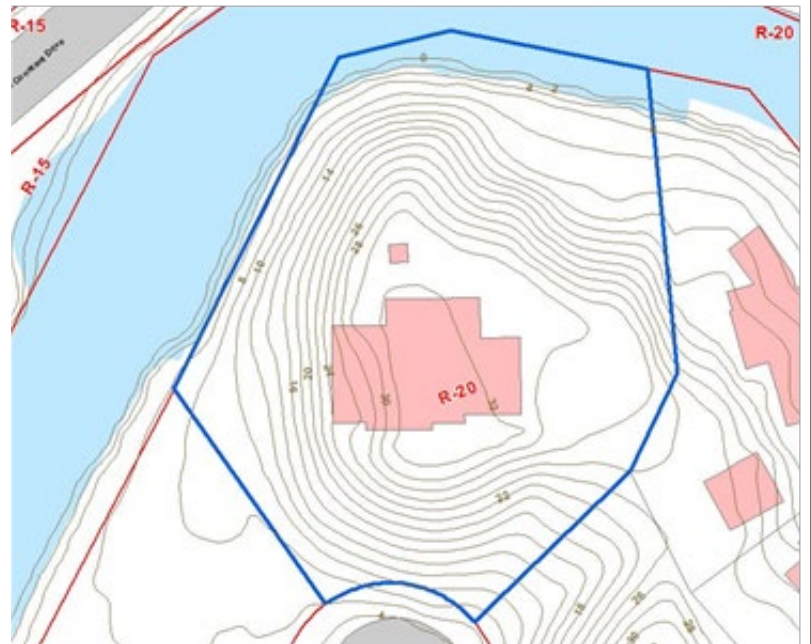
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing stone patio, hot tub, and retaining walls removed

Construction Details

- Swimming pool with associated hot tub and fire pit
- Gravel path adjacent to existing bulkhead from cul-de-sac to existing pier/boat lift

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Flood Zone – Zone AE, Base Flood Elevation (BFE): 7

Flood Zone – Zone X

Soil Type(s)

Fripp Series (deep, excessively drained sandy marine and eolian sediment soils)

Psamments Series (well-drained and moderately well-drained soils, sandy material)

Shoreline

Shoreline is stabilized by a bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that the preservation of the existing heavily wooded riparian buffer shall be a means to prevent an increase in nonpoint source pollution load in the watershed. Staff concurs and offers that an established riparian buffer provides significant merit towards water quality taking into account that a viable riparian buffer can achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients [City Code, Appendix F, Sec 106 (B)(3)(a)].

Evaluation and Recommendation

This variance requests proposes to remove the existing stone patio, retaining walls, and hot tub to construct a new stone pool deck, fire pit, pool, and hot tub area. This property is characterized by a very steep grade in the front and rear yard with approximate topographic elevations adjacent to the bulkhead of 5 to 6 feet above sea level to and

William & Louise Donigan

Agenda Item 3

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approximate topographic elevations adjacent to the single-family residence of 32 feet above sea level. Given these existing elevations of the lot, the applicant proposes to construct a retaining wall contiguous to the seaward edge of the proposed swimming pool and patio area as a means to prevent rainwater runoff at the rear yard of the property where these improvements are proposed. In addition, due to the significant change in topography, to provide safe pedestrian access to the water the applicant proposes to construct a five-foot wide gravel path from the cul-de-sac on the western side of the house running along and adjacent to the existing bulkhead to the pier. The location of this path avoids the steepest portions of the site; however, the gravel path is counted towards the percentage of impervious cover. During the site visit, Staff was informed of an emergency where the Virginia Beach Fire Department had to float an individual requiring medical assistance across the canal on a paddle board to Susan Constant Drive due to lack of access to the rear yard and existing pier area.

As proposed, this request increases the overall impervious cover of the lot from 10,253 square feet to 12,162 square feet (23.6 percent to 28 percent of the lot). Approximately 1,194 square feet of the proposed improvements are considered redevelopment over existing impervious cover and 2,740 square feet of this request classified as new impervious cover. Of the new impervious cover in the RPA, approximately 1,960 square feet is associated with the proposed gravel path adjacent to the existing bulkhead. The applicant is proposing to convert approximately 830 square feet of existing impervious cover to pervious cover in an area adjacent to the single-family residence and an area near the existing pier.

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 *"no special privilege by this plan. In concert, with similar variance requests."* Staff concurs and is of the opinion that the applicant has designed the proposed improvements in a manner that complements the existing topography of the lot with the use of materials to limit imperviousness and limit land disturbance with the use of retaining walls.
- 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 existing lot is wholly located in the RPA and contains tremendous contour relief from the existing house to the water's edge. The lot was developed prior to the creation of the Chesapeake Bay Preservation Ordinance.* Staff concurs with the applicant's agent 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 fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because *the proposed improvements are located near the main house and contained with retaining walls to limit the extends of grading and fill. The proposed gravel path is needed to safely access the rear of the property.* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA ordinance findings with the proposed size and locations of the structures. Staff is of the opinion that the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the existing locations of buffer are heavily wooded and will remain so. The existing buffer plus the proposed buffer mitigation will help enhance water quality."* Staff is of the opinion that the proposed improvements with this variance request will not be of substantial detriment to water quality. This lot has a mature tree canopy, and the applicant has taken measures to minimize impacts in the RPA by keeping the

main improvements in the landward buffer and above the top of bank. The applicant is also proposed 5,526 square feet of buffer restoration, which is above the minimum requirement of 5,480 square feet.

- 5) *“Stormwater from the development will drain via overland flow and shallow concentrated pathways to the point of discharge at the property limits. No change in flow patterns is proposed.”* Staff is of the opinion that with the proposed buffer restoration measures will contribute to the goal of no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following 18 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 proposed gravel path shall be constructed of a noncompacted organic material (gravel), shall have a maximum width of 5 feet, and shall be constructed in harmony with the existing grades on the property to the greatest extent practicable. The installation of an asphalt or concrete path or any other impervious material for the path, notwithstanding the noncompacted gravel, shall be prohibited.
- 3) The proposed gravel path shall be staked in the field by the Engineer of Record and reviewed by Civil Inspections Staff during the preconstruction meeting.
- 4) The pool shall be constructed concurrent with all proposed improvements proposed in this variance application that will be adjacent to the existing single-family residence.
- 5) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements, shall be authorized outboard or seaward of the proposed improvements.
- 6) 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.
- 7) 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.
- 8) 5,526 square feet of buffer restoration shall be installed on the lot as depicted on the CBPA Exhibit provided for the CBPA Variance request. 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 to the greatest extent practicable.

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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.

- 9) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 10) A pre-construction meeting shall be held with the CBPA Inspector and Civil Inspections Staff prior to any land disturbance, including demolition.
- 11) 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.
- 12) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.
 - Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
- 13) Construction limits and all construction activities shall be contained within the limits of the condition silt fence.
- 14) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 15) 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.
- 16) 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.
- 17) ** 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 \$627.91 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.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated August 31, 2021, prepared by Gaddy Engineering Services. 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.

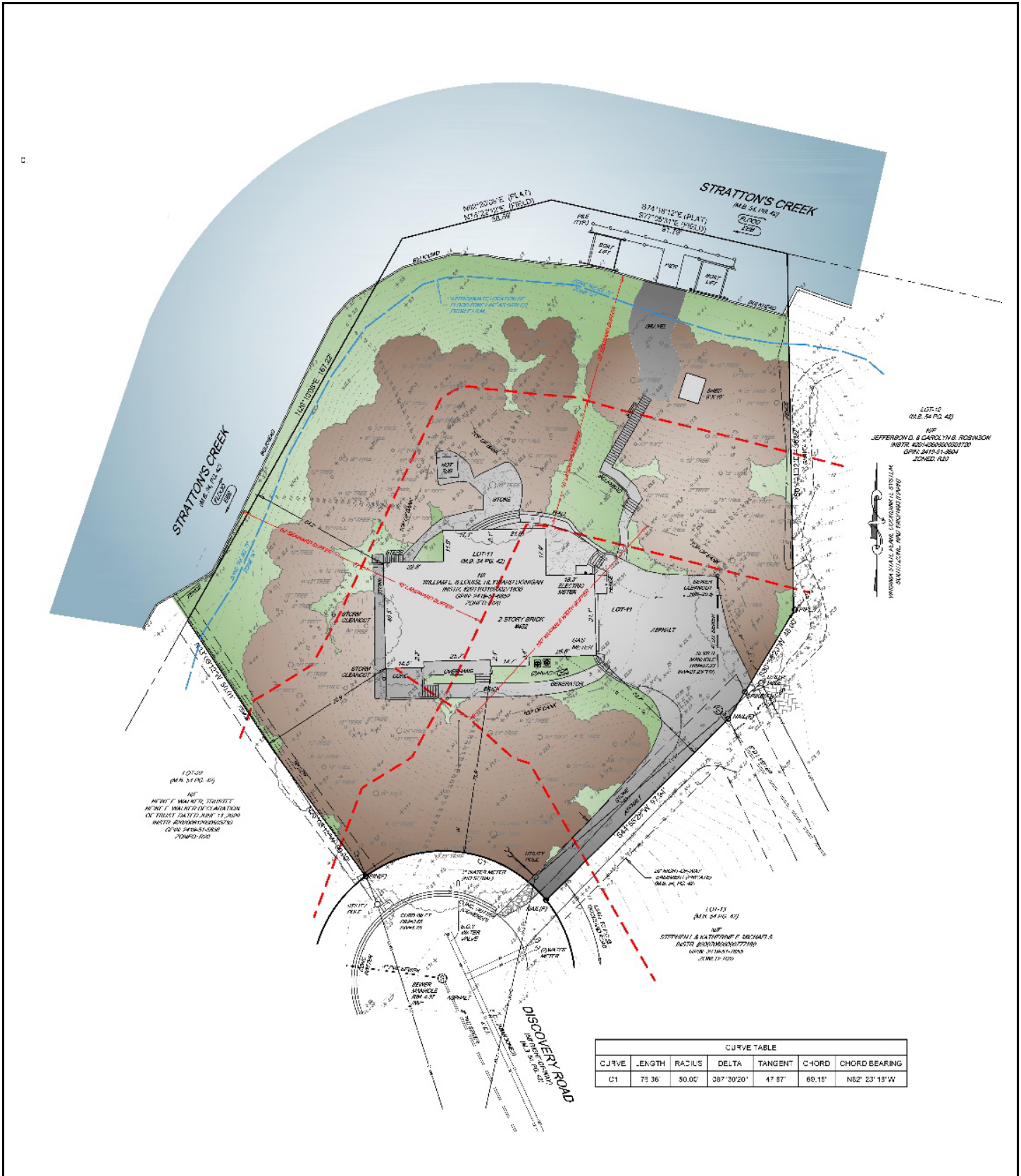
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*** 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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

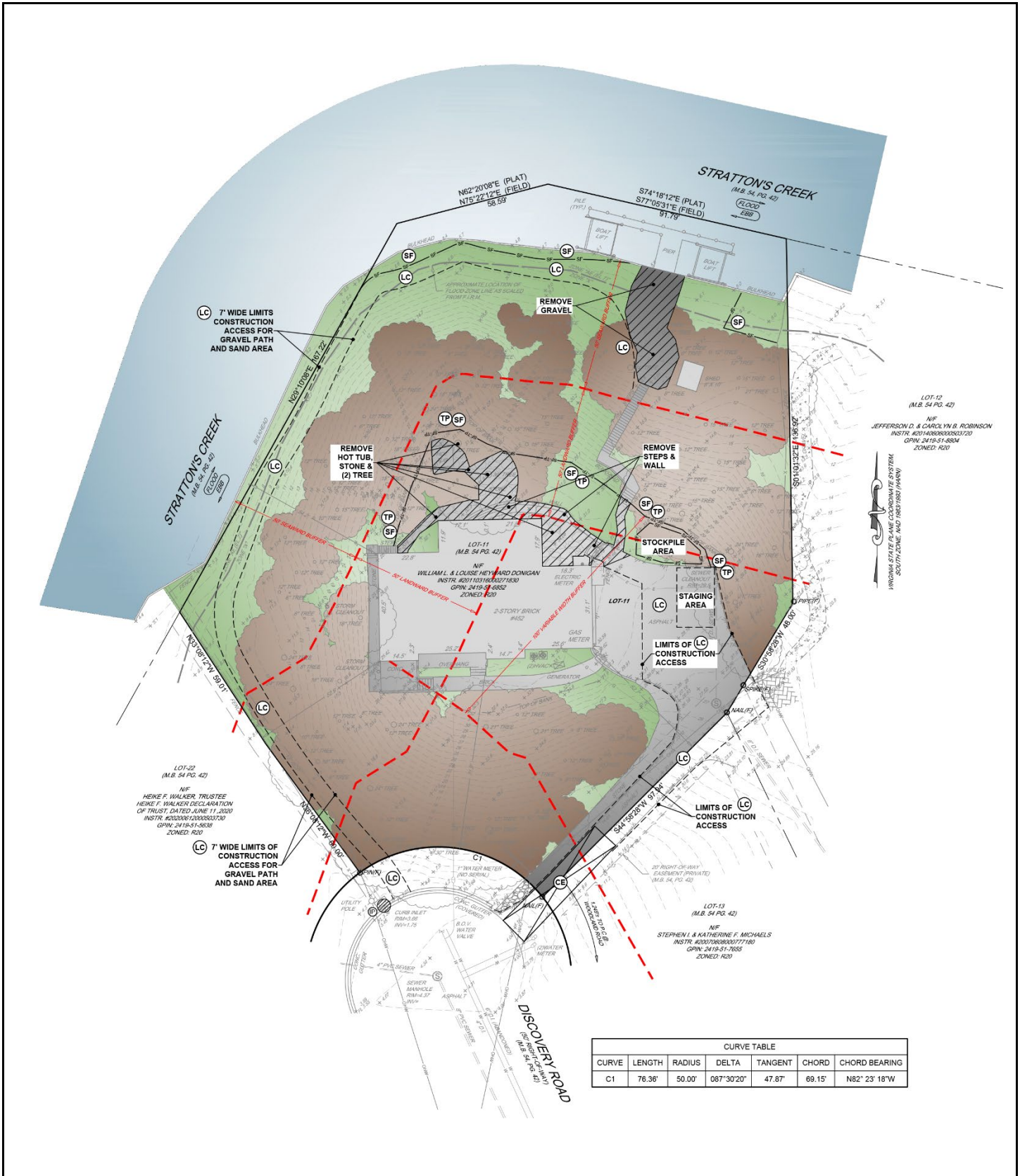
Site Aerial



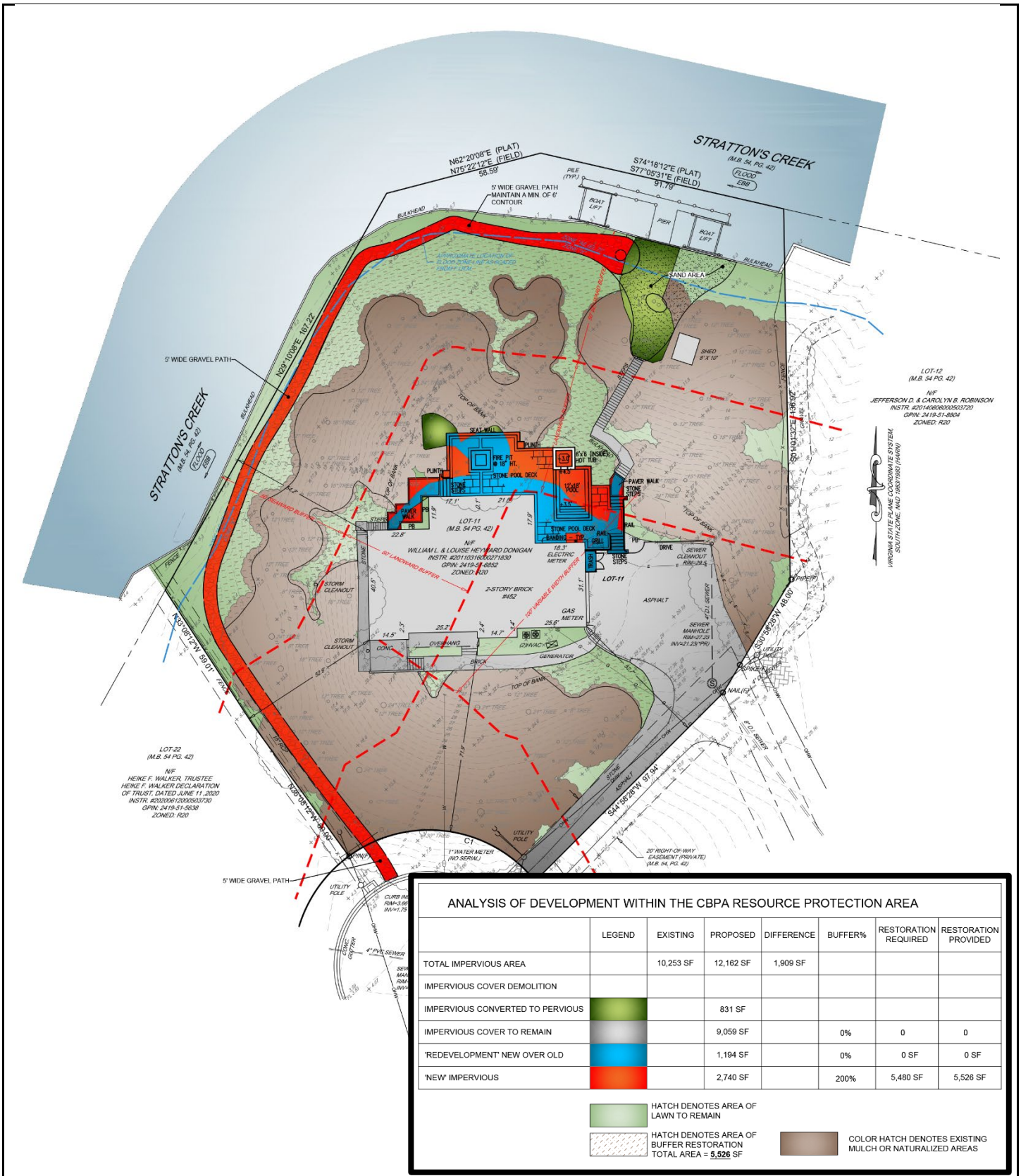
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Demolition Plan



CBPA Exhibit – Proposed Improvements and Color Analysis



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 Heyward William and Louise Donigan

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.

Towar Bank equity line

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.

Richard Tobin, Tobin & Collins New Jersey

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.

Siska Aurand (Landscape Architect) - 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 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.

Gaddy Engineering Services, LLC - Mike Gaddy

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.**

William & Louise Donigan

Applicant Signature

William & Louise Donigan

Print Name and Title

8/31/21

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 **Kathleen M. Blough**
Address **1841 Windy Ridge Point**
Public Hearing **October 4, 2021**
City Council District **Lynnhaven**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a patio, retaining wall, and paver walkway.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 036, Page 059
Recorded 05/13/1954

GPIN

2409-62-0551

SITE AREA

36,880 square feet or 0.847 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,603 square feet or 0.840 acres

EXISTING IMPERVIOUS COVER OF SITE

10,602 square feet or 29 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,165 square feet or 30 percent of site

Area of Redevelopment in RPA

741 square feet

Area of New Development in RPA

563 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

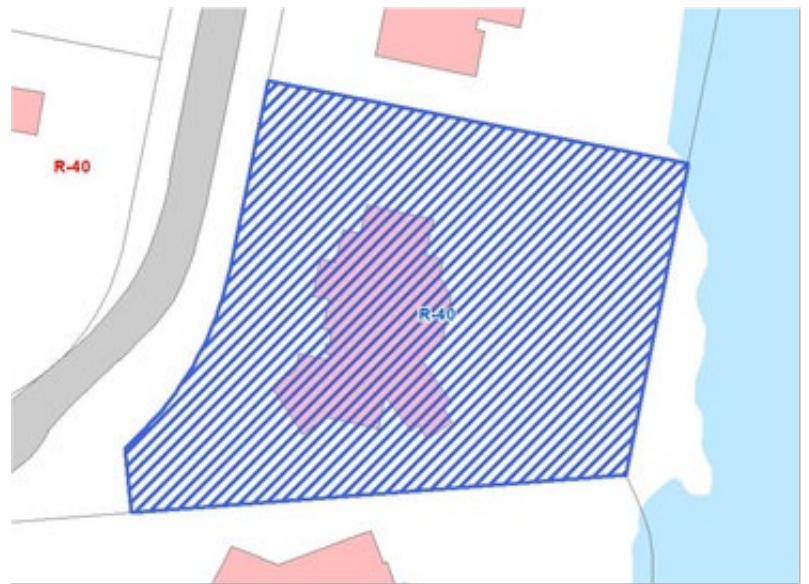
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete swimming pool and associated patio area, area to be redeveloped

Construction Details

- Expansion to swimming pool patio along the southeast edge of the existing concrete surround
- Retaining wall along the seaward edge of the proposed expansion area
- Concrete paver walkway through existing planting bed

CBPA Ordinance Variance History

February 28, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, concrete circular driveway, walkways, generator pad, pool equipment room, pool, and associated 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 prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *A heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 15' seaward of improvements.*
6. *All improvements shall lie a minimum of 10 feet from the top-of-bank.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
8. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities*
9. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan.*
10. *Pool decking shall be as shown.*
11. *The pool shall be constructed prior to or concurrent with the residence.*
12. ***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 \$2,824.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 3,081 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*

13. *Buffer restoration shall be installed equal to 150% of proposed impervious cover (18,450 sq. ft.) and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf with no less than 50% of said restoration installed along the area of highly erodible soils. Said restoration shall be installed prior to the issuance of the certificate of occupancy with condition so noted on the site plan.*
14. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
15. *No less than 34 trees shall be installed, shall be evenly distributed throughout the site to the greatest extent practicable, and shall be comprised of 50% evergreen and 50% deciduous species.*
16. *The conditions and approval associated with this variance are based on the site plan dated January 6, 2005, prepared by Gallup Surveyors and Engineers Ltd.*
17. *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 February 28, 2005 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

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: 0

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request proposes to replace the existing swimming pool patio and expand the width of the swimming pool patio an additional 2 feet along the eastern edge of the pool from 4 feet in width to 6 feet in width. In addition, the proposed improvements expand the southern portion of the swimming pool patio area approximately 400 square feet for a paver patio area with pergola. A small paver walkway is also proposed through an existing planting bed to provide

pedestrian access to the northern portion of the rear yard. A retaining wall is proposed seaward of the new paver patio area to accommodate the existing grade transition without introducing fill material for the proposed improvements. As submitted, the variance request will increase the overall impervious cover of the lot from 10,602 square feet to 11,165 square feet or 29 percent to 30 percent of the lot above water and wetlands and will impact the landward buffer and variable width buffer portions of the Resource Protection Area (RPA). Staff is of the opinion that the location of the proposed improvements are acceptable and have been designed to minimize impacts in the RPA. Given the buffer restoration measures proposed with this request, Staff supports the encroachment as conditioned below.

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 *"the property was platted in 1954 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff offers that the proposed improvements are located within the upper reach of the 100-foot RPA buffer and are in harmony with similar variance requests for adjacent properties along this reach of the Lynnhaven River.
- 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 *"lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. As such, the CBPA buffers cover over 85 percent of this lot."* Staff concurs given the minimal encroachment request within the RPA buffer and the minimal increase in impervious cover.
- 3) The variance is the minimum necessary to afford relief because *"the Owners have designed the additions and improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts in the critical buffer areas."* Staff concurs and offers that the proposed improvements are situated in an area that does not require the removal of existing vegetation and in an area that is best situated given the existing topography of the lot.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, and if approved, the proposed redevelopment will be required to increase the stormwater treatment between the improvements and the river."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"additional bioretention stormwater management and buffer restoration will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river."* Staff concurs.

Given the above comments, Staff recommends the following 15 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) **1,126** square feet of buffer restoration shall be installed on the lot with 580 square feet of the 1,126 square feet installed as depicted by the CBPA Exhibit provided for the CBPA Variance request. 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 to the greatest extent practicable consisting of **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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.

- 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 5 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) This variance and associated conditions **are in addition to** the conditions of the Board variance granted February 28, 2005.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 21, 2021, prepared by WPL, signed September 1, 2021 by Eric A. 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.

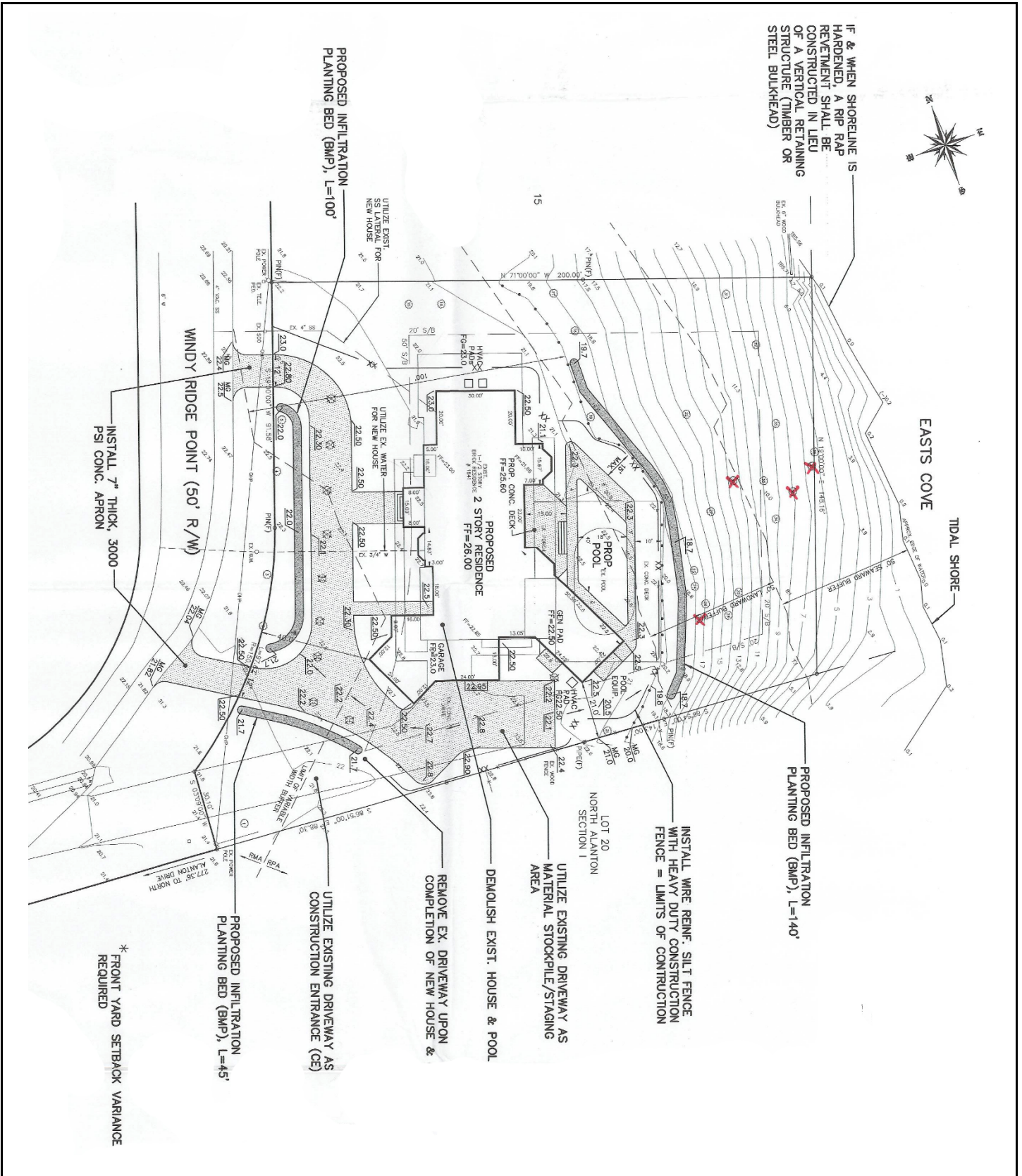
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial



February 28, 2005 CBPA Board Variance Exhibit



IF & WHEN SHORELINE IS HARDENED, A RIP RAP REVENMENT SHALL BE CONSTRUCTED IN LIEU OF A VERTICAL RETAINING STRUCTURE (TIMBER OR STEEL BULKHEAD)



EASTS COVE

TIDAL SHORE

PROPOSED INFILTRATION PLANTING BED (BMP), L=140'

INSTALL WIRE REINF. SILT FENCE WITH HEAVY DUTY CONSTRUCTION FENCE = LIMITS OF CONSTRUCTION

LOT 20 NORTH ALANTON SECTION 1

UTILIZE EXISTING DRIVEWAY AS MATERIAL STOCKPILE/STAGING AREA

REMOVE EX. DRIVEWAY UPON COMPLETION OF NEW HOUSE & POOL

UTILIZE EXISTING DRIVEWAY AS CONSTRUCTION ENTRANCE (CE)

PROPOSED INFILTRATION PLANTING BED (BMP), L=45'

* FRONT YARD SETBACK VARIANCE REQUIRED

INSTALL 7" THICK, 3000 PSI CONC. APRON

WINDY RIDGE POINT (50' R/W)

PROPOSED INFILTRATION PLANTING BED (BMP), L=100'

UTILIZE EXIST. S/L LATERAL FOR NEW HOUSE

UTILIZE EX. WATER FOR NEW HOUSE

PROPOSED 2 STORY RESIDENCE FF=26.00

HVAC PADS FF=25.0

GEN PAD FF=22.50

PROP. CONC. DECK FF=25.60

PROP. POOL

PROP. CONC. DECK FF=25.60

UTILIZE EX. WATER FOR NEW HOUSE

UTILIZE EXIST. S/L LATERAL FOR NEW HOUSE

PROPOSED INFILTRATION PLANTING BED (BMP), L=100'

INSTALL 7" THICK, 3000 PSI CONC. APRON

WINDY RIDGE POINT (50' R/W)

UTILIZE EX. WATER FOR NEW HOUSE

UTILIZE EXIST. S/L LATERAL FOR NEW HOUSE

PROPOSED INFILTRATION PLANTING BED (BMP), L=100'

INSTALL 7" THICK, 3000 PSI CONC. APRON

WINDY RIDGE POINT (50' R/W)

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PROPOSED INFILTRATION PLANTING BED (BMP), L=100'

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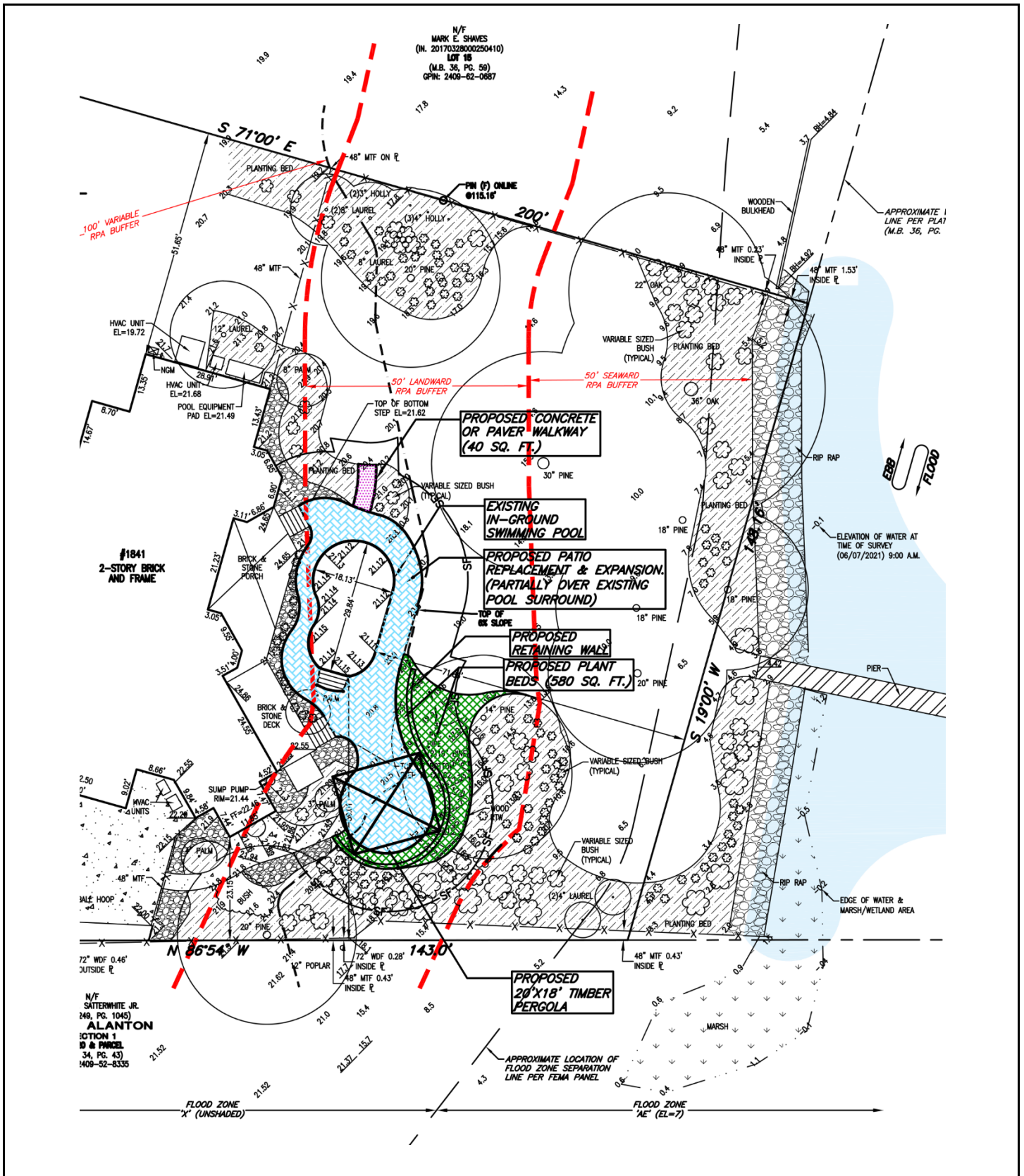
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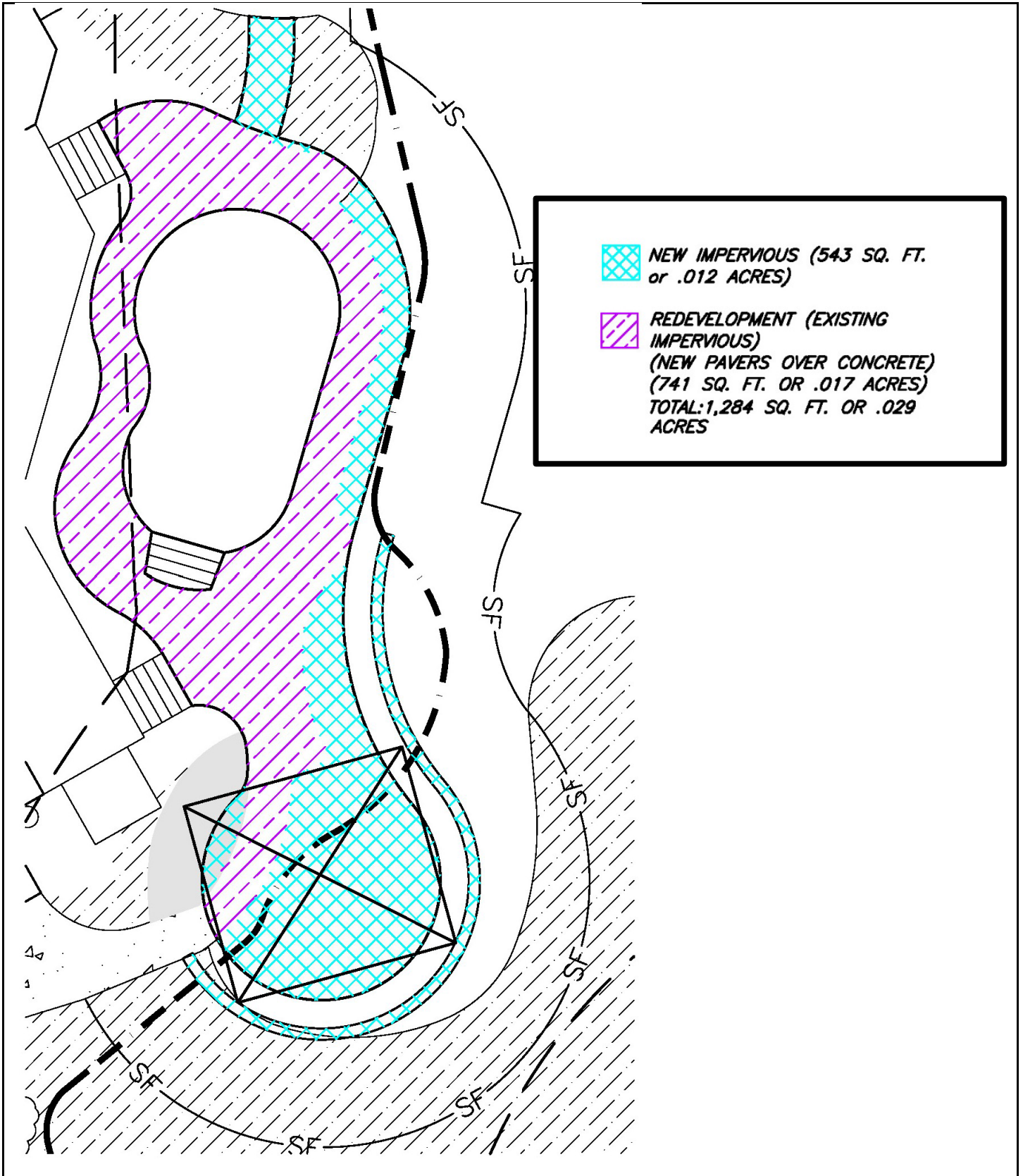
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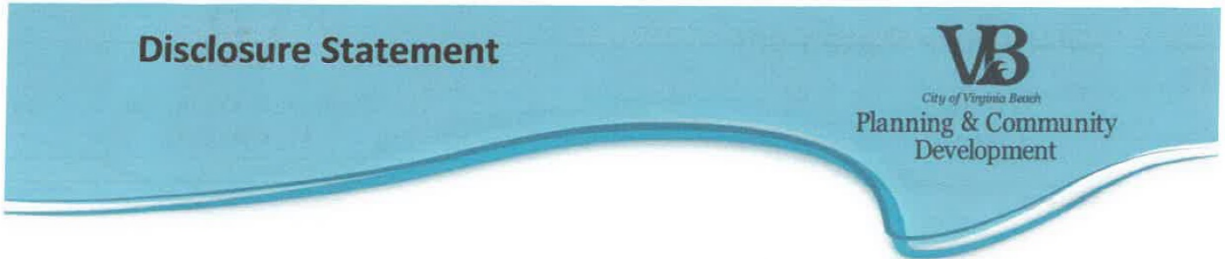
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Proposed Improvements Color Analysis, Redevelopment & New Impervious



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 Kathleen M Blough

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 necessary³)

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.
-

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.

Kathleen M Blough
Applicant Signature
Kathleen M Blough

Print Name and Title
8/12/21
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 **Ron Tesnow**
 Address **3004 Island Lane**
 Public Hearing **October 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

5

**The applicant is requesting a deferral of this application to the December 6, 2021 CBPA Board Public Hearing.
 Staff supports the request to defer.**

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool and pool surround

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 024, Page 0046
 Recorded 09/1949

GPIN

1499-17-4498

SITE AREA

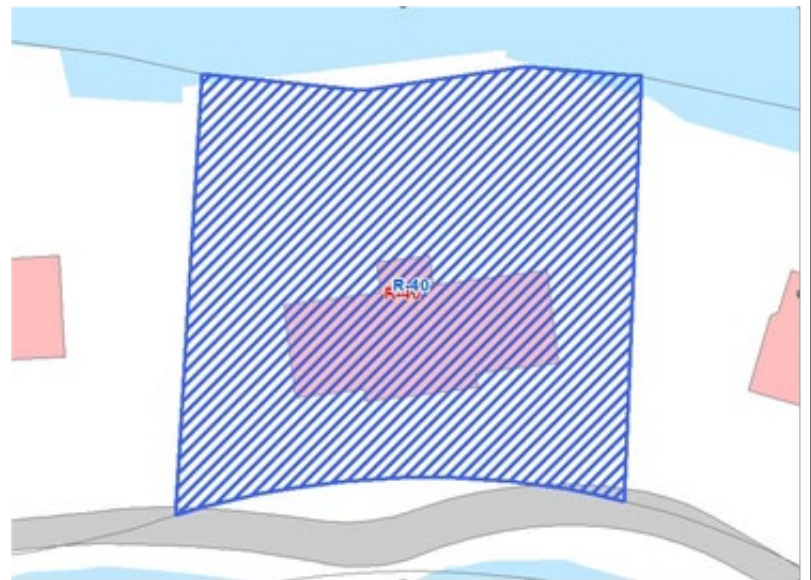
22,106 square feet or 0.508 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,817 square feet or 0.455 acres

EXISTING IMPERVIOUS COVER OF SITE

6,908.8 square feet or 34.9 percent of site



Site Aerial



Variance Request

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

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole Fisher

Lot Recordation

Map Book 162, Page 0012
 Recorded 09/03/1982

GPIN

2418-06-2743

SITE AREA

43,560 square feet or 1.0 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

43,560 square feet or 1.0 acres

EXISTING IMPERVIOUS COVER OF SITE

12,079.3 square feet or 27.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

14,824 square feet or 34 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

2,745 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

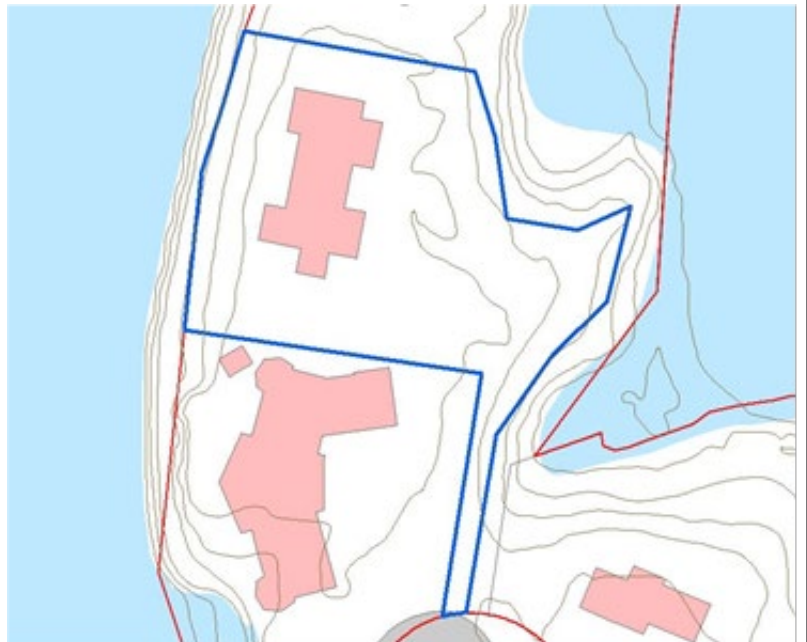
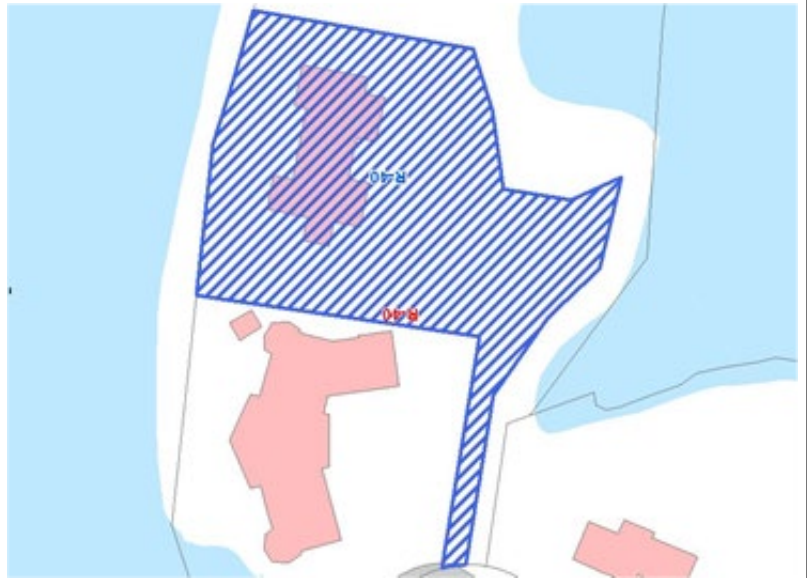
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with pool patio
- Detached pool house

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Flood Zone –AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is stabilized with a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of the pool/pool surround and pool house.

Stormwater Management Methodology

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

Evaluation and Recommendation

The existing residential lot is one of three lots platted on a peninsula shaped land mass that is encumbered by the Resource Protection Area (RPA) buffer from the south, east and west. In addition, these lots were platted approximately a decade prior to the adoption of the CBPA Ordinance and the existing residential structure was built in 1985. Staff is of the opinion that these circumstances pose challenges to the redevelopment given the shape and size of the peninsula which results in the 50-foot seaward buffer encumbering the majority the rear yard portion of these lots.

Staff is of the opinion that the dimensions of the proposed pool, 18 feet by 40 feet, is marginally greater than the average residential swimming pool of 16 feet by 32 feet. Additionally, the layout of the proposed patio area does not

reflect the minimum necessary to afford relief given the location of proposed improvements within the 50-foot seaward buffer on a lot that predates the City's adoption of the CBPA Ordinance. Furthermore, the proposed swimming pool and patio area transitions more than 4 feet from the proposed grade elevation of the improvements to the existing grade elevation of the rear yard, approximately 12.8 feet above sea level for the proposed improvements to approximately 9 feet above sea level along the seaward limits of the proposed improvements. Although the shoreline is hardened and it appears that there is not a significant impact to this area of the lot from sea level rise projections, Staff is concerned with any introduction of fill material or additional land disturbance outboard the delineated limits of construction given the exposure of the lot to wind a fetch. Staff offers the following comments related to these opinions regarding the proposed improvements.

- The existing raised slate patio area is approximately 927 square feet. As submitted, the proposed swimming pool is minimally larger than the average residential swimming pool with a proposed paver patio of approximately 1,469 square feet. Collectively these patio areas total 2,396 square feet of which 1,056 square feet of proposed patio area is within the 50-foot seaward buffer. If a typical swimming pool surround, 4 foot by 4 foot by 4 foot by 8 foot is calculated to the size of the proposed swimming pool, approximately 834 square feet would be need for sensible access around the proposed swimming pool. This analysis would then leave approximately 635 square feet of additional new patio area within the RPA buffer as proposed with this variance request. As a compromise Staff recommends a condition below that the proposed improvements be reduced, specifically condition 2 as a means towards being the minimum necessary to afford relief.
- Given the elevation change in the rear yard, approximate elevation 10.7 feet above sea level transitioning to elevation 4.9 feet above sea level adjacent to the existing rip rap revetment, in the area of the proposed swimming pool and patio area, Staff is of the opinion that an introduction of fill material would increase the existing slope of the rear yard subsequently increasing the velocity of stormwater runoff. Given the short distance from the proposed improvements to the edge of water and exposure to wind and fetch, Staff provides the recommended condition, specifically condition 4 as a means towards a no net increase in nonpoint source pollution.

Staff spoke with the applicant and applicant's agent after visiting the site regarding the above concerns. On September 22, 2021 Staff received a revised CBPA Exhibit to address these concerns. Staff finds the revisions to the proposed improvements as shown on page 60 of this Staff report to be acceptable.

In addition to Staff's concern regarding the proposed new impervious cover on the lot associated with the proposed improvements, Staff offers that the majority of the lots mature canopy cover is within the 50-foot landward buffer. Access to construct the proposed improvements will be within the critical root zone of the existing canopy trees. To address this concern, Staff offers the recommended condition below, specifically condition 5 as a means to limit soil compaction within these critical root zones as a means to promote the long-term health and survivability of the existing canopy cover within the RPA buffer.

The applicant provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements as revised are appropriate towards the redevelopment of this lot.

- 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 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 no way confer any special privilege to the current owners."* Staff concurs that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA

Ordinance and offers that the encroachment request is similar to existing improvements on adjacent lots. Staff is of the opinion that the recommended conditions in this Staff report provides merit towards the variance request not conferring special privileges to this applicant.

- 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 buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away.”* Staff concurs with the statement provided by the applicant’s agent.
- 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 does not exceed 30% of the land area, which leaves significant amount of land to be used for buffer restoration and bioretention beds.”* While Staff acknowledges the statement provided by the applicant’s agent, the specific conditions of the lot warrant an analysis of the proposed improvements to the access of the site, associated land disturbance to construct the proposed improvements, location within the RPA buffer of the proposed improvements and mitigation measures provided to enhance water quality. As such, Staff has provided the recommended conditions below as a means for the variance request to be in harmony with the intent of the CBPA Ordinance.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the 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 and 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 acknowledges that the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds on a lot that currently does not offer stormwater treatment coupled with the recommended conditions below.
- 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 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 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 proposed swimming pool with associated permeable paver surround and steps shall be a maximum of 1,990 square feet. Said reduction in impervious cover shall provide a retreat landward of the proposed improvements as shown on the CBPA Exhibit.
- 3) The proposed pool house shall not encroach into the 50-foot seaward buffer.

- 4) No perimeter fill is authorized within the 50-foot seaward buffer.
- 5) Soil and root zone protection shall be installed within the critical root zones of all trees along the construction access. Said soil and root zone protection shall be installed as per the best management practices (Mulch, plywood, matting, etc.) of the Companion publication to the ANSI A300 Part 5: Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Management of Trees and Shrubs During Site Planning, Site Development and Construction).
- 6) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 7) 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.
- 8) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,745 square feet x 200 percent = 5,490 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: **5 canopy trees, 5 understory trees, 28 large shrubs, and 42 small shrubs.**

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

- 9) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 10) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 11) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved.

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

- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) ** 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 \$629.00 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 September 1, 2021, as revised September 22, 2021 prepared by Gallup Surveyors & Engineers, signed September 1, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

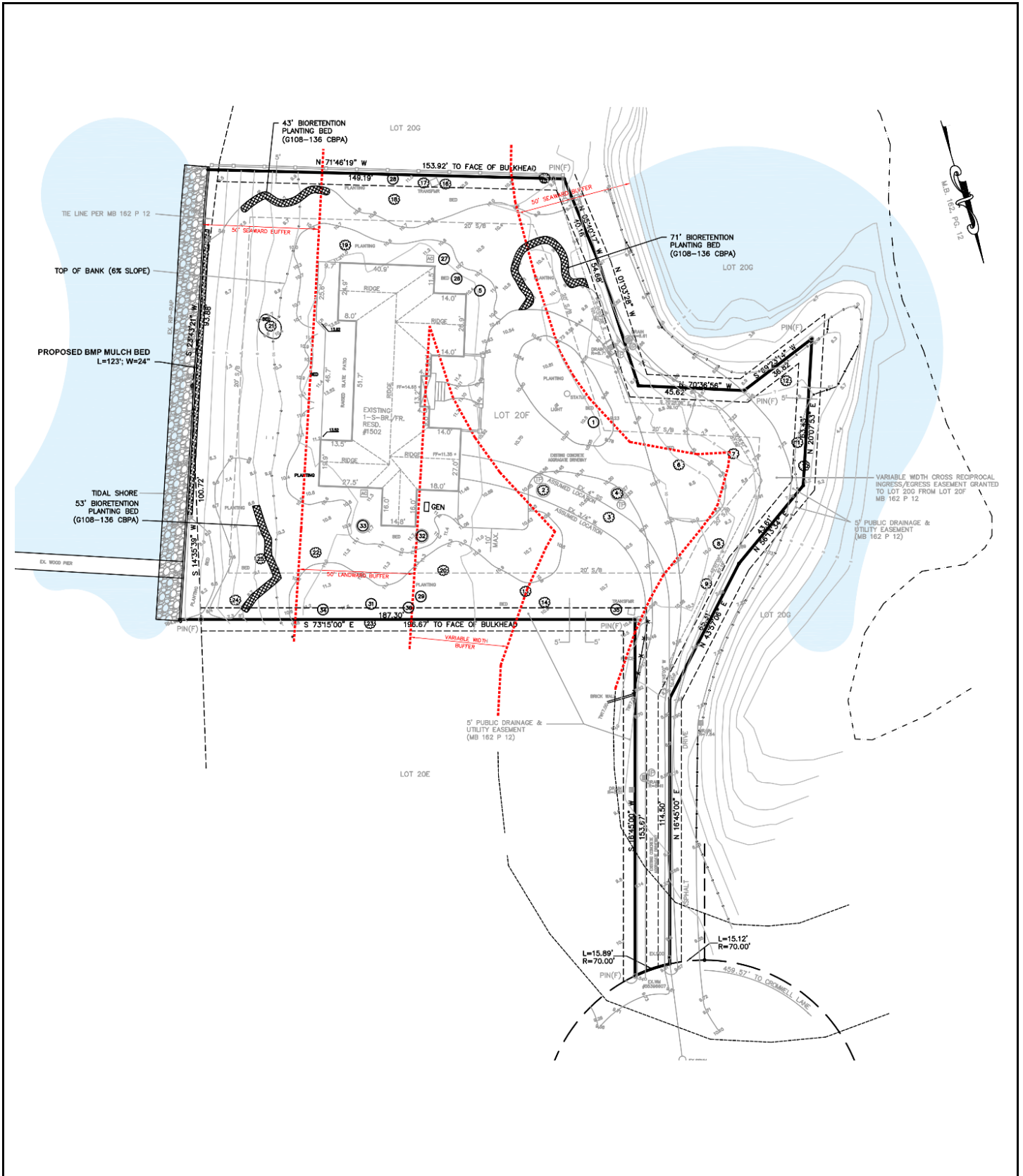
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

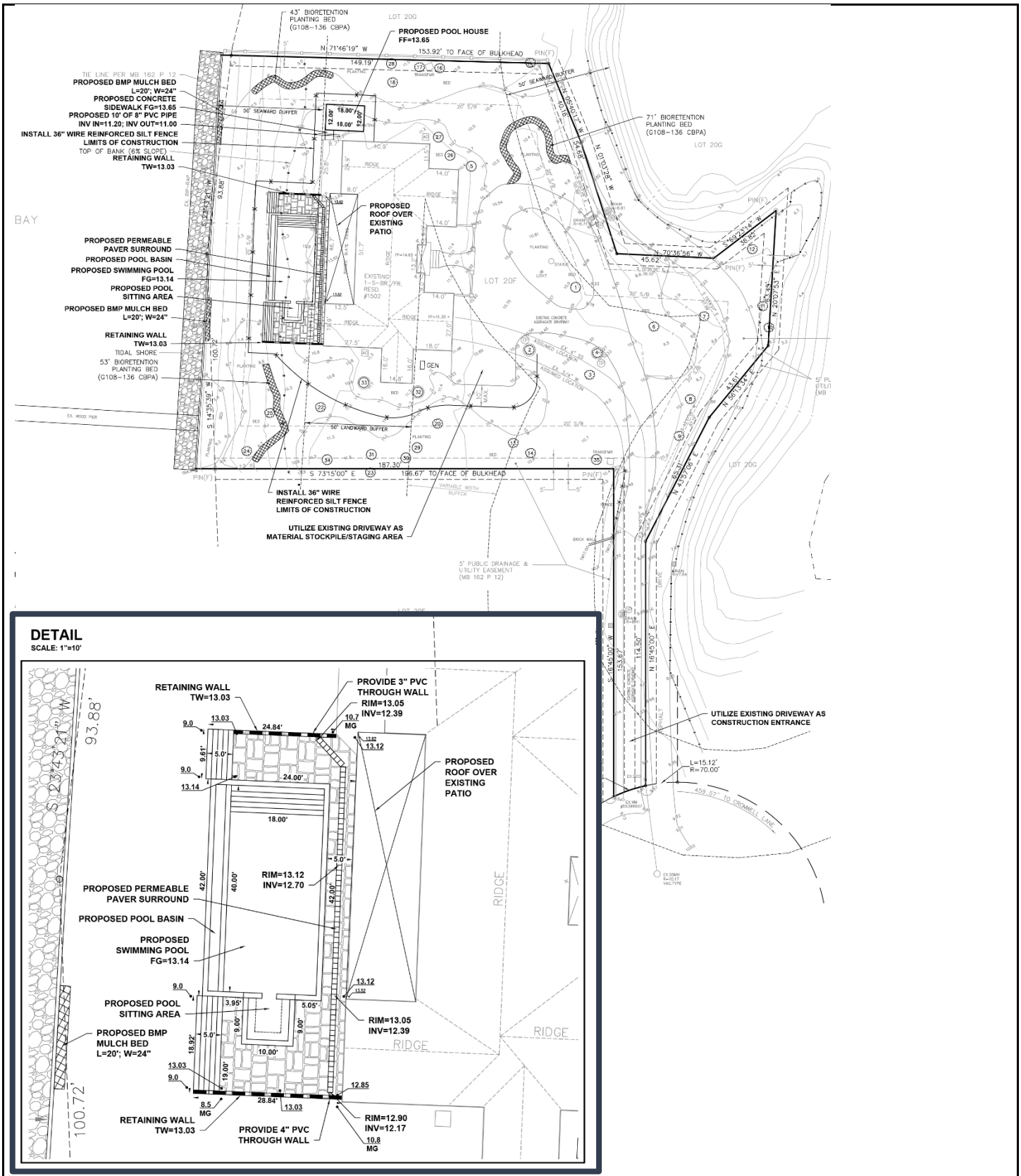
Site Aerial



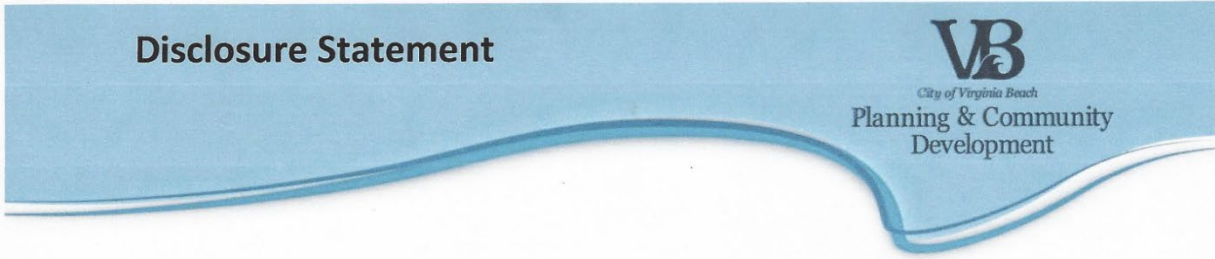
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements, Revised September 22, 2021



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 Jason Barnes

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)
Jason Barnes (Trustee)

• 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.

PENFED

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.

NLPCPAS

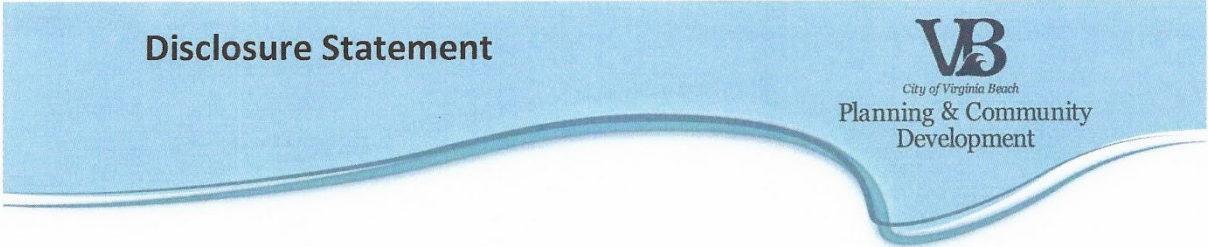
4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

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

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.

Trilly Surveyors & Engineers

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.

[Handwritten Signature]

Applicant Signature

Jason Barnes

Print Name and Title

September 7, 2021

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



Applicant & Property Owner **Virginia Beach Racquet Club, Etc.**
 Address **1951 Thomas Bishop Lane**
 Public Hearing **October 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

7

Variance Request

Encroachment into the RPA with the subdivision of 1 existing lot into 3 residential lots.

Applicant’s Agent

Eddie Bourdon, Esq.
 Sykes, Bourdon, Ahern, Levy PC

Staff Planner

Cole S. Fisher

Lot Recordation

Instrument No. 202107060098
 Recorded 06/28/2021

GPIN

1499-46-9576

SITE AREA

122,782 square feet or 2.819 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

99,655 square feet or 2.288 acres

EXISTING IMPERVIOUS COVER OF SITE

46,078.5 square feet or 46 percent of site
 *61,285.5 square feet total, includes portion of tennis court on adjacent lot

PROPOSED IMPERVIOUS COVER OF SITE

40,239 square feet or 40.3 percent of site
 * Above figure is total combined areas of delineated buildable area on Lots 1A, 1B and 1C.

Area of Redevelopment in RPA

25,250 square feet

Area of New Development in RPA

14,989 square feet

* Above figure is based off areas of delineated buildable area on Lots 1A, 1B and 1C.

Location of Proposed Impervious Cover

- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete tennis courts with associated asphalt paved parking lot

Construction Details

- 3-lot subdivision to construct single-family residences with associated accessory structures

CBPA Ordinance Variance History

There is no known Chesapeake Bay Preservation Area (CBPA) Board variance history to report.

Environmental Conditions

Flood Zone

Flood Zone – Zone X

Soil Type(s)

Udorthents Series (well-drained and moderately well-drained soils)

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: 35
- Number of existing understory trees requested for removal within the RPA: 16
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 10
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated buildable areas for Lots 1A, 1B and 1C, shown on the CBPA exhibit.

Stormwater Management Methodology

The applicant's agent has indicated in the WQIA for this variance request that bioretention planting beds will be utilized as a means to manage stormwater run-off to prevent the variance request from contributing to an increase in nonpoint source pollution load.

Evaluation and Recommendation

This site is currently the home for three nonoperational tennis courts and an asphalt parking lot. Outboard of the existing improvements, the subject lot has a functioning riparian ecosystem with extensive tree canopy cover. Most of the functioning riparian ecosystem is located below the top of bank feature.

As submitted, the applicant desires to subdivide the existing lot, platted Lot 1B consisting of 122,782 square feet, into three R-40 residential lots for the construction of future single-family residential homes with associated accessory structures typical of a single-family residential development – i.e. decks, patios, swimming pools, etc. The lot is currently split zoned with approximately 43,345 square feet of the lot zoned R-20 and approximately 79,437 square feet of the lot zoned R-40. With the proposed three lot subdivision request, the applicant has provided a “buildable area” for each of the proposed lots. The “buildable area” for each lot provides the following.

	Lot area (Site Area)	Lot area above water and Wetlands	Buildable Area provided on CBPA Exhibit
Lot 1A	46,160 square feet	approximately 34,122 square feet	14,993 square feet
Lot 1B	40,047 square feet	approximately 34,474 square feet	13,281 square feet
Lot 1C	40,061 square feet	approximately 34,383 square feet	11,965 square feet

All three lots provide a 20-foot setback from the top of bank feature to the proposed buildable area. While the buildable area provided for Lot 1B and Lot 1C encroach into the 50-foot landward buffer and variable width buffer of the RPA feature, the buildable areas provided for these lots do not encroach further seaward than the existing tennis courts and associated parking lot. In addition, both lots provide a reduction in impervious cover by redeveloping the proposed improvements over the existing impervious cover of the tennis courts and associated parking lot. The buildable area for Lot 1A encroaches into the 50-foot seaward buffer and 50-foot landward buffer of the RPA feature. Redevelopment potential on Lot 1A consists of approximately 320 square feet of the existing parking lot. An analysis of the proposed lots to a 30 percent impervious cover accounting for all proposed improvements, both primary and accessory structures is provided below.

	Lot area above water and Wetlands	Analysis of 30 percent impervious cover	Reduction of Buildable Area
Lot 1A	approximately 34,122 square feet	10,237 square feet	4,756 square feet
Lot 1B	approximately 34,474 square feet	10,342 square feet	2,938 square feet
Lot 1C	approximately 34,383 square feet	10,315 square feet	1,650 square feet

The above analysis reflects a development scenario for the proposed 3 residential lots similar to adjacent lots encumbered by the Chesapeake Bay Resource Protection Area and allocates a collective overall proposed impervious cover with the development of each lot of approximately 30,894 square feet. This scenario results in an overall reduction in the amount of impervious cover. Specifically, the existing impervious cover of the lot is 40,239 square feet and the new impervious cover associated with the above scenario would be 30,894 square feet – an overall reduction of impervious cover on the lot of 9,345 square feet. Staff is of the opinion, through further analysis of Lot 1A, that the development of this proposed lot with a single-family residence and associated accessory structures can be achieved landward of the 50-foot seaward buffer subject to proposed improvements situated at the 50-foot front yard setback and 20-foot side yard setback along the north property line. A Subdivision Variance will be required for the proposed subdivision as submitted. This variance requires action by both the Planning Commission and City Council following action by the CBPA Board.

The applicant provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance. Also, the applicant contents that the subdivision of the lot and subsequent construction of the individual single-family residences are appropriate towards developing within the Chesapeake Bay RPA based on the following.

- 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 *“regardless of the developer, the residential development of these lots must meet requirements set forth by the R-40 zoned subdivision. It is located within R-40 zoning and requires 40,000 square foot lots and a 50’ setback from the road right-of-way.”* Staff is of the opinion that the overall reduction of impervious cover within the RPA, down zoning the R-20 portion of the

lot to R-40 and maintaining a 20 foot setback from the top of bank feature with all future improvements provides merit towards the variance request not conferring any special privilege to this property owner.

- 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 *“regardless of the developer, the residential development of these lots must meet requirements set forth by the R-40 zoned subdivision. It is located within R-40 zoning and requires 40,000 square foot lots and a 50’ setback from the road right-of-way.”* Although the lot will be subdivided after the adoption of the CBPA Ordinance, Staff is of the opinion that the applicant has maintained a functional RPA buffer despite the existing encroachments and has complied with the performance standards of the CBPA Ordinance. This includes specifically limiting land disturbance to the area necessary to provide for the proposed use and preserving the existing vegetation to the maximum extent practicable. Although the action to create these lots is self-imposed, it is recognized that the redevelopment of the lot will provide an overall reduction of impervious cover in the RPA.
- 3) The variance is the minimum necessary to afford relief because *“there is an existing need for single-family residential homes and R-40 zoning requirements are being met.”* While Staff acknowledges the statement provided by the applicant, Staff is of the opinion that the reduction in the overall impervious cover coupled with the recommended condition that the future development of the individual single-family residences be limited to a maximum of 30 percent provides merit to the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“this variance request provides a net decrease in impervious area within the CBPA buffer”* Staff concurs and further offers and that the retention of the existing vegetation in the RPA buffer to the greatest extent practicable as well as the introduction of additional buffer restoration mitigation and stormwater management for the individual single-family lots provides significant merit towards the variance request not being of substantial detriment to water quality taking into account that a viable riparian buffer can achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients [City Code, Appendix F, Sec 106 (B)(3)(a)].
- 5) *“Net reduction in impervious area within the buffer and installation of stormwater BMPs”* will serve 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 15 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) For each individual single-family residence, the maximum impervious cover for primary and accessory structures shall not exceed the following amount specific to each lot.
 - **Proposed Lot 1A** – 30 percent of the lot above water and wetlands or 10,237 square feet of overall impervious cover
 - **Proposed Lot 1B** – 30 percent of the lot above water and wetlands or 10,342 square feet of overall impervious cover
 - **Proposed Lot 1C** – 30 percent of the lot above water and wetlands or 10,315 square feet of overall impervious cover

- 2) There shall be no encroachment of proposed impervious cover, redevelopment of existing impervious cover, or placement of fill material within the 50-foot seaward buffer Resource Protection Area (RPA) or within 20 feet of the top of bank feature, whichever is greater as delineated on the CBPA Exhibit.
- 3) Individual Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval of each lot prior to the issuance of a building permit.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 5) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed along the 50-foot seaward buffer of the RPA or along the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit, whichever is greater.
 - Along the remain portions of the property the required silt fence shall be installed 15 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 6) **Specific for Lot 1A, the silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 7) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 9) All areas outside the limits of construction within the 50-foot seaward buffer shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that "All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence."
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 11) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 12) The 100-foot RPA buffer shall be restored for each lot with a full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable. The required restoration shall be located in the 100-foot 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. 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.

13) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located landward of the 50-foot seaward buffer of the RPA and the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit.

14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with the site plan approval for each individual lot. Payment for each lot shall be in the following amount per lot.

- **Impervious cover in the RPA feature associated with the proposed improvements on each lot divided by 4, then divided by 27, then multiplied by 15 and then multiplied by 1.65 for the total dollar amount to be paid.**

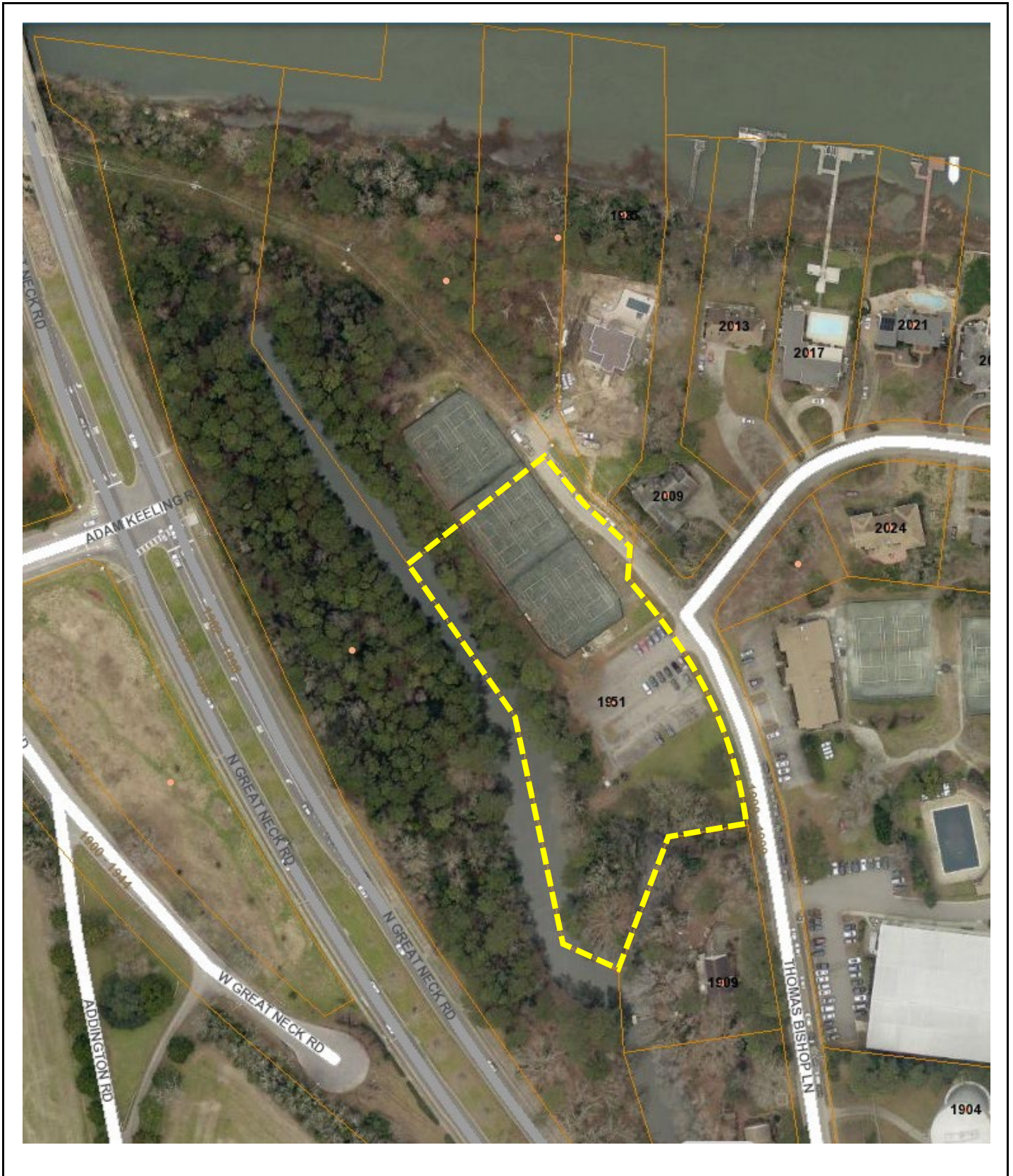
Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) The conditions and approval associated with this variance are based on the subdivision exhibit plan dated January 15, 2021, prepared by Todd H. French, LS of Timmons Group. 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.

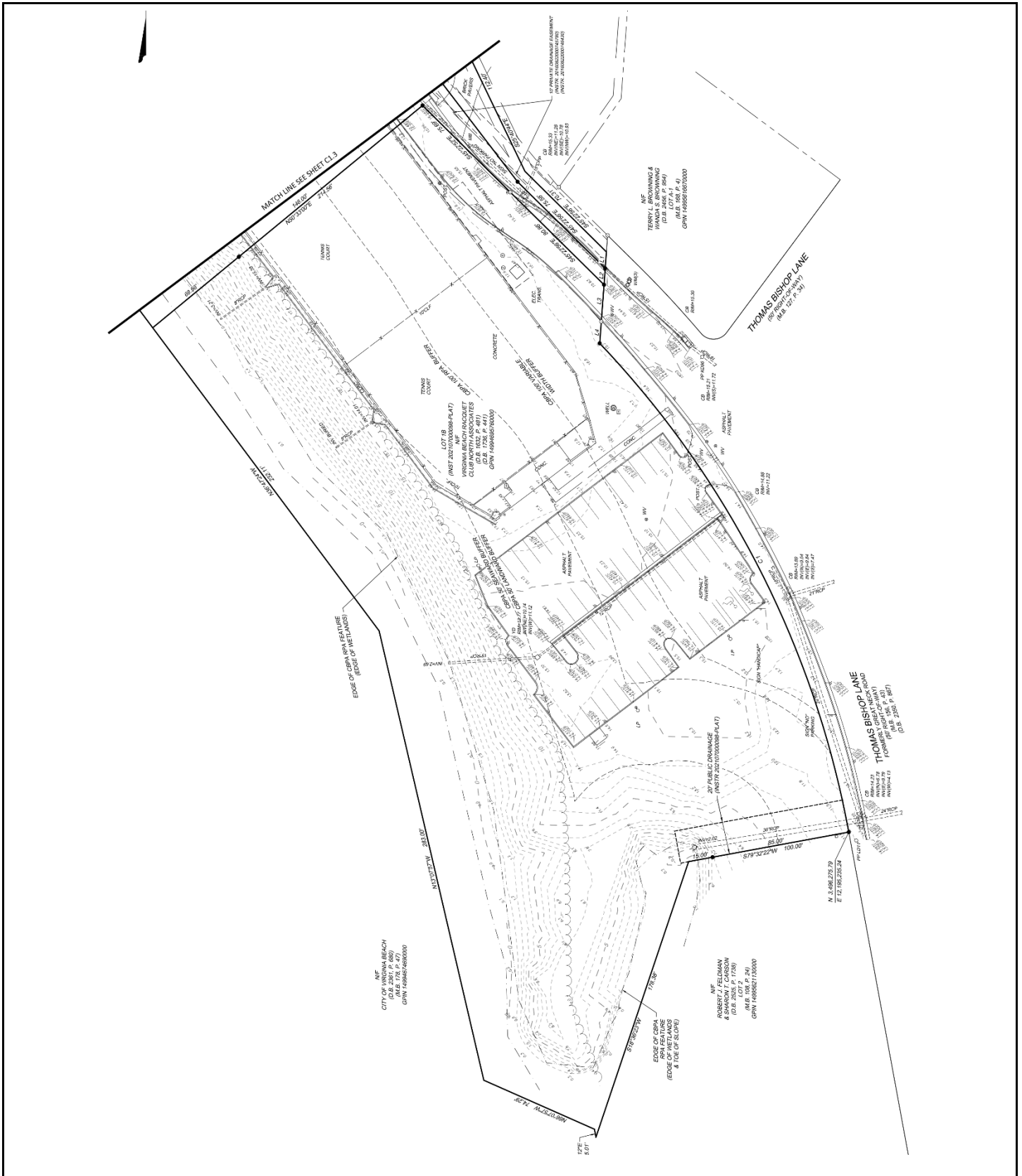
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*** 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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

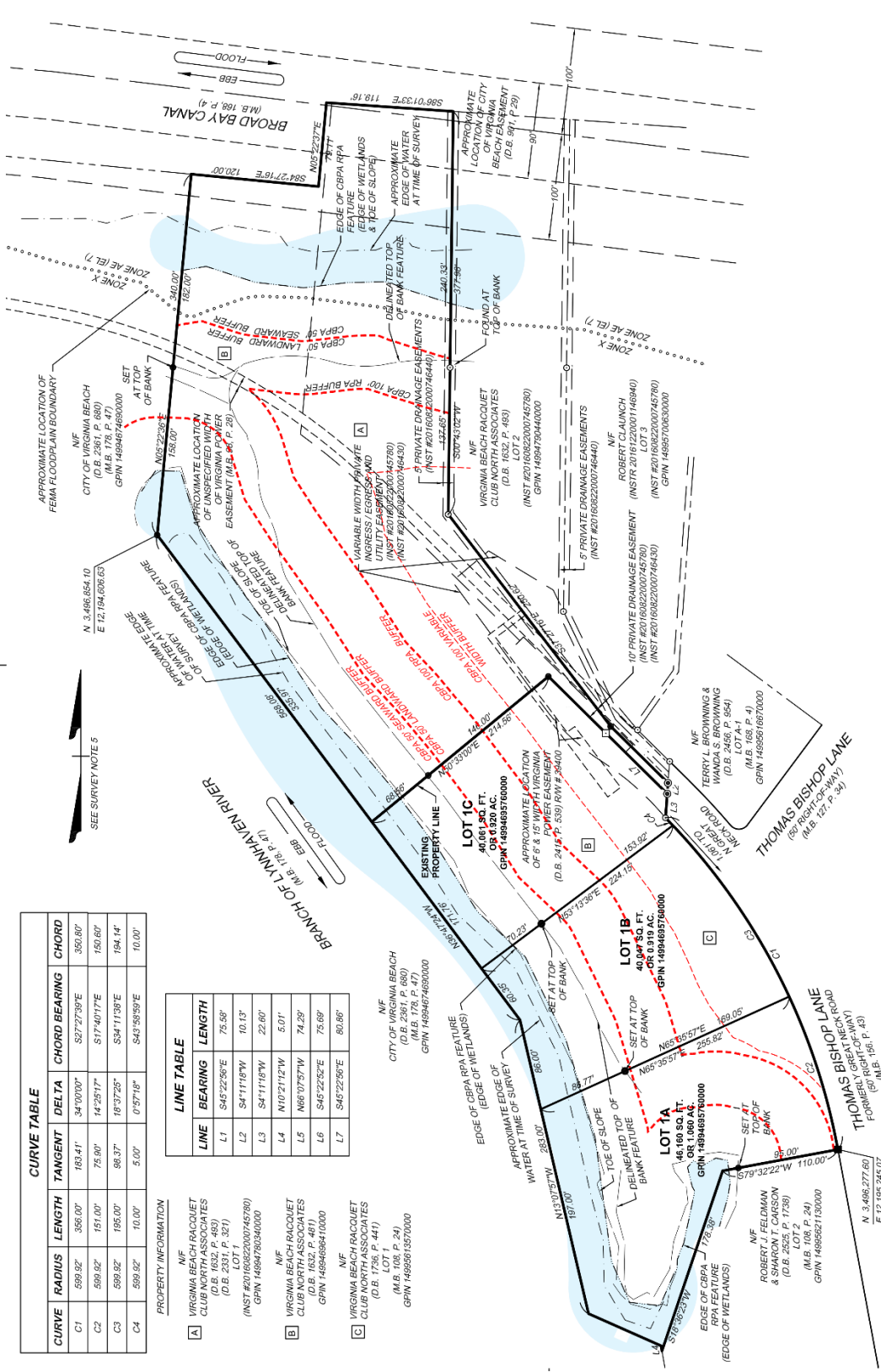
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements, Creation of Lots 1A, 1B and 1C

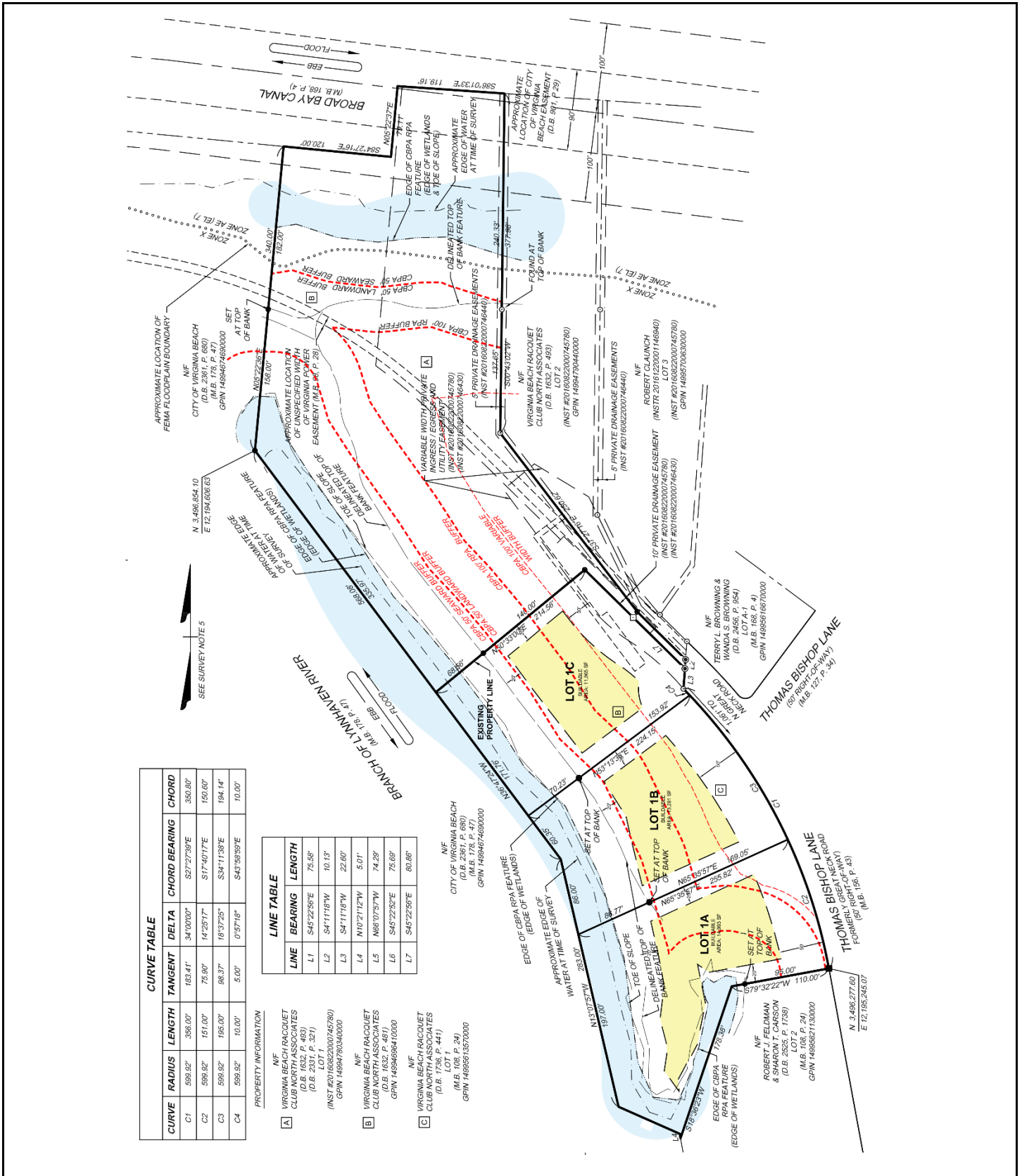


CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD BEARING	CHORD
C1	599.92'	365.00'	163.41'	34°00'00"	S27°27'39"E	350.80'
C2	599.92'	151.00'	75.50'	14°25'17"	S17°40'17"E	150.60'
C3	599.92'	105.00'	58.37'	18°37'25"	S34°11'38"E	194.14'
C4	599.92'	10.00'	5.00'	0°57'18"	S43°58'59"E	10.00'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S45°22'56"E	75.58'
L2	S4°11'18"W	10.13'
L3	S4°11'18"W	22.60'
L4	N10°27'12"W	5.01'
L5	N65°07'57"W	74.29'
L6	S45°22'56"E	75.68'
L7	S45°22'56"E	80.66'

- PROPERTY INFORMATION**
- NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 483) (INST #20160822000745780) GFIN 14894780340000 (LOT 1)
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 481) GFIN 14894698410000
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 441) (M.B. 108, P. 24) (LOT 1)
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 483) GFIN 14895613570000

CBPA Exhibit – Proposed Improvements Buildable Area for Lots 1A, 1B and 1C



CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD BEARING	CHORD
C1	599.92'	356.00'	183.41'	34°00'00"	S27°27'39"E	360.80'
C2	599.92'	151.00'	75.90'	14°25'17"	S17°40'17"E	150.80'
C3	599.92'	195.00'	96.37'	18°37'25"	S24°11'38"E	194.14'
C4	599.92'	10.00'	5.00'	0°57'18"	S43°55'59"E	10.00'

LINE TABLE

LINE	BEARING	LENGTH
L1	S45°22'26"E	75.59'
L2	S4°11'18"W	10.13'
L3	S4°11'18"W	22.60'
L4	N10°21'12"W	5.01'
L5	N68°07'57"W	74.29'
L6	S45°22'25"E	75.69'
L7	S45°22'26"E	80.86'

- PROPERTY INFORMATION**
- A** N.F. VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1632, P. 463) (D.B. 2351, P. 321) (INST #20160822000745780) GPIN 14884780340000
 - B** N.F. VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1632, P. 461) GPIN 14894696410000
 - C** N.F. VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1736, P. 441) LOT 1 (M.B. 108, P. 24) GPIN 14896015070000

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 Virginia Beach Racquet Club North Associates

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

R. Edward Bourdon Jr.

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)

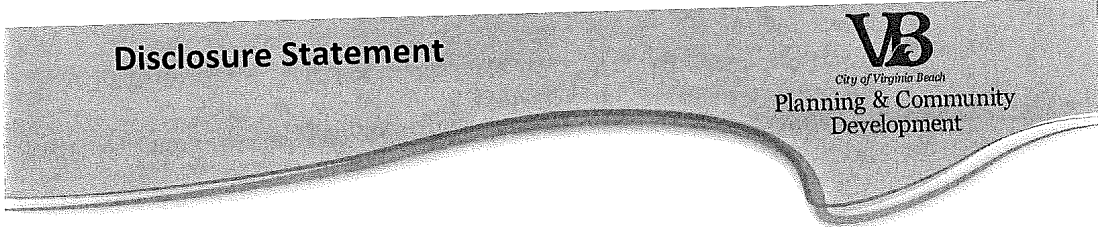
Harvey H. Shiflet III (President) ²⁰¹⁵ General Partner, Virginia Beach Racquet Club North Associates

- 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.

Towne 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.

Berkshire Hathaway Towne Realty / Jonathan P. Decker

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.

Wall Emhorn and Chernitzer

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.

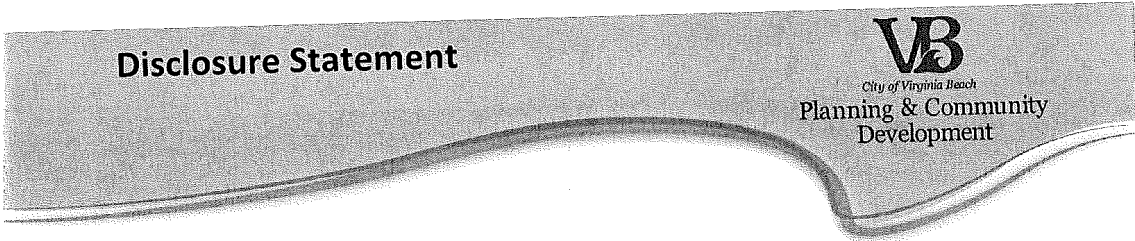
Timmon's Group / Roger Rodriguez

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.

C. Torrey Breeden

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.
- Timmon's Group / Roger Rodriguez
-
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.
- Sykes, Bourdon, Ahern & Levy, P.C. / Howard R. Sykes Jr.

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.

Harvey H. Shiflet III
 Applicant Signature
 Print Name and Title
 Virginia Beach Racquet Club North Associates / Harvey H. Shiflet III (President) *General partner*
 Date *9-20-21*

- 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 for the expansion of a wood deck.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

2/23/1966

Map Book 67, Page 54

GPIN

1488-50-7952

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of New Development in RPA

56 square feet

Location of Proposed Impervious Cover

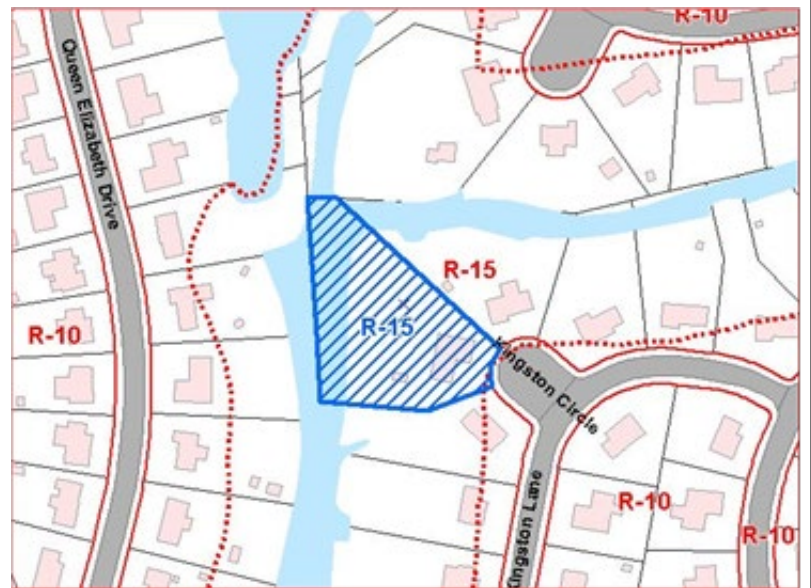
50 Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- After-the-fact 7 foot by 8 foot wood deck landing

CBPA Ordinance Variance History

A Show Cause hearing was held on September 6, 2021. No civil penalty was issued for the item on noncompliance.

July 22, 2019 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to expand the existing wood deck footprint with a second story deck and landing area off the rear and side of the residence – 2 in total with the following 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. *The proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.*
3. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **313 square feet x 200 percent = 626 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 3 small shrubs.***

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

4. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
5. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*

6. Construction limits shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
7. 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.

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 hardened by a riprap revetment/concrete rubble.

Riparian Buffer

Sparsely wooded

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

Evaluation and Recommendation

The applicant desires to expand the wood deck landing along the southern side of the residence to be 7 feet by 8 feet. The proposed expansion will increase the size of the wood deck landing by 40 square feet. Prior to the 2012 CBPA Administrative variance, the overall impervious cover of the lot was 3,221 square feet or 11.4 percent of the land area outside of water and marsh. The post-development impervious cover, inclusive of all the proposed improvements associated with the 2012 CBPA Administrative variance totaled 5,445 square feet or 19.2 percent of the land area outside of water and marsh. To date, the building addition off the rear of the residence has not been constructed. Given the overall impervious cover of the lot being under 20 percent and the proposed improvements being located within the upper reach of the 50 landward buffer, Staff is of the opinion that the proposed improvements will have minimal impact on the existing riparian buffer and will not contribute to the degradation of water quality, or prove detrimental to the RPA feature.

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 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 which are subject to the provisions of the CBPA Ordinance because *"the request is similar to other improvements on adjacent lots."* Staff concurs.
- 2) Staff provides 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 neighborhood was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing much of this property within the RPA.

- 3) The variance is the minimum necessary to afford relief *"with a good portion of the proposed improvements being redevelopment."* Staff concurs and offers that the footprint of the wood deck is similar in size to other existing decks within the neighborhood.
- 4) Staff is of the opinion that the variance is in harmony with the purpose and intent of the CBPA Ordinance and not of substantial detriment to water quality with the retention of all existing vegetation within the property, the introduction of buffer planting to an already present riparian buffer, the proposed improvements being outboard of the 50-foot seaward buffer, and the minimal site impact associated with the proposed improvements. The applicant provides that with the proposed improvements *"no vegetation will be removed."*
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"buffer restoration and planting have been installed."* The applicant indicates that the lot has been landscaped and areas allowed to naturalize. Staff is of the opinion that the conditioned buffer restoration coupled with approximately 80 feet of stabilized groundcover and plantings in the RPA buffer offers a means to filter stormwater runoff.

Should the Board desire to consider granting this variance request, Staff offers the following 1 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.

***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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial

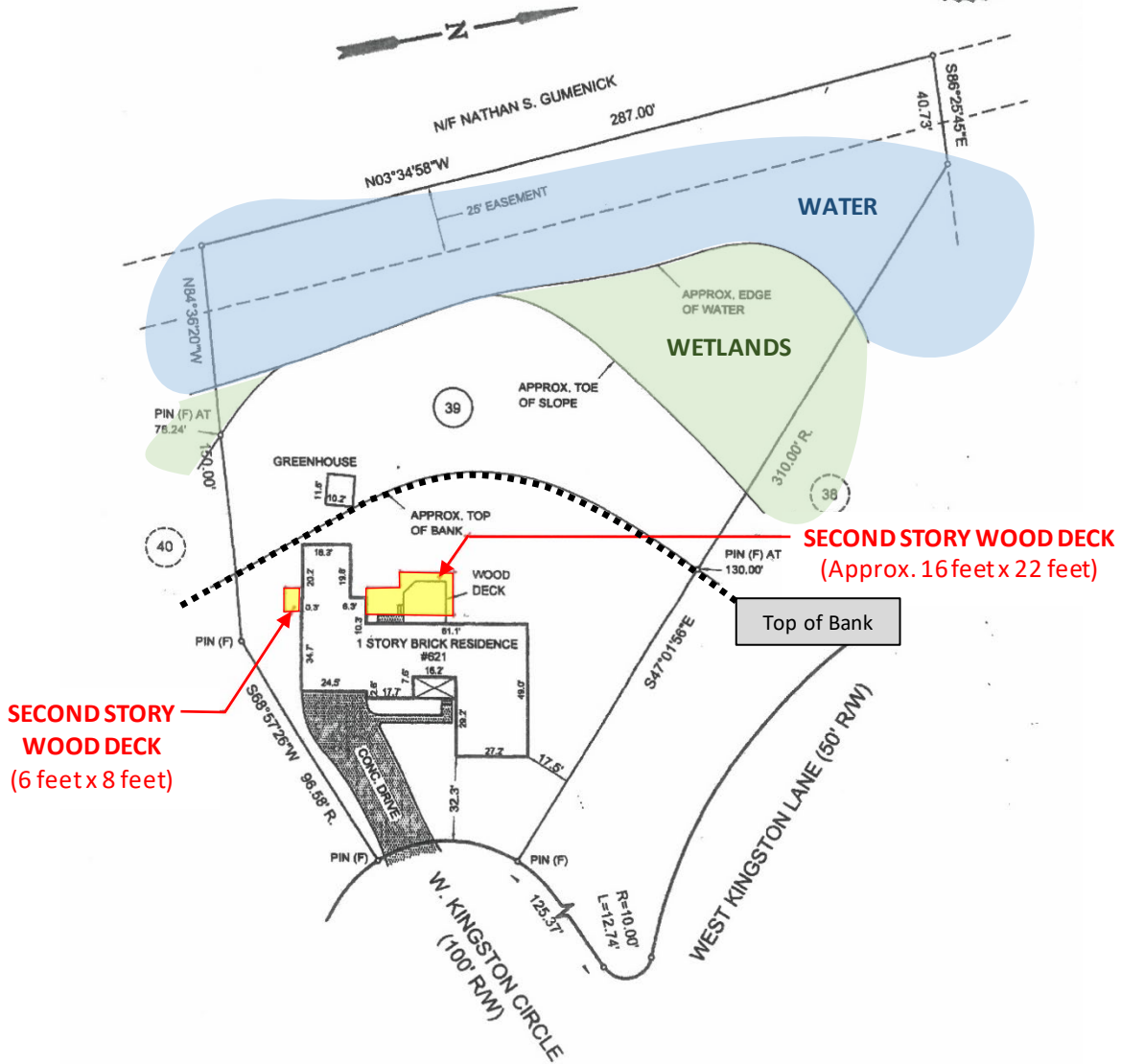
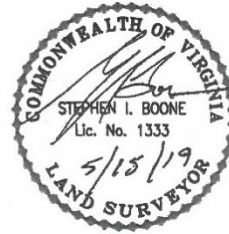


THIS IS TO CERTIFY THAT ON MAY 13, 2019, I SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE SHOWN ON THIS PLAT. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

THE RESIDENCE SHOWN HEREON APPEARS TO BE IN FLOOD ZONE "X"
 FIRM MAP CITY OF VIRGINIA BEACH COMMUNITY NO. 515531
 MAP REVISION: JAN. 16, 2015 PANEL NO. 0101G

THIS SURVEY PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.

A 5' UTILITY AND DRAINAGE EASEMENT (UNLESS GREATER WIDTH IS NOTED) EXISTS ALONG AND ADJACENT TO ALL SIDE AND REAR LINES OF ALL LOTS WITHIN THIS SUBDIVISION.



PHYSICAL SURVEY
 OF
 621 W. KINGSTON CIRCLE, VIRGINIA BEACH, VIRGINIA
 LOT 39
 KINGS GRANT

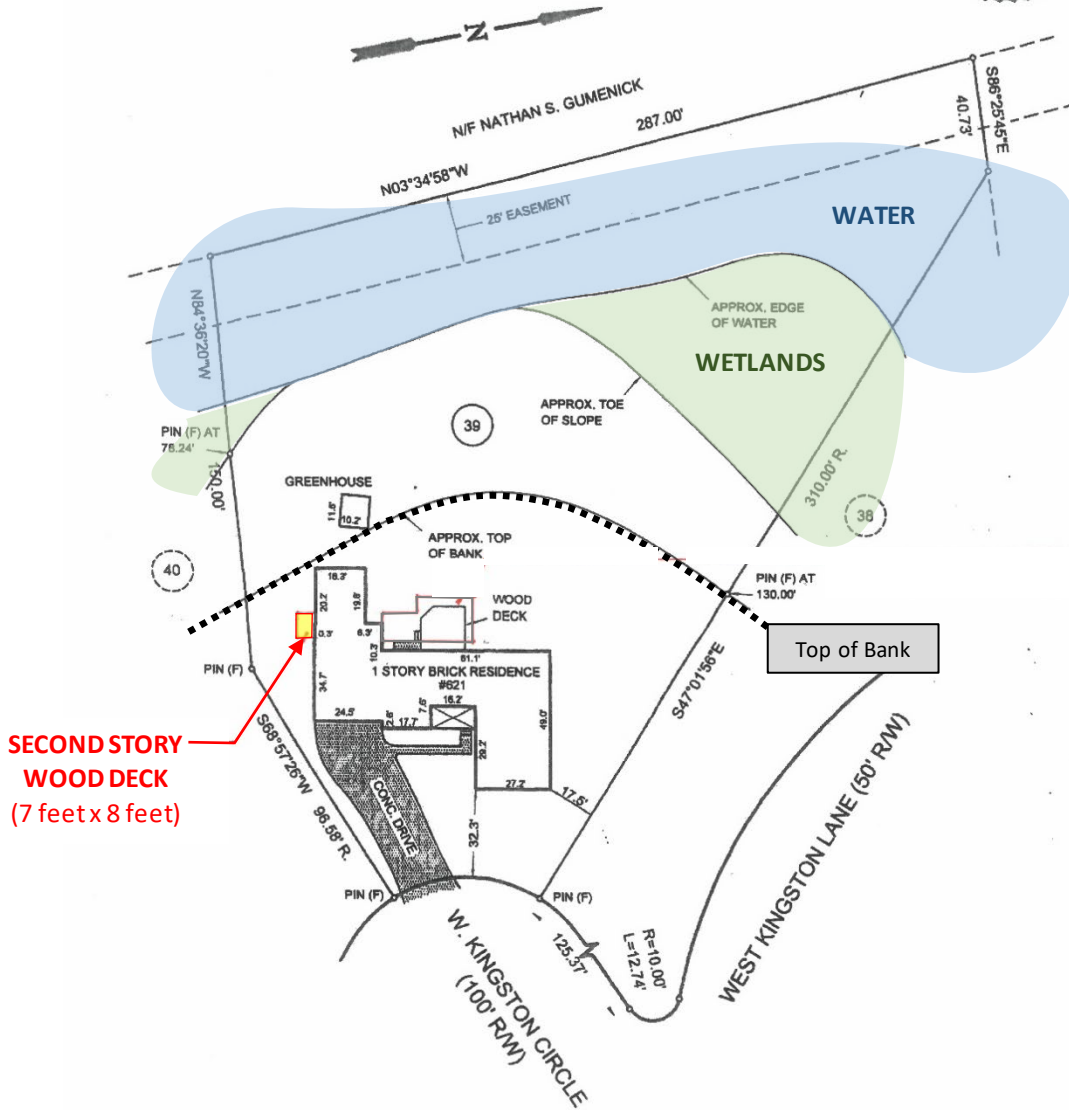
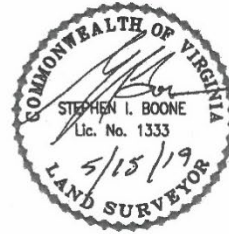
CBPA Exhibit – Proposed Improvements, After-the-Fact

THIS IS TO CERTIFY THAT ON MAY 13, 2019, I SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE SHOWN ON THIS PLAT. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

THE RESIDENCE SHOWN HEREON APPEARS TO BE IN FLOOD ZONE "X"
 FIRM MAP CITY OF VIRGINIA BEACH COMMUNITY NO. 515531
 MAP REVISION: JAN. 16, 2015 PANEL NO. 0101G

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A 5' UTILITY AND DRAINAGE EASEMENT (UNLESS GREATER WIDTH IS NOTED) EXISTS ALONG AND ADJACENT TO ALL SIDE AND REAR LINES OF ALL LOTS WITHIN THIS SUBDIVISION.



SECOND STORY WOOD DECK
 (7 feet x 8 feet)

PHYSICAL SURVEY
 OF
 621 W. KINGSTON CIRCLE, VIRGINIA BEACH, VIRGINIA
 LOT 39
 KINGS GRANT



APPLICANT'S NAME THET M. KYAW

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).

<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Thet Mon Kyaw
If an LLC, list all member's names:

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

(B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	S B Williams Contracting Co -
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Boone
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

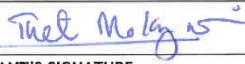
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	THET M. KYAW	may-29-2019
APPLICANT'S SIGNATURE	PRINT NAME	DATE

Noncompliance with the CBPA Ordinance

Encroachment into the Resource Protection Area (RPA) buffer with the construction of an unauthorized building addition.

Restoration Hearing

On August 2, 2021 the Chesapeake Bay Preservation Area (CBPA) Board made a finding that the improvements constructed at 621 W. Kingston circle did not warrant noncompliance to the provisions of the CBPA Ordinance for the unauthorized expansion of improvements.

No civil charge was imposed, and an after-the-fact CBPA Variance request was ordered by the CBPA Board for the property owner – Thet M. Kyaw.

Lot Description

Kings Grant, Section 5-C, Lot 39 also known as 621 W. Kingston Circle

Lot Recordation

Map Book 67, Page 54
Recorded 2/23/1966

GPIN

1488-50-7952

Current Property Owner

Thet M. Kyaw & Yin Yin May

Applicant's Agent

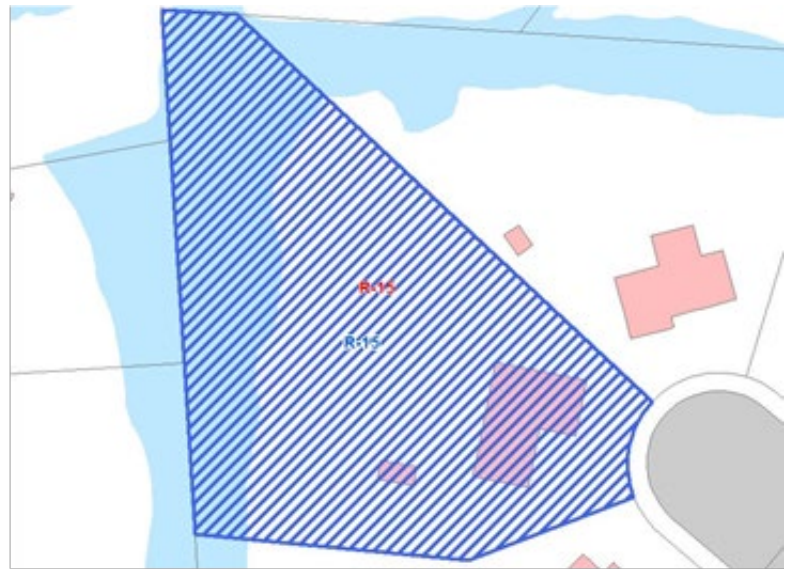
Self-represented

Staff Planner

Cole Fisher

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet



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 hardened by a riprap revetment/concrete rubble.

Riparian Buffer

Sparsely wooded

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

CBPA Ordinance Variance History

July 22, 2019 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to expand the existing wood deck footprint with a second story deck and landing area off the rear and side of the residence – 2 in total with the following 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. *The proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.*
3. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **313 square feet x 200 percent = 626 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 3 small shrubs.***

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

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

4. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
5. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
6. *Construction limits shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.***
7. *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.*

History of Noncompliance

To Staff's knowledge, Thet M. Kyaw has no known history of noncompliance with the provisions of the Chesapeake Bay Preservation Area Ordinance.

Chronology of Events to CBPA Variance

March 26, 2012	CBPA Administrative Variance provided for additions to the primary structure on a parcel recorded prior to the adoption of the CBPA Ordinance, request may be permitted administratively [Appendix F, Sec 106(B)(4)].
May 29, 2012	Modification approved breezeway location and replacement of existing driveway associated with the 2012 CBPA Administrative Variance.
January 16, 2013	RPA Single Family Site Plan approved by the Development Services Center
May 22, 2013	Field Change Plan approved for additions to the primary structure, 35 x 4 off south side of residence and 10 x 10 off west side of residence.
November 12, 2013	Field Change Plan for the elimination of the proposed water service upgrade in West Kingston. The existing water service will remain and be utilized as long as the new full bathroom is located on the 1 st floor.
August 26, 2014	Preliminary Project Request (PPR) for 2 nd story balcony over natural ground on west and south side of residence. CBPA Board Variance required.
August 15, 2016	Preliminary Project Request (PPR) to construct a fence along property line. No variance to the CBPA Ordinance required.

April 10, 2017	Preliminary Project Request (PPR) to construct balcony approved by CBPA Administrative Variance. Approval letter was issued then a hold place on the record when Staff discovered that the wood decks were not part of the 2012 CBPA Administrative Variance as present.
October 16, 2017	Preliminary Project Request (PPR) to place stone along shoreline. A Joint Permit Application (JPA) required.
May 28, 2019	Preliminary Project Request (PPR) for 2 nd story balcony over natural ground on west and south side of residence. CBPA Board Variance required.
May 29, 2019	CBPA Board Variance application received for construction of wood deck off the rear of the residence and a wood deck off the south side of the residence.
July 22, 2019	CBPA Board granted a variance to the CBPA Ordinance for the encroachment into the RPA buffer to construct two wood deck as conditioned. Conditions of the July 2019 CBPA Variance are listed above under CBPA Ordinance Variance History, specifically condition 2 that states <i>"the proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet."</i>
June 16, 2021	Building permit issued by Permits & Inspections for the construction of two decks. The plan provided to Permits & Inspections and issued for permitting was the CBPA Exhibit presented to the CBPA Board at the July 2019 CBPA Board public hearing. This exhibit showed a 6-foot by 8-foot deck off the south side of the residence. The CBPA Variance conditioned a maximum size of the proposed wood deck of 4 feet by 4 feet.
August 6, 2021	Staff receives a complaint regarding the construction of the wood deck off the south side of the residence.
August 9, 2021	Building Inspections visits the site, and a Stop Work Order is placed on the property for the activities associated with the construction of the wood deck off the south side of the residence.
August 16, 2021	Staff sent a Notice to Comply letter to the property owner at 621 W. Kingston Circle to appear before the Chesapeake Bay Preservation Area (CBPA) Board at the September 9, 2021 CBPA Board Public Hearing.

Evaluation and Recommendation

The subject area of the unauthorized wood deck landing expansion occurred within the upper reach of the 50-foot landward buffer of the Resource Protection Area (RPA) of the Chesapeake Bay watershed adjacent to a tidal waterway. Staff estimates that the area of land disturbance associated with the unauthorized improvements is less than 6 square feet for the construction of 4 concrete footers with most of the land disturbance for the unauthorized improvements defined by the associated construction footprint.

Should the Board approve the aforementioned agenda item 8 after-the-fact CBPA variance, Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives.

Site Aerial



Exhibit – Approximate Area of Unauthorized Improvements



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