

Chesapeake Bay Preservation Area Board Agenda

January 4, 2021



PAGE LEFT BLANK

CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

In accordance with Virginia Code § 2.2-3708.2, Virginia Code § 15.2-1413 and the City's Continuity of Government Ordinance adopted on September 15, 2020, and Chapter 1289 of the 2020 Acts of Assembly as amended, a meeting by electronic communications means of the Virginia Beach Chesapeake Bay Preservation Area Board will be held on **Monday, January 4, 2021 at 10:00 a.m.** with CBPA Board Members, Staff and citizens participating via video/audio conference.

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

For those citizens who desire to attend this meeting virtually, registration is required. Please visit www.vbgov.com/cbpa or enter the following URL into your web browser to register: <https://vbgov.webex.com/vbgov/onstage/g.php?MTID=e7bf88a0c7678859b2671b6e7bcff4e9b>.

Citizens are encouraged to submit comments to the CBPA Board prior to the public hearing via email to pscully@vbgov.com or via United States Mail to PJ Scully, 2875 Sabre Street, Suite 500, Virginia Beach, VA 23452. **If you desire to speak at the virtual public hearing you must notify Staff prior to 5:00 pm, December 31, 2020 at (757) 385-4621 or via email at sheederi@vbgov.com.**

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 of the items that it believes should be on the Consent Agenda, it will vote at one time for all of 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 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 Chairman, this time may be increased to 5 minutes. Speakers will be electronically timed.

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



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **January 4, 2021**

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.

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.

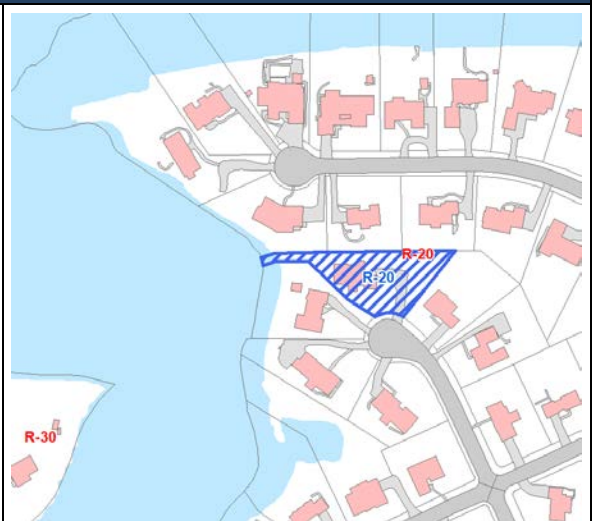
OLD BUSINESS AGENDA ITEMS

1. Adam & Kristyn Beck
[Applicant & Property Owner]

1624 Bay Breeze Drive
GPIN 2409-23-9903
Council District – Lynnhaven
Accela Record 2020-CBPA-00049

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a covered porch, swimming pool with associated retaining walls and backfill material.

Staff Planner – PJ Scully
Staff Report – page 7

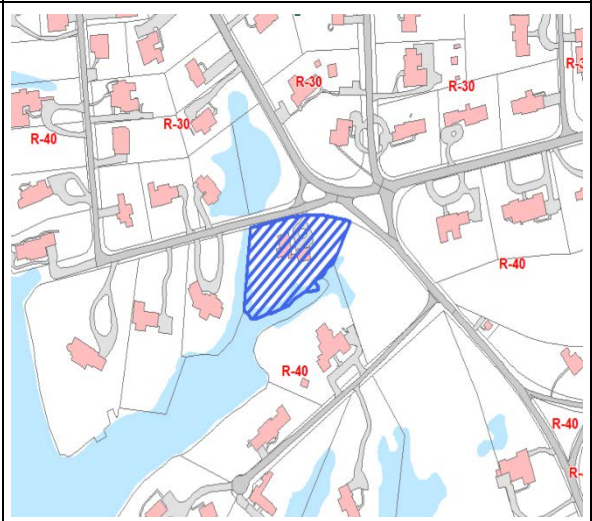


2. Robert & Joan Berndt
[Applicant & Property Owner]

805 Cavalier Drive
GPIN 2418-56-2080
Council District – Beach
Accela Record 2020-CBPA-00053

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, surround and cabana.

Staff Planner – PJ Scully
Staff Report – page 9



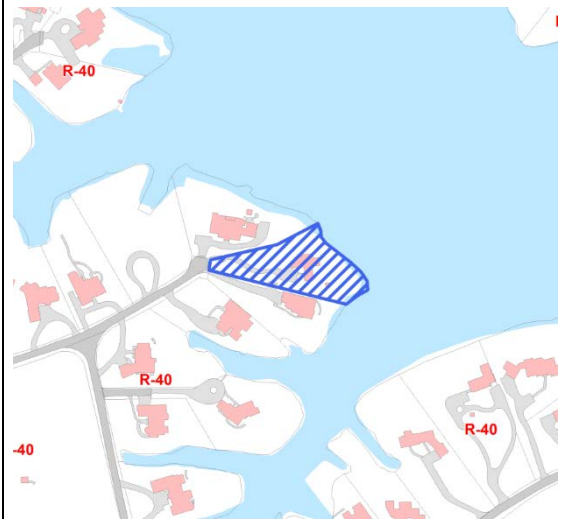
OLD BUSINESS AGENDA ITEMS

3. Mark & Kelsey Kinnane
[Applicant & Property Owner]

1200 Kamichi Court
GPIN 2418-42-9570
Council District – Lynnhaven
Accela Record 2020-CBPA-00056

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a detached garage elevated deck with associated walk, paver patio and driveway expansion.

Staff Planner – PJ Scully
Staff Report – page 25



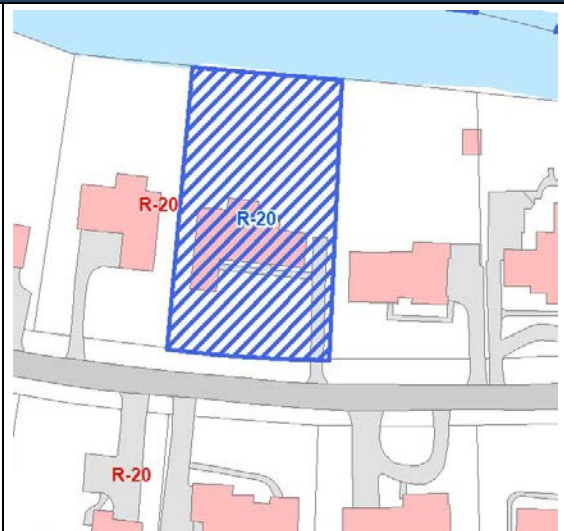
NEW BUSINESS AGENDA ITEMS

4. Andrew J Busk
[Applicant & Property Owner]

2216 Windward Shore Drive
GPIN 2409-19-5117
Council District – Lynnhaven
Accela Record 2020-CBPA-00061

Variance Request – Encroachment into the RPA to expand the existing driveway with new walk and construct a swimming pool with associated pool surround.

Staff Planner – PJ Scully
Staff Report – page 39



5. Hugo Living Trust
[Applicant & Property Owner]

649 Thalia Point Road
GPIN 1488-00-3331
Council District – Lynnhaven
Accela Record 2020-CBPA-00062

Variance Request – Encroachment into the RPA to construct a building addition, swimming pool with associated pool patio and retaining wall.

Staff Planner – PJ Scully
Staff Report – page 53



NEW BUSINESS AGENDA ITEMS

- 6. Anne Talbott Jordan & et al**
[Applicant & Property Owner]

Lot 164, North Linkhorn Park
1108 Bruton Ln
GPIN 2418-37-2305
Council District – Lynnhaven
Accela Record 2020-CBPA-00064

Variance Request – Encroachment into the RPA to construct a single-family residence with proposed deck and swimming pool.

Staff Planner – PJ Scully
Staff Report – page 67

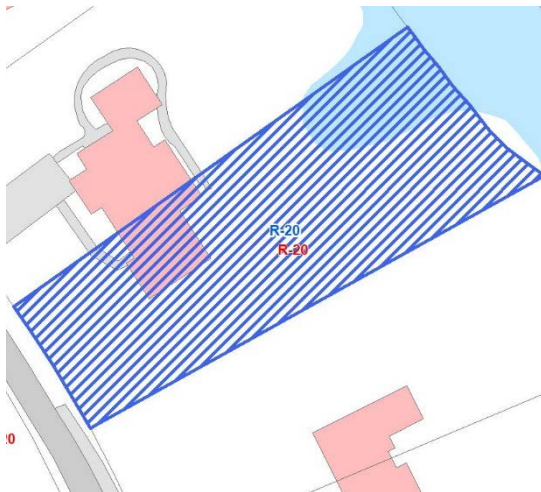


- 7. Anne Talbott Jordan & et al**
[Applicant & Property Owner]

Lot 165, North Linkhorn Park
1108 Bruton Ln
GPIN 2418-37-2268
Council District – Lynnhaven
Accela Record 2020-CBPA-00065

Variance Request – Encroachment into the RPA to construct a single-family residence with proposed deck.

Staff Planner – PJ Scully
Staff Report – page 79

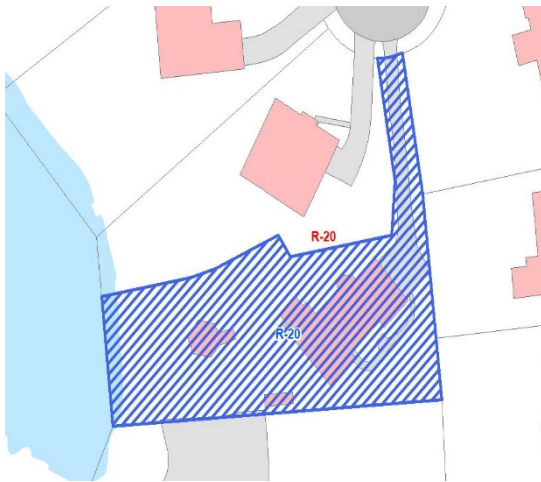


- 8. Michelle & David Gregory**
[Applicant & Property Owner]

2005 Inland Cove
GPIN 2408-49-1368
Council District – Lynnhaven
Accela Record 2020-CBPA-00066

Variance Request – Encroachment into the RPA to construct a gravel parking area.

Staff Planner – PJ Scully
Staff Report – page 91



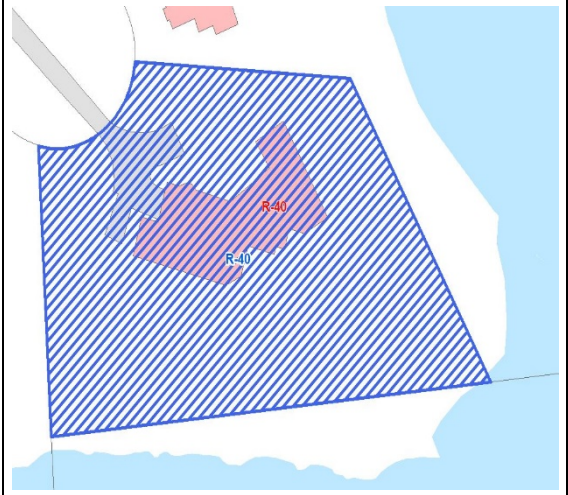
NEW BUSINESS AGENDA ITEMS

9. Scott & Suzie Moore
[Applicant & Property Owner]

1694 S Woodside Lane
GPIN 1499-33-4433
Council District – Lynnhaven
Accela Record 2020-CBPA-00067

Variance Request – Encroachment into the RPA to construct a swimming pool with patio area, guest house with patio area, and driveway expansion.

Staff Planner – PJ Scully
Staff Report – page 103





Applicant & Property Owner **Adam & Kristyn Beck**
Address **1624 Bay Breeze Drive**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda Item

1

**The applicant is requesting a deferral of this application to the February 1, 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 with associated retaining walls and backfill material.

Applicant's Agent

Sean Marsden, P.E.

Staff Planner

PJ Scully

Lot Recordation

Map Book 98 Page 38

Recorded 8/07/1973

Instr. No 20111121001196280

11/21/2011

GPIN

2409-23-9903

SITE AREA

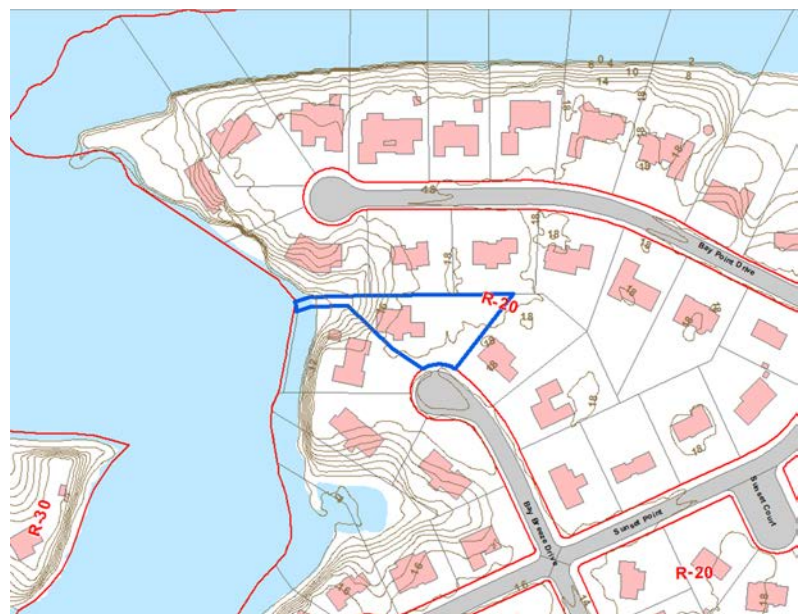
26,141.7 square feet or 0.6 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

25,306.7 square feet or 0.581 acres

EXISTING IMPERVIOUS COVER OF SITE

7,786.6 square feet or 30.76 percent of site



AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Robert & Joan Berndt**
 Address **805 Cavalier Drive**
 Public Hearing **January 4, 2021**
 City Council District **Beach**

Agenda Item

2

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 5, Page 151
 Recorded 11/29/1916

GPIN

2418-56-2080

SITE AREA

47,286 square feet or 1.09 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

38,851 square feet or 0.89 acres

EXISTING IMPERVIOUS COVER OF SITE

7,145 square feet or 18.4 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,468 square feet or 21.8 percent of site

Area of Redevelopment in RPA

413.5 square feet

Area of New Development in RPA

1,323 square feet

Location of Proposed Impervious Cover

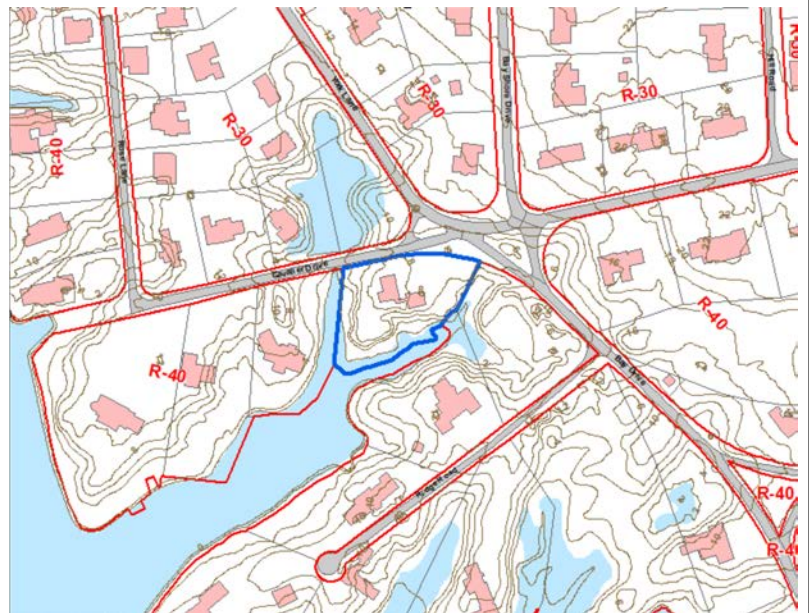
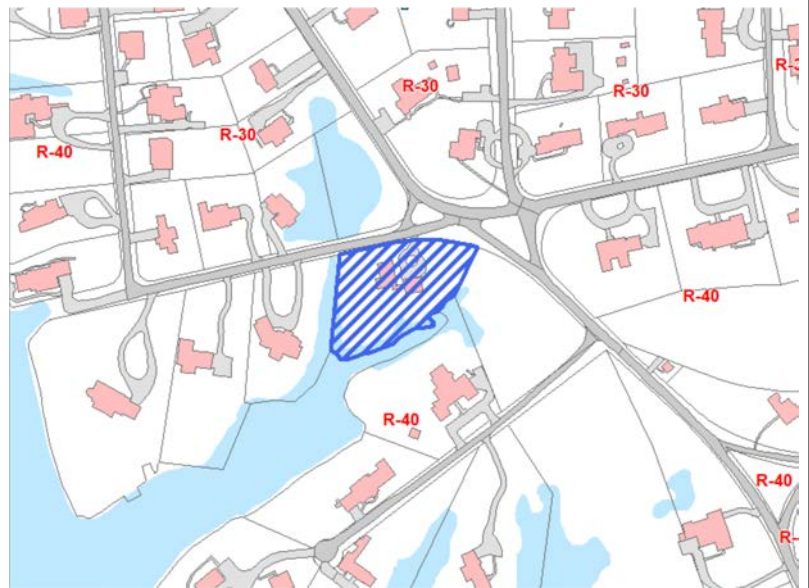
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Brick patio and stairs

Construction Details

- Swimming pool with stone pool surround
- Cabana
- Stacked retaining wall

CBPA Ordinance Variance History

This agenda item was deferred at the following Chesapeake Bay Preservation Area (CBPA) Board Public Hearings.

- December 7, 2020 CBPA Board Public Hearing to the January 4, 2021 CBPA Board Public Hearing

June 24, 2002 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of five additions to the existing residence, two additions to the existing detached garage and construction of a pool with associated decking with the following conditions:

1. *Triple erosion and sedimentation control measures shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover is established. Said measures shall employ two rows of silt fence and one row of straw bales.*
2. *A temporary chain link fence shall be installed along the seaward limits of the project. Said fence shall be installed adjacent to the erosion and sedimentation controls and shall remain in place during all phases of construction.*
3. *Buffer restoration shall be installed equal to one and one-half times the proposed impervious cover. Said restoration shall employ bayscape landscaping principles and shall be installed along the lower southern portion of the site and seaward of the pool. Said restoration shall be shown on a separate landscape / buffer restoration plan and shall be installed prior to the issuance of a certificate of occupancy.*
4. *All areas below the top-of-bank shall remain in a natural state and shall be so noted on the site plan.*
5. *Tree compensation shall be at a 3:1 ratio (30 trees). Bald cypress are recommended.*
6. *If and when the shoreline is hardened, a rip-rap revetment shall be installed in lieu of a vertical retaining structure (timber bulkhead).*
7. *All stormwater from new and existing impervious cover shall be conveyed to structural stormwater management facilities.*
8. *As offered by the applicant, payment into the Lynnhaven Oyster Heritage Program in the amount of \$ 742.00 shall be made prior to or concurrent with site plan approval. Said payment will provide for the equivalent of an approximately 12-inch-deep, 811 square foot oyster shell plant with the Lynnhaven River Basin. This payment is based on 100% of the new impervious cover on the site.*
9. *Pool decking shall be a maximum of 4' x 3' x 3' x 8' (diving board end). The pool shall be no larger than 14' x 34'.*

10. A revised site plan and buffer restoration plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit

Portions of the June 24, 2002 CBPA Board granted variance specific to the additions to the existing residence and detached garage have been constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone AE, Base Flood Elevation (BFE): 7 and 0.2% annual chance of flooding

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Majority of the shoreline is in a natural state with a portion located adjacent to the existing pier hardened by a rip rap revetment. Moderate maintenance should be performed within the cove portion of the lot, along the eastern property line, to remove debris distributed along the edge of marsh floated in on tide events.

Riparian Buffer

Moderate to heavily wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The applicant's agent stated in the Water Quality Impact Assessment (WQIA) that approximately 100 linear feet of shoreline will be managed with the removal of lower limbs from trees along the shoreline to allow for sunlight to the existing marsh fringe. In addition to the management of existing trees along the shoreline the applicant's agent has provided that the existing denuded shoreline shaded by canopy tree growth will be replanted with appropriate vegetation.

Stormwater Management Methodology

The applicant's agent stated in the WQIA for this variance request that infiltration and bioretention beds will be provided as best management practices for stormwater run-off mitigation.

Evaluation and Recommendation

Staff met with the applicant, applicant's agent and Landscape Architect to discuss the June 24, 2002 Chesapeake Bay Preservation Area (CBPA) Board variance for this lot. Staff's goal of the meeting was to ensure a project design that will be conscience of the existing topography, enhance the existing vegetative cover within the lot – specifically along the existing tidal shoreline east of the existing pier, and be able to minimize the amount of land disturbance given the desired location of the proposed improvements. As a result of on-going discussions, the location of the proposed improvements deviates from the 2002 CBPA Exhibit that was presented to the Board at said public hearing. It is Staff's understanding that the CBPA Exhibit provided on page 16 below was provided in the June 24, 2002 CBPA Staff report. A subsequent CBPA Exhibit, provided on page 17 below, was then presented to the CBPA Board at the June 2002 CBPA Board public hearing. An analysis of the encroachment request into the RPA buffer specific to the CBPA Exhibits dating back to June 2002 for the proposed impervious cover associated with the swimming pool area are as follows.

CBPA Board Exhibit

- June 2002 CBPA Exhibit provided in the CBPA Staff report
- June 2002 CBPA Exhibit presented to the CBPA Board
- Submitted December 2020 CBPA Exhibit
- Revised January 2021 CBPA Exhibit

Encroachment Request into RPA Buffer

- Approximately 1,212 square feet
- Approximately 1,787 square feet
- Approximately 1,978 square feet
- Approximately 1,767 square feet

Since the deferral request at the December 2020 CBPA Board public hearing, the applicant and their consulting team have provided the following revisions to the CBPA Exhibits represented in this Staff report.

- A 2-foot landward shift to the location of the proposed swimming pool.
- A reduction in the amount of proposed impervious cover of approximately 211 square feet. This amount of impervious cover has been provided through the reduction of the proposed pool patio area.

In addition, the applicant and their consulting team informed Staff that they have contacted adjacent property owners and the neighborhood civic league regarding the history of the CBPA variance requests associated with past owners of the lot as well as their desire to redevelopment the lot. To Staff's knowledge at the time of writing this report there is no known opposition.

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 as *"there are no special privileges taken for this project and we expect to be treated fairly, as with any project."* Staff offers that the proposed improvements associated with this variance request deviate from the June 2002 CBPA Variance present to the Board with the location of the proposed improvements; however, the reduction in the amount of land disturbance associated with the 2002 variance and mitigation measures provided by the applicant specific to this new request offer merit towards this variance not providing a special privilege to the applicant.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted more than 100 years prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"this project is very close to the house with minimal pool deck, including none on two sides. The previously approved plan was not environmentally sensitive."* Staff concurs and provides that the proposed pool deck has been further reduced as depicted on the CBPA Exhibit provided in this Staff report specific to this public hearing.
- 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 project is keeping filling, grading to a minimum and creating an outdoor space close to the house."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"the proposed will decrease the source of pollution. Currently the runoff goes right into the marsh, through lawn. We are creating a flat patio space and I plan on utilizing area drains which can be piped to a BMP, creating no runoff. Lawn will be converted to spartina as well."* Staff is of the opinion that the applicant's approach to ensure a no net increase of nonpoint source pollution is acceptable. These management techniques include situating the proposed improvements in an area currently devoted turf, managing the shoreline to promote

more sunlight for the fringe marsh area, removing debris from the tidal cove, and integrating the revegetation of the adjacent shoreline into the design plan with the introduction of Spartina plant species.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 2,646 square feet.

All the required restoration shall be located in the 100-foot Resource Protection Area buffer integrating the redevelopment of the shoreline and transitioning into the uplands located along the eastern portion of the property to the greatest extent practicable. Said restoration shall achieve the full complement of vegetation consisting of understory trees, shrubs, grasses and groundcovers suitable for the existing grade elevations and environmental conditions to the greatest extent practicable suitable wetland community based on elevation (i.e. high marsh, transition, shrub, upland, etc.).

Buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 30 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) The conditions of the June 2002 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.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) A double row of 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.

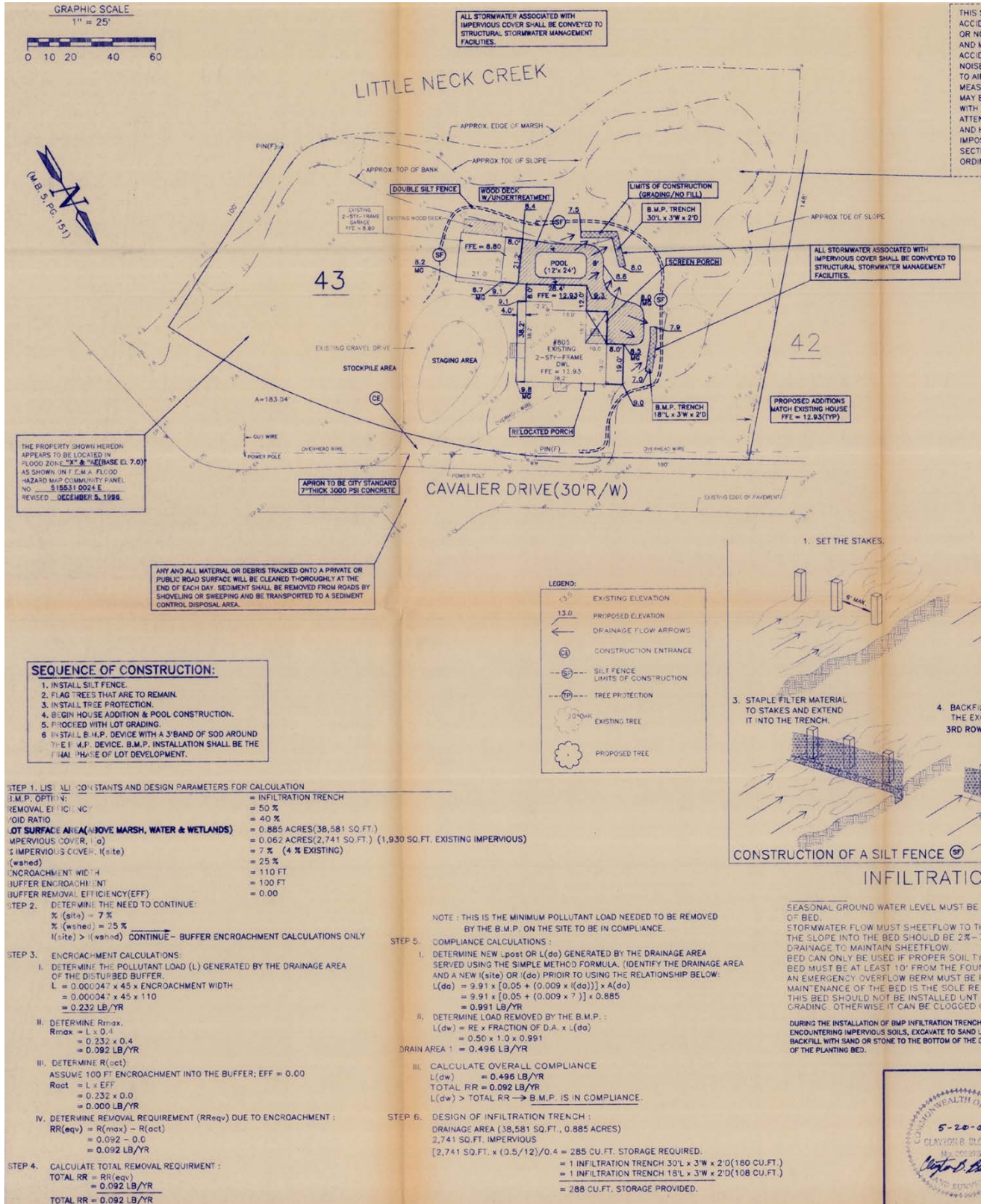
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$303.18 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) This variance and associated conditions **are in addition to** the conditions of the Board variance granted June 24, 2002 except for condition 6 and condition 9 of said variance.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated December 16, 2020 – Site Plan Concept B, prepared by Siska Aurand Landscape Architects. 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.

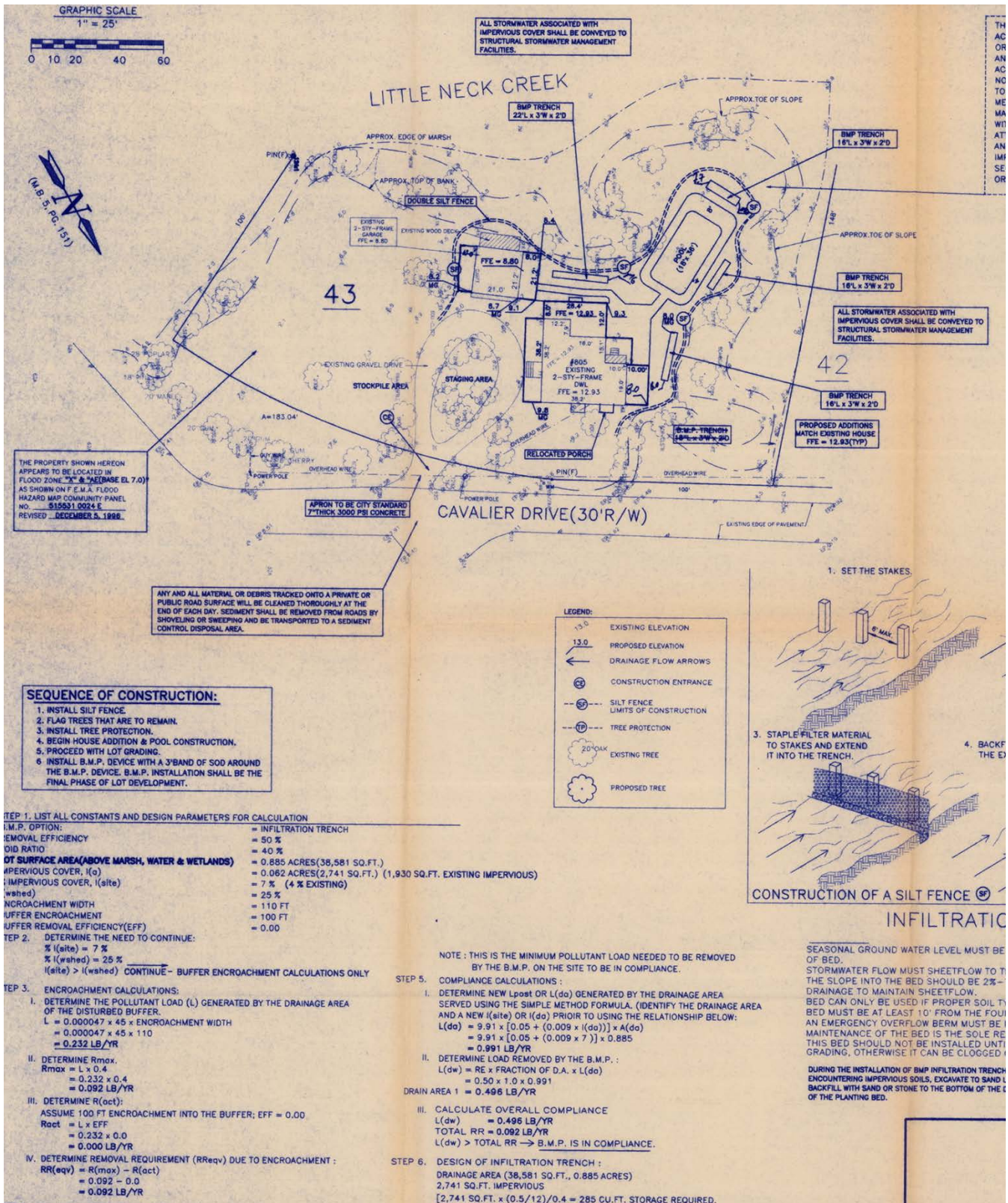
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*******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.

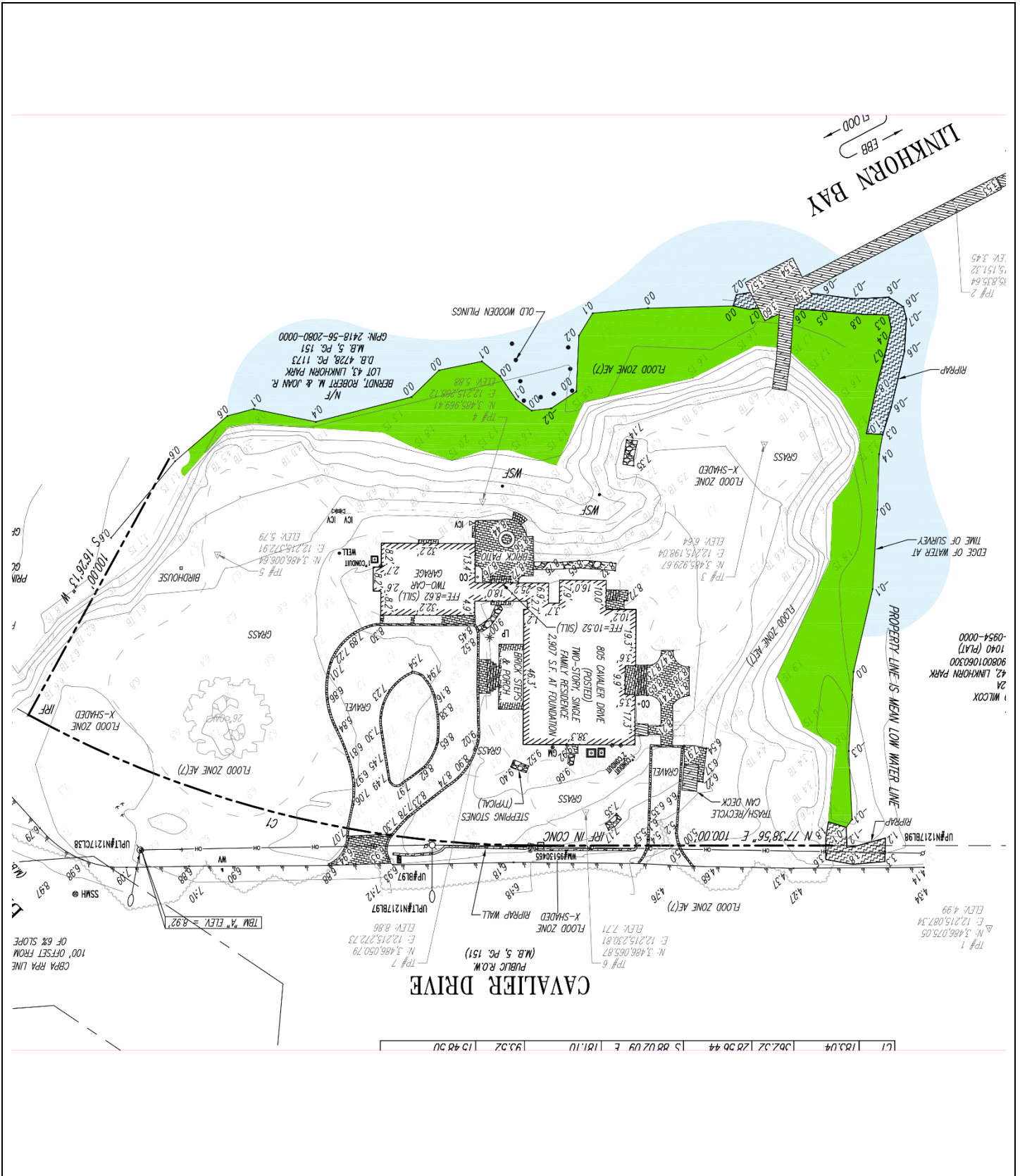
Site Aerial



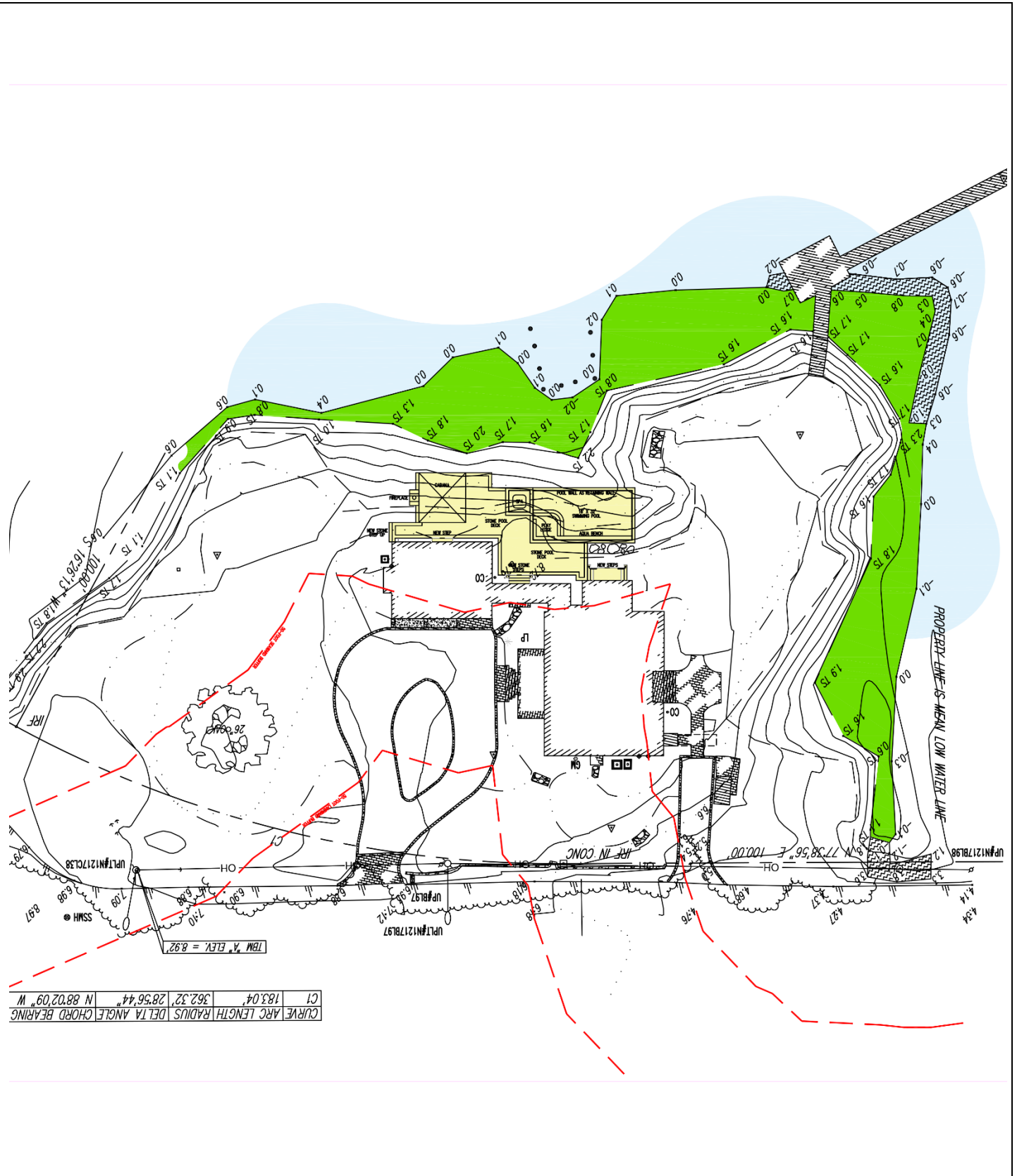




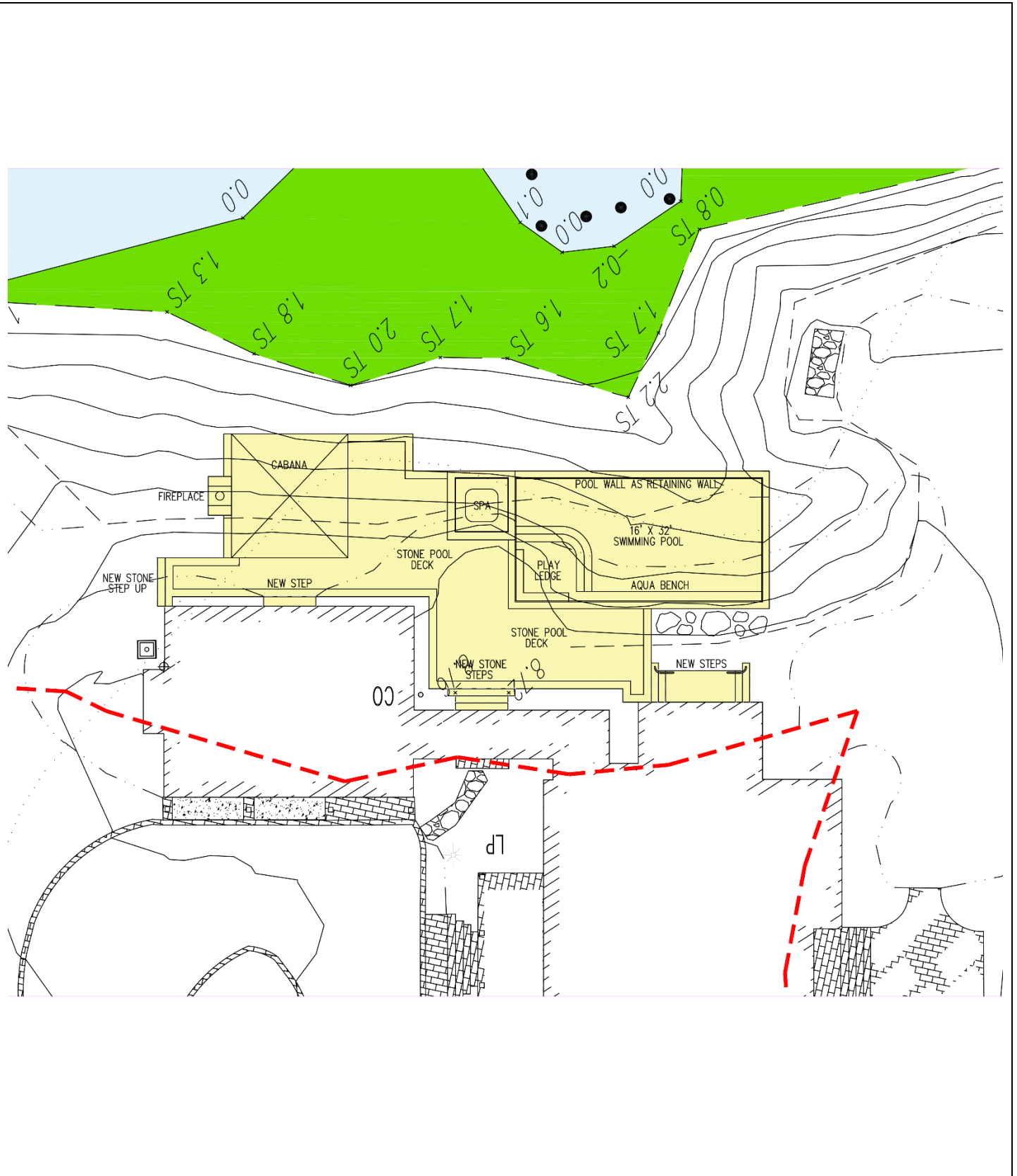
CBPA Exhibit – Existing Conditions



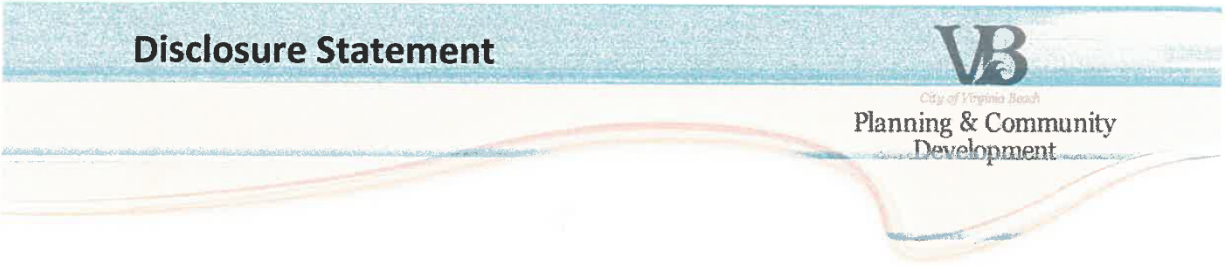
CBPA Exhibit – Proposed Improvements



CBPA Exhibit - Proposed Improvements, Enlarged View



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 Robert Berndt

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.

Wells Fargo

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.

Siska Aurand Landscape Architects, Inc.

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.

Project will probably be put to bid, not known at this time.

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.

Beth Anne Campbell of MAS Surveying

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.**

Robert M. Berndt

Applicant Signature

Robert M. Berndt owner

Print Name and Title

10/19/20

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 **Mark & Kelsey Kinnane**
 Address **1200 Kamichi Court**
 Public Hearing **January 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a detached garage elevated deck with associated walk, paver patio and driveway expansion.

Applicant's Agent

Brad Martin

Staff Planner

PJ Scully

Lot Recordation

Map Book 7 Page 192

Recorded 7/30/1926

GPIN

2418-42-9570

SITE AREA

38,693 square feet or 0.888 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

28,724 square feet or 0.659 acres

EXISTING IMPERVIOUS COVER OF SITE

6,678 square feet or 23.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,885 square feet or 30.9 percent of site

Area of Redevelopment in RPA

3,636 square feet

Area of New Development in RPA

2,207 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 gravel driveway
- Brick paver patio

Construction Details

- Detached garage and concrete parking space
 - *Detached garage will require a Board of Zoning Appeals (BZA) Variance*
- Asphalt driveway
- Paver patio
- Elevated deck with associated steps and walkway

CBPA Ordinance Variance History

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

This agenda item was deferred at the following Chesapeake Bay Preservation Area (CBPA) Board Public Hearing.

- December 7, 2020 CBPA Board Public Hearing to the January 4, 2021 CBPA Board Public Hearing

Environmental Conditions

Flood Zone

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

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

Shoreline

Shoreline is hardened with a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the request to remove 3 trees from the lot is reasonable, as the 2 trees located at the rear of the residence and adjacent to the top of bank are exhibiting signs of dieback and decline.

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 buffer restoration will be provided as best management practices for stormwater run-off mitigation.

Evaluation and Recommendation

Staff's write-up from the December 7, 2020 CBPA Board public hearing.

"Of the 28,724 square feet of the lot above water and wetlands, approximately 24,280 square feet or 85 percent of the lot is located within the 100-foot Resource Protection Area (RPA) buffer. Approximately 11,200 square feet of the land area within the 100-foot RPA is located below the top of bank. Given to narrow triangular shape of the lot, and the topographic relief of approximately 6 to 8 feet present within the 50-foot seaward buffer due to the pronounced top of bank feature, Staff is of the opinion that redeveloping the lot is challenged by these existing conditions. Further challenging the redevelopment of this lot is the year the lot was platted, 1926, and the year the residence was constructed, 1967. These dates are well before the adoption of the Chesapeake Bay Preservation Area Ordinance of 1991.

Specific to the proposed improvements situated within the 50-foot seaward buffer and adjacent to the top of bank feature present on this lot, Staff has the following concerns with the application of the proposed improvements.

- The elevated deck off the northwest side of the existing residence. The proposed improvements encroach over the top of bank feature in an area that is currently stabilized with turf. Staff's concern with the placement of the proposed improvements in this area pertains to the long-term stability and maintenance of the slope underneath the deck. The potential for future erosion is high at this location.*
- The steps and walkway from the elevated deck to the existing driveway area. Staff's concern with the placement of the proposed improvements in this area pertains to the use of materials and the necessity of a retaining wall or placement of fill material to stabilize the proposed walkway within the top of bank feature. Additional details on how the construction methodology is required to ascertain short-term and long-term impacts.*
- The redeveloped and expansion of the paver patio area off the rear of the residence. The proposed improvements redevelop the existing patio area of approximately 490 square feet and result in an expansion of approximately 1,000 square feet. This increase in patio area encroaches approximately 224 square feet into the 50-foot seaward buffer exclusive of the walkway to the rear door of the residence. Staff acknowledges that this area of the lot is relatively flat and stabilized with turf; however, Staff is of the opinion that the increase in impervious cover exceeds the average room size or outdoor gathering area for a residential application and questions if the expansion meets the minimum necessary to afford relief standard."*

Since the December CBPA Board public hearing, the following revisions have been made to the submitted CBPA Exhibit:

- An overall reduction in the amount of encroachment within the RPA feature for new impervious cover from 2,762 square feet to 2,207 square feet. The 555 square foot reduction in the amount of encroachment within the RPA feature occurs within two areas of the lot. The first area is located along the eastern side of the existing residence specific to the expansion of the existing paver patio area. The reduction in the size of the proposed paver patio is approximately 177 square feet and limits encroachment into the 50-foot seaward buffer to the proposed walkway to the rear steps of the existing residence. The second area is located along the southern side of the proposed garage. Reductions have been provided to the overall size of the proposed garage and the proposed driveway expansion has been eliminated specific to this area of the lot.

Staff provided the following conditions specific to the CBPA Exhibit presented in the December 2020 CBPA Board Staff report.

- *"The overall impervious cover of the lot shall not exceed 8,790 square feet or 30 percent of the lot above water and wetlands."* Staff is of the opinion that the revised CBPA Exhibit addresses this concern.

- *“Exclusive of a 4-foot-wide walkway to the existing rear door of the residence, the proposed redevelopment and expansion of the existing patio area shall not encroach into the 50-foot seaward buffer.”* Staff is of the opinion that the revised CBPA Exhibit addresses this concern.

For the Board’s deliberation, the applicant’s Engineer of Record has provided the following comments relative to the findings of the CBPA Ordinance specific to this variance request.”

- 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 existing home and improvements already exist on the property; the new owners want to enhance the livability of the project within reasonable limits and at a reasonable 32.9 percent impervious cover.”* The applicant’s agent has acknowledged Staff’s concern with the overall impervious cover of the lot and has provided a reduction in overall impervious cover of approximately 555 square feet. This reduction results in the overall impervious cover of the lot being 8,885 square feet or 30.9 percent of the lot outside of water and wetlands.
- 2) This variance request is not based upon conditions or circumstances that are or have been created by the applicant or predecessor in title because *“the house was built in the 1960’s, prior to the enactment of the CBPA Ordinance, and the CBPA buffer encompasses the entire parcel.”* Staff concurs that the existing residence was constructed prior to the adoption of the CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because *“it is a modest request for a deck, patio enlargement, detached garage, and expanded driveway (to allow turning) in the natural places for these improvements.”* The applicant’s agent has acknowledged Staff’s concern with the overall impervious cover of the lot and has provided a reduction in overall impervious cover of approximately 555 square feet. This reduction results in the overall impervious cover of the lot being 8,885 square feet or 30.9 percent of the lot outside of water and wetlands.
- 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 entire property will be designed to achieve stormwater management and the proposed stormwater mitigation of the existing runoff will improve water quality.”* Staff is of the opinion that stormwater management of upland impervious cover is beneficial to water quality and would strongly recommend that the property owner address the existing condition of the failing bulkheaded shoreline to further provide a means for improvement of water quality.
- 5) *“The BMP’s will treat stormwater runoff before it enters Little Neck Creek”* as a means to manage towards a net increase in nonpoint source pollution load. Staff reiterates the statement above that stormwater management of upland impervious cover is beneficial to water quality and strongly recommends that the property owner address the existing condition of the failing bulkheaded shoreline to further provide a means for improvement of water quality.

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

Recommended Conditions

- 1) 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 elevated deck and associated steps and walkway shall be constructed of an open pile system with minimal excavation for the pile support. Said system shall be used for all portions of the improvements located within the 50-foot seaward buffer.
- 3) Under deck treatment of gravel shall be installed. Said treatment shall be installed under the elevated deck and associated stairs and walkway.
- 4) The layout of the driveway and all vegetation, inclusive of understory trees and shrubs shall be staked and flagged in the field and reviewed with Staff during the preconstruction meeting.
- 5) 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.
- 6) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,207 square feet x 200 percent = 4,408 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, 22 large shrubs, and 33 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.

- 7) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 9) 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.
- 10) 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.**
- 11) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed continuous along the toe of slope adjacent to northwest side of the residence and transition to the top of bank adjacent to the east side of the residence for those portions of the project prior to any land disturbance and shall remain in

place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements. Construction limits shall lie within all areas of the silt fence.

- 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) 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.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$505.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated December 15, 2020, prepared by Clark Design Group, signed December 15, 2020 by Brad Martin. 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 the provided layout of proposed improvements or said conditions during site plan review may require resubmittal to the CBPA Board consideration.

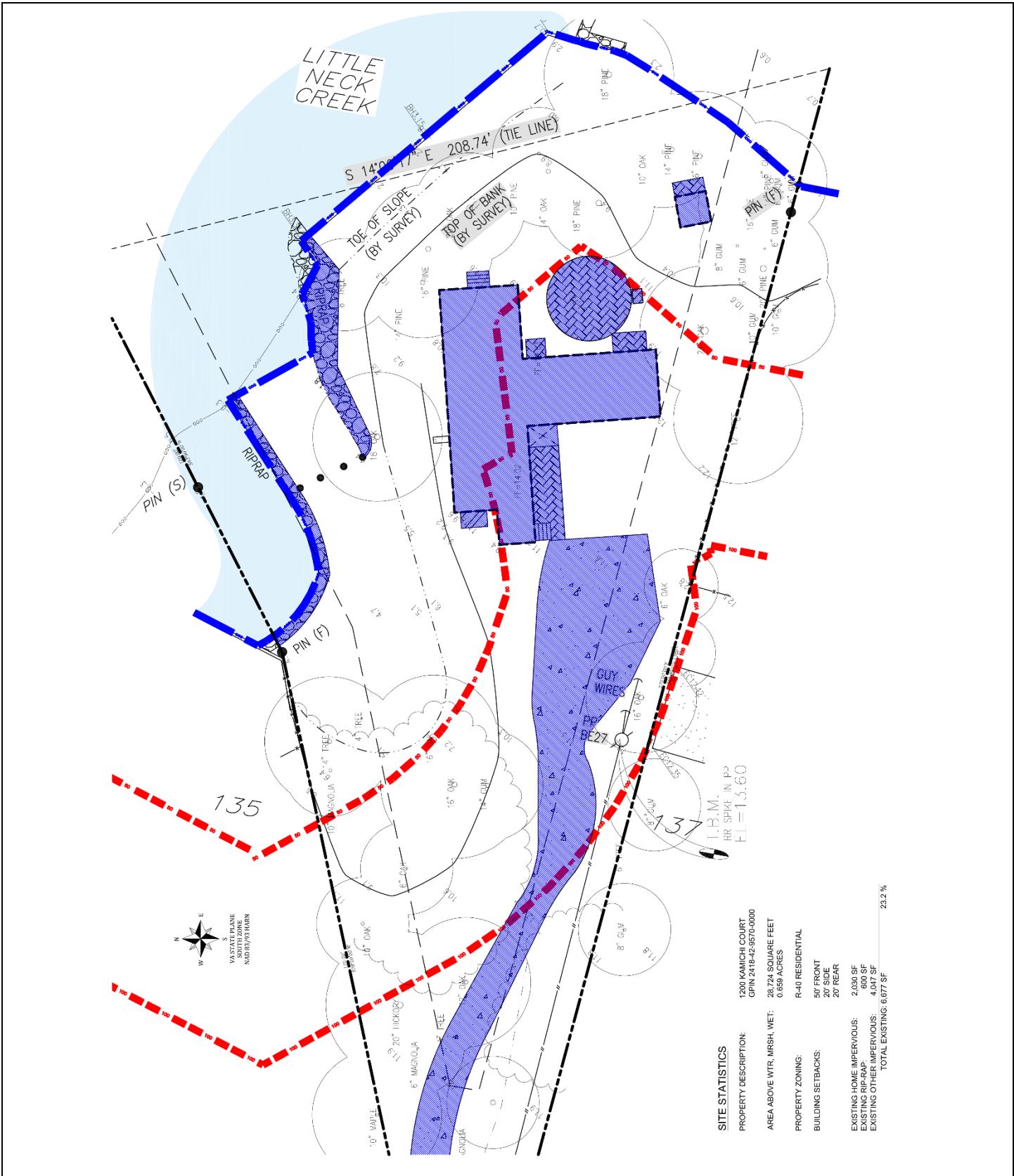
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

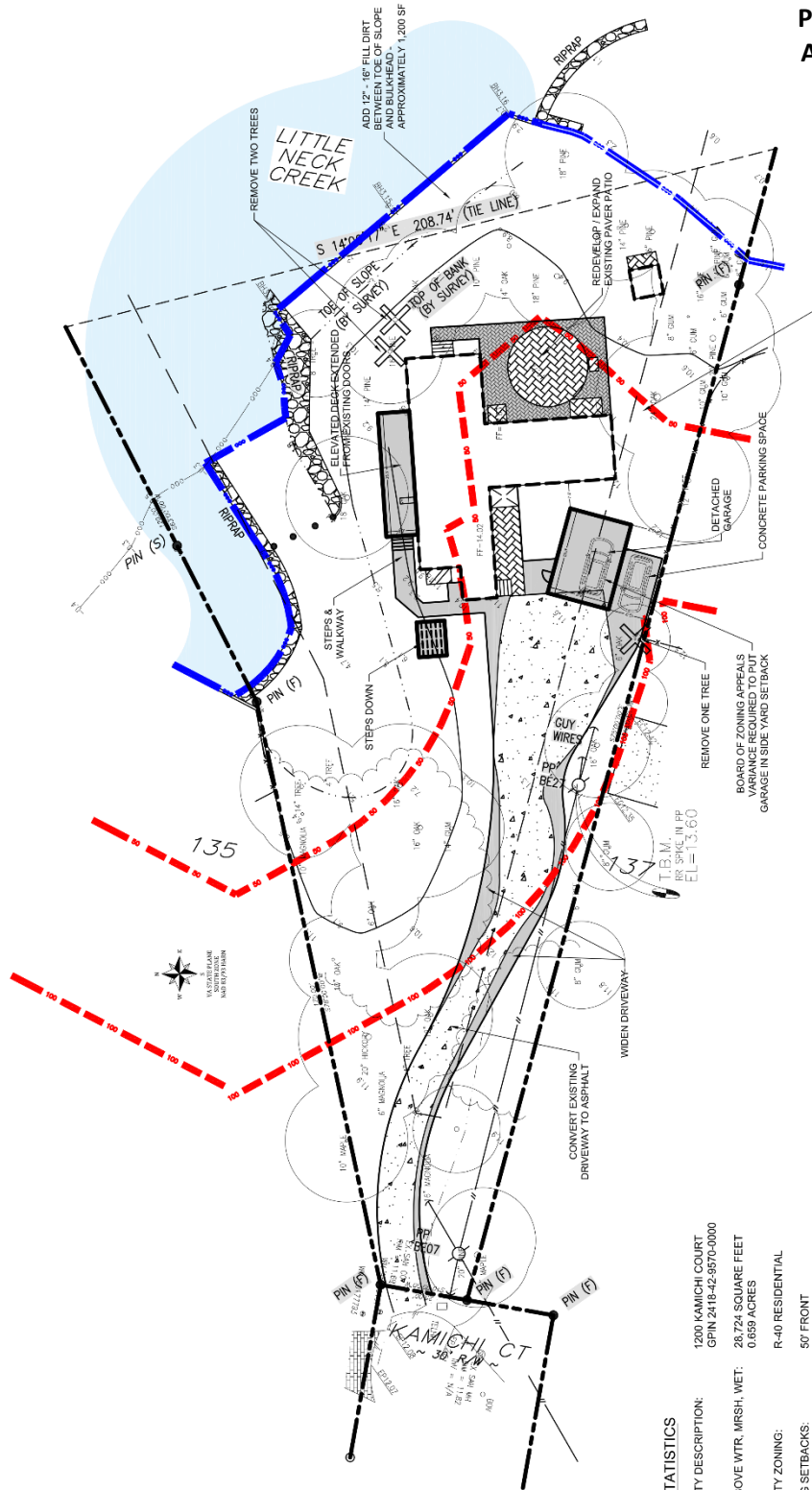
Site Aerial



CBPA Exhibit – Existing Conditions



PROPOSED IMPROVEMENTS ARE HIGHLIGHTED IN GRAY



SITE STATISTICS

PROPERTY DESCRIPTION: 1200 KAMICHI COURT
G/PIN 2418-42-8670-0000

AREA ABOVE WTR. MRSH. WET: 28,724 SQUARE FEET
0.659 ACRES

PROPERTY ZONING: R-40 RESIDENTIAL

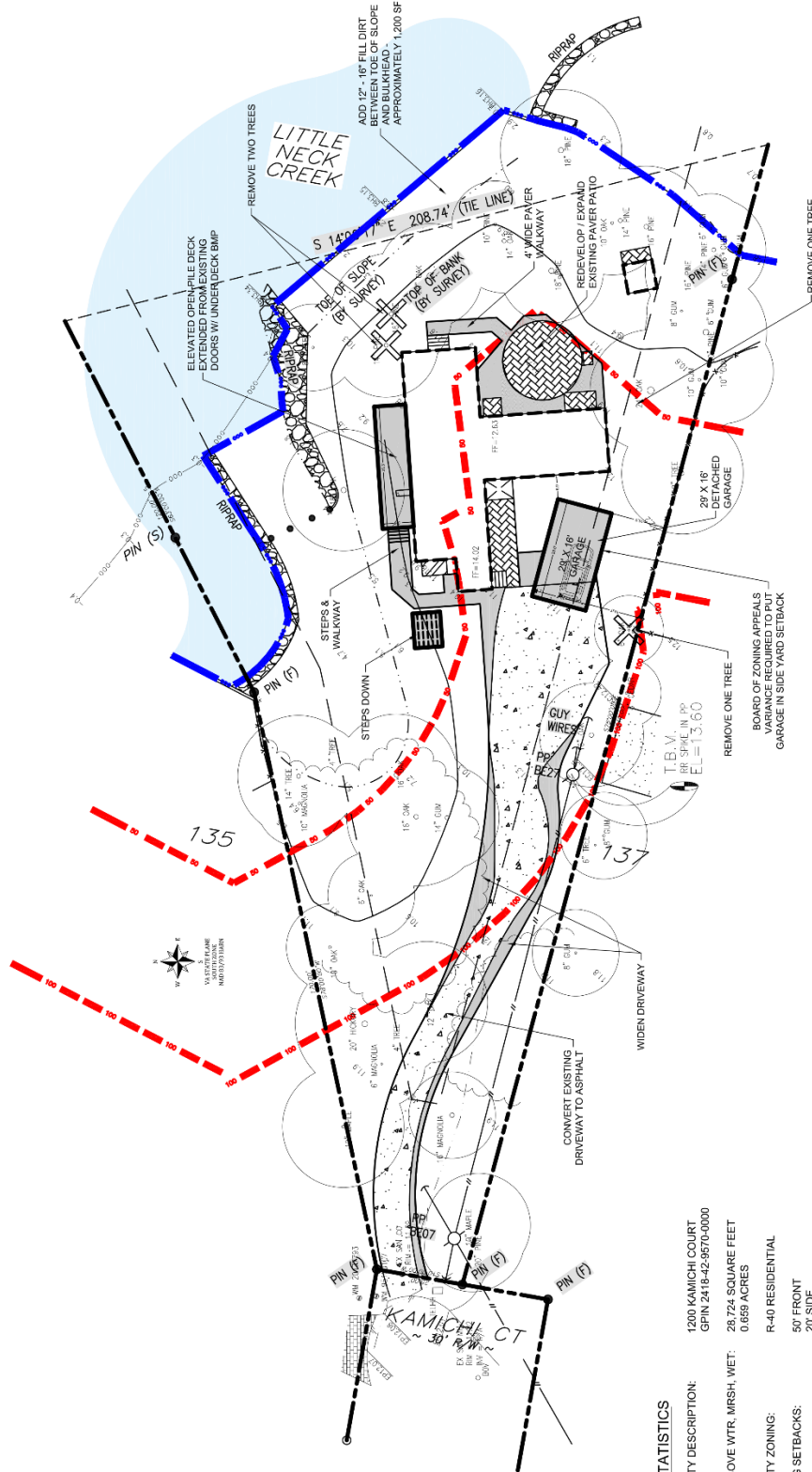
BUILDING SETBACKS: 50' FRONT
20' SIDE
20' REAR

EXISTING HOME IMPERVIOUS: 2,030 SF
EXISTING RIP-RAP: 600 SF
EXISTING OTHER IMPERVIOUS: 4,048 SF
TOTAL EXISTING: 6,678 SF 23.2%

SITE STATISTICS - TOTAL PROPERTY

EXISTING IMPERVIOUS: 6,678 SF
DEMOLITION: 3,638 SF
REDEVELOPMENT: 3,638 SF
PROPOSED IMPROVEMENTS: 2,762 SF
TOTAL PROPOSED: 9,440 SF 32.9%

Revised CBPA Exhibit – Proposed Improvements



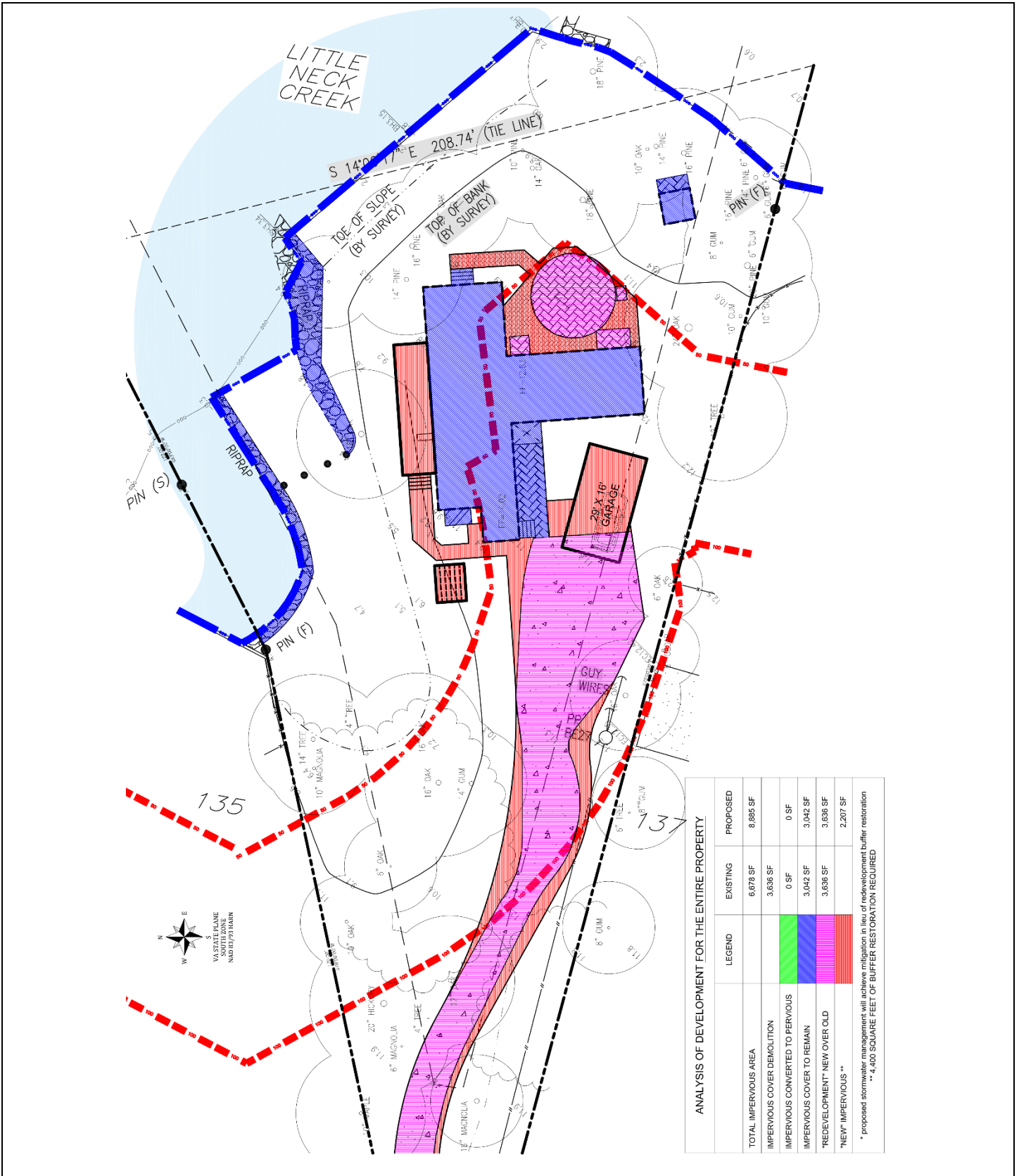
SITE STATISTICS

PROPERTY DESCRIPTION:	1200 KAMICHI COURT GPN 2418-42-8570-0000
AREA ABOVE WTR. MRSH. WET:	28,724 SQUARE FEET 0.659 ACRES
PROPERTY ZONING:	R-40 RESIDENTIAL
BUILDING SETBACKS:	50' FRONT 20' SIDE 20' REAR
EXISTING HOME IMPERVIOUS:	2,030 SF
EXISTING RIP-RAP:	600 SF
EXISTING OTHER IMPERVIOUS:	4,048 SF
TOTAL EXISTING:	6,678 SF
	23.2 %

SITE STATISTICS - TOTAL PROPERTY

EXISTING IMPERVIOUS:	6,678 SF
DEMOLITION:	3,638 SF
REDEVELOPMENT:	3,638 SF
PROPOSED IMPROVEMENTS:	2,207 SF
TOTAL PROPOSED:	8,885 SF
	30.9 %

CBPA Exhibit – Color Analysis



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 KELSEY & MARK KINNANE

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

BILLY GARRINGTON, GPC / BRAD MARTIN, P. E., CLARK DESIGN GROUP

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

ATLANTIC BAY MORTGAGE

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

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

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

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

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

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

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

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

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the company and individual providing the service.
CLARK BUILDING GROUP, INC.
7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the firm and individual providing the service.
BRAD MARTIN, P. E., CLARK DESIGN GROUP / BILLY GARRINGTON, GPC
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.**

Kelsey Kinnane
 Applicant Signature
KELSEY KINNANE

Print Name and Title
 DECEMBER 15, 2020

- 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

Variance Request

Encroachment into the RPA to expand the existing driveway with new walk and construct a swimming pool with associated pool surround.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 45, Page 37

Recorded 9/3/1958

GPIN

2409-19-5117

SITE AREA

26,893 square feet or 0.617 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

26,126 square feet or 0.6 acres

EXISTING IMPERVIOUS COVER OF SITE

5,771 square feet or 21.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,746 square feet or 32.5 percent of site

Area of Redevelopment in RPA

309 square feet

Area of New Development in RPA

2,975 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

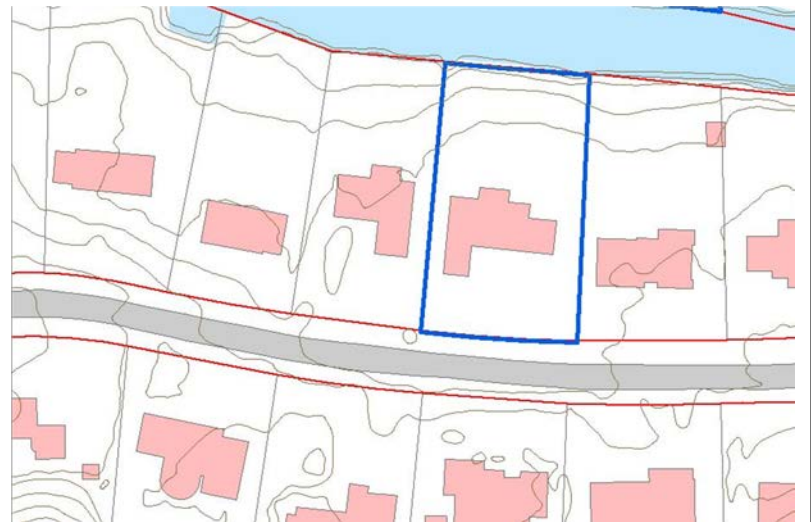
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Walkways – front and rear
- Concrete patio area

Construction Details

- Covered patio area
- Swimming pool with paver surround
- Front sidewalk
- Driveway expansion

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened with a rip rap revetment

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that infiltration beds will be provided as a best management practice for stormwater run-off mitigation. The underlying soil, Fripp soil series is excessively well drained fine sand to a depth of approximately 60 inches. The permeability of this soil is very rapid.

Evaluation and Recommendation

The applicant is proposing to construct a 928 square foot swimming pool with an approximately 2,155 square foot paver pool deck. Inclusive of the proposed pool deck, approximately 345 square feet is allocated to the redevelopment of the existing concrete patio located at the northeast rear corner of the existing residence.

The applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements, coupled with restoration initiatives of stormwater management and riparian buffer mitigation will aid with the redevelopment of this lot from not being of substantial detriment to water quality.

- 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 request to be heard in January is identical to numerous of other variances that have been granted in Long Creek vicinity in recent years and will not confer any special privilege on the applicant. The subdivision predates the Bay Act by decades and the house was built many years to the adoption of the Act."* While Staff acknowledges the statement provided by the applicant's agent, Staff offers that *"other variances that have been granted in the Long Creek vicinity"* typically deal with the entire redevelopment of the associated lot. In some instances, while the footprint of proposed single-family residences has increased the requests often maintain accessory structures with a realm of reasonable accommodations to provide for the use.
- 2) The applicant offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather *"the entire back portion of this property is impacted by the RPA buffer since the Act was adopted. Avoidance of the buffer is not possible for any type of development in the back yard. We have tried to make sure we avoid the seaward buffer and limited the new development to a size that historically gets approved by the Board."* Staff concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we are close to the 30% threshold the board usually likes to see. With some minor reductions we can get closer to that number on site."* Staff acknowledges the statement provided by the applicant's agent, however is of the opinion that the proposed pool deck proposed at approximately 2,155 square feet exceeds the minimum necessary to afford relief at a rate of more than 2 times the size of the proposed swimming pool. As such, Staff has provided recommended condition 2 below.
- 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 of the ordinance is "water quality". This lot currently has ZERO storm water treatment on-site and never has since it was built, as a result of this variance request treatment on-site will occur, turf zones will be reduced, buffer restoration will be installed to create trophic layers and off-site mitigation will also occur ALL to help improve water quality in a subdivision that pre-dates the storm water ordinance so all the water in the streets direct flows into creek."* Staff concurs.
- 5) The applicant provides, as a means to manage towards a no net increase in nonpoint source pollution load *"the first item to protect non-point source pollution is the E & S measures. First thing to be installed, last thing to be removed. Also stockpile on existing hard surfaces and single point accessway all are most important. Revegetating denuded areas as soon as possible will also help in reducing any runoff during construction, installing all required buffer restoration and infiltration measures will reduce runoff significantly."* Staff concurs.

Regarding the comments provided by the applicant's agent, Staff provides the following two points of analysis for this variance application specific to the proposed new impervious cover and other variance requests granted to adjacent lots for the Board's consideration.

- Staff conducted a square foot analysis for the size of the proposed swimming pool to a minimal pool surround (a continuous 4-foot surround with 8 feet at the diving end). For the 925 square foot swimming pool proposed, a minimal pool surround would be approximately 720 square feet. The applicant has proposed a 2,155 square foot pool surround to accommodate for additional outdoor recreational amenities such as an area for a grill and tables, fire pit, and separate area for lounge chairs. Staff is of the opinion that the proposed improvements are not the minimum necessary to afford relief. Specifically, it is recommended and that the pool surround specific to the west, north and east sides of the proposed swimming pool be reduced given the dimensions of the pool surround area along the south side of the proposed swimming pool.
- All the lots along Windward Shore Drive are located within the 100-foot RPA, typically bisecting the lot with the average width of the peninsula at approximately 400 linear feet. Of the 26,126 square feet of the subject lot above water or wetlands, approximately 11,280 square feet, the entire rear portion of the lot, is located within the 100-foot RPA buffer. Staff performed a conceptual analysis based on CBPA Variances for adjacent lots to examine existing impervious cover within the vicinity for comparison. It was determined that the average impervious cover for lots in the vicinity range from approximately 30.4 percent to 37.5 percent.

Although the proposed impervious cover falls within the range of impervious cover for the neighborhood as stated above, Staff remains of the opinion that the proposed pool surround is not the minimum necessary to afford based off the minimal pool surround analysis. The following 15 reasonable and appropriate conditions are recommended below for the Board’s deliberation, including condition 2 that addresses Staff’s concerns.

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) Exclusive of the covered patio area, the maximum impervious cover of the swimming pool paver surround shall not exceed 1,471 square feet whereas the west, north and east sides of the swimming pool surround shall be reduced in width resulting in the overall impervious cover of the site outside of water and wetlands not to exceed 8,242 square feet of the site outside of water and wetlands.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,471 square feet x 200 percent = 4,942 square feet.**

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

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the

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

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) ** 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 \$566.27 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, LLC, signed November 6, 2020 by Michael S. Gaddy. 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.

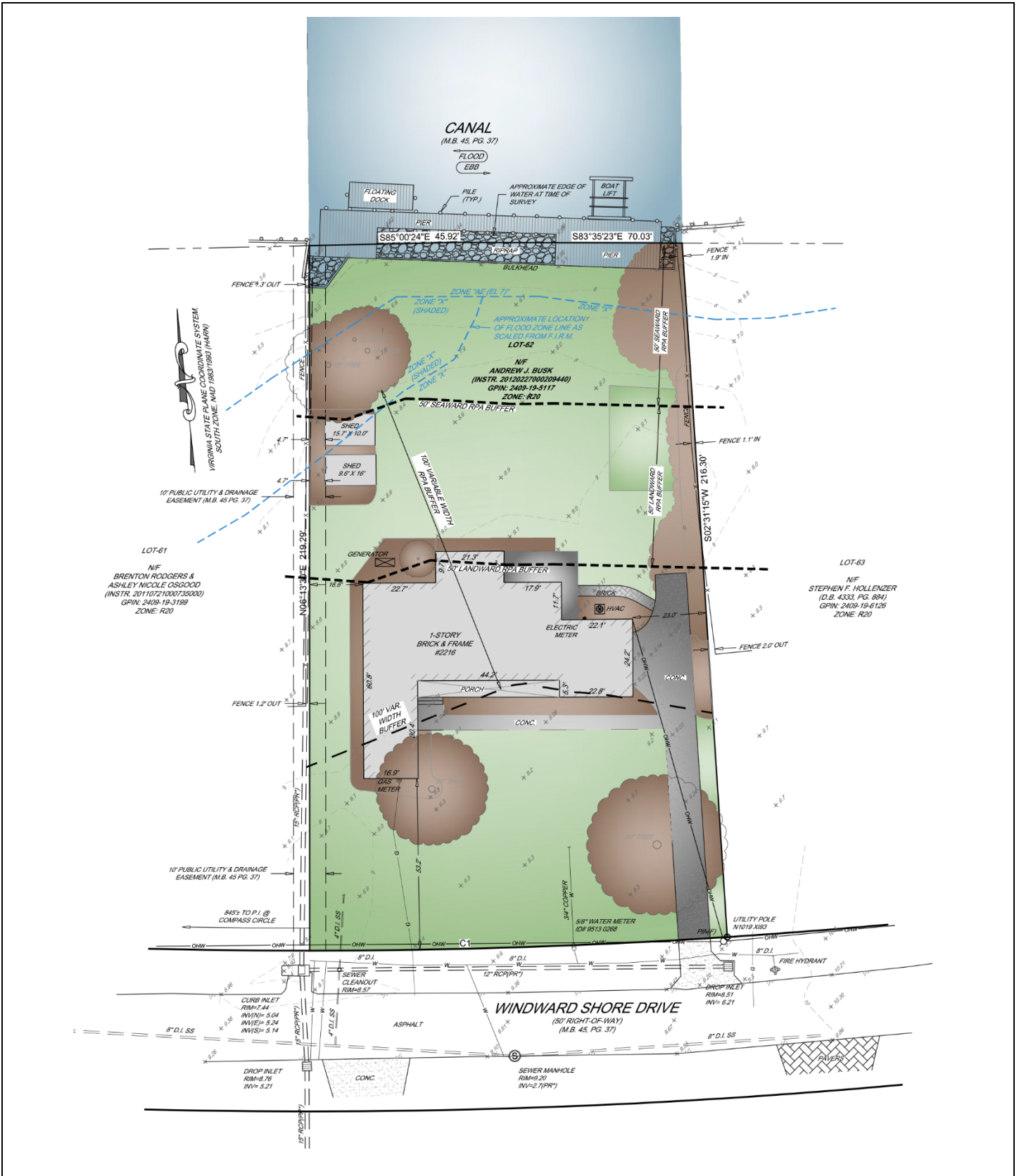
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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

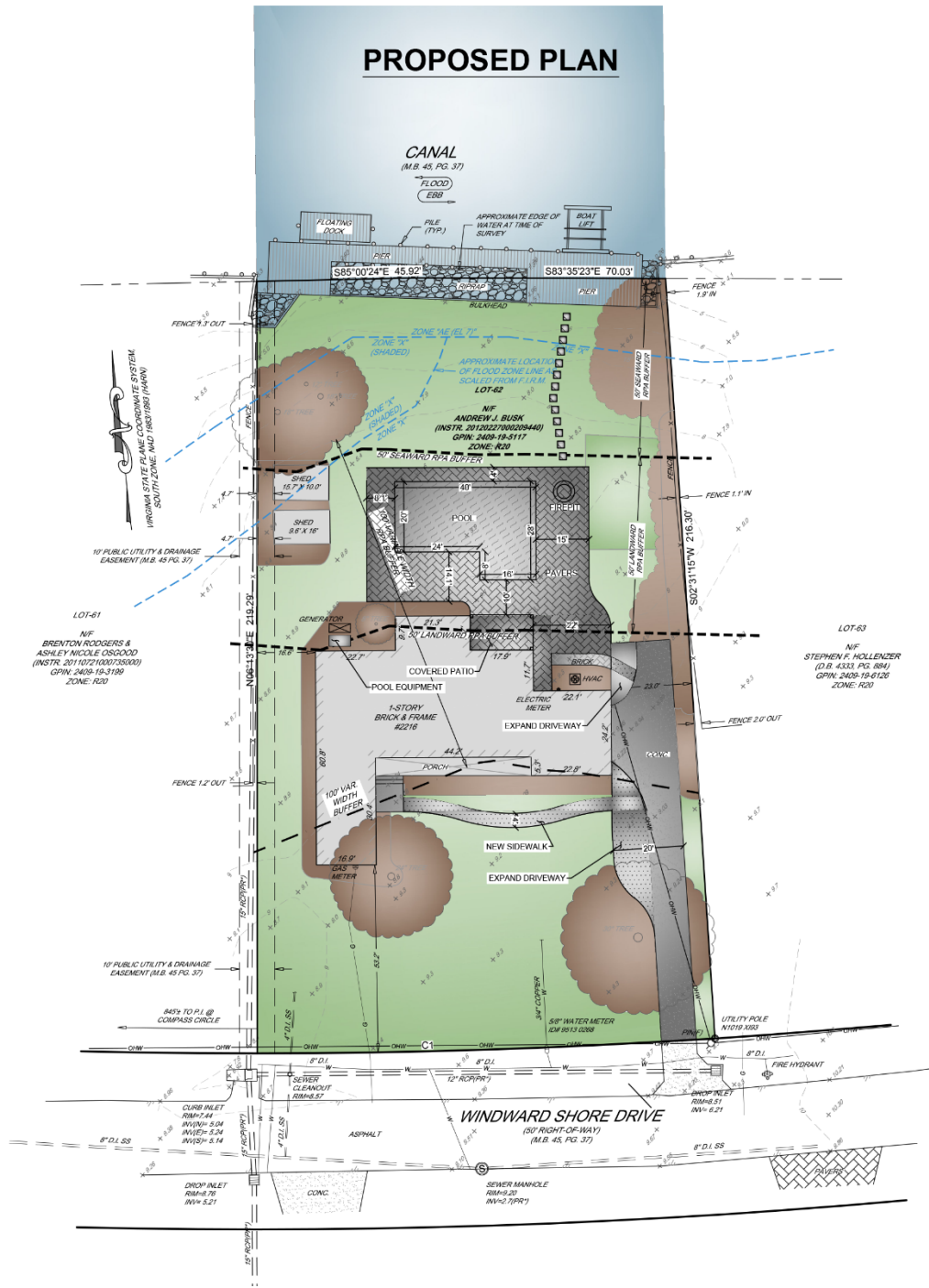


CBPA Exhibit – Existing Conditions

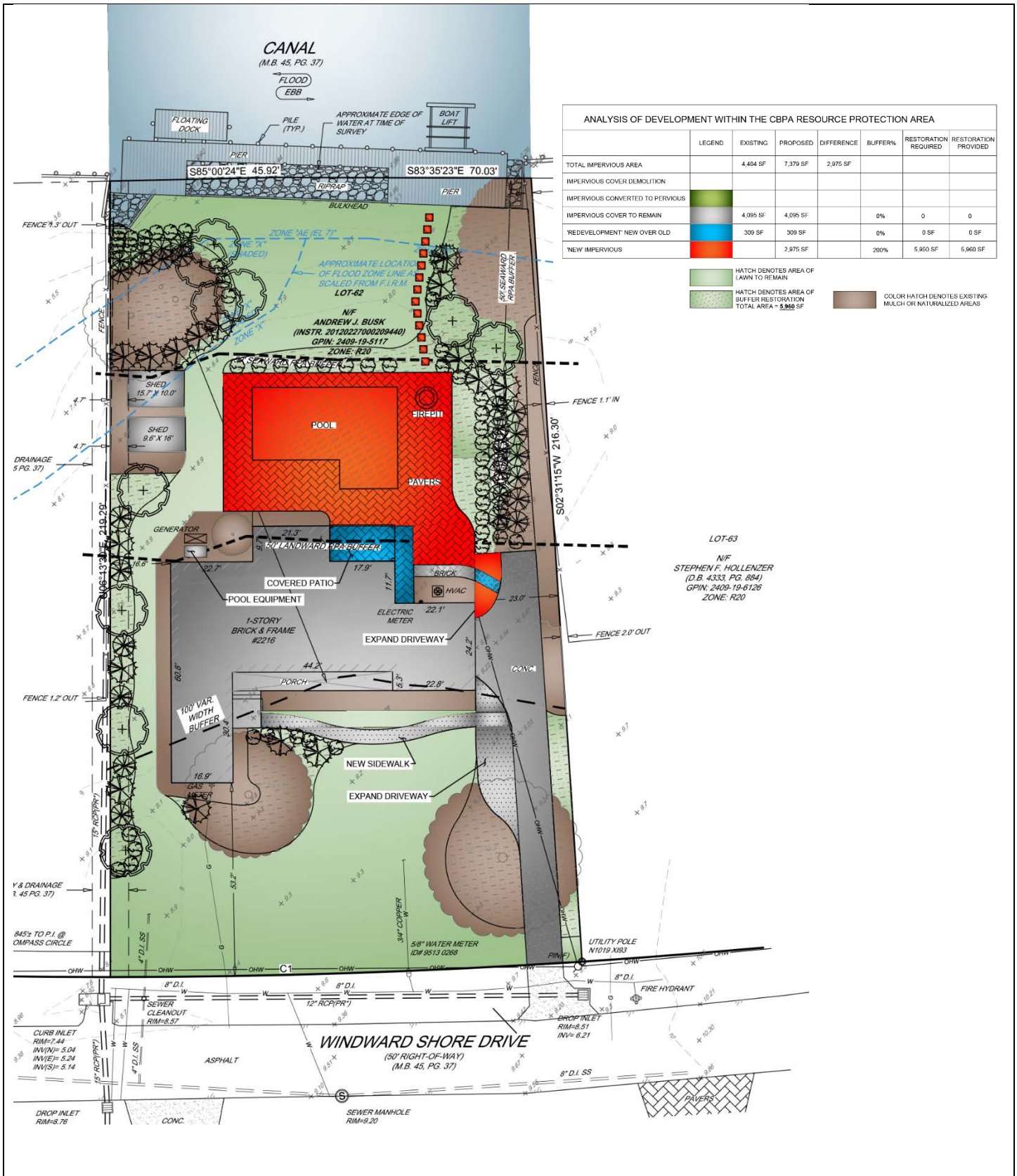


CBPA Exhibit – Proposed Improvements

- COLOR HATCH DENOTES OTHER IMPERVIOUS AREAS
- COLOR HATCH DENOTES LAWN AREAS
- COLOR HATCH DENOTES EXISTING MULCH OR NATURALIZED AREAS



CBPA Exhibit – Color Analysis



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 Andrew J Busk

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.

Chase Bank and Navy Federal Credit Union

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.

Gaddy Engineering

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.

Aegean Pools

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.

Gaddy Engineering

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

Andrew J Busk

Print Name and Title

30 Oct 2020

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 **Hugo Living Trust**
 Address **649 Thalia Point Road**
 Public Hearing **January 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

5

Variance Request

Encroachment into the RPA to construct a building addition, swimming pool with associated pool patio and retaining wall.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 36, Page 49
 Recorded 8/3/1957

GPIN

1488-00-3331

SITE AREA

29,962 square feet or 0.688 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,560 square feet or 0.449 acres

EXISTING IMPERVIOUS COVER OF SITE

7,586 square feet or 38.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,582 square feet or 38.8 percent of site

Area of Redevelopment in RPA

993 square feet

Area of New Development in RPA

305 square feet

Location of Proposed Impervious Cover

- 50-foot Seaward Buffer
- 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Rear porch
- Portion of concrete driveway located in the 50-foot seaward buffer

Construction Details

- Swimming pool with associated pool deck
- Addition to existing single-family residence

CBPA Ordinance Variance History

September 23, 1996 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of an inground swimming pool with a wood deck:

- 1. The pool is to be located adjacent to the driveway area and is to be constructed as close to the house as practicable. The maximum setback from the house shall be equal to the depth of the pool.*
- 2. Retaining walls shall be constructed on the northeast and southeast sides of the pool. A cross section of the retaining wall shall be required at the time of detailed site plan review.*
- 3. The wooden deck shall be reduced in scope to a maximum of 15' x 15'. The pool decking shall be a maximum of 4'x4'x4'x8' (diving board area).*
- 4. Wood decking shall have under deck treatment of sand and gravel. Additionally, terraced timber ties shall be installed under the decking for those portions along steep slopes features.*
- 5. A vegetative buffer shall be planted between the pool area and the proposed rip rap revetment. A landscaping plan shall be submitted at the time of detailed site plan review.*
- 6. Dual erosion and sedimentation control measures shall be installed along the down slope portion of the project.*
- 7. A site plan shall be submitted to the Planning Department, Development Services Center for a full plan of development review prior to the issuance of a building permit.*

The September 23, 1996 CBPA Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Bojac Series (deep, well-drained soils)

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

Shoreline

Shoreline is hardened by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a 253 square foot swimming pool with associated pool deck and a 330 square foot elevated wood deck. The swimming pool will be encompassed by a retaining wall along the seaward edges of the structure in the 50-foot seaward buffer. In addition to the new impervious cover within the RPA, approximately 171 square feet of the existing concrete driveway will be removed from the 50-foot seaward buffer.

A CBPA Variance was granted in 1996 for the construction of a swimming pool; however, the proposed location of the swimming pool associated with this variance request deviates from condition 1 of the 1996 CBPA Variance. The existing condition requires that *"the pool to be located adjacent to the driveway area and is to be constructed as close to the house as practicable. The maximum setback from the house shall be equal to the depth of the pool."* As such, a modification to that condition is requested in order to construct the swimming pool as proposed. The new location places the pool adjacent to the existing porch instead of the existing driveway, and within 11 feet from the house instead of approximately 5 to 6 feet as conditioned based off the depth of the pool.

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 request to be heard in January is identical to other variances that have been granted in this neighborhood in recent years and will not confer any special privilege on the applicant. The subdivision predates the Bay Act by decades and the house was built many years to the adoption of the Act."* Staff acknowledges the statement provided by the applicant's agent and concurs that the lots along this reach of Thalia Point Road are within the 100-foot RPA.
- 2) The applicant offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather *"the entire back and front portions of this property are impacted by the RPA buffer since the Act was adopted. Avoidance of the buffer is not possible for any type of redevelopment on this lot. We have tried to make sure we balance the amount of redevelopment on this lot and limit the encroachment request into the seaward buffer with the new development to a size that historically gets approved by the Board."* Staff concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.

- 3) The variance is the minimum necessary to afford relief because *“we are not proposing to increase the overall impervious cover of the lot with the proposed improvements.”* Staff concurs and supports the request to have the swimming pool located farther than the depth of the pool away from the existing single-family residence.
- 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 of the ordinance is “water quality”. This lot currently has ZERO storm water treatment on-site and never has since it was built, as a result of this variance request treatment on-site will occur, turf zones will be reduced, buffer restoration will be installed to create trophic layers and off-site mitigation will also occur ALL to help improve water quality in a subdivision that pre-dates the storm water ordinance so all the water in the streets direct flows into creek.”* Staff concurs.
- 5) The applicant provides, as a means to manage towards a no net increase in nonpoint source pollution load *“the first item to protect non-point source pollution is the E & S measures. First thing to be installed, last thing to be removed. Also stockpile on existing hard surfaces and single point accessway all are most important. Revegetating denuded areas as soon as possible will also help in reducing any runoff during construction, installing all required buffer restoration and infiltration measures will reduce runoff significantly.”* Staff concurs.

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

Recommended Conditions

- 1) A Small Project in the RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **305 square feet x 200 percent = 610 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: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) **** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$69.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**

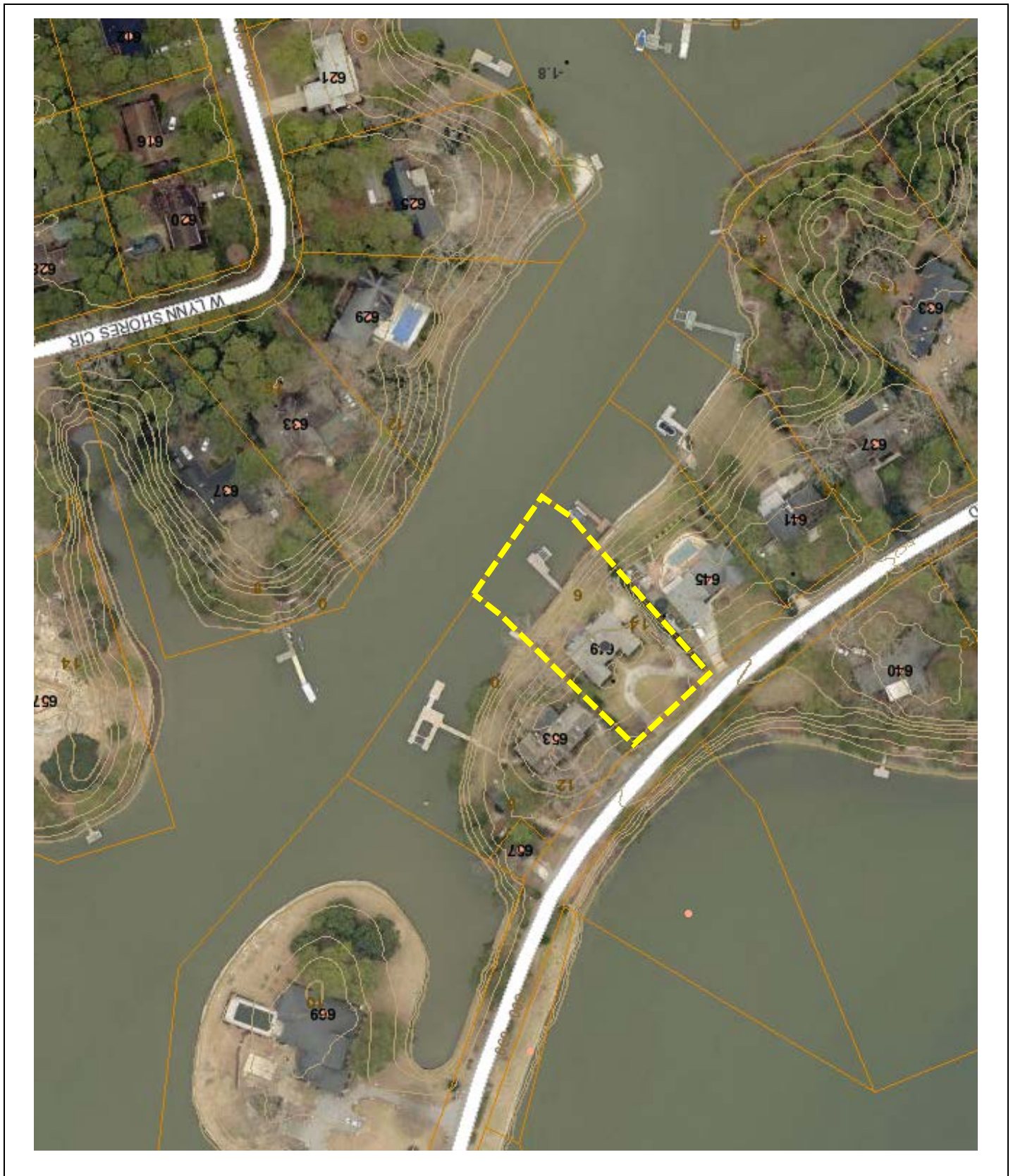
15) This variance and associated conditions **will supersede** the conditions of the Board variance granted September 23, 1996.

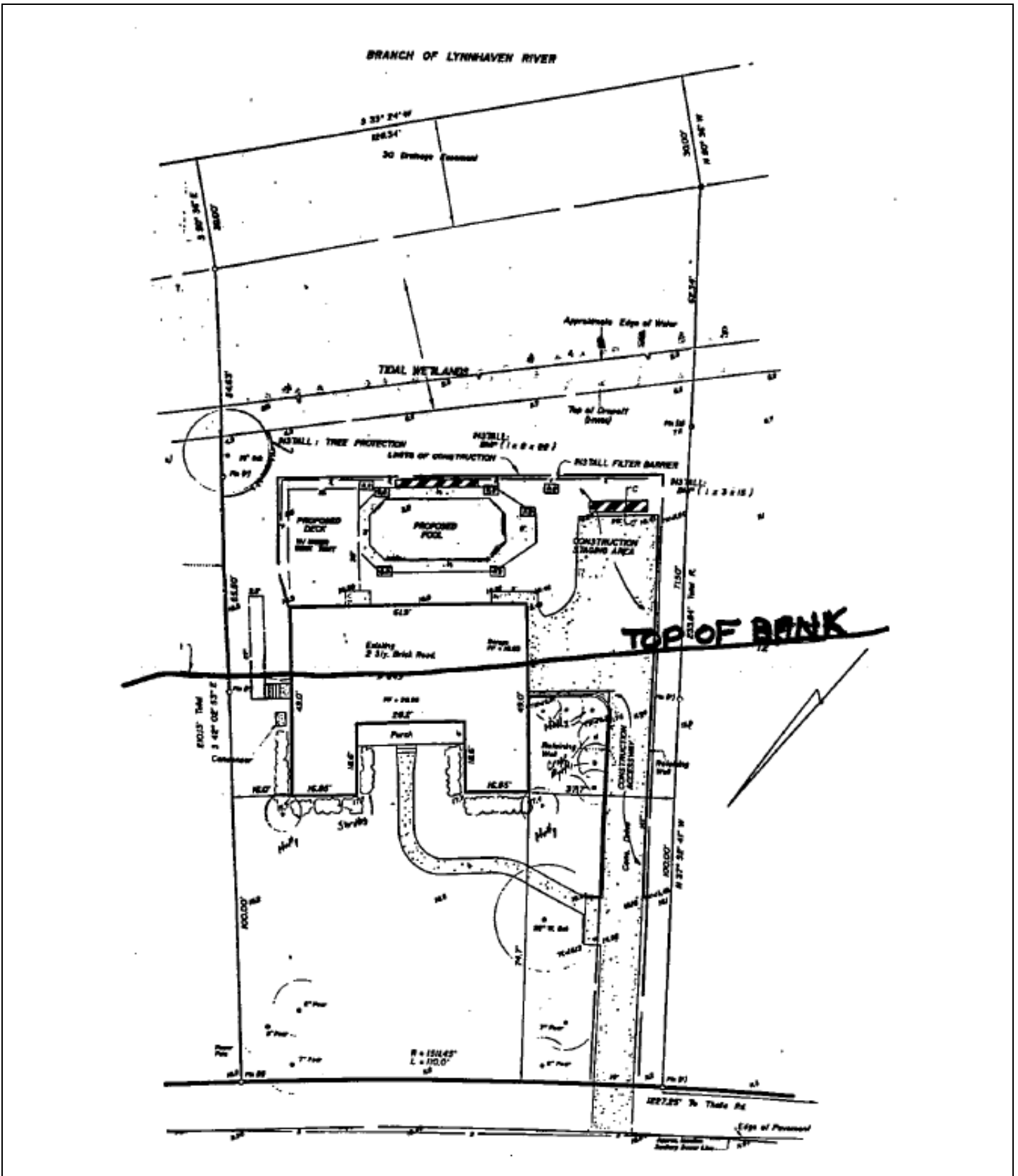
16) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, signed November 4, 2020 by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented 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.

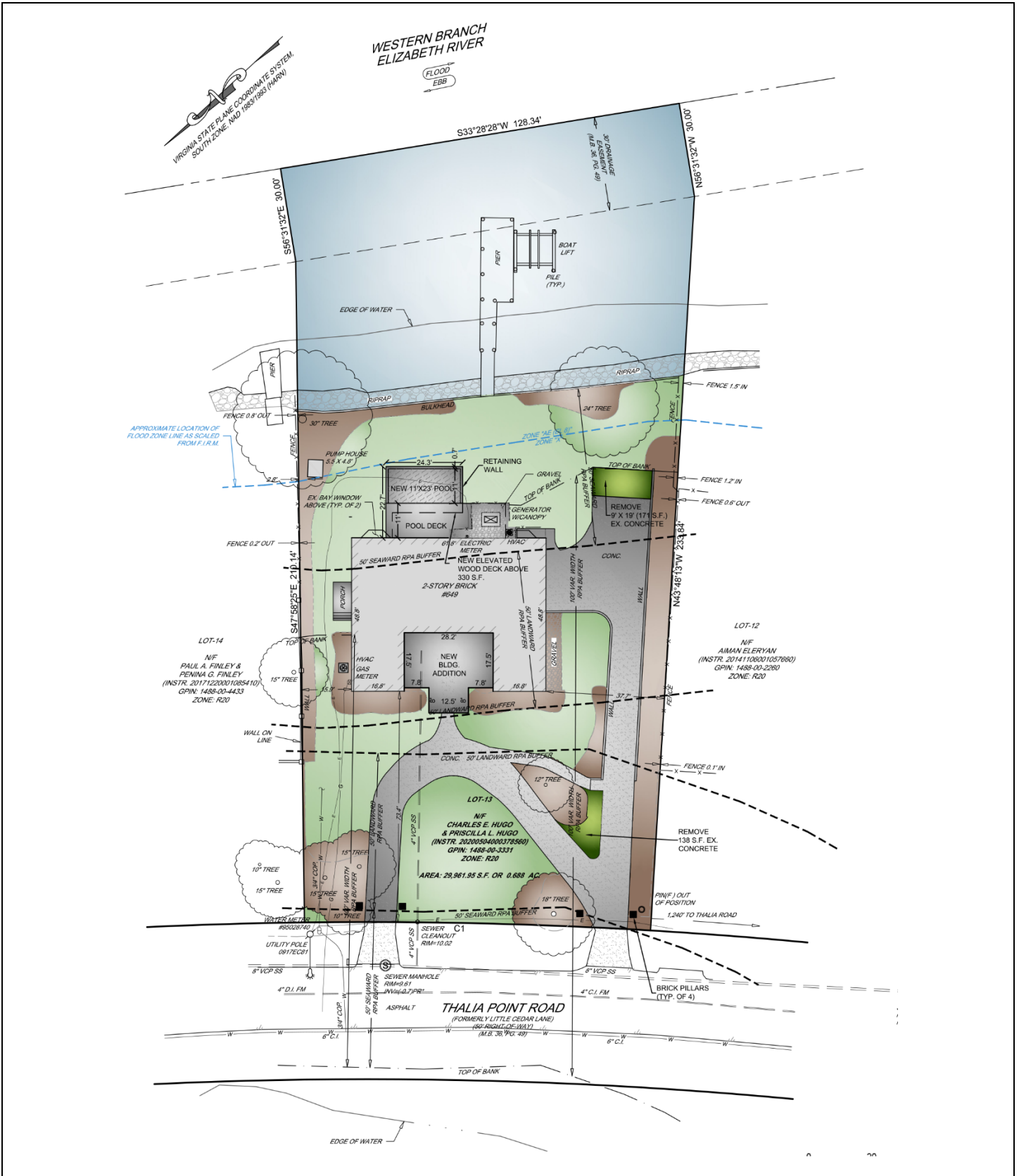
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial













CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Color Analysis

ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA							
	LEGEND	EXISTING	PROPOSED	DIFFERENCE	BUFFER%	RESTORATION REQUIRED	RESTORATION PROVIDED
TOTAL IMPERVIOUS AREA		7,586 SF	7,582 SF	-4 SF			
IMPERVIOUS COVER DEMOLITION							
IMPERVIOUS CONVERTED TO PERVIOUS			309 SF				
IMPERVIOUS COVER TO REMAIN			5,975 SF			0	0
'REDEVELOPMENT' NEW OVER OLD			993 SF			0 SF	0 SF
'NEW IMPERVIOUS			305 SF		200%	610 SF	613 SF

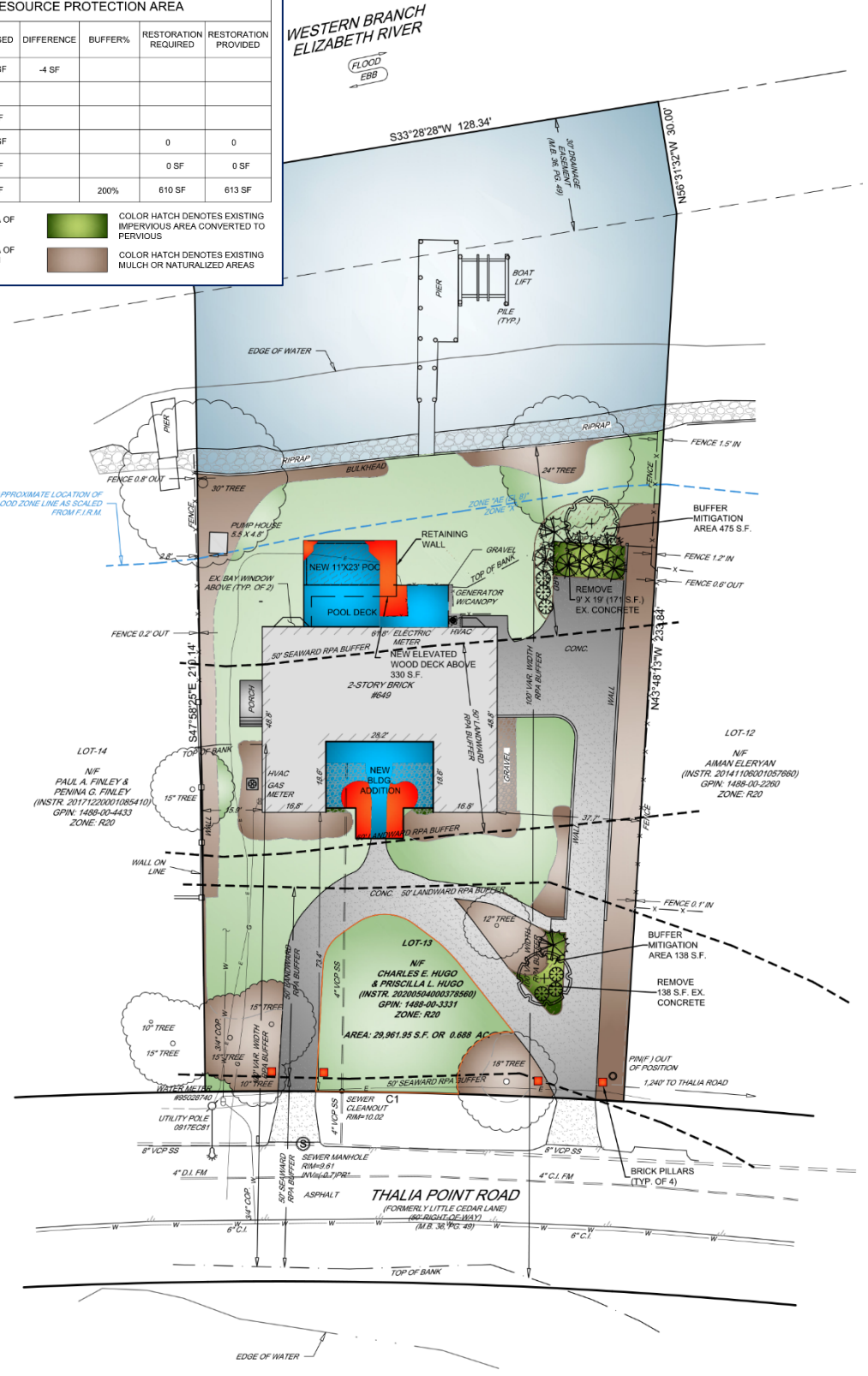
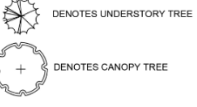
 HATCH DENOTES AREA OF LAWN TO REMAIN	 COLOR HATCH DENOTES EXISTING IMPERVIOUS AREA CONVERTED TO PERVIOUS
 HATCH DENOTES AREA OF BUFFER RESTORATION TOTAL AREA = 610 SF	 COLOR HATCH DENOTES EXISTING MULCH OR NATURALIZED AREAS

LANDSCAPING REQUIRED:

BUFFER RESTORATION UNIT = 1 UNIT / 400 S.F.
 TOTAL BUFFER RESTORATION REQ'D = 610 S.F.
 NUMBER OF UNITS REQ'D = 610 S.F. / 400 S.F. = 1.52 (2)

LANDSCAPING PROVIDED:

- 2 CANOPY TREES
- 4 UNDERSTORY TREES
- 4 LARGE SHRUBS
- 6 SMALL SHRUBS



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

HUGO LIVING TRUST

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

CHARLES HUGO

PRISCILLA HUGO

- 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.

PNC 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 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.

MARK ROBERTSON CPA

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.

KEN KIRBY

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.

Mike Gaddy, Gaddy Eng.

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.

+ Priscilla Hugo

Applicant Signature

+ Priscilla Hugo

Print Name and Title

+ 11.9.2020

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	

Variance Request

Encroachment into the RPA to construct a single-family residence with proposed deck and swimming pool.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 144

Recorded 3/15/1926

GPIN

2418-37-2305

SITE AREA

24,500 square feet or 0.562 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

22,318 square feet or 0.512 acres

EXISTING IMPERVIOUS COVER OF SITE

1,431 square feet or 6.4 percent of site

**previously developed lot*

PROPOSED IMPERVIOUS COVER OF SITE

5,869 square feet or 26.3 percent of site

Area of Redevelopment in RPA

754.5 square feet

Area of New Development in RPA

5,114.5 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

- Gravel driveway

Construction Details

- Single family residence with associated walkways
**Board or Zoning Appeal Variance required for encroachment into front yard setback*
- Permeable paver driveway
- Swimming pool with concrete pool surround
- Deck area off rear of residence

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened with a low-profile rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The tree being requested for removal is 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 grass channels graded to bioretention planting beds, permeable pavers and gravel underdeck treatment will be provided as best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The variance request for this lot is to construct a single-family residence with associated accessory structures consisting of a swimming pool with concrete pool surround and deck area off the rear of the proposed residence. This lot, lot 164,

Anne Talbott Jordan & et al.

Agenda Item 6

Page 68

and the adjacent lot to the southeast, lot 165, were platted in 1926. A single-family residence constructed in approximately 1958 was situated on both lots 164 and 165, which was typical for waterfront lots within this neighborhood. The single-family residence has since been demolished and the applicant desires to redevelop each lot independently.

As submitted, the proposed improvements do not encroach into the 50-foot seaward buffer. The proposal includes the following elements in an effort to minimize the encroachment within the RPA buffer.

- Board of Zoning Appeals (BZA) variance for encroachment into the 50-foot front yard setback.
- Limitation of the size of the proposed swimming pool with associated retaining wall and deck area off the rear of the residence to be landward of the top of bank feature.
- Installation of permeable pavers, rather than asphalt or concrete, for the proposed driveway to aid in management of stormwater run-off.

Staff has expressed concern to the applicant's agent that the future sale of this speculative project could give rise to subsequent variance requests in order for a future property owner to tailor the project specific to their vision. Given that the environmental features of the lot encumber all of the uplands, and that the proposed improvements requested by the applicant, specifically the swimming pool and deck area being minimized to avoid encroachment within the 50-foot seaward buffer to the greatest extent practicable, it is not likely that Staff would support any additional encroachment by future variance requests.

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, with Staff comment provided for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and have been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff acknowledges the statement provided by the applicant's agent and is mindful of the applicant's consulting team's effort to limit encroachment into the RPA buffer with the layout of the proposed improvements. However, Staff is of the opinion that just because this lot was platted prior to the adoption of the City's CBPA Ordinance and Subdivision Ordinance that the development of the lot should not solely be debated over the adoption date of these Ordinances, but rather be based on the fact that there are multiple discretionary variance processes required, both CBPA for encroachment into the RPA buffer and BZA for encroachment into the front yard setback.
- 2) The applicant 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 *"the buffer zones were made part of the Bay Act and these lots were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff concurs.
- 3) With regard to the minimum necessary to afford relief the applicant's agent provides that *"the minimum necessary to afford relief is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff evaluates each variance request based off the merits provided with the request specific to the existing conditions of the lot and not solely on the overall impervious cover 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 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 lots currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality.”* Staff concurs and offers that with the redevelopment of lots in this neighborhood that are not located within the RPA buffer only compliance with stormwater management regulations would be required with regard to water quality.
- 5) The applicant’s agent provides that as a means to manage towards a no net increase in nonpoint source pollution load *“strict erosion and sediment control measure do more to halt non-point source pollution, stockpiling material on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.”* Staff acknowledges the statement provided by applicant’s agent and has provided the 22 recommended conditions below as a means to manage towards a no net increase in nonpoint source pollution.

Given the above comments, Staff recommends the following 22 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) The 50-foot seaward buffer shall remain in its current natural state. Require buffer restoration shall be augmented with the existing vegetation. Existing vegetation within the 100-foot RPA shall not be removed to accommodate the required buffer restoration.
- 4) Only the variable width buffer portion of the RPA feature shall be devoted to turf for this lot. All remaining impervious area shall be areas of buffer restoration.
- 5) Buffer restoration shall be installed within the 100-foot RPA buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 50 large shrubs, and 75 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 augment in proposed vegetation with the existing vegetation. Existing vegetation within the 50-foot seaward buffer of the RPA shall not be removed to accommodate the required buffer restoration. 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.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 9) 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.
- 10) 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.**
- 11) A double row of 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.
- 12) 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.**
- 13) 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.
- 14) 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.
- 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) **The pool shall be constructed prior to or concurrent with the residence.**
- 18) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.

- 19) 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.
- 20) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,171.95 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.
- 21) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 22) The conditions and approval associated with this variance are based on the exhibit plan dated December 1, 2020, prepared by Gallup Surveyors and Engineers, signed December 3, 2020 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.

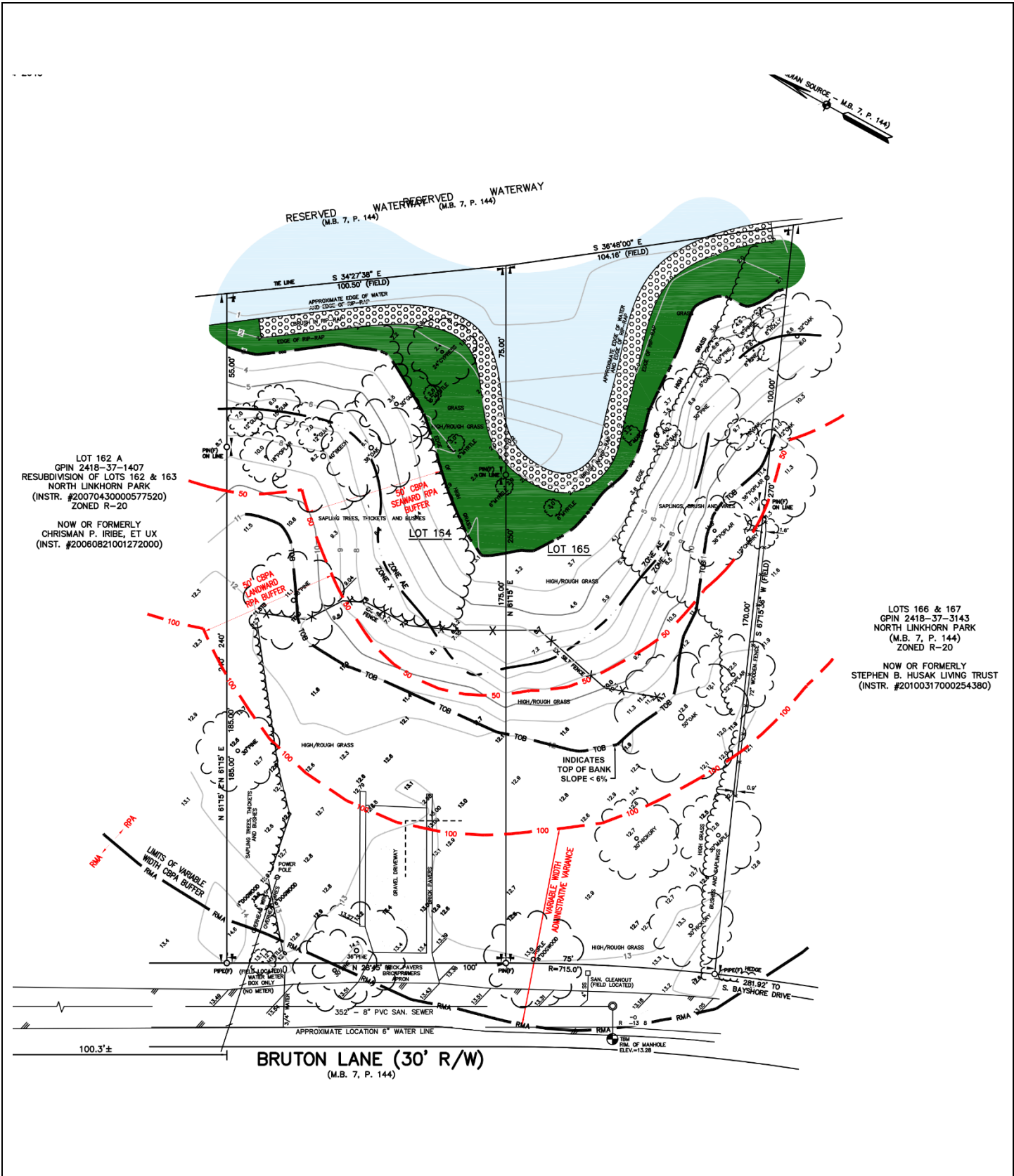
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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

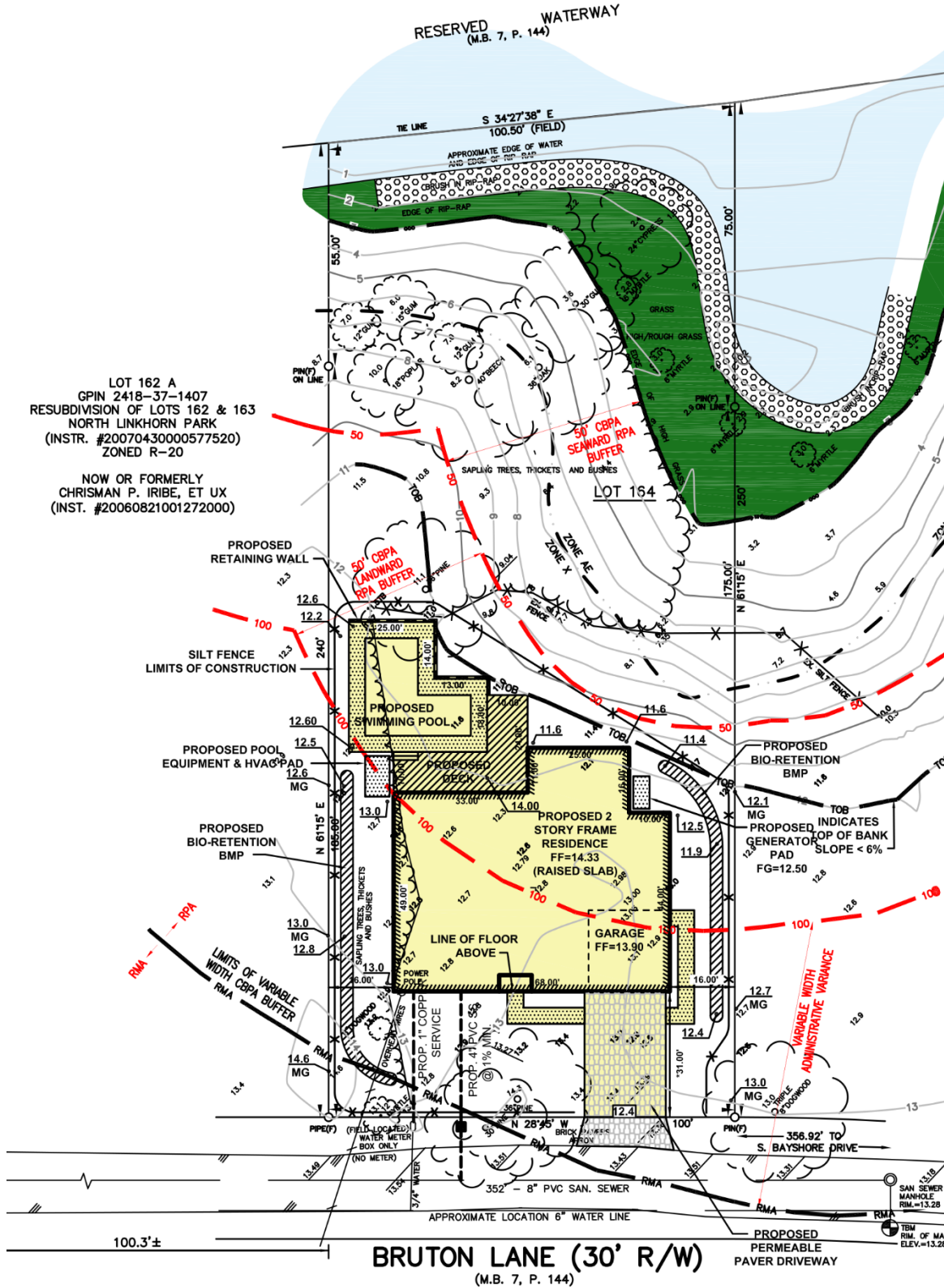


CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements

LOT 162 A
 GPIN 2418-37-1407
 RESUBDIVISION OF LOTS 162 & 163
 NORTH LINKHORN PARK
 (INSTR. #20070430000577520)
 ZONED R-20
 NOW OR FORMERLY
 CHRISMAN P. IRIBE, ET UX
 (INST. #20060821001272000)



Disclosure Statement

Fwd: Bruton Lane

imap://imap.gmail.com:993/fetch>UID>/INBOX>20546?head...



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 CHARLES G. JORDAN, Anne Talbott Jordan, Margaret Jordan Harvey

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

GALLUP SURVEYORS and 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)

Margaret J. Harvey - Margaret J. Harvey

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

Sister, co-owner of property

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

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

Disclosure Statement

**City of Virginia Beach
Planning & Community
Development**

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

- 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.

- 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.
Ms. Julie Liebler

- 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.

- 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.

- Is there any other pending or proposed purchaser of the subject property? Yes No
 - If yes, identify the purchaser and purchaser's service providers.

2 | P a g e

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.

CALLUP

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]

[Handwritten Signature]

Applicant Signature

CHARLES G. JORDAN

ANNE T JORDAN

Print Name and Title

DECEMBER 1, 2020

DEC 7, 2020

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 **Anne Talbott Jordan & et al.**
 Address **Lot 165, North Linkhorn Park, 1108 Bruton Lane**
 Public Hearing **January 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

7

Variance Request

Encroachment into the RPA to construct a single-family residence with proposed deck.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 144

Recorded 3/15/1926

GPIN

2418-37-2268

SITE AREA

22,949 square feet or 0.527 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

18,761 square feet or 0.431 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

**previously developed lot*

PROPOSED IMPERVIOUS COVER OF SITE

3,207 square feet or 17.1 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,207 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

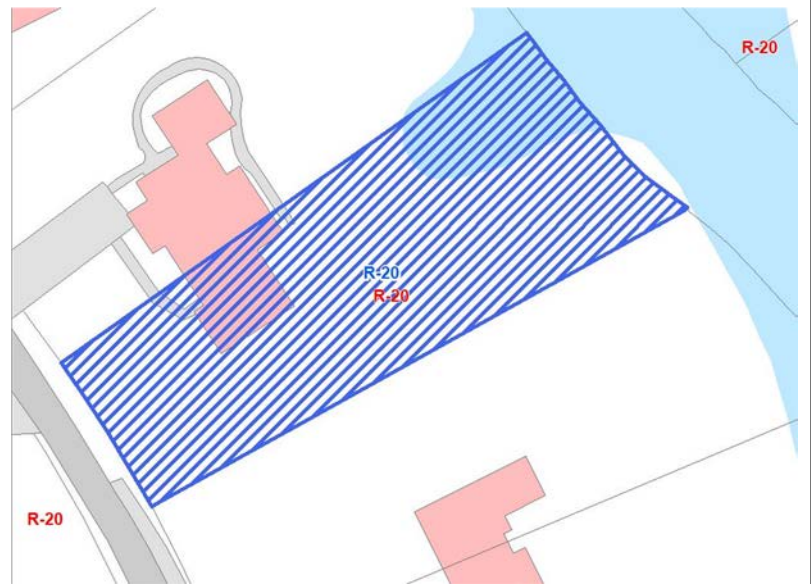
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Single family residence with associated walkways
**Board or Zoning Appeal Variance required for encroachment into front yard setback*
- Permeable paver driveway
- Deck area off rear of residence

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened with a low-profile rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Evaluation of existing canopy tree removal request: The trees being requested for removal is 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 grass channels graded to bioretention planting beds, permeable pavers and gravel underdeck treatment will be provided as best management practices for stormwater run-off mitigation.

Evaluation and Recommendation

The variance request for this lot is to construct a single-family residence with associated accessory structures consisting of a deck area off the rear of the proposed residence. This lot, lot 165, and the adjacent lot to the northwest, lot 164, where platted in 1926. A single-family residence constructed in approximately 1958 was situated on both lots, which was typical for waterfront lots within this neighborhood. The single-family residence has since been demolished and the applicant desires to redevelop each lot independently.

As submitted, the proposed improvements do not encroach into the 50-foot seaward buffer. The proposal includes the following elements in an effort to minimize the encroachment within the RPA buffer.

- Board of Zoning Appeals (BZA) variance for encroachment into the 50-foot front yard setback.
- Limitation of the size of the proposed single-family residence to be landward of the top of bank feature.
- Installation of permeable pavers, rather than asphalt or concrete, for the proposed driveway to aid in the management of stormwater run-off.

Staff has expressed concern to the applicant's agent that the future sale of this speculative project could give rise to subsequent variance requests in order for a future property owner to tailor the project specific to their vision. Given that the environmental features of the lot encumber all of the uplands, and that the proposed improvements requested by the applicant, specifically the size of the single-family residence proposed and the location of the deck area being minimized to avoid encroachment within the 50-foot seaward buffer and the top of bank feature to the greatest extent practicable, it is not likely that Staff would support any additional encroachment by future variance requests.

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, with Staff comment provided for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and have been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff acknowledges the statement provided by the applicant's agent and is mindful of the applicant's consulting team's effort to limit encroachment into the RPA buffer with the layout of the proposed improvements. However, Staff is of the opinion that just because this lot was platted prior to the adoption of the City's CBPA Ordinance and Subdivision Ordinance that the development of the lot should not solely be debated over the adoption date of these Ordinances, but rather be based on the fact that there are multiple discretionary variance processes required, both CBPA for encroachment into the RPA buffer and BZA for encroachment into the front yard setback. Staff provides that there is 18,761 square feet of land above water and wetlands from the delineated seaward limits of the 50 foot seaward buffer to the front property line on an R-20 lot and a reasonably sized dwelling has been proposed however, should the request of either a CBPA and BZA variance not be granted for this lot the applicant may desire to submit a subsequent application for both lots collectively.
- 2) The applicant 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 *"the buffer zones were made part of the Bay Act and these lots were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff concurs.
- 3) With regard to the minimum necessary to afford relief the applicant's agent provides that *"the minimum necessary to afford relief is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff evaluates each variance request based off the merits provided with the request specific to the existing conditions of the lot and not solely on the overall impervious cover 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 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 lots currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality.”* Staff concurs and offers that with the redevelopment of lots in this neighborhood that are not located within the RPA buffer, only compliance with stormwater management regulations would be required with regard to water quality.
- 5) The applicant’s agent provides that as a means to manage towards a no net increase in nonpoint source pollution load *“strict erosion and sediment control measure do more to halt non-point source pollution, stockpiling material on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.”* Staff acknowledges the statement provided by applicant’s agent and has provided the 22 recommended conditions below as a means to manage towards a no net increase in nonpoint source pollution.

Given the above comments, Staff recommends the following 22 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) The 50-foot seaward buffer shall remain in its current natural state. Require buffer restoration shall be augmented with the existing vegetation. Existing vegetation within the 100-foot RPA shall not be removed to accommodate the required buffer restoration.
- 4) Only the variable width buffer portion of the RPA feature shall be devoted to turf for this lot. All remaining impervious area shall be areas of buffer restoration.
- 5) Buffer restoration shall be installed within the 100-foot RPA buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 50 large shrubs, and 75 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 augment in proposed vegetation with the existing vegetation. Existing vegetation within the 50-foot seaward buffer of the RPA shall not be removed to accommodate the required buffer restoration. 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.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 9) 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.
- 10) 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.**
- 11) A double row of 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.
- 12) 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.**
- 13) 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.
- 14) 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.
- 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) **The pool shall be constructed prior to or concurrent with the residence.**
- 18) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.

- 19) 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.
- 20) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,171.95 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.
- 21) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 22) The conditions and approval associated with this variance are based on the exhibit plan dated December 1, 2020, prepared by Gallup Surveyors and Engineers, signed December 3, 2020 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.

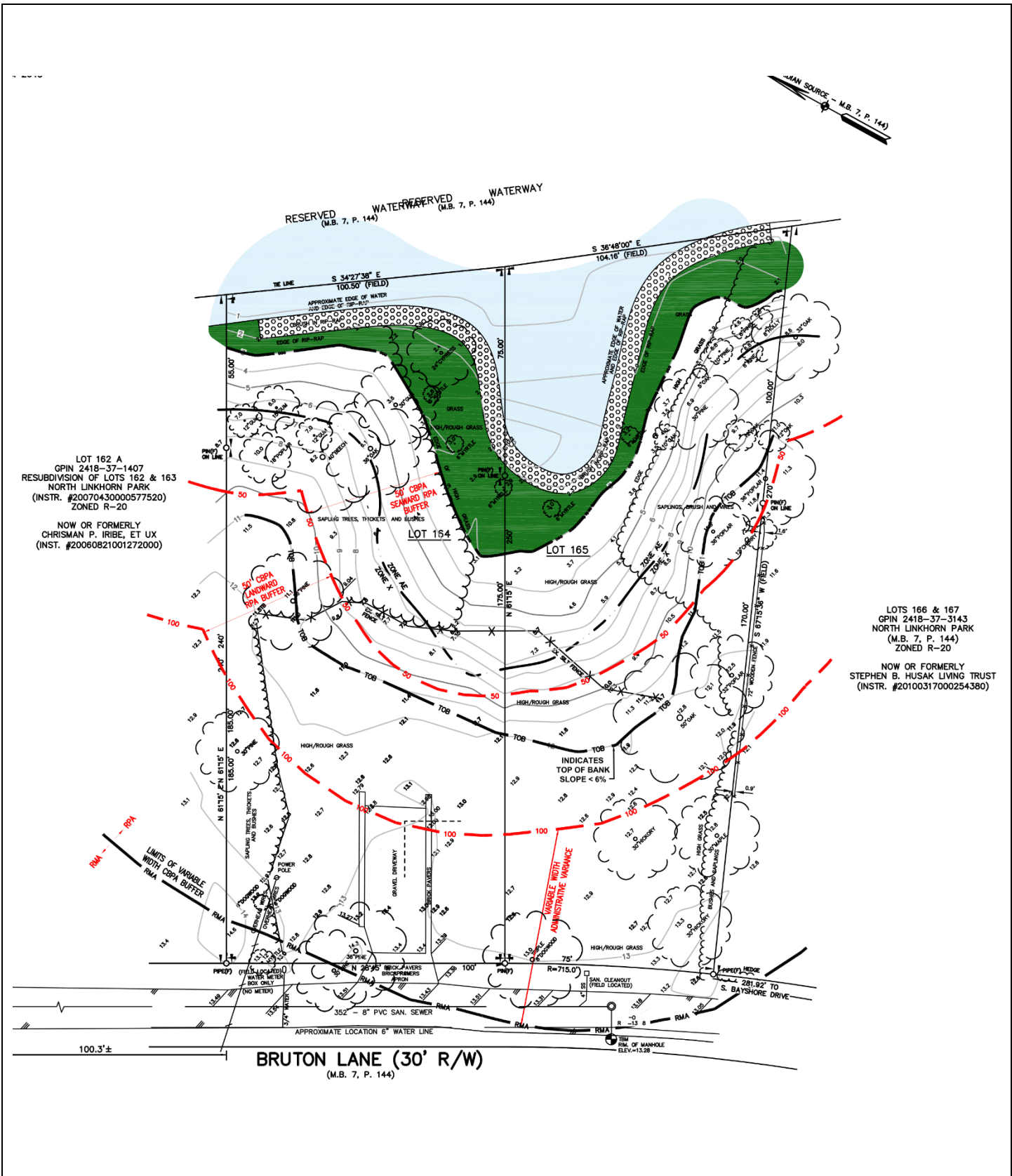
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

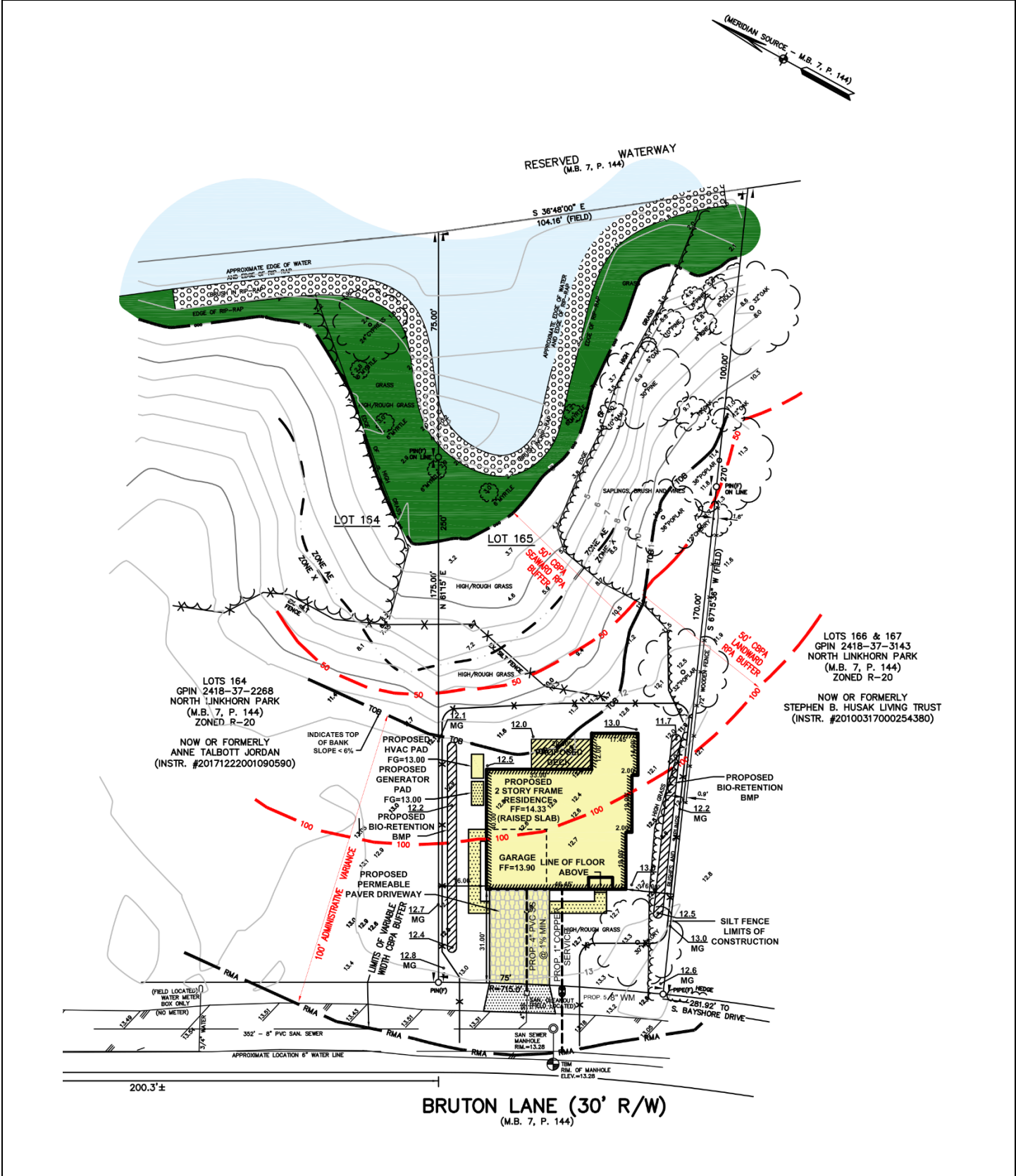
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements




Disclosure Statement

Fwd: Bruton Lane

imap://imap.gmail.com:993/fetch>UID>/INBOX>20546?head...

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 CHARLES G. JORDAN, Anne Talbott Jordan, Margaret Jordan Harvey

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.
GALLUP SURVEYORS and 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)
Margaret J. Harvey - Margaret J. Harvey

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

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

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

1 / Page

Disclosure Statement

**City of Virginia Beach
Planning & Community
Development**

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

- 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.

- 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.
Ms. Julie Liebler

- 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.

- 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.

- Is there any other pending or proposed purchaser of the subject property? Yes No
 - If yes, identify the purchaser and purchaser's service providers.

2 | P a g e

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.

CALLUP

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] *[Handwritten Signature]*

Applicant Signature
 CHARLES G. JORDAN ANNE T JORDAN

Print Name and Title
 DECEMBER 1, 2020 DEC 7, 2020
 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 **Michelle & David Gregory**
Address **2005 Inland Cove**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a gravel parking area.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Instrument No. 200301150008324

Recorded 1/15/2003

GPIN

2408-49-1368

SITE AREA

29,057 square feet or 0.667 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

27,640 square feet or 0.634 acres

EXISTING IMPERVIOUS COVER OF SITE

8,908 square feet or 32.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,628 square feet or 34.8 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

720 square feet

Location of Proposed Impervious Cover

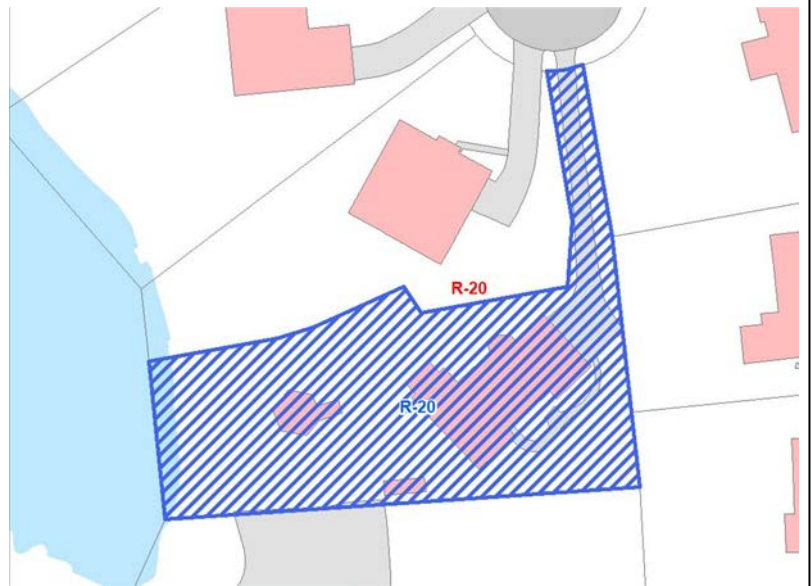
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Gravel parking area – 18 feet by 40 feet

CBPA Ordinance Variance History

July 27, 1998 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a pool and decking with the following conditions:

1. *The pool decking constructed of concrete shall be a maximum of 4' x 4' x 4' x 8' (diving board end). The remainder of the pool decking shall be constructed of pervious pavers.*
2. *An infiltration planting bed, a minimum of 5' in width, shall be installed downslope of the pool and the gazebo as shown on the submitted landscape plan dated 7-27-98. This landscape bed shall employ 4"-6" of mulch. The bed shall be equal in size to the amount of new impervious cover (square feet).*
3. *Construction limits shall lie a maximum of 10' outboard of pool decking along the channelward portion of the project.*
4. *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 July 27, 1998 CBPA Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is hardened with a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The tree being requested for removal is 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 bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation. Location of the proposed bioretention planting bed adjacent to the gravel parking area with dimensions of 40 linear feet by 4 feet in width at a depth of 2 feet.

Evaluation and Recommendation

The existing driveway and access to the single-family residence is a 20-foot wide flag lot from Inland Cove. Based on the configuration of the existing improvements there is minimal area to park or turn a vehicle around in the driveway. As such, the applicant desires to install a gravel pad area within the rear portion of the lot to provide a stable surface for additional parking for a boat trailer. Vehicular access is proposed via the existing community boat ramp parking lot that is under ownership by the Baycliff Civic League. The applicant's agent has stated to Staff that the property owner has the ability to use the civic league's property to access their property. Staff is of the opinion that the material proposed, gravel, provides merit towards infiltration practices given the low sediment and debris loading associated with the residential private use of the gravel area.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff acknowledges the applicant's statement regarding other approved encroachment requests into the RPA buffer. Specific to encroaching into the RPA feature with impervious cover, Staff concurs that this request will not confer upon the applicant any special privilege subject to the provisions of this Ordinance.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessors in title because *"the buffer zones were made a part of the Bay Act and these houses were already in place with it was enacted and the hardship that is now on these properties will never go away."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff acknowledges the applicant's statement, however, is of the opinion that the material proposed provides merit towards infiltration practices given the low sediment and debris loading associated with the residential private use of the gravel area.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution, most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas*

currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.” Staff is of the opinion that the applicant’s proposal to install a gravel pad area within the rear portion of the lot to provide a stable surface does provide merit towards long-term water quality standards through the management of the lot to minimize sediment migration from land disturbance.

- 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 concurs.

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) The material, size and use of the gravel pad shall not be constructed of any other type of impervious cover, for example a shed, concrete pavers, etc.
- 2) A Single-Family Small Project in the RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required 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.
- 4) 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.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **720 square feet x 200 percent = 1,440 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: **4 canopy trees, 4 understory trees, 8 large shrubs and 12 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.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) 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.
- 9) 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.**
- 10) 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.
- 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) 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.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$165.00 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.
- 17) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 18) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 27, 1998.

19) The conditions and approval associated with this variance are based on the exhibit plan dated December 7, 2020, prepared by Gallup Surveyors & Engineers, signed December 7, 2020 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

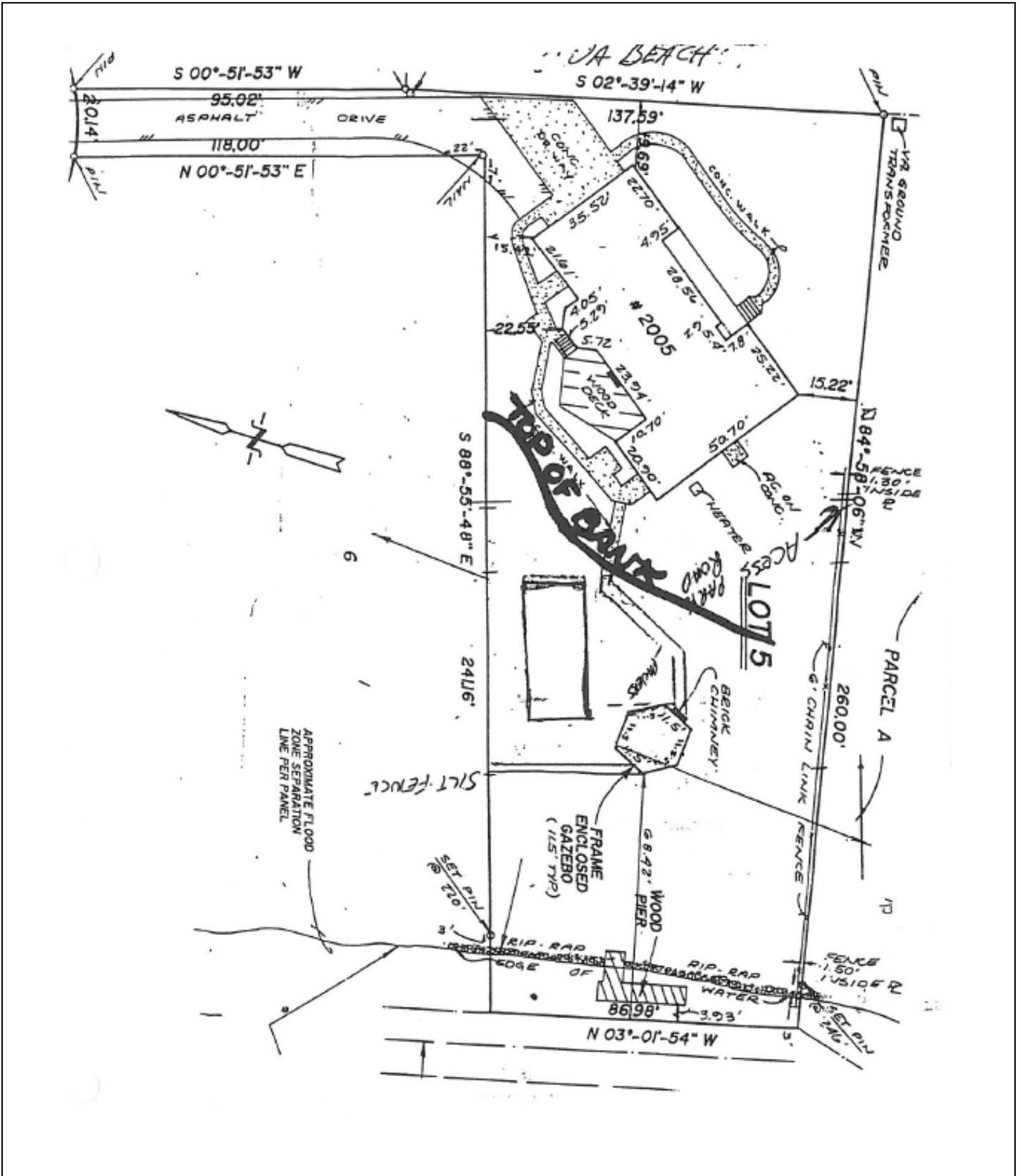
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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

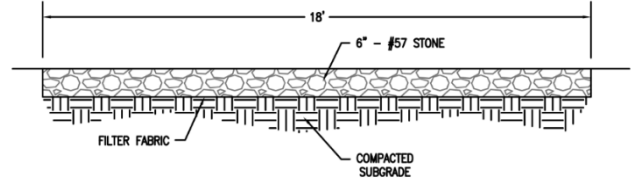


July 27, 1998 CBPA Board Variance Exhibit

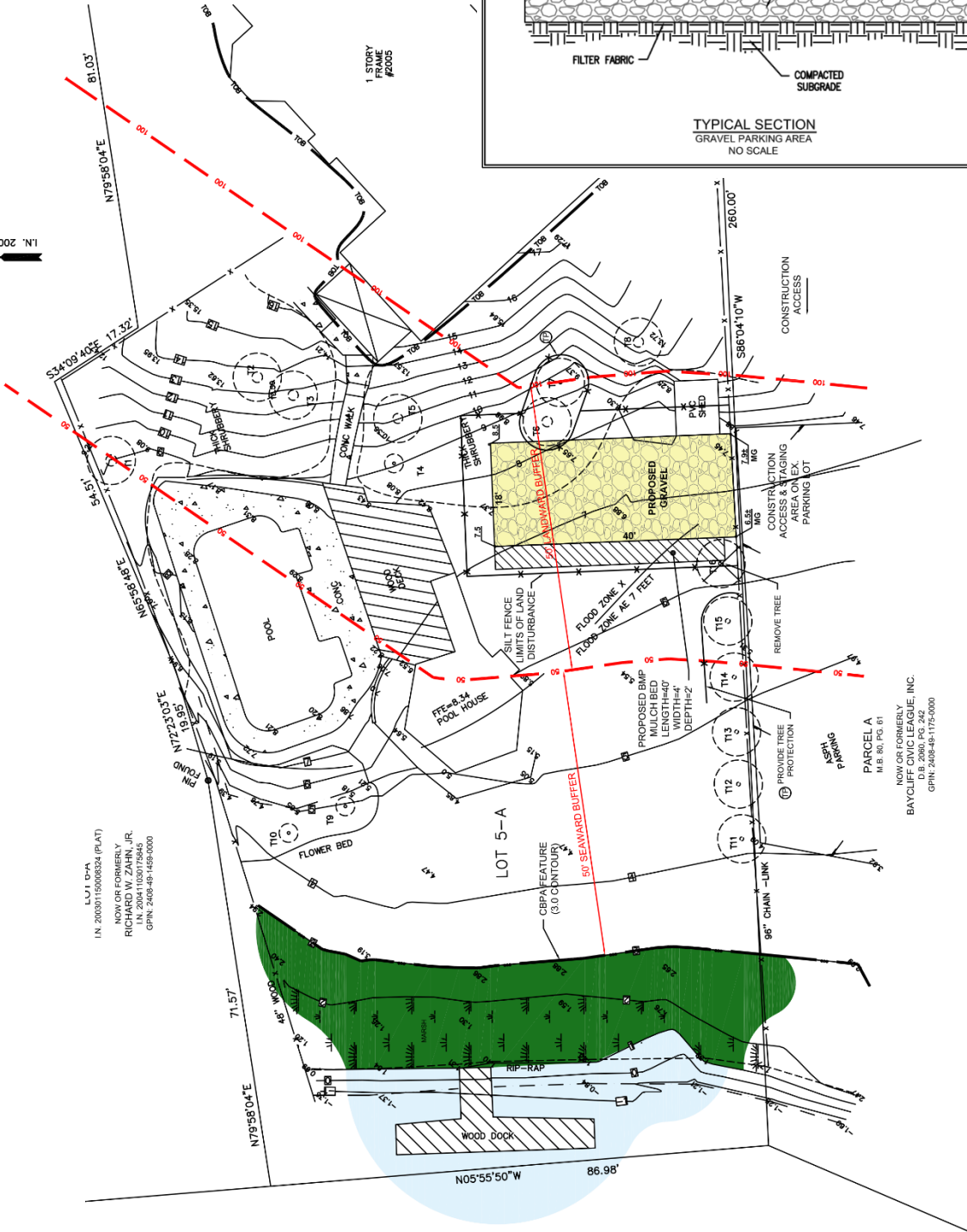
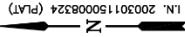


CBPA Exhibit – Proposed Improvements

Section Detail – Gravel Pad



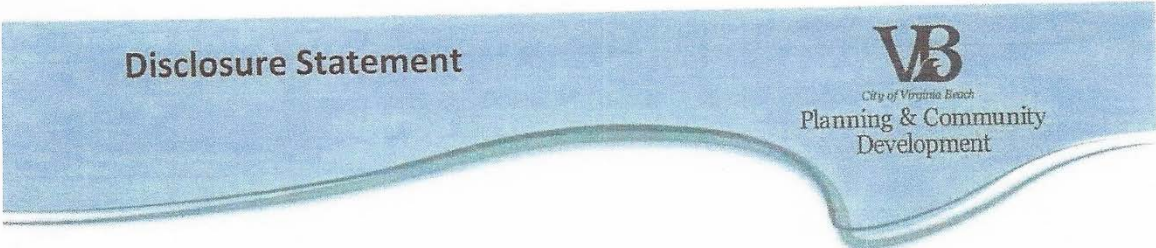
TYPICAL SECTION
GRAVEL PARKING AREA
NO SCALE



LVI CPA
IN. 200301150008324 (PLAT)
NOW OR FORMERLY
RICHARD W. ZAHN, JR.
IN. 200301150008324
GPN. 2408-48-1458-0000

PARCEL A
#18.00, PG. 01
NOW OR FORMERLY
BAYCLIFF CIVIC LEAGUE, INC.
GPN. 2408-48-1172-0000

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 David S. Gregory & Michelle Leigh Gregory

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrison

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

- If yes, identify the financial institutions.
-

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.

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.

Ballup 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.

David S. Gregory

Applicant Signature

David S. Gregory "property owner" Michelle L Gregory

Print Name and Title

12-8-2020

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 **Scott & Suzie Moore**
 Address **1694 S. Woodside Lane**
 Public Hearing **January 4, 2021**
 City Council District **Lynnhaven**

Agenda Item

9

Variance Request

Encroachment into the RPA to construct a swimming pool with patio area, guest house with patio area, and driveway expansion.

Applicant’s Agent

Robert Simon

Staff Planner

PJ Scully

Lot Recordation

Map Book 209, Page 88

Recorded 12/18/1990

GPIN

1499-33-4433

SITE AREA

40,514.83 square feet or 0.93 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

38,949 square feet or 0.89 acres

EXISTING IMPERVIOUS COVER OF SITE

8,036 square feet or 20.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,923 square feet or 28.0 percent of site

Area of Redevelopment in RPA

909 square feet

Area of New Development in RPA

3,128 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

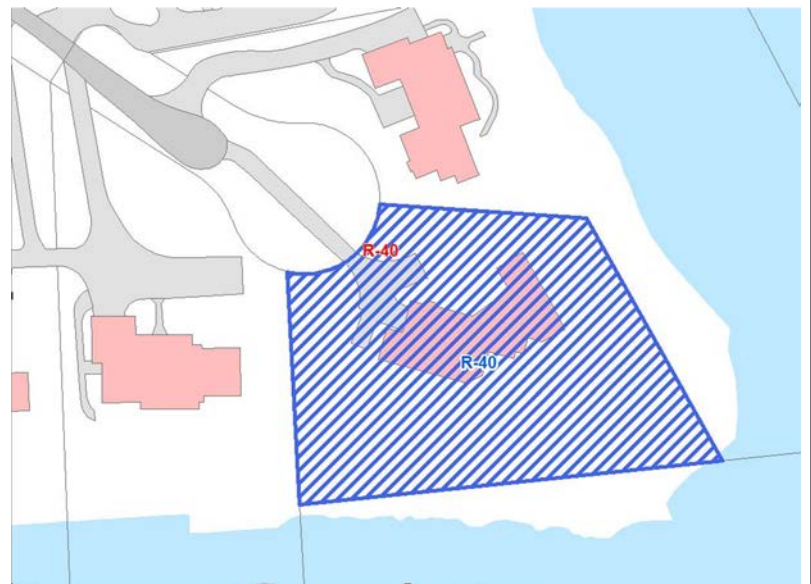
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood deck

Construction Details

- Swimming pool with patio area
- Guest house with patio area
- Driveway expansion

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 9

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

The shoreline is in a natural state along the eastern portion of the lot transitioning into a timber bulkhead.

Riparian Buffer

Moderately to heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 27
- Number of existing understory trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the overall request to remove 27 canopy trees and 1 understory tree associated with the redevelopment of this lot is excessive. An analysis of the limits of construction, set at 10 feet outboard of the proposed improvements, was performed by Staff as the necessity to remove 28 trees versus the preservation of the trees within those portions of the lot not being redeveloped was unclear. Staff is of the opinion that approximately 10 to 15 trees could be preserved if properly managed during the phases of construction for the redevelopment of this lot. Staff offers that trees described as 102 through 105, 114 through 116, 120, 121, 149, 155, 163, 164, and 173 through 175 on the CBPA Exhibit appear to be in areas of the lot that could be protected while providing adequate access for the construction of the proposed improvements. An exhibit of this analysis is provided on page 112 of this Staff report with the above trees represented by a green "X" on the exhibit.

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.

Scott & Suzie Moore

Agenda Item 9

Page 104

Evaluation and Recommendation

The applicant is proposing to redevelop the existing residential lot with a swimming pool with patio area, guest house with patio area, and driveway expansion. The overall post-impervious cover of the lot above water and wetlands associated with this variance request is 28 percent (10,923 square feet of impervious cover on a 38,949 square foot lot). Although the encroachment into the 100-foot RPA buffer does not propose any new impervious cover within the 50-foot seaward buffer, Staff is concerned with the amount of impact the limits of the proposed improvements will have on the riparian ecosystem, specifically the extent of existing canopy trees requested for removal. Staff is of the opinion that the retention of some of the trees requested to be removed would provide merit towards reducing erosion potential during construction through interception of rainwater and provide a reduction in the amount of pollutant runoff from the lot. Land management in riparian buffer areas directly affect water quality in adjacent rivers and estuaries by providing shade and cooling water temperatures; slowing and storing floodwater; and filter significant quantities of sediment, nutrients, and heavy metals from urban stormwater runoff. Studies have shown that sediment removal by trees range from 60 – 90 percent depending on buffer area, slope, and the volume and velocity of runoff (Nowak, Wang & Endreny, 2007). To address this concern, Staff has provided the analysis exhibit on page 112 of this Staff report and recommends condition 9 below as a means towards integrating the proposed improvements within the existing riparian ecosystem.

The applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the performance standards of the CBPA Ordinance and believes that the construction of the proposed improvements as submitted on the CBPA Exhibit lend support that the proposed improvements will not be substantially detrimental to water quality.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed pool was approved previously and the total proposed development in the RPA is at 28 percent."* While Staff acknowledges that the previous administration approval of a swimming pool for the subject lot, this variance application further increases the amount of new impervious cover with the proposed accessory structure and associated patio area, therefore necessitating that the variance request be granted by the CBPA Board and the project looked at in totality for the merits of the variance request.
- 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 proposed pool was previously approved in a larger and more aggressive footprint. The proposed pool now will be a reduction and retreat. The proposed guest residence is partial redevelopment of an existing gravel parking area."* Staff acknowledges the statement provided by the applicant's agent and provides that the current property owners are not associated with any past variance requests for the subject lot.
- 3) This variance request is the minimum necessary to afford relief because *"the proposed pool is a reduction in square feet and retreat landward from the prior approved site plan and the proposed guest residence is shown to not encroach into the 50' seaward buffer."* Staff is of the opinion that the location of the proposed improvements provide merit towards limiting land disturbance to only a portion of the lot. However, Staff is concerned with the amount of impact the limits of the proposed improvements will have on the riparian ecosystem, specifically the extent of existing canopy trees requested for removal and recommends condition 9 below to address this concern.
- 4) This variance request 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 development is at 28% in the RPA, there will be a 10% reduction in stormwater runoff from development and therefore in harmony with the ordinance.” Staff has provided recommended conditions for the Board’s deliberation pertaining to land management practices within the riparian buffer ecosystem of the lot towards managing the redevelopment as a means to provide water quality and riparian buffer restoration that specifically addresses riparian buffer preservation and mitigation with new plant material.

- 5) “Bioretention beds and enhancing the natural area will reduce non-point source pollution running off this lot unchecked” as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that the preservation of existing canopy trees to a greater extent than provided on the submitted variance application and the planting of buffer mitigation provides merit towards a no net increase in nonpoint source pollution load towards the redevelopment of this lot.

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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,128 square feet x 200 percent = 6,256 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 15 understory trees, 30 large shrubs, and 45 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Limits of construction and tree preservation for the redevelopment of this lot shall be as follow.
 - 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.
 - All canopy trees and understory vegetation outboard the conditioned construction limits shall be preserved.
 - Construction limits shall lie a maximum of 10 feet outboard of the proposed improvements and be continuous within the RPA of the lot.
 - Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
 - 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.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) The proposed concrete patio associated with the guest house 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.
- 12) 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.
- 13) 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.

14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$716.83 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) The conditions and approval associated with this variance are based on the exhibit plan dated November 5, 2020, prepared by Chesapeake Bay Site Solutions, Inc. 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.

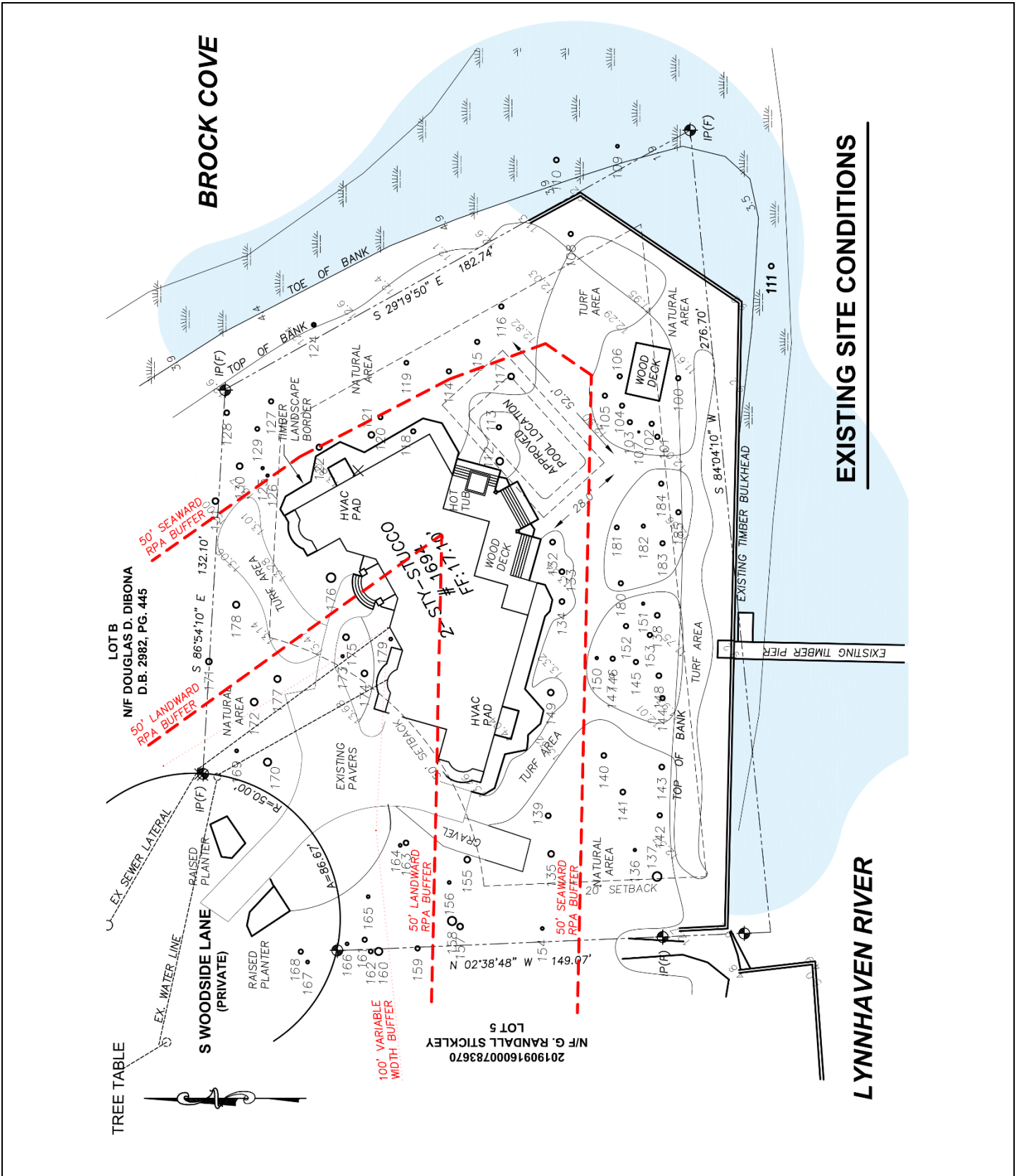
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Nowak, D.J., J. Wang, and T. Endreny. 2007. Chapter 4: Environmental and economic benefits of preserving forests within urban areas: air and water quality. Pages 28–47 in de Brun, C.T.F. (ed.), The economic benefits of land conservation. The Trust for Public Land, San Francisco, California.

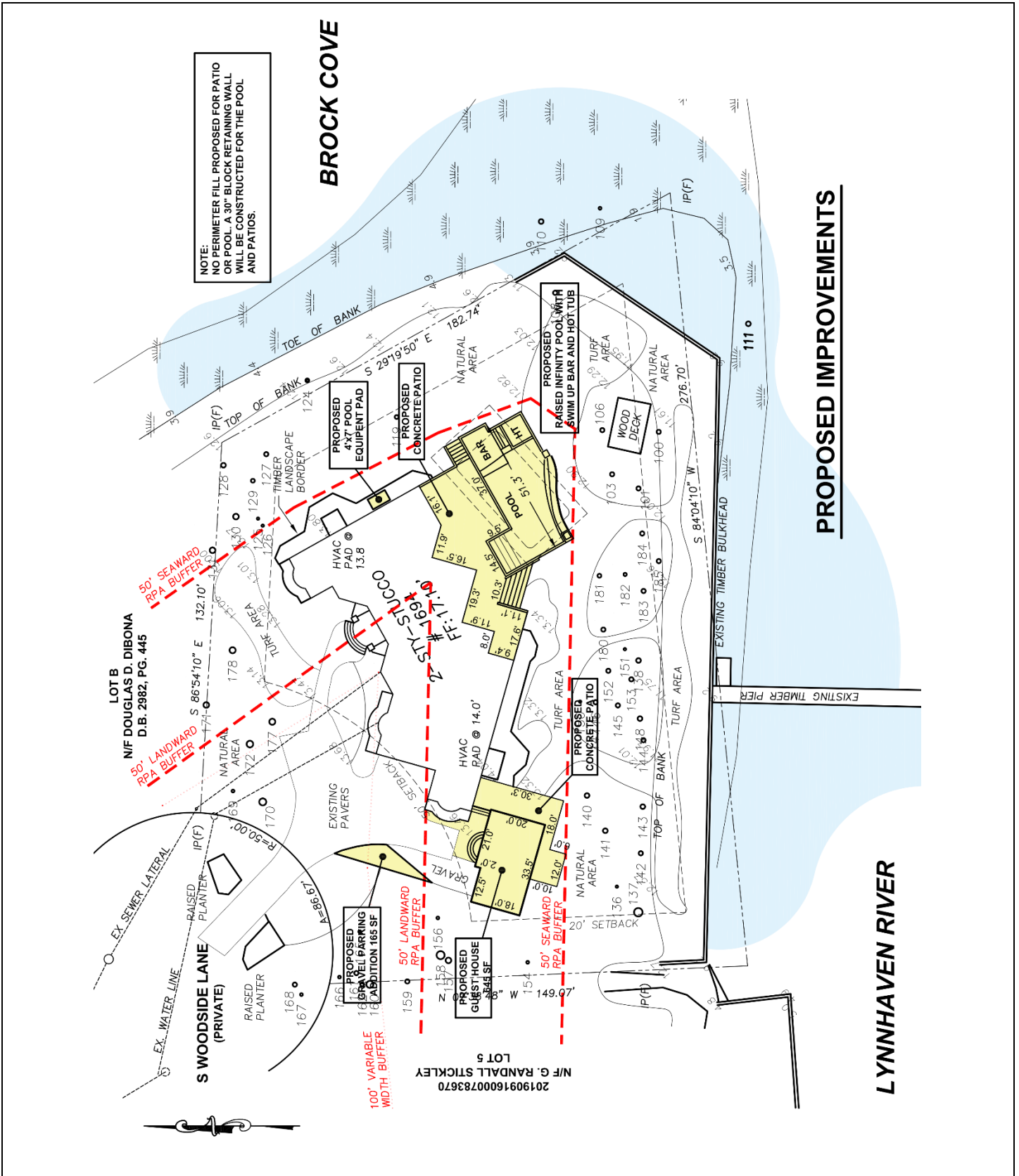
Site Aerial



CBPA Exhibit – 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 Scott W. Moore

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

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

Robert E. 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.

YNOT Build, LLC

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

Scott W. Moore

Print Name and Title

12/7/2020

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	

