



May 3, 2021

# **Chesapeake Bay Preservation Area**

## **CBPA Board Agenda**

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# CHESAPEAKE BAY PRESERVATION AREA BOARD

## NOTICE OF PUBLIC HEARING

The City of Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold a Public Hearing on Monday, May 3, 2021, at 10:00 a.m. at the Virginia Beach Convention Center, 1000 19th Street, Virginia Beach, Virginia.

An informal session will be held at 9:00 a.m. at the Virginia Beach Convention Center, 1000 19th Street, Virginia Beach, Virginia. During the informal session, Staff briefs the Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing that follows. For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-4621 or go to [www.vbgov.com/cbpa](http://www.vbgov.com/cbpa) or visit the Department of Planning and Community Development, 2875 Sabre Street, Suite 500, Virginia Beach, Virginia by appointment.

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

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

### THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

*(IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT A STAFF MEMBER VIA EMAIL ([pscully@vbgov.com](mailto: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 as a spokesperson, and the spokesperson is encouraged to have his or her supporters stand to indicate their support.

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

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

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



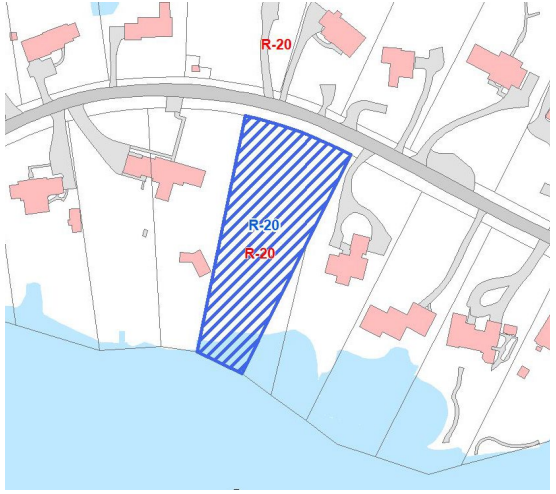
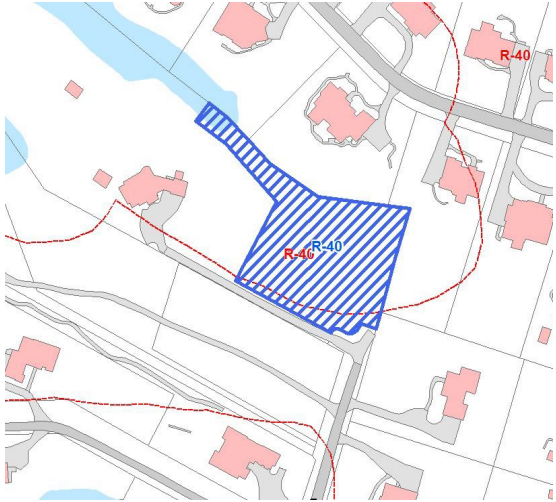
# CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **May 3, 2021**

Due to the ongoing Covid-19 Pandemic, please check the Chesapeake Bay Preservation Area (CBPA) Board website at [www.vbgov.com/cbpa](http://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](http://www.vbgov.com/cbpa). For information call (757) 385-4621.

<b>OLD BUSINESS AGENDA ITEMS</b>	
<p><b>1. Charis Properties, LLC</b> [Applicant &amp; Property Owner]</p> <p><b>465 Goodspeed Road</b> GPIN 2419-41-8184 Council District – Lynnhaven Accela Record 2021-CBPA-00003</p> <p><b>Variance Request</b> – Encroachment into the Resource Protection Area (RPA) 50-foot seaward buffer with the placement of fill material.</p> <p><b>Staff Planner</b> – PJ Scully <b>Staff Report</b> – page 9</p>	
<p><b>2. Dean Cauley</b> [Applicant &amp; Property Owner]</p> <p><b>Roper Tract, Lot A-1, Lynnwood Drive</b> GPIN 1488-88-4048 Council District – Lynnhaven Accela Record 2021-CBPA-00016</p> <p><b>Variance Request</b> – Encroachment into the RPA to construct a single-family residence with accessory structure.</p> <p><b>Staff Planner</b> – PJ Scully <b>Staff Report</b> – page 11</p>	

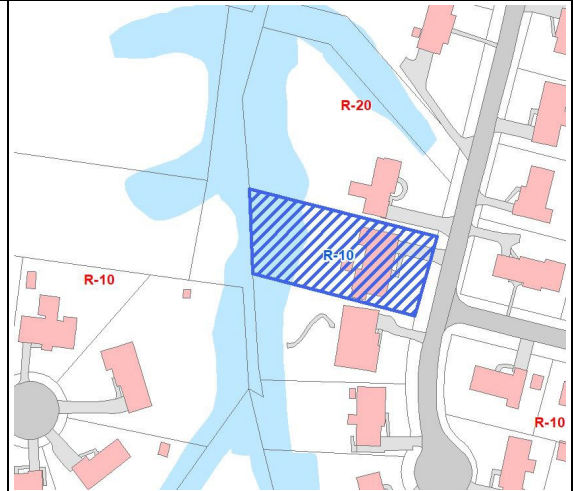
## OLD BUSINESS AGENDA ITEMS

- 3. Todd B Perry Trust**  
[Applicant & Property Owner]

**3517 Byrn Brae**  
GPIN 1446-99-1992  
Council District – Kempsville  
Accela Record 2021-CBPA-00013

**Variance Request** – Encroachment into the RPA to construct a swimming pool with associated pool surround.

**Staff Planner** – PJ Scully  
**Staff Report** – page 25



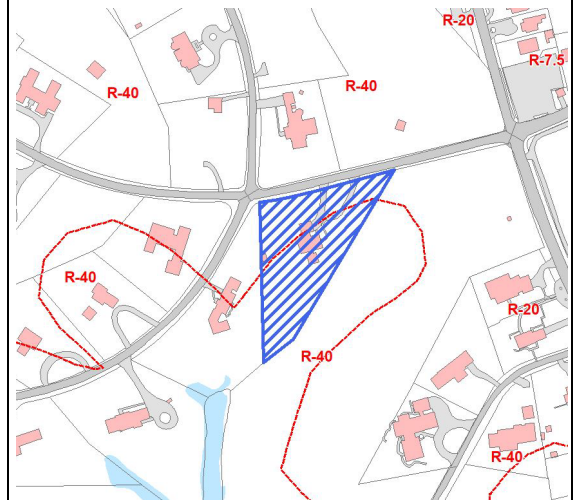
## NEW BUSINESS AGENDA ITEMS

- 4. Elizabeth B. Skolnick**  
[Applicant & Property Owner]

**512 Linkhorn Drive**  
GPIN 2418-84-3220  
Council District – Beach  
Accela Record 2021-CBPA-00019

**Variance Request** – Encroachment into the RPA to construct a detached garage with covered walkway, swimming pool with associated pool surround and cabana.

**Staff Planner** – PJ Scully  
**Staff Report** – page 37

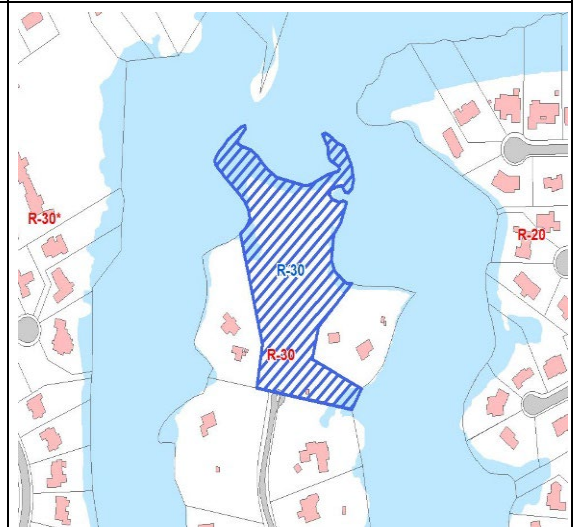


- 5. Anthony & Cynthia Disilvestro**  
[Applicant & Property Owner]

**1680 Godfrey Ln**  
GPIN 2409-23-0703  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00027

**Variance Request** – Reconsideration of the 2017 CBPA Variance for an increase in impervious cover within the 100-foot Resource Protection Area (RPA) buffer.

**Staff Planner** – PJ Scully  
**Staff Report** – page 49



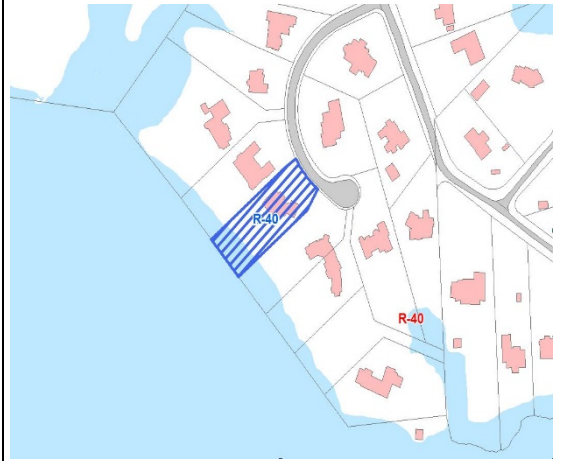
## NEW BUSINESS AGENDA ITEMS

- 6. Gregory & Becky Sawyer**  
[Applicant & Property Owner]

**2920 Gaines Landing**  
GPIN 1499-23-2719  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00014

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

**Staff Planner** – PJ Scully  
**Staff Report** – page 63

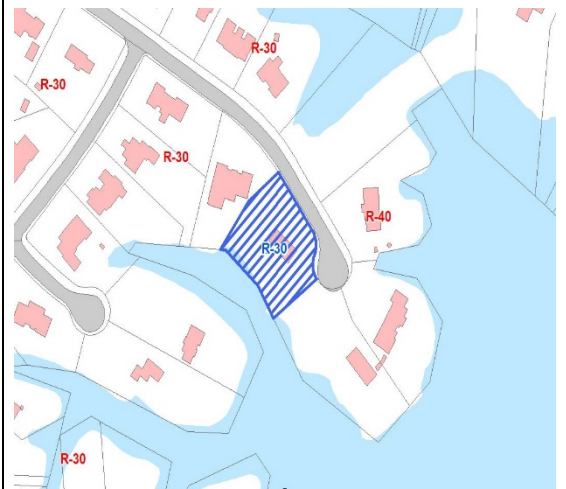


- 7. Buffy & Jason Barefoot**  
[Applicant & Property Owner]

**4045 Bridgehampton Ln**  
GPIN 1488-05-7136  
Council District – Bayside  
Accela Record 2021-CBPA-00021

**Variance Request** – Encroachment into the RPA to construct an outdoor kitchen with paver area and terrace with fire pit.

**Staff Planner** – PJ Scully  
**Staff Report** – page 77

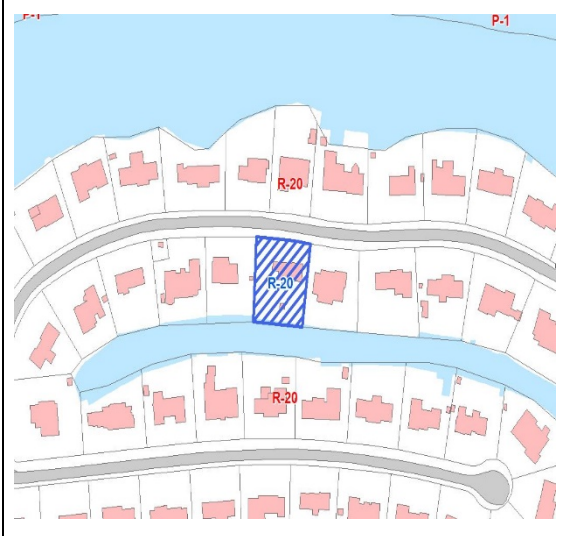


- 8. Cynthia & John Trefry**  
[Applicant & Property Owner]

**2333 Leeward Shore Dr**  
GPIN 2500-00-2040  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00025

**Variance Request** – Encroachment into the RPA to redevelop pool deck and construct a circular driveway, building addition, 2 covered porches and a moveable shed.

**Staff Planner** – PJ Scully  
**Staff Report** – page 89



## NEW BUSINESS AGENDA ITEMS

**9. Winnie Musa & Jeffrey Piper**  
[Applicant & Property Owner]

**1116 Bruton Ln**  
GPIN 2418-27-9575  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00022

**Variance Request** – Encroachment into the RPA to construct a building addition and wood deck.

**Staff Planner** – PJ Scully  
**Staff Report** – page 101

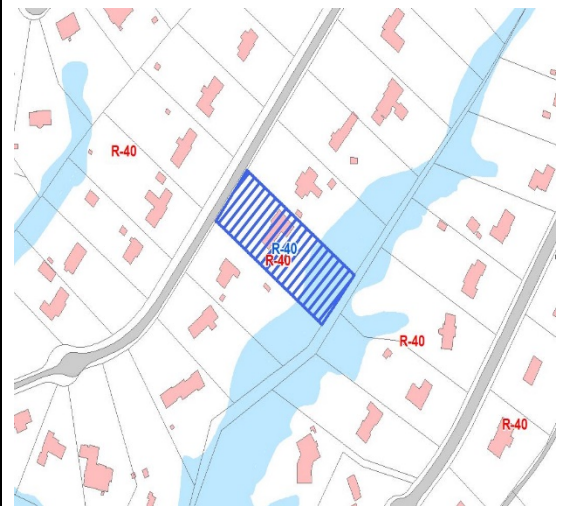


**10. Melanie Haga & Ryan Dunlap**  
[Applicant & Property Owner]

**1028 Michaelwood Dr**  
GPIN 1488-55-3453  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00023

**Variance Request** – Encroachment into the RPA to construct a garage addition with gravel drive, covered porch, paver area, swimming pool and walkway to dock.

**Staff Planner** – PJ Scully  
**Staff Report** – page 115

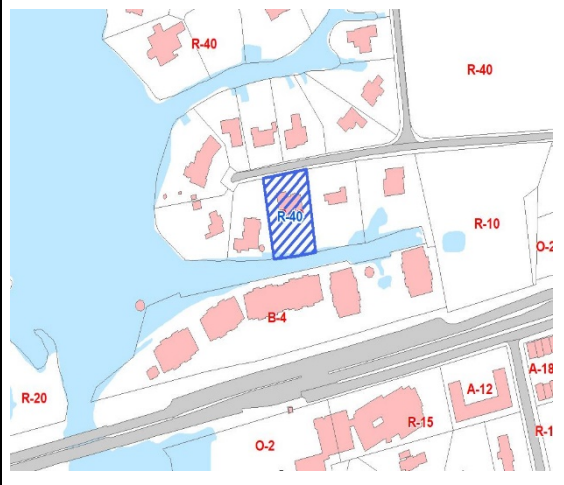


**11. Christina & David Burchett**  
[Applicant & Property Owner]

**1257 Tanager Trl**  
GPIN 2418-30-7135  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00024

**Variance Request** – Encroachment into the RPA to construct a swimming pool with associated pool deck.

**Staff Planner** – PJ Scully  
**Staff Report** – page 117





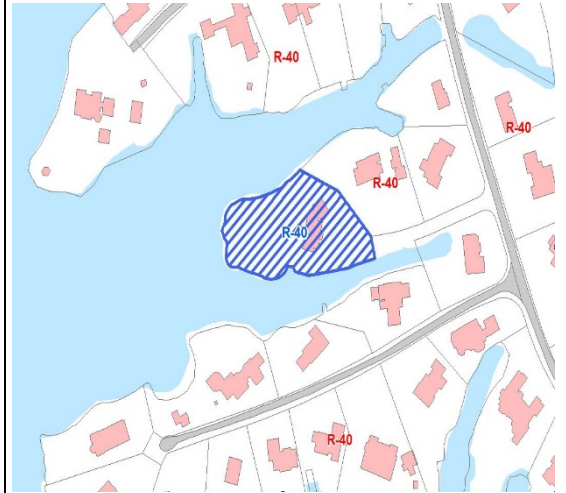
## NEW BUSINESS AGENDA ITEMS

**12. Abby & Brenda Horwitz**  
[Applicant & Property Owner]

**1308 Wren Pl**  
GPIN 2418-13-9225  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00026

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

**Staff Planner** – PJ Scully  
**Staff Report** – page 133

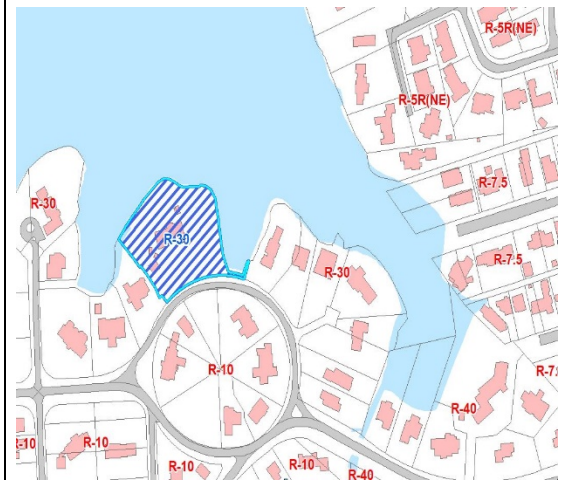


**13. Boyd Melchor & Deona Oliver**  
[Applicant & Property Owner]

**1244 Crystal Lake Cir**  
GPIN 2418-68-7136  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00028

**Variance Request** – Encroachment into the RPA to redevelop and expand pool deck and pool house.

**Staff Planner** – PJ Scully  
**Staff Report** – page 143



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**The applicant is requesting a deferral of this application to the July 5, 2021 CBPA Board Public Hearing.  
 Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) 50-foot seaward buffer with the placement of fill material.

This variance request was deferred at the March 1, 2021 CBPA Board Public Hearing.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Instrument No. 20180308000191680  
 Recorded 3/8/2018

**GPIN**

1488-88-4048

**SITE AREA**

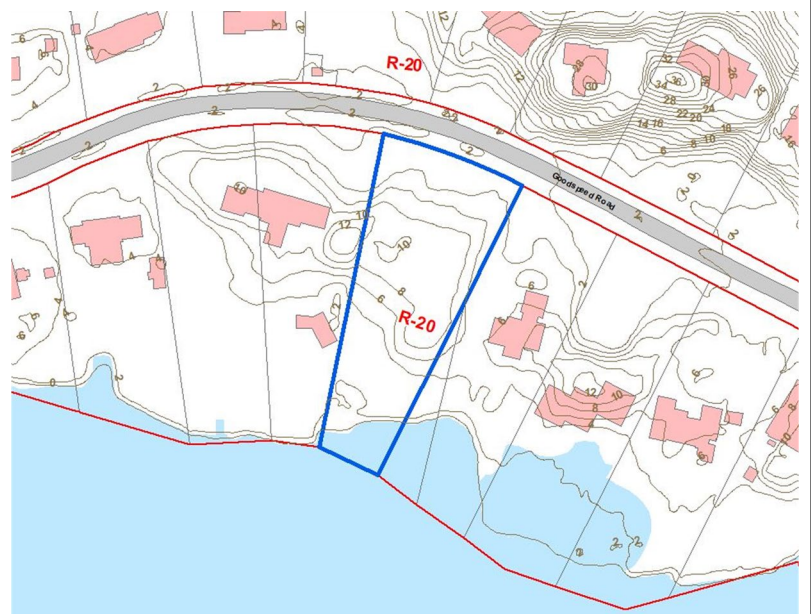
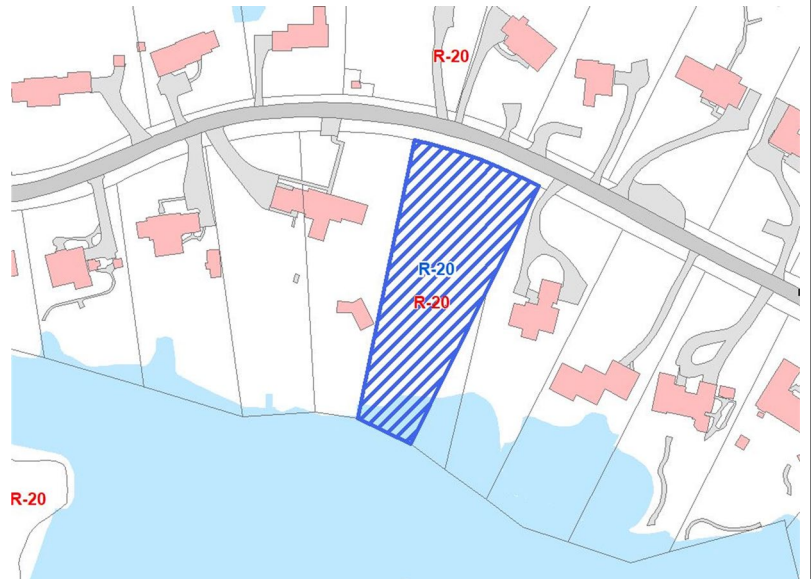
48,018 square feet or 1.102 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

40,804 square feet or 0.937 acre

**EXISTING IMPERVIOUS COVER OF SITE**

0 square feet or 0 percent of site



# Site Aerial





Applicant & Property Owner **Dean Cauley**  
Address **Lynwood Drive**  
Public Hearing **May 3, 2021**  
City Council District **Beach**

Agenda Item

**2**

**Variance Request**

Encroachment into the RPA to construct a single-family residence with accessory structure.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Instrument No. 20180308000191680

Recorded 3/8/2018

**GPIN**

1488-88-4048

**SITE AREA**

48,018 square feet or 1.102 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

40,804 square feet or 0.937 acres

**EXISTING IMPERVIOUS COVER OF SITE**

0 square feet or 0 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

8,794 square feet or 21.6 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

7,485 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

100-foot Variable Width Buffer

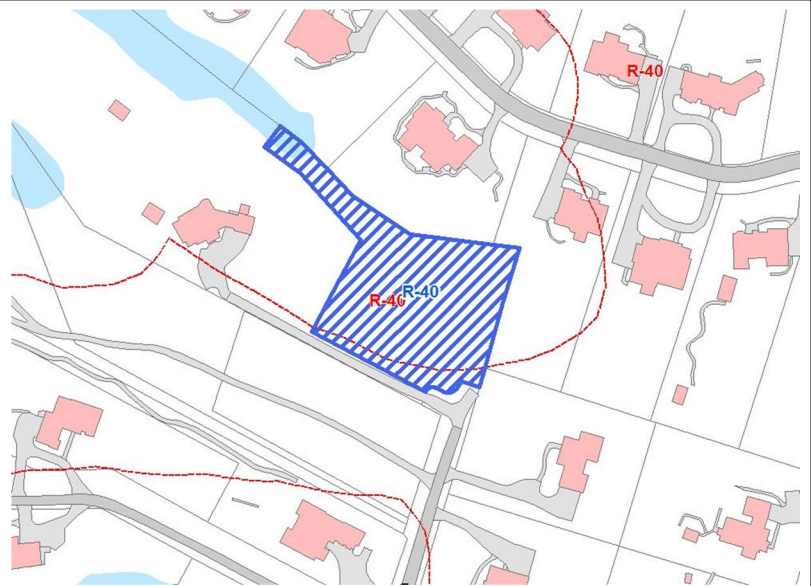
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Undeveloped lot

### Construction Details

- Single family residence with associated concrete walkways
- Concrete driveway
- Swimming pool with concrete pool patio
- Covered porches
- Shed

## CBPA Ordinance Variance History

This variance request was deferred at the following CBPA Public Hearing.

- April 5, 2021 CBPA Board Public Hearing

**May 22, 2017 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of a single parcel into two residential lots with the following conditions:**

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition as well as for the construction of individual single-family lots.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *Wire reinforced 36 inches silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed approximately 15 feet from improvements.*
4. *Construction limits shall lie approximately 15 feet seaward of improvements. All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
5. *Prior to clearing, grading, demolition or construction, tree protection shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. Said 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.*
6. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
7. *All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*

8. *Individual single-family lot encroachments into the RPA buffer shall be limited to the designated building envelopes as shown on the Chesapeake Bay Preservation Area (CBPA) exhibit. No encroachment for any lot shall extend outboard of the designated building envelope.*
  
9. *The maximum impervious cover for each proposed lot shall not exceed the following*

<i>Proposed lot A-1: 7,601.52 square feet</i>	<i>19 percent of individual lot</i>
<i>Proposed lot B-1: 17,780.16 square feet</i>	<i>16 percent of individual lot</i>
  
10. *An individual single-family site plan for each lot 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. The conditions of this variance shall be noted on the submitted site plan.*
  
11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
  
12. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
  
13. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable. Planting / buffer restoration areas shall have a mulch layer of organic material 4 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
  
14. *Turf area for each lot shall be located no further seaward than the seaward limits of the proposed building envelope and limited to the remaining building envelope area for each lot minus the total impervious cover permitted.*

<i>Proposed lot A-1: 14,774 square feet minus the proposed impervious</i>	
<i>Proposed lot B-1: 22,180 square feet minus the proposed impervious cover</i>	
  
15. *When applicable, under deck treatment of sand and gravel shall be installed.*
  
16. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with individual site plan approval. Payment shall be calculated as follows (proposed impervious cover in the Resource Protection Area (RPA) divided by 4, divided by 27, times 15, and times 1.65 for the total amount required). Said amount is based on 25% of the proposed impervious cover within the RPA and shall provide for an oyster shell plant within the Lynnhaven River Basin.*
  
17. *The recordation of this variance shall be referenced on the subdivision plat by the following note:*

*"A CHESAPEAKE BAY PRESERVATION AREA (CBPA) BOARD VARIANCE WAS APPROVED (provide date of variance). THE VARIANCE APPROVAL CONTAINED CONDITIONS FOR ALL PROPOSED CONSTRUCTION THAT QUANTIFIED LIMITS OF IMPERVIOUS COVER FOR EACH SINGLE FAMILY LOT. LIMITS OF IMPERVIOUS COVER ARE SHOWN ON THE CBPA EXHIBITS AND ARE ON FILE WITH THE DEPARTMENT OF PLANNING AND*

COMMUNITY DEVELOPMENT. DEVIATION FROM THE CONDITIONS OF THE CBPA BOARD VARIANCE MAY REQUIRE RESUBMITTAL FOR BOARD CONSIDERATION."

18. The conditions and approval associated with this variance are based on the exhibit plan dated March 30, 2017, prepared by Gallup Surveyors and Engineers, signed March 30, 2017 by Bruce Gallup. 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.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

### Shoreline

Shoreline is in a natural state. The applicant's agent stated in the Water Quality Impact Assessment (WQIA) that approximately 100 linear feet of shoreline will be managed. Management of the shoreline consists of pruning existing canopy and understory trees to promote sunlight interaction with the existing forested floor and removing trash and debris buildup within the isolated cove area of the lot.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 35 trees with a diameter at breast height (DBH) greater than 6 inches.
- Number of existing canopy trees requested for removal within the RPA: 42 trees with DBH less than 6 inches.
- Number of existing understory trees requested for removal within the RPA: 10
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction. Of the trees within the limits of construction, approximately 36 trees are outboard of the 2017 CBPA Exhibit envelop. The trees outboard of the 2017 CBPA Exhibit consist of approximately 13 canopy trees with a DBH greater than 6 inches.

## 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.

## Evaluation and Recommendation

The applicant has submitted this variance request for a reconsideration of the 2017 Chesapeake Bay Preservation Area (CBPA) Board variance. The 2017 variance conditioned that no further encroachment into the Resource Protection Area (RPA) feature occur beyond the delineated building envelop as depicted on the CBPA Exhibit provided on page 19 below and limited overall impervious cover on the lot to 7,601.52 square feet or 19 percent of the lot above water and wetlands. Since the deferral request at the April 2021 CBPA Board public hearing, Staff has worked with the applicant's

Dean Cauley

Agenda Item 2

Page 14



agent and Engineer of Record regarding the above request to deviate from the 2017 CBPA Variance. As a result, the applicant has reduced the overall proposed impervious cover for this variance request by 451 square feet from 9,245 square feet to 8,794 square feet or 21.5 percent of the lot above water and wetlands. Approximately 65 square feet of the 451 square foot reduction occurs outboard of the 2017 CBPA Exhibit building envelop.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff concurs with the applicant's statement and is of the opinion that the proposed single-family residence and associated swimming pool are consistent with the size of other dwellings in the area. In addition, the 2017 CBPA Exhibit building envelop is approximately 14,774 square feet of which 6,449 square feet is within the front yard setback and 20-foot variable width public drainage easement. Staff is of the opinion that the applicant has situated the proposed improvements to avoid encroachment into both areas to the greatest extent practicable.
- 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 *"but rather is necessitated by the fact that this lot is within the Chesapeake Bay Preservation Act and the City's CBPA Ordinance."* Staff provides that the encroachment into the RPA on this lot is based upon conditions of the original developer and 2017 CBPA variance that has been imposed by the applicant's predecessor in title that limits a construction footprint within an conceptual area defined by a building envelop. Staff is of the opinion that this request to further encroach has been designed in a manner that reflects a true, realistic development for a property owner in-lieu of a building envelop and variance condition that addressed the assumed development of this lot.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to be minimize the impacts to the Chesapeake Bay, the new home has been placed towards the front setback line and shifted around on the site to minimize site impacts, and avoid development in the 50' seaward portion of the site."* Staff concurs and offers that the proposed improvements do not encroach into the 50-foot seaward buffer and are less than 22 percent of the of the lot above 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay. However, if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay."* Staff concurs and offers that the retention of the existing riparian buffer seaward of the proposed improvements provides merit towards water quality.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) A maximum of 750 square feet of turf is permitted for this lot. Said turf shall not be permitted within the 50-foot seaward buffer. All remaining pervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable consisting of 16 understory trees, 32 large shrubs, and 48 small shrubs.

The required restoration shall be installed beginning in the upper limits of 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 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 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

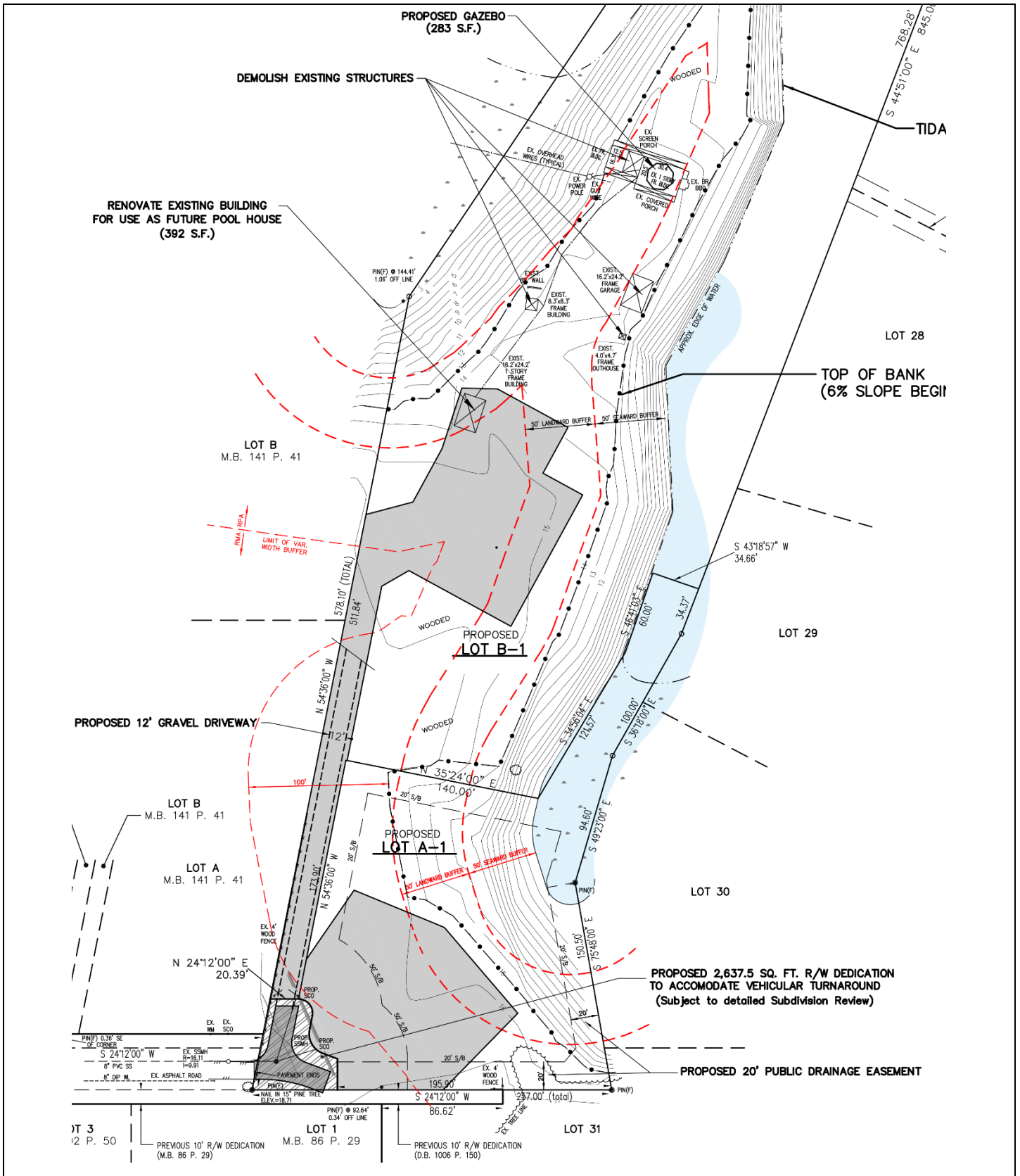
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall 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 \$2,015.29 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 May 22, 2017 for this lot only.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 23, 2021, prepared by WPL, signed April 6, 2021 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. 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.

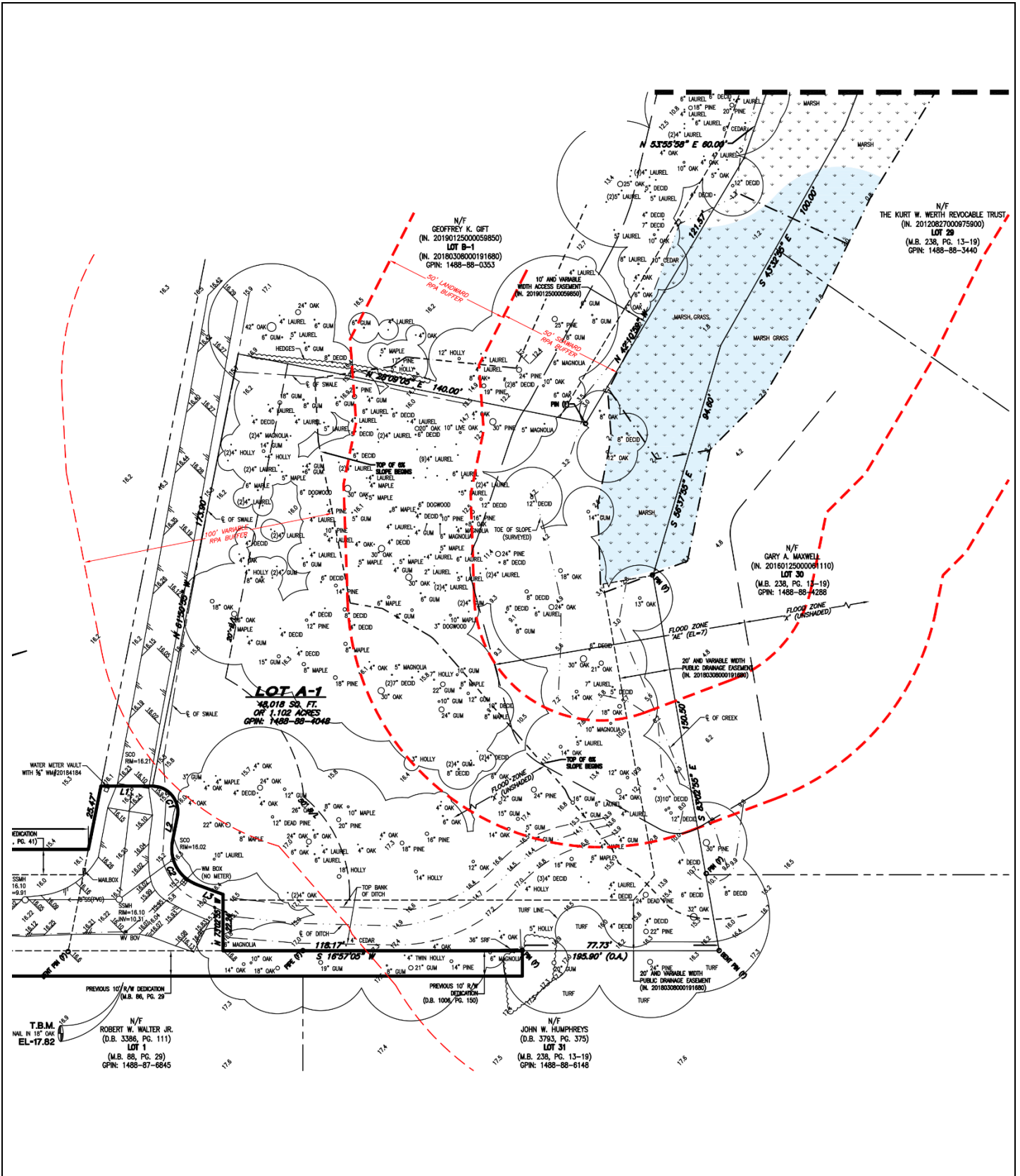
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





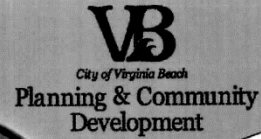
# CBPA Exhibit – Existing Conditions





# 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** Dean Cauley

**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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

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



## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

**Yes**  **No**

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

Towne Bank

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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

# Disclosure Statement



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

### Applicant Signature

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

Applicant Signature  
Dean C. Cauley

Print Name and Title  
February 26, 2021

Date

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

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

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

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



Applicant & Property Owner **Todd B. Perry Trust**  
Address **3517 Byrn Brae Drive**  
Public Hearing **May 3, 2021**  
City Council District **Kempsville**

Agenda Item

**3**

**Variance Request**

Encroachment into the RPA to construct a swimming pool with associated pool surround.

**Applicant's Agent**

Keith Oliver, PLA

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 50, Page 39  
Recorded 8/31/1960

**GPIN**

1446-99-1992

**SITE AREA**

23,368 square feet or 0.54 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

15,704 square feet or 0.36 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,926 square feet or 37.7 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,227 square feet or 39.7 percent of site

*\*calculates permeable pavement*

6,527 square feet or 41.6 percent of site

*\*overall impervious cover*

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

451 square feet

**Area of New Development in RPA**

301 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

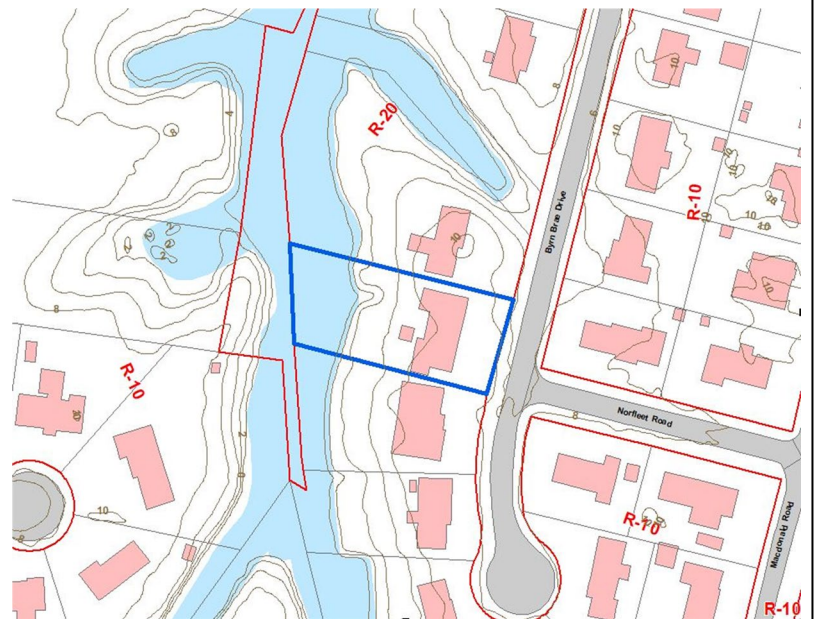
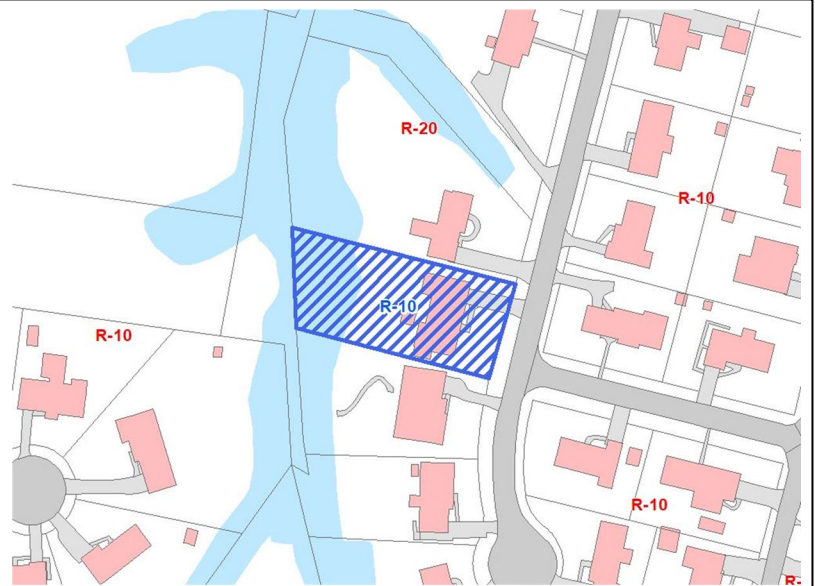
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Stone fire pit area and associated at-grade wooden deck

### Construction Details

- Swimming pool with associated pool surround
- Retaining wall, located along the seaward edge of the pool surround

## CBPA Ordinance Variance History

This variance request was deferred at the following CBPA Public Hearing.

- April 5, 2021 CBPA Board Public Hearing

February 1, 2021 a Chesapeake Bay Preservation Area (CBPA) Board variance was denied for the construction of a swimming pool with associated pool surround.

February 26, 2007 a Chesapeake Bay Preservation Area (CBPA) Board variance was denied for the construction of three putt-putt golf holes within the 50-foot seaward buffer.

## Environmental Conditions

### Flood Zone

Zone AE, Base Flood Elevation (BFE): 8

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)  
Bojac (fine, sandy loam) located below the top of bank

### Shoreline

Shoreline is hardened with a riprap revetment and wood bulkhead.

### Riparian Buffer

Sparsely Wooded Lot

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

## Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that infiltration beds will be provided as a best management practice for stormwater run-off mitigation. In addition, the applicant's agent has shown on the CBPA Exhibit an area of permeable pavers for a portion on the proposed swimming pool surround.

## Evaluation and Recommendation

The applicant is proposing to construct a 367 square foot swimming pool with a 624 square foot pool deck of which 292 square feet are specified to be a permeable paver system. The pool deck includes a 52-foot concrete masonry unit (CMU) linear retaining wall located along the seaward edge of the pool deck. Inclusive of the proposed swimming pool and pool deck, approximately 451 square feet is allocated to redevelopment with the removal of the existing stone fire pit area and an at-grade wood deck.

The applicant's agent stated in the WQIA that the *"the proposed encroachment is in a flat area of lawn and patio, behind the top of the 6% slope areas. The majority of the proposed deck to be constructed outside of the redevelopment area will be permeable. Most of the construction access, and all of the staging and stockpiling utilizes an existing driveway. Silt fence will be installed. Locating it next to the house limits encroachment."* Also stated in the WQIA, *"the retaining wall will have an approximate height of 1 to 2 feet to limit the use of fill material within the 50-foot seaward buffer."* As a means to manage the proposed request during the construction phase, the applicant's agent has delineated the construction accessway and limits of construction on the CBPA Exhibit specific to the dimension of the proposed improvements and existing environmental conditions of the lot. The delineated limits of construction minimize land disturbance to under 2,500 square feet as a means to prevent potential adverse impacts to water quality and stage for the construction of the proposed improvements on the existing driveway.

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.

- 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 owner is limiting and mitigating impacts with thoughtful siting and a smaller than average swimming pool and deck surround, using primarily permeable paving outside of the existing impervious redevelopment area."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along this reach of the Elizabeth River with most residential structures being built during the early 1960's and the density of the area equal to or greater than 4 dwelling units per acre, Staff is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff for this variance request. The recommended conditions require the applicant to meet additional standards for stormwater management for projects under 2,500 square feet and riparian buffer mitigation that would not be required if the residential lot was not located within the RPA Buffer of the Chesapeake Bay watershed.
- 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 predecessor in title *"because the home was constructed in 1986 and the owners purchased it in 1992. The rear yard depth was established by others."* Staff offers that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"pool is located in part over existing patio and behind the top of slope. The retaining wall is vertical, not segmental with an angled face, to reduce the footprint. The largest area of deck is on the landward side in area that is already paved and has been reduced to 3' minimum on the seaward side. Only 60 sf of the deck outside of the Redevelopment Area will be impervious, and the remaining 292 sf of the deck will be permeable. 20 sf of existing impermeable paving will be removed and replaced with permeable."* Staff concurs with the location of the improvements and

offers that the proposed dimensions for both the swimming pool and surround are smaller than the average residential swimming pool size and surround.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“this variance takes a careful approach to minimize the footprint, incorporate permeable paving, replace lawn with buffer planting, utilize previously disturbed areas, avoid slopes. It is similar the adjacent neighbors pool which was approved and construction a few years ago. Some of the impervious area is actually the water surface of the pool, so not typically contributing to runoff.”* Staff concurs.
- 5) *“The primary means is replacement of lawn with new buffer plantings and E&S controls during construction”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and is of the opinion that the analysis and layout of the proposed improvements coupled with the layout of the conditioned buffer restoration and selected plant species offers nutrient reduction annually on a lot and associated project that would not require stormwater management as proposed.

Given the above comments, Staff recommends the following 11 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan prepared by Via Design, signed February 26, 2021 by Keith M. Oliver. 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. A Single-Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. 1,180 square feet of buffer restoration shall be installed within the RPA buffer 50-foot seaward 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: 3 canopy trees, 5 understory trees 6 large shrubs and 9 small shrubs.

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

3. An infiltration trench shall be installed seaward of the proposed improvement to capture rainwater run-off from the proposed upland improvements and shall be sized by to accommodate and treat for pollutant removal.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. 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.
6. 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.**
7. 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.
8. 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.
9. No perimeter fill is authorized outboard or seaward of the proposed improvements.
10. **\*\*** 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 \$135.20 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.
11. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

**\*\*** 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.

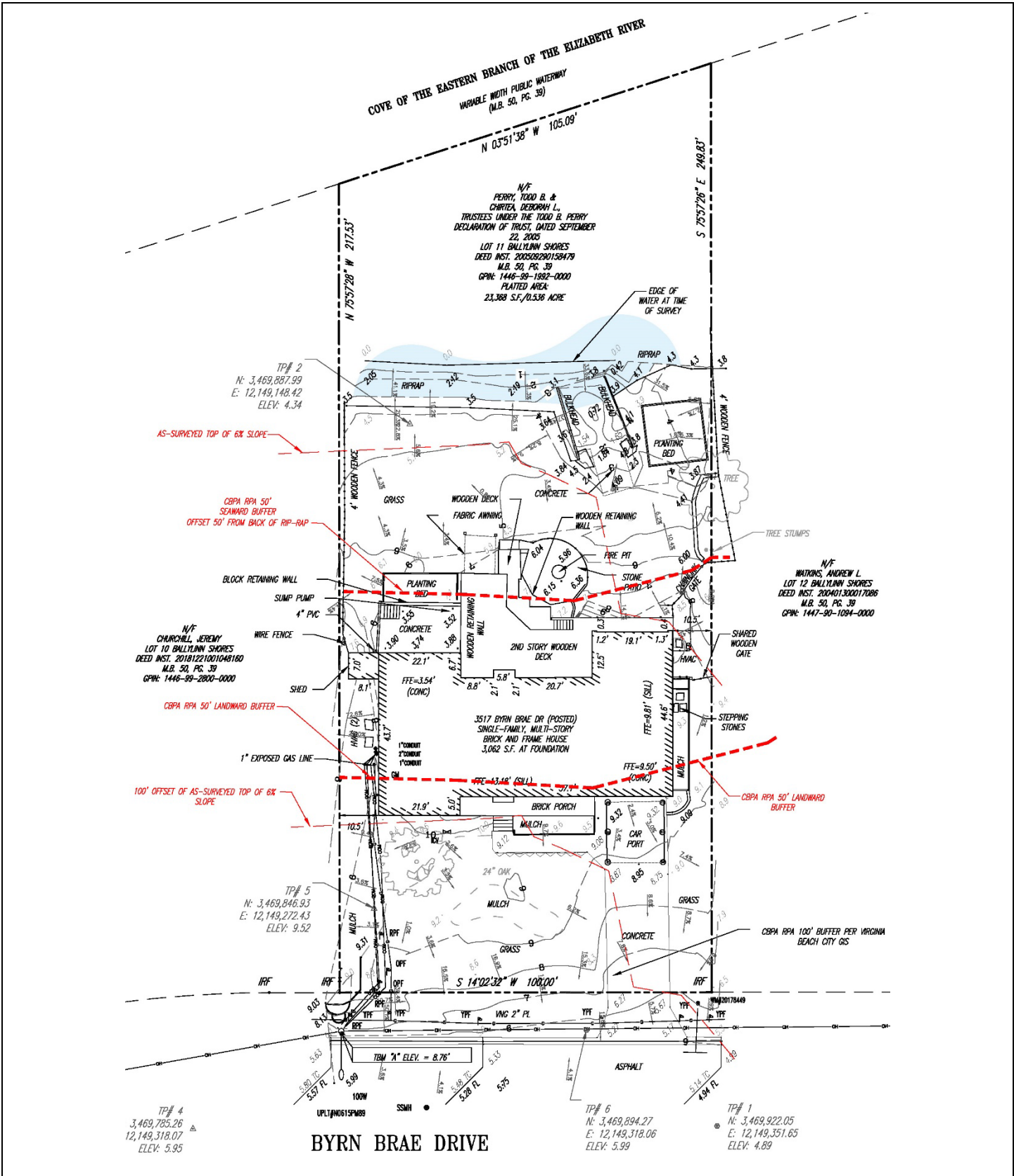
**\*\*\***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation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

Site Aerial

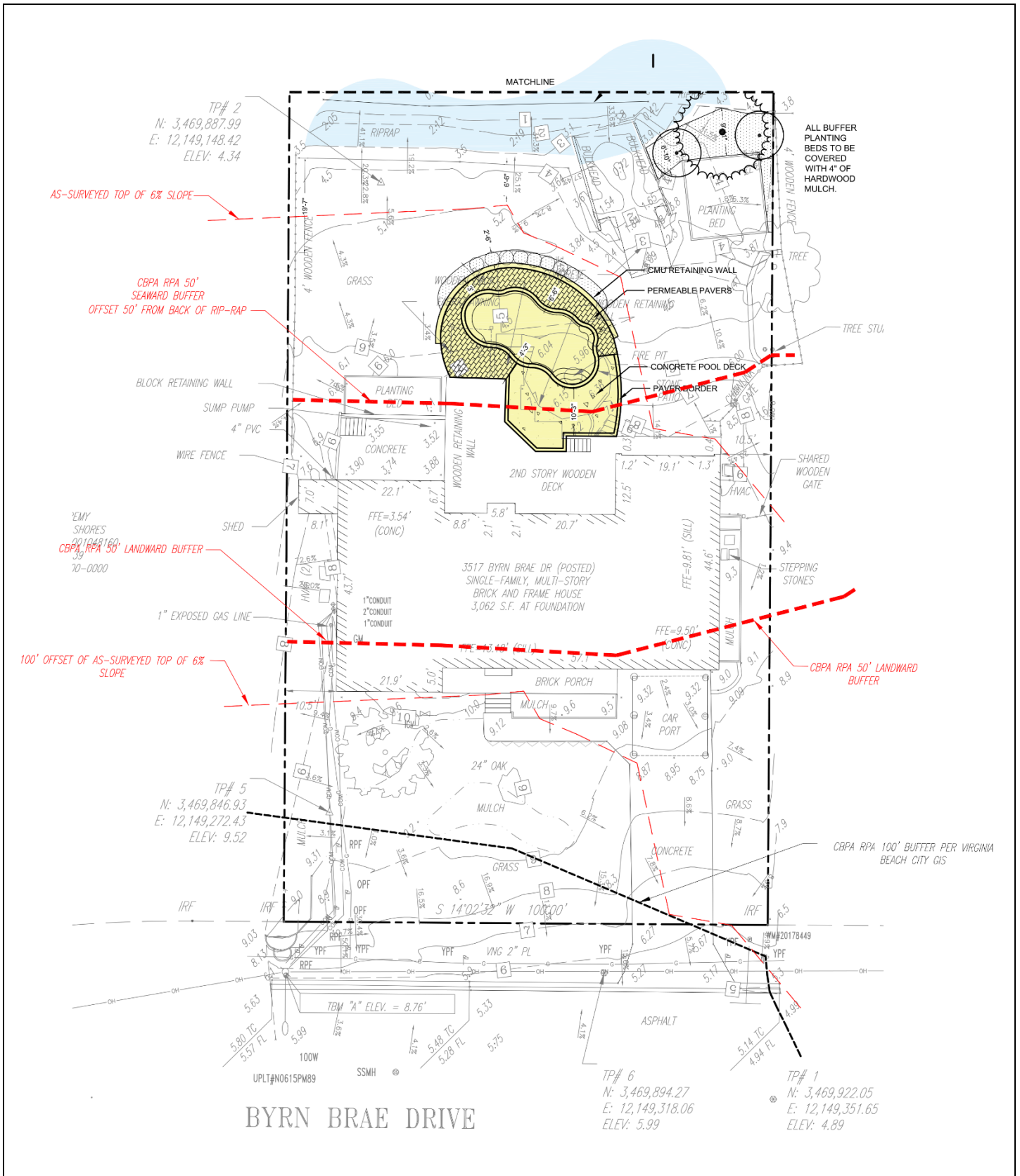




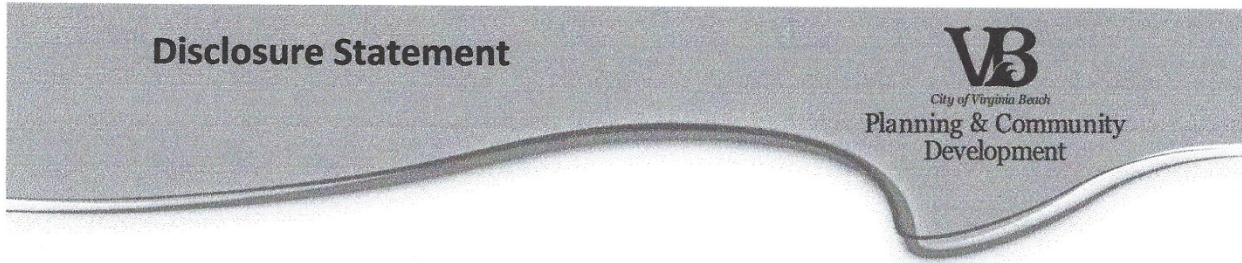
# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



# Disclosure Statement



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### Applicant Disclosure

Applicant Name Todd Perry

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

Keith Oliver, VIA Design Architect

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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

*VIA Design Architects*

---

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

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

# Disclosure Statement



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

---

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

---

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

### Applicant Signature

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

\_\_\_\_\_  
*Todd Perry*  
 Applicant Signature

\_\_\_\_\_  
 Todd Perry  
 Print Name and Title

\_\_\_\_\_  
 12-29-20  
 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	

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**Variance Request**

Encroachment into the RPA to construct a detached garage with covered walkway, swimming pool with associated pool surround and cabana.

**Applicant’s Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

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

**GPIN**

2418-84-3220

**SITE AREA**

68,092 square feet or 1.56 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

58,502.58 square feet or 1.34 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,599 square feet or 12.98 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

13,355 square feet or 22.8 percent of site

**Area of Redevelopment in RPA**

162 square feet

**Area of New Development in RPA**

5,756 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

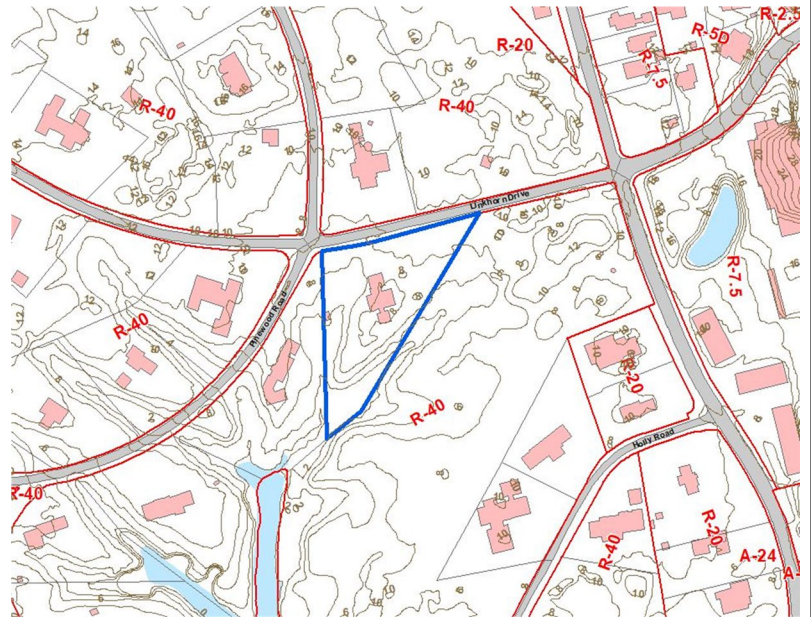
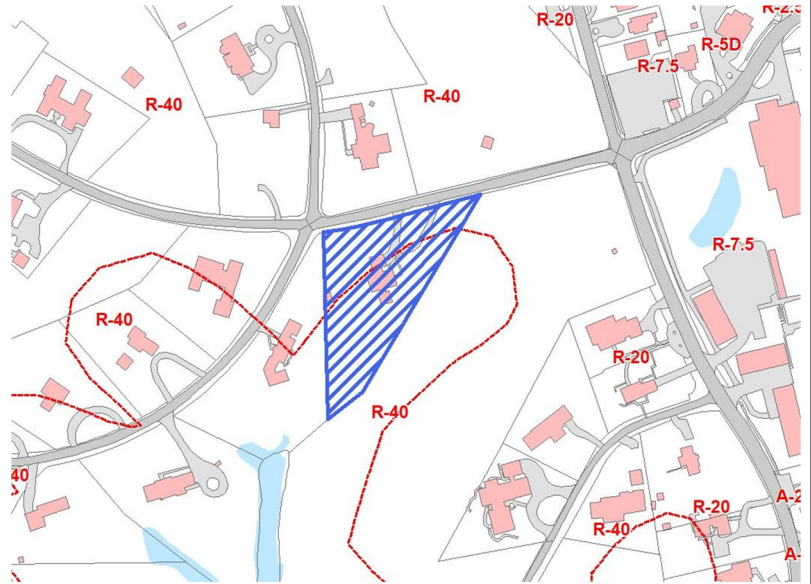
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with associated hot tub and 'Forever Lawn' pool surround
- Cabana with associated stone walk
- Stone patio with steps adjacent to existing residence
- Detached garage with covered walkway and associated driveway

## CBPA Ordinance Variance History

**December 21, 1993 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a room addition and deck to the existing single-family residence with the following conditions:**

- 1. A site plan must be submitted to the Planning Department for a Plan of Development review and approval and appropriate bonds posted prior to issuance of a building permit.*
- 2. The silt fence/limits of construction shall be re-established above the top-of-bank, to the greatest degree practicable.*

The December 21, 1993 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

Multiple Zones – Zone X, 0.2% Annual Chance of Flooding and AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

Chapanoke Series (deep, poorly drained soils)

Yeopim Series (deep and moderately well-drained soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily 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: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction.

## Stormwater Management Methodology

The applicant 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.

Elizabeth B. Skolnick

Agenda Item 4

Page 38



## Evaluation and Recommendation

The applicant is proposing to construct a 778 square foot detached garage with associated driveway and a 512 square foot swimming pool and hot tub with an associated 256 square foot cabana. Staff spoke with the applicant regarding the variance request and the applicant relayed to Staff that the purpose of the detached garage is to provide additional living space for care of a family member. An analysis of the proposed swimming pool and pool surround provides that the size of the swimming pool is in keeping with the size of other custom swimming pools built in the neighborhood on lots within the Resource Protection Area (RPA). With regard to the proposed swimming pool surround and stone patio areas, Staff is of the opinion that the layout provided is excessive and challenges the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance towards being the minimum necessary to afford relief. However, the applicant has provided an alternative surface material with the specification of a synthetic material (Forever Lawn) for approximately 36 percent of the area proposed, the area that is made up of Forever Lawn and stone patios. To further address this concern Staff provides the recommended conditions 5 and 6 below as merit towards the variance request being the minimum necessary to afford relief for the CBPA Board's consideration.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the *"property was platted in 1916, prior to the Chesapeake Bay Act, and the improvements are keeping in line with other homes in the neighborhood."* Staff concurs and offers that the proposed swimming pool and pool surround are similar in size to other custom swimming pools that have been built in the neighborhood on lots within the RPA.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because the *"property was platted in 1916, and the existing topographies and buffers now require approval from the Chesapeake Bay Preservation Act to seek variance approval."* Staff 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 *"per the layout of the submitted plan."* Staff acknowledges the statement provided by the applicant however evaluates each variance request based off merits of the proposal to existing environmental conditions and lot characteristics. As such, Staff is of the opinion that the proposed improvements, specific to the proposed swimming pool surround and stone patio areas challenge the findings of the CBPA Ordinance as being the minimum necessary to afford relief and has provided the recommended conditions below in support of the variance request.
- 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 project is in harmony with the intent of this neighborhood and not of substantial detriment to water quality or otherwise detrimental to the public welfare. This project will beautify and get the property in line with the adjacent parcels."* Staff concurs with the statement provided by the applicant and is of the opinion that the location of the lot at the headwaters of the RPA feature provides merit towards water quality with optimal pervious area seaward of the proposed improvements to allow for infiltration of stormwater runoff.
- 5) *"Improvements made to this site will be done with any guidelines necessary to protect the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff acknowledges the statement

provided by the applicant and offers the recommended conditions below as a means to manage the redevelopment of this lot towards a no net increase in nonpoint source pollution.

Given the above comments, Staff recommends the following 19 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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: **5,321 square feet x 200 percent = 10,642 square feet.**

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

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

- 4) The existing concrete basketball court shall be removed, and the area restored with vegetative cover.
- 5) The swimming pool area with associated 'Forever Lawn' areas and stone patios/walk shall be reduced by 435 square feet.
- 6) The areas described as 'Forever Lawn' shall be constructed of a permeable material/product system. A detail of the specific permeable material/product system and subbase construction shall be provided in the site plan submitted to the Development Services Center for review and approval.
- 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.

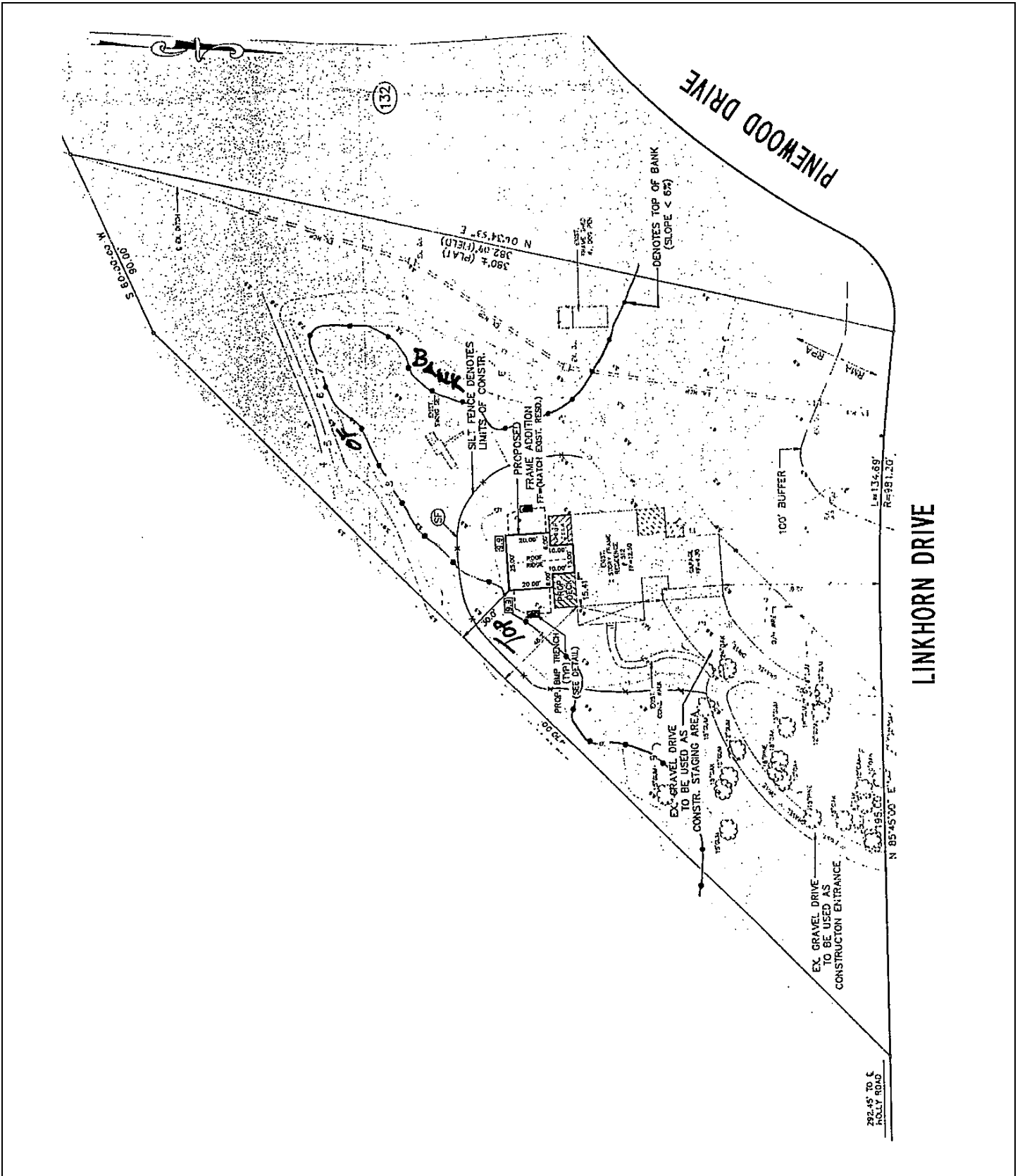
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 11) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 12) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 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) 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.
- 17) **\*\*** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,219.39 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 18) This variance and associated conditions **will supersede** the conditions of the Board variance granted December 21, 1993.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated December 2, 2020, prepared by Siska Aurand Landscape Architects, 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.

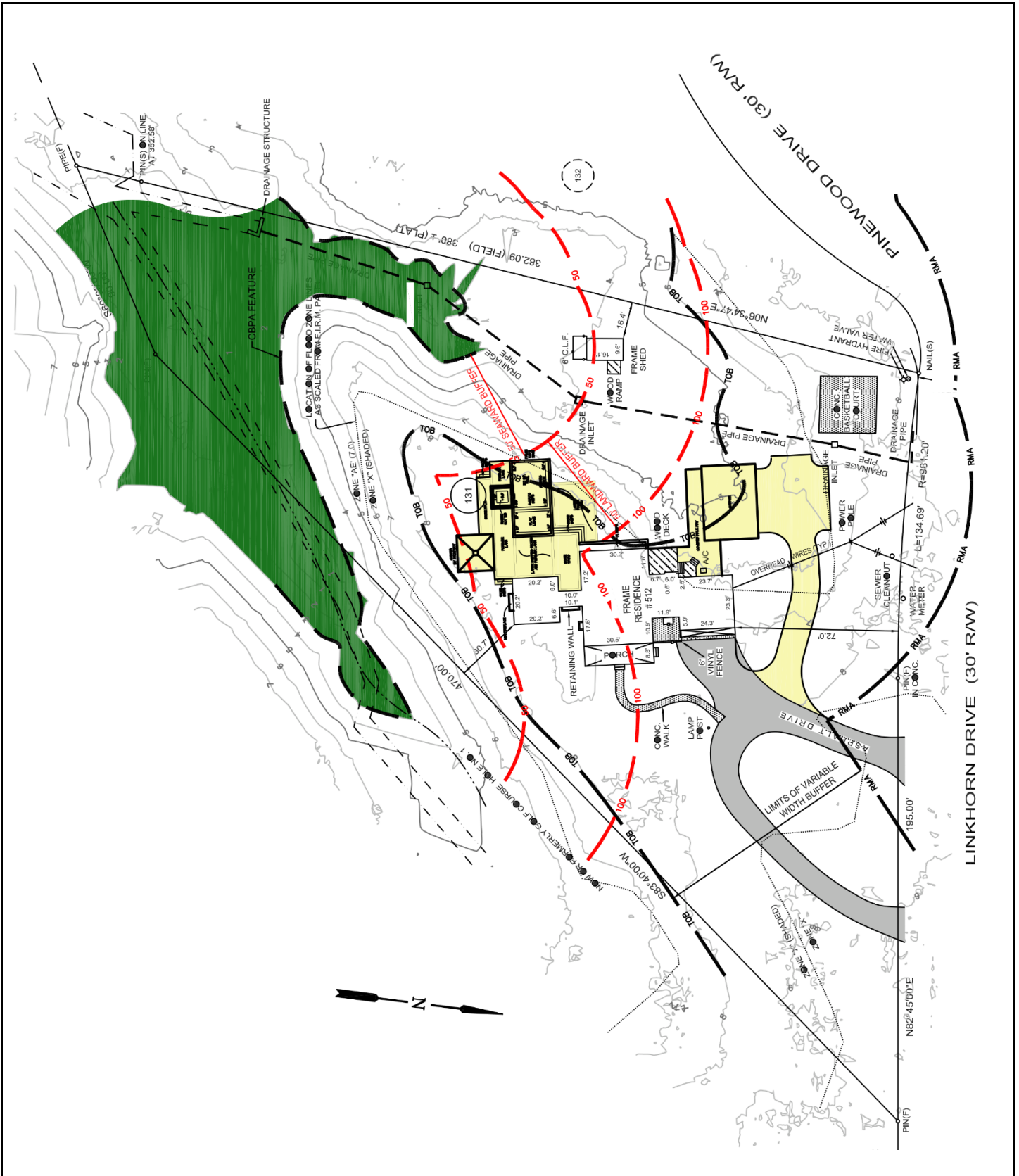
Site Aerial







# CBPA Exhibit – Proposed Improvements



# Disclosure Statement

## Disclosure Statement



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

### **Applicant Disclosure**

**Applicant Name** Elizabeth B Skolnick

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

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

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

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

- If **yes**, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

<sup>1</sup> "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.

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



# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

John Watson / Jeremy Maloney

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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.

TO be determined

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.

Hoggard Eure and Gallop Surveyors

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

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

### Applicant Signature

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

Applicant Signature Elizabeth B. Skolnick

Print Name and Title  
Elizabeth B Skolnick / Homeowner

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**

Reconsideration of the 2017 CBPA Variance for an increase in impervious cover within the 100-foot Resource Protection Area (RPA) buffer.

**Applicant's Agent**

Robert Simon

**Staff Planner**

PJ Scully

**Lot Recordation**

2/13/1959

Map Book 46, Page 36

**GPIN**

2409-23-0703

**SITE AREA**

227,139.58 square feet or 5.21 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

176,397 square feet or 4.05 acres

**EXISTING IMPERVIOUS COVER OF SITE**

19,510 square feet or 11.06 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

27,460 square feet or 16.39 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

2,913 square feet

*\* Above quantity associated with paver parking area*

6,496 square feet

*\* Above quantity associated with tennis court*

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

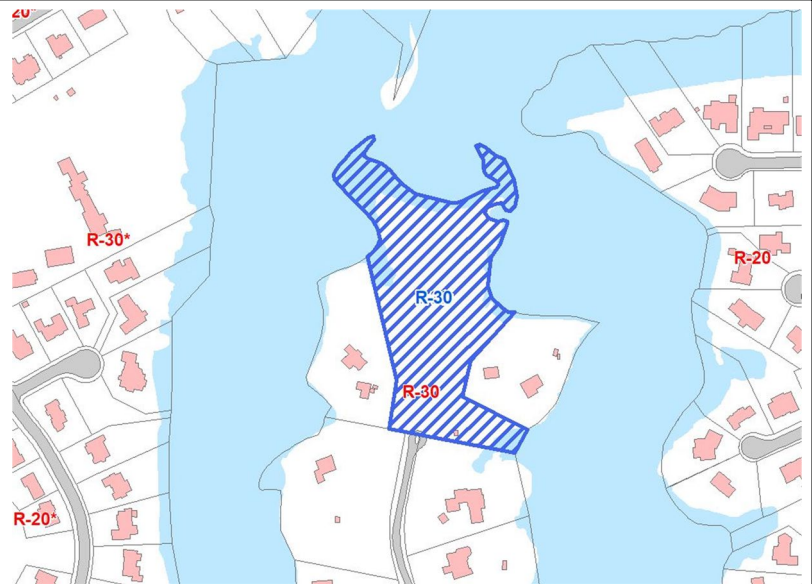
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approve as conditioned



## Summary of Proposal

### Construction Details

- Paver parking area
- Vehicular entry court expansion at garage access area, after the fact

## CBPA Ordinance Variance History

**December 20, 2017 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a single-family residence with vehicular entry court, pool, pool patio, driveway and clay tennis court with the following conditions:**

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *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.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
4. *Wire reinforced 36-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.*
5. *Exclusive of the limits of grading for the Flexamat installation, the construction limits along the seaward portion of the proposed primary structure and associated accessory structures shall lie a maximum of 15 feet seaward of said improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.***
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
8. *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.*
9. *A 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.*

10. 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.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Exclusive of the proposed Italian Cypress presented on the CBPA Board exhibit, buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **22,412 square feet x 200 percent = 44,842 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: **28 canopy trees, 28 understory, 56 large shrubs and 84 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.

13. **The pool shall be constructed prior to or concurrent with the residence.**
14. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
15. The proposed tennis court shall be rotated so that the northeast corner is landward of the 15-foot contour. Any redevelopment of the tennis court shall be of equal or greater permeability.
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 \$5,136.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 5,603 square feet, 12-inch-deep oyster shell plant within the Lynnhaven River Basin.**
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 **will supersede** the conditions of the Board variance granted February 25, 2008.
19. The conditions and approval associated with this variance are based on the exhibit plan dated November 5, 2017 and revised November 28, 2017, prepared by Chesapeake Bay Site Solutions, Inc., signed December 5, 2017 by Gregory Milstead. The conditions and approval associated with this variance are based on the Board exhibit

prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

## Environmental Conditions

### Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 7 and Zone VE, BFE: 9 located along the northern portion of the lot

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)  
Rumford Series (highly erodible soils) located below the top of bank

### Shoreline

The shoreline along the northern portion of the lot has been regraded at an approximate 1:1 slope for a distance of 175 linear feet to correct an approximate 8 to 12-foot escarpment. The reestablished bank has been stabilized with the placement of a ‘Flexamat’ system. ‘Flexamat’ is a vegetated concrete block mat utilized for stabilizing slopes and channels. In addition, a 245-foot-long offshore break water has been installed as a means to further protect the toe of slope and existing sandy beach area. This portion of the property falls within the FEMA VE Flood Zone and is subject to coastal hazards associated with storm waves.

### Riparian Buffer

Moderately to sparsely wooded parcel. The majority of the lot moderately wooded occurs along the western, eastern and southern shoreline with approximately 600 linear feet of the lot’s shoreline has remained in a natural state.

## Stormwater Management Methodology

The applicant’s agent has stated in the Water Quality Impact Assessment (WQIA) that grass channels, permeable pavers and bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation. Due to the changes that have occurred to the proposed improvements, Staff required the applicant to submit a revised stormwater management plan to the Development Services Center (DSC) for the already constructed improvements. Said stormwater management plan is in the second review process and the applicant’s agent is awaiting resubmittal to the DSC based off the outcome of the CBPA Board public hearing.

## Evaluation and Recommendation

The applicant has submitted this variance request for a reconsideration of the 2017 Chesapeake Bay Preservation Area (CBPA) Board variance that conditioned, specific to this lot, *“that the approval granted is the maximum impervious cover the site can support”* as opined by the CBPA Board. As submitted, the proposed improvements are less than the maximum impervious cover, 22,412 square feet that was conditioned by the CBPA Board at the 2017 CBPA Board Public Hearing. At this time, the applicant desires to construct the approved tennis court and proposed paver parking area. As such the overall impervious cover of the lot will exceed the conditions of the 2017 CBPA Variance. A breakdown of the cumulative existing and proposed impervious covers are as follows.

<b>Improvements (either existing or proposed)</b>	<b>Cumulative Square Footage Quantity</b>
• Existing residence, swimming pool and associated driveway and walks	19,510 square feet
• Proposed paver parking area (plus 2,913 square feet)	22,423 square feet

- Tennis court associated with 2017 Variance (plus 6,496 square feet) 28,919 square feet

During the stormwater management plan review associated with the 2017 CBPA Variance, Staff required that the current improvements be recorded and submitted for accurate accounting of impervious cover on the lot. During said review, Staff determined that the improvements as built encroach further seaward into the RPA buffer with the field change along the eastern portion of the residence associated with the vehicular entry court expansion at garage access area. Given the existing impervious cover of the lot and the improvements that were approved with the 2017 CBPA Board Variance that have not been construction, Staff is of the opinion that the overall impervious cover challenges the findings of the CBPA Ordinance with regard to the improvements being the minimum necessary to afford relief. As such, 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 are appropriate based off the conveniences of others within the neighborhood.

- 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 total impervious cover for the site is 15.5 percent, well below the 30 percent threshold for most variances."* Given the impervious development of the residential lots along this reach of the Lynnhaven River and the encroachments that have been granted to property owners along Haversham Close, Dey Cove Drive and Bay Point Drive, Staff is of the opinion that the proposed improvements would not convey any special privileges that have not been provided to other owners of property within the RPA. However while Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request and not based off an applicable percentage of impervious cover to a lot. A such, Staff provides the recommended conditions below consistent with conditions of the 2017 CBPA Variance. The recommended conditions require the applicant to meet the conditions for impervious cover, verify the standards for riparian buffer mitigation have been provided and long-term maintenance of the undeveloped riparian buffer that would not be required if the residential lot was not located within the RPA Buffer of the Chesapeake Bay watershed.
- 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 *"the lot was created prior to 1959 and the buildable area at the point and throughout the property is heavily impacted by the CBPA Ordinance."* Staff 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. However, in addition to the request for new improvements within the 100-foot RPA buffer with the proposed paver parking area, the applicant has encroached further seaward with the driveway and walkway to the pier that was not shown on the 2017 CBPA Exhibit. The existing conditions associated with the impervious cover on the lot are consistent with the maximum impervious cover conditioned by the CBPA Board in 2017 but will exceed the maximum impervious cover conditioned by the CBPA Board should this variance request be granted. As such, Staff has provided the recommended conditions below for the CBPA Board's consideration.
- 3) The variance is the minimum necessary to afford relief because *"the proposed development is only at 15.5 percent of the site."* Staff corrects the percentage provided by the applicant's agent to be 16.4 percent of the site above water and wetlands inclusive vehicular entry court expansion, paver parking area and conditioned tennis court. Staff is of the opinion with the 2017 CBPA variance request that the proposed improvements, specific to the location of the primary structure on the lot challenged the findings of the CBPA Ordinance. However, Staff commends the applicant for correcting the detrimental erosion that was occurring along the northern portion of the lot, the removal of trash and debris that accumulated along the

tidal shoreline, and the ongoing review of a full stormwater management plan with Staff to comply with State stormwater regulations.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed development is at 15.5 percent in of the site and all stormwater runoff is being treated in compliance with the Virginia Stormwater Management regulations.”* While Staff acknowledges the statement provided by the applicant’s agent, Staff offers that the impervious development of the residential lots along this reach of the Lynnhaven River and the encroachments that have been granted to property owners along Haversham Close, Dey Cove Drive and Bay Point Drive are similar if not more when reviewed for encroachment into the 100-foot RPA and overall impervious cover of the lot. However, Staff has provided the recommended conditions below as a means for the variance request being in harmony with the purpose and intent of the CBPA Ordinance.
- 5) *“Pavers, bioretention beds and natural areas to be enhanced will reduce nonpoint source pollution from running off this lot”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that approval of the stormwater management plan currently under review by Staff when approved, implemented correctly, and maintained offers merit towards the variance request not being a net increase in nonpoint source pollution.

Given the above comments, Staff recommends the following 10 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted December 20, 2017.
- 2) The maximum impervious cover of the parcel shall not exceed 22,423 square feet square feet. Said limits of impervious cover shall not encroach any further seaward than delineated of the 2021 CBPA Board Exhibit.
- 3) The proposed paver parking area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 4) Upon granting of this variance, a revised stormwater management plan shall be submitted to the Department of Planning and Community Development, Development Services Center for review and approval within 30 days from the date of this hearing. Once the plans have been approved, a **CBPA / CIVIL permit** must be obtained within 60 days. All required stormwater management facilities and buffer restoration must be installed or in the process of installation within 90 days after issuance of the building permit.
- 5) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance granted December 20,2017, specifically the required buffer restoration shall be documented on the revised stormwater management plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 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) 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.
- 8) 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.
- 9) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance associated with this variance.
- 10) The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, signed April 5, 2021 by Gregory O. Milstead. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

\*\* 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.

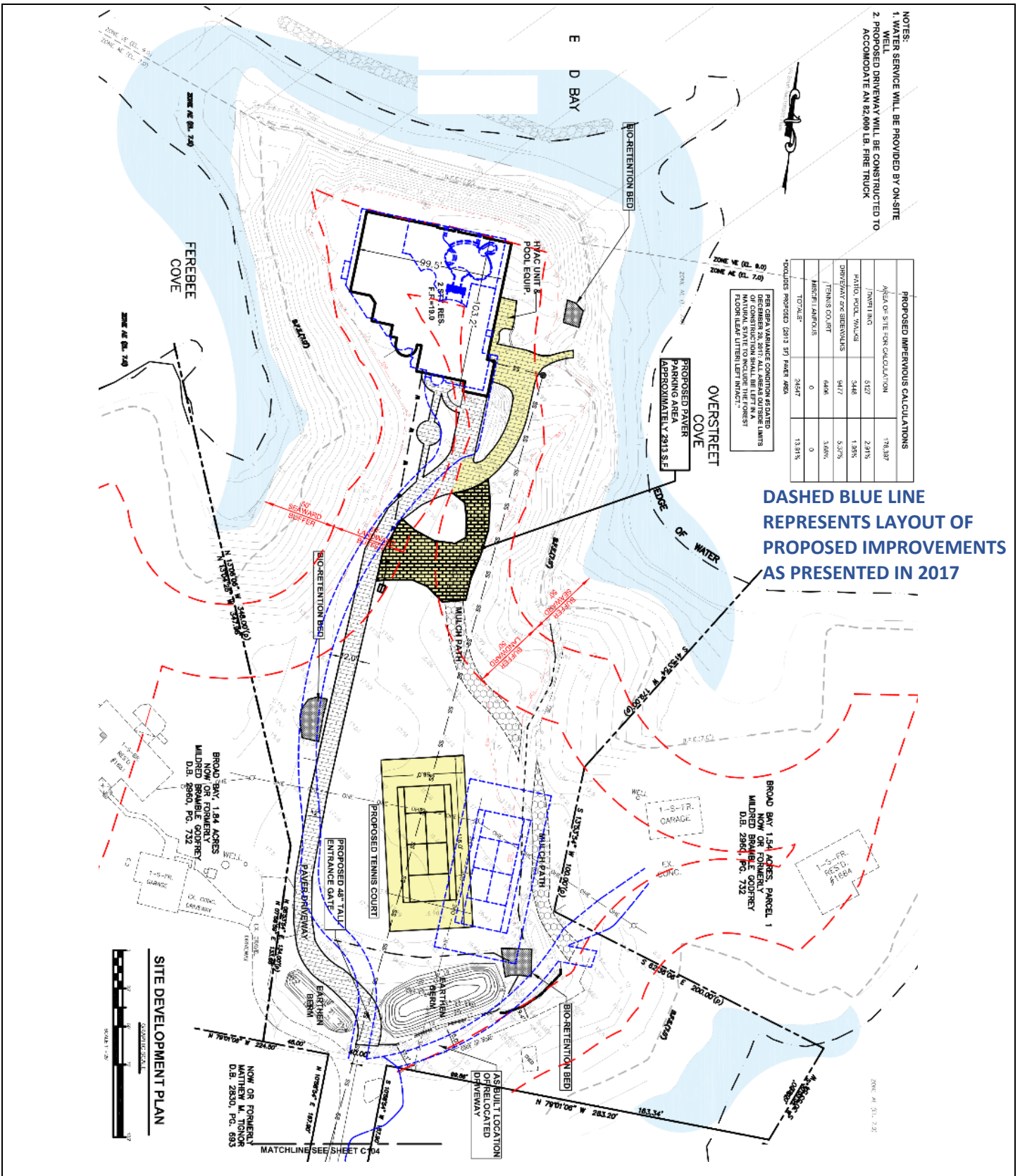
Site Aerial







# CBPA Exhibit – Comparison of the 2017 and 2021 CBPA Exhibits



# 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** Anthony Disilvestro

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

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

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)

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- If **yes**, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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<sup>1</sup> "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.

<sup>2</sup> "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?

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## 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.

Towne Bank

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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.

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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.

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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.

Go Outdoors, Inc, Greg Orrel

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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.

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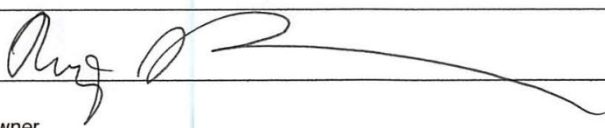
# Disclosure Statement



- 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
- 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   
Anthony Disilvestro

Print Name and Title  
Anthony Disilvestro Owner

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 **Gregory & Becky Sawyer**  
Address **2920 Gaines Landing**  
Public Hearing **May 3, 2021**  
City Council District **Lynnhaven**

Agenda Item

**6**

**Variance Request**

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

**Applicant's Agent**

Carl Eason

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 264 Page 23

Recorded 12/12/1997

**GPIN**

1499-23-2719

**SITE AREA**

40,553.63 square feet or 0.93 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

28,890.94 square feet or 0.66 acres

**EXISTING IMPERVIOUS COVER OF SITE**

10,016 square feet or 34.7 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

11,056 square feet or 38.3 percent of site

**Area of Redevelopment in RPA**

203 square feet

**Area of New Development in RPA**

1,127 square feet

**Location of Proposed Impervious Cover**

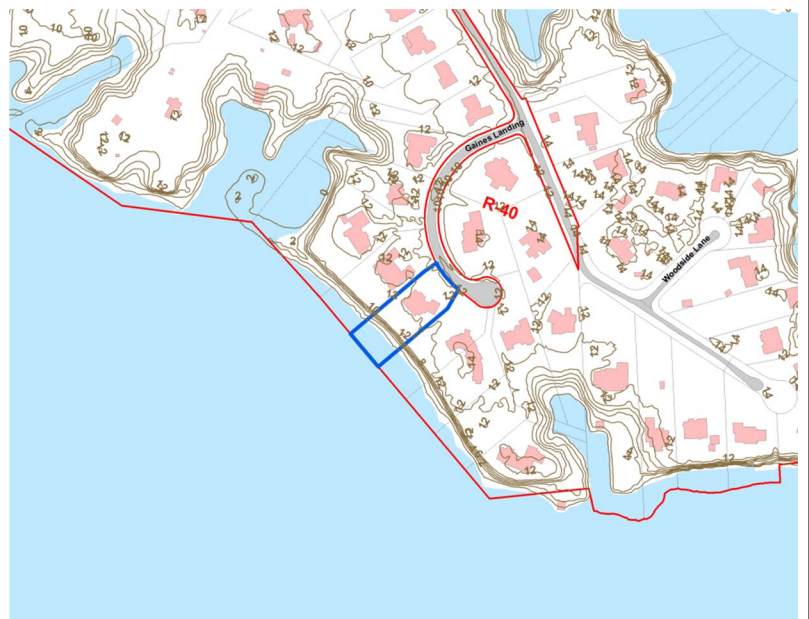
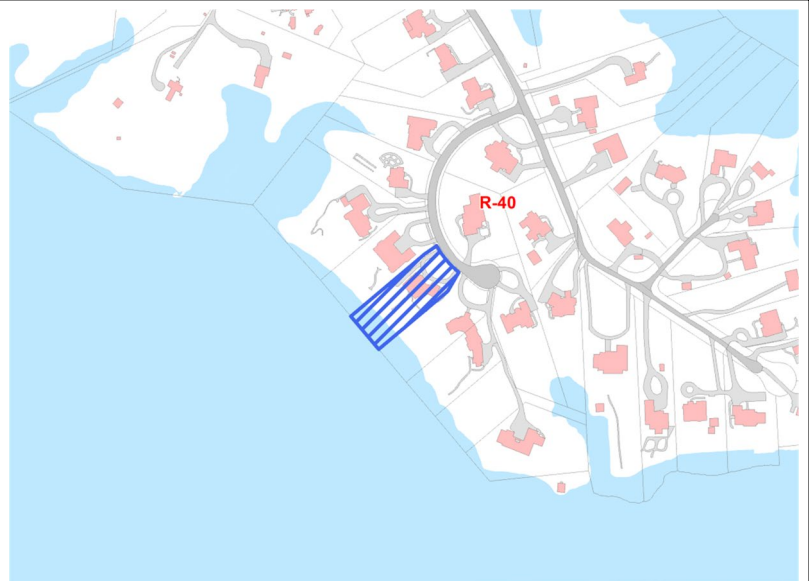
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Remove steppingstones, portion of paver patio and well house

### Construction Details

- Swimming pool with associated hot tub and paver pool patio/surround
- Concrete pads for pool equipment and generator

## CBPA Ordinance Variance History

**December 7, 2020 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a swimming pool with associated pool surround with the following 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: **632 square feet x 200 percent = 1,264 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 and landward of the top of bank feature in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*

4. *The maximum impervious cover of the parcel shall not exceed 11,000 square feet or 38 percent of site. Said limits of proposed impervious cover shall not be any further seaward than the originally imposed 75-foot restriction measured from the top of bank RPA feature landward.*
5. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*

6. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
7. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
8. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
9. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.*
10. *Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.*
11. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
12. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
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 \$1144.83 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. *This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 11, 1996.*
16. *The conditions and approval associated with this variance are based on the exhibit plan dated July 27, 2020, prepared by Chesapeake Bay Site Solutions. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*

The December 7, 2020 CBPA Board granted variance has not been acted upon.

**December 11, 1996 a CBPA Board variance was granted for a 20-lot residential subdivision with the following conditions:**

1. *For Lots 1, 2 through 5 – land disturbance within the Resource Protection Area, adjacent to S. Woodside Lane shall be limited to driveway access only, all structures shall be located outside of the Resource Protection Area.*
2. *For Lot 6 – land disturbance within the Resource Protection Area, adjacent to S. Woodside Lane shall be limited to driveway access and landscape and signage improvements within any common area.*
3. *For Lots 10, 11, 13 through 16, 19, & 20, land disturbance shall be 75’ from the top of bank.*
4. *For Lots 12 and 17 all land disturbance shall be 75’ from riverside top of bank and 50’ from the cove side of the top of bank.*
5. *Shoreline hardening shall be limited to rip rap revetment march protection only, consistent with recommendations offered by the Shoreline Erosion Advisory Service (SEAS).*
6. *Deed restrictions shall be established for conditions 1 through 4 above and be recorded concurrent with the recordation of the subdivision plat. To assist in ensuring long term compliance with the deed restriction, a homeowner’s association shall be established with membership being mandatory.*

The December 11, 1996 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 in a natural state.

### **Riparian Buffer**

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of existing understory trees requested for removal within the RPA: 1
- Evaluation of existing tree removal request: One of the trees being requested for removal are within the delineated limits of construction.

## **Stormwater Management Methodology**

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

## Evaluation and Recommendation

The applicant has submitted this variance request for a reconsideration of the 2020 Chesapeake Bay Preservation Area (CBPA) Board variance that conditioned, *“the maximum impervious cover of the parcel shall not exceed 11,000 square feet or 38 percent of site. Said limits of proposed impervious cover shall not be any further seaward than the originally imposed 75-foot restriction measured from the top of bank RPA feature landward.”* As a result, the applicant has submitted a CBPA Exhibit with the overall proposed impervious cover of 11,056 square feet with the location of the proposed swimming pool 47 linear feet from the top of bank feature. As for the proposed improvements, Staff is of the opinion that the dimensions of the proposed swimming pool (14 feet by 30 feet) are in keeping with an average residential swimming pool (16 feet by 32 feet) however the layout of the proposed patio area minimally exceeds the general layout and square footage of a typical 4 feet by 4 feet by 4 feet by 8 feet pool surround. In addition, the applicant stated to Staff that the utility drops and associated corridor for electric and communication lines track along the eastern property line and connect to the residence through the center of the existing courtyard with paver patio area. As such, the applicant is of the opinion that the proposed location of the swimming pool is a more favorable layout due to the relocation expense of existing utility drops to the residence and distance of swimming pool depth from the foundation of the residential structure given the constraints of the existing courtyard.

To support the proposed redevelopment of this lot, the applicant’s agent has provided the following comments relative to the findings of the CBPA Ordinance specific to this variance request for the Board’s deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff offers that an aerial review of the lot associated with the 1996 CBPA Variance depicts improvements similar to those requested with this variance application.
- 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 or predecessor in title because *“the lot has topographic relief and the adjacent wetlands that have and impact on the CBPA buffer on the subject lot are all natural conditions.”* Staff offers that the existing vegetative cover along the shoreline and well-kept conditions of the existing upland improvements are in harmony with the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance and the CBPA Board variance granted in 1996.
- 3) The variance is the minimum necessary to afford relief because *“the house was constructed in 1999 in it’s current location. The only area for expansion/redevelopment is as shown. The proposed development has been limited to the landward buffer.”* Staff respects the perspective of the applicant’s agent regarding the location of the proposed improvements and offer the statement provided by the applicant that *“the utility drops and associated corridor for electric and communication lines track along the eastern property line and connect to the residence through the center of the existing courtyard with paver patio 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality.”* Staff concurs.

- 5) *“Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Given the existing topography within the rear yard and the distance the proposed improvements will be from the top of bank feature, Staff is of the opinion that the required buffer restoration would offer merit towards the creation of a riparian ecosystem within the 100-foot RPA buffer and complement the existing landscaping of the lot.

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

## Recommended Conditions

1. A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
2. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,127 square feet x 200 percent = 2,254 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: **3 canopy trees, 3 understory trees, 12 large shrubs, and 18 small shrubs.**

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

4. The maximum impervious cover of the parcel shall not exceed 11,000 square feet or 38 percent of site. Said limits of proposed impervious cover shall not be any further seaward than depicted on the CBPA Exhibit submitted for the subject variance request.
5. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
6. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

7. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
8. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
9. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
10. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
11. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
12. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
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 \$258.27 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. This variance and associated conditions **will supersede** the conditions of the Board variance granted December 7, 2020.
16. The conditions and approval associated with this variance are based on the exhibit plan dated July 27, 2020 and revised January 8, 2021 prepared by Chesapeake Bay Site Solutions. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

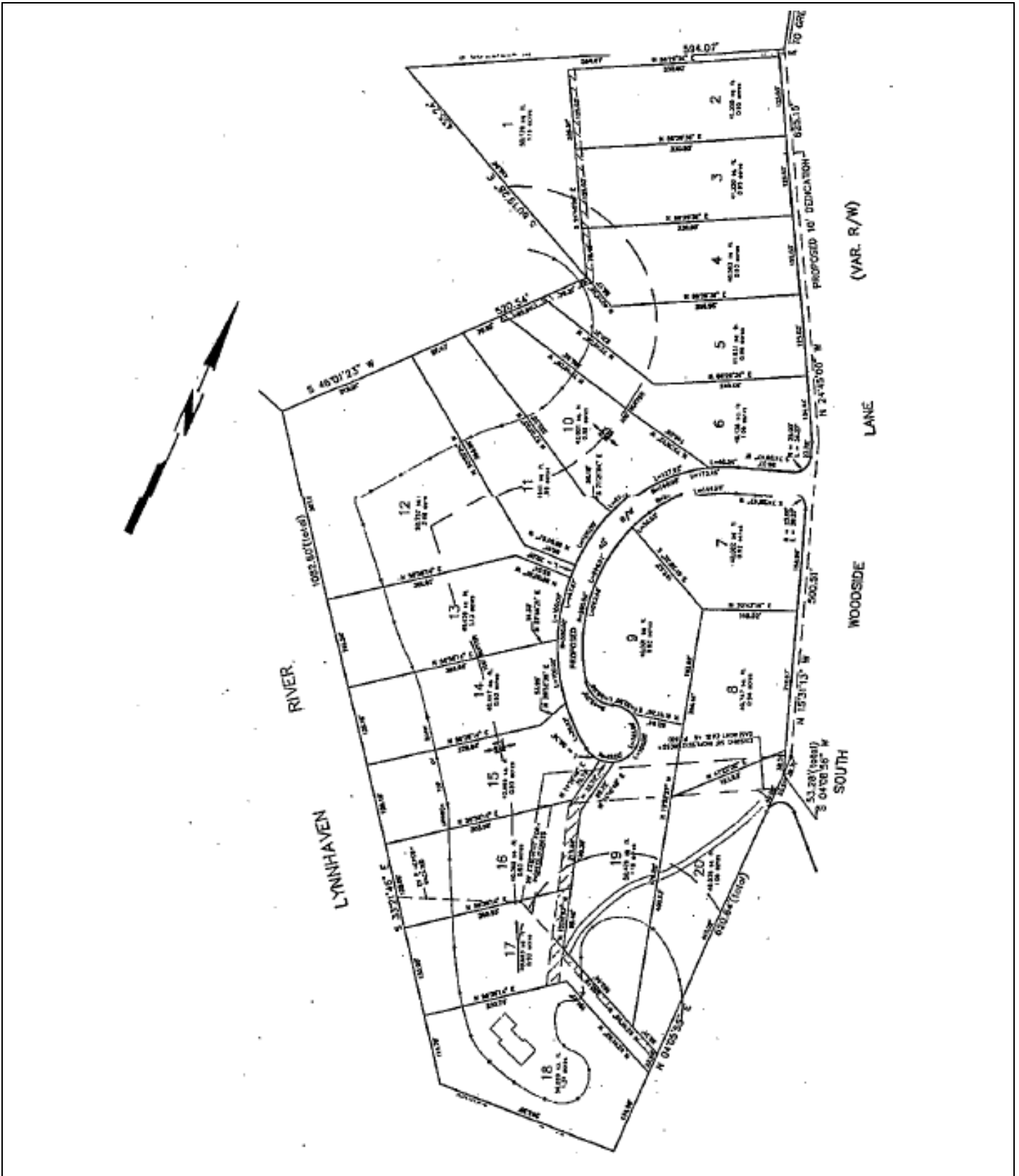
**\*\* NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

**\*\*\*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











# 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** Gregory E. and Becky C. Sawyer

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

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

Waterfront Consulting, Inc, Robert E. Simon

**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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
 \_\_\_\_\_

<sup>1</sup> "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.

<sup>2</sup> "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?

Gregory E. Sawyer, Applicant is an employee with CVB Traffic Operations

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## 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.

Towne Bank

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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.

Angie Clark

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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.

Matt Froehler

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.

Coleman & Coleman

## 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

Gregory E. and Becky C. Sawyer

Print Name and Title

10/30/2020  
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 **Buffy & Jason Barefoot**  
 Address **4045 Bridgehampton Lane**  
 Public Hearing **May 3, 2021**  
 City Council District **Bayside**

Agenda Item

**7**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct an outdoor kitchen with paver area and terrace with fire pit.

**Applicant's Agent**

Eddie Bourdon

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 130, Page 45

Recorded 12/6/1978

**GPIN**

1488-05-7136

**SITE AREA**

40,126 square feet or 0.921 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

36,624 square feet or 0.841 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,412 square feet or 15 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,119 square feet or 17 percent of site

**Area of Redevelopment in RPA**

27 square feet

**Area of New Development in RPA**

681 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

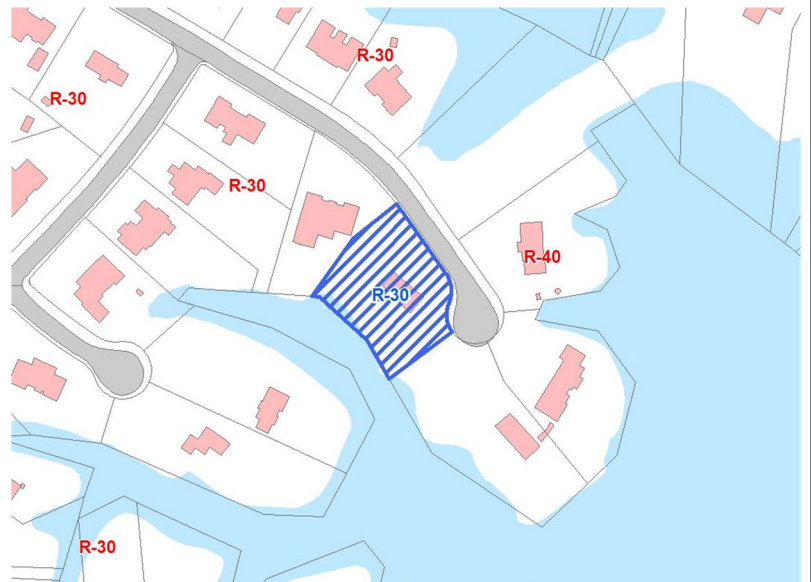
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Outdoor kitchen with paver patio area
- Terrace area with fire pit

## CBPA Ordinance Variance History

**April 24, 2017 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for 10 feet by 15 feet shed with the following conditions:**

1. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
2. *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.*
3. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **150 square feet x 200 percent = 300 square feet.***

*Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 2 understory, and 3 shrubs.***

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

4. *The conditions and approval associated with this variance are based on the exhibit plan dated January 16, 2017, prepared by WPL. 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.*

The April 24, 2017 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

Buffy & Jason Barefoot

Agenda Item 7

Page 78



## Soil Type(s)

Tetotum Series (deep, 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

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of existing canopy trees dead, diseased or dying within the RPA: 3
- Evaluation of existing canopy tree removal request: Trees being requested for are either diseased and dying or are in decline with a substantial lean towards the existing residence.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct an outdoor grill area and terrace that totals approximately 681 square feet. The proposed improvements will be constructed at existing grade elevations with minimal fill material used for leveling the proposed surfaces and facilitating positive drainage off the impervious surfaces. Given the existing canopy cover and established naturalized areas on the lot, Staff is of the opinion that the proposed improvements will not contribute to the detriment on water quality.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the neighborhood and do not offer the owners any special privilege or convenience because this lot was created and developed prior to adoption of the CBPA Ordinance and the entire lot is within the RPA Buffers."* Staff concurs.
- 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 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 is within the Chesapeake Bay Preservation Act and the City's CBPA Ordinance."* Staff concurs
- 3) The variance is the minimum necessary to afford relief because *"the design for the proposed improvement has taken into account the existing grading, landscape, and vegetation to minimize the site impact to the Chesapeake Bay and avoid development in the most sensitive portion of the site."* Staff concurs.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the existing and proposed improvements and the bay.”* Staff concurs.
- 5) *“The existing areas the owners are voluntarily maintaining as buffers (i.e. were not required to be vegetated buffers pursuant to any CBPA variance) will be enhanced and expanded upon surrounding the proposed development to complement the existing site conditions”* 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 11 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

### Recommended Conditions

- 1) 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.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **681 square feet x 200 percent = 1,362 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 13 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

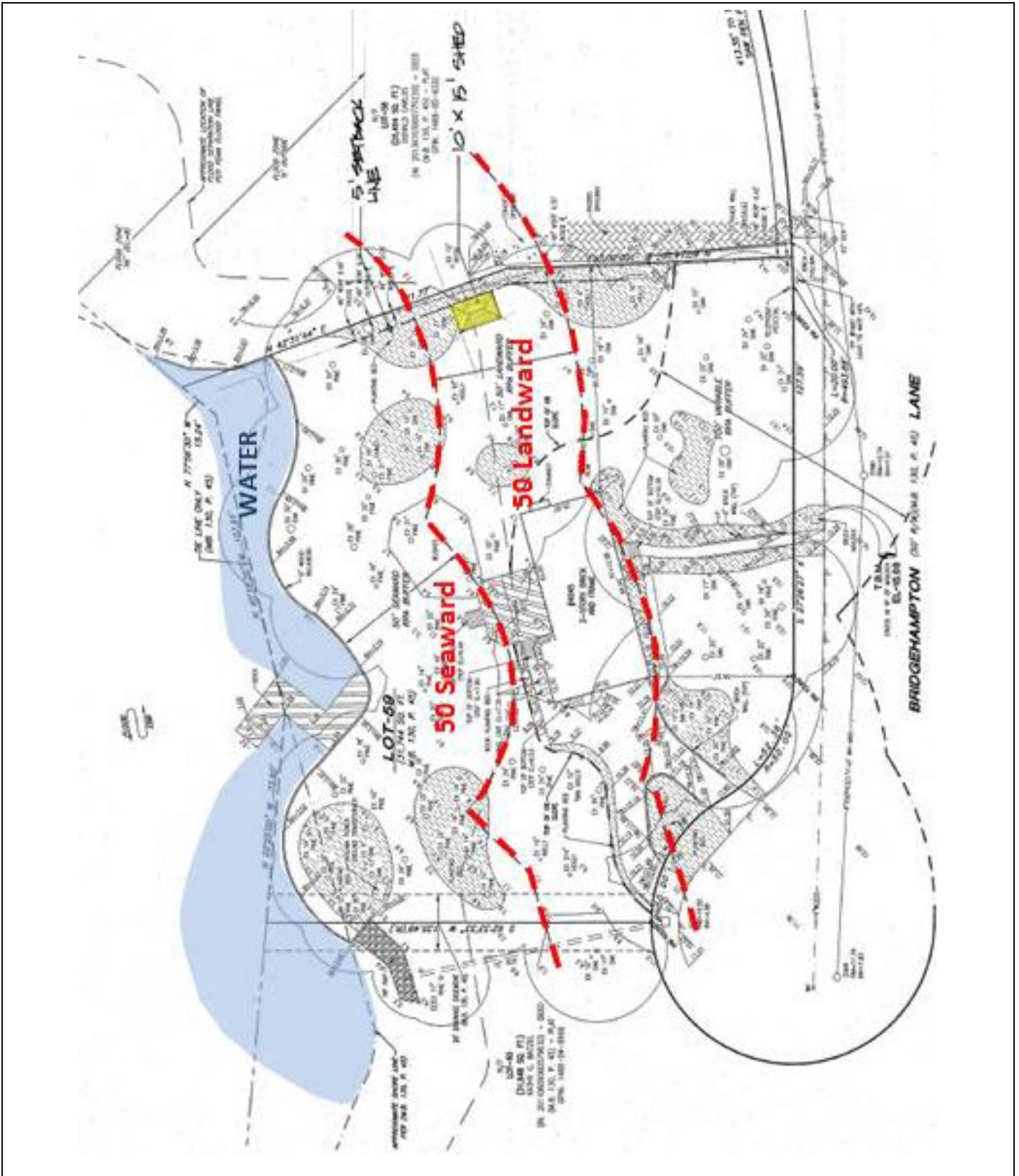
the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) 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.**
- 7) 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.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 9) 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.
- 10) This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 24, 2017.
- 11) The conditions and approval associated with this variance are based on the exhibit plan dated January 26, 2017, prepared by WPL, signed March 29, 2021 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

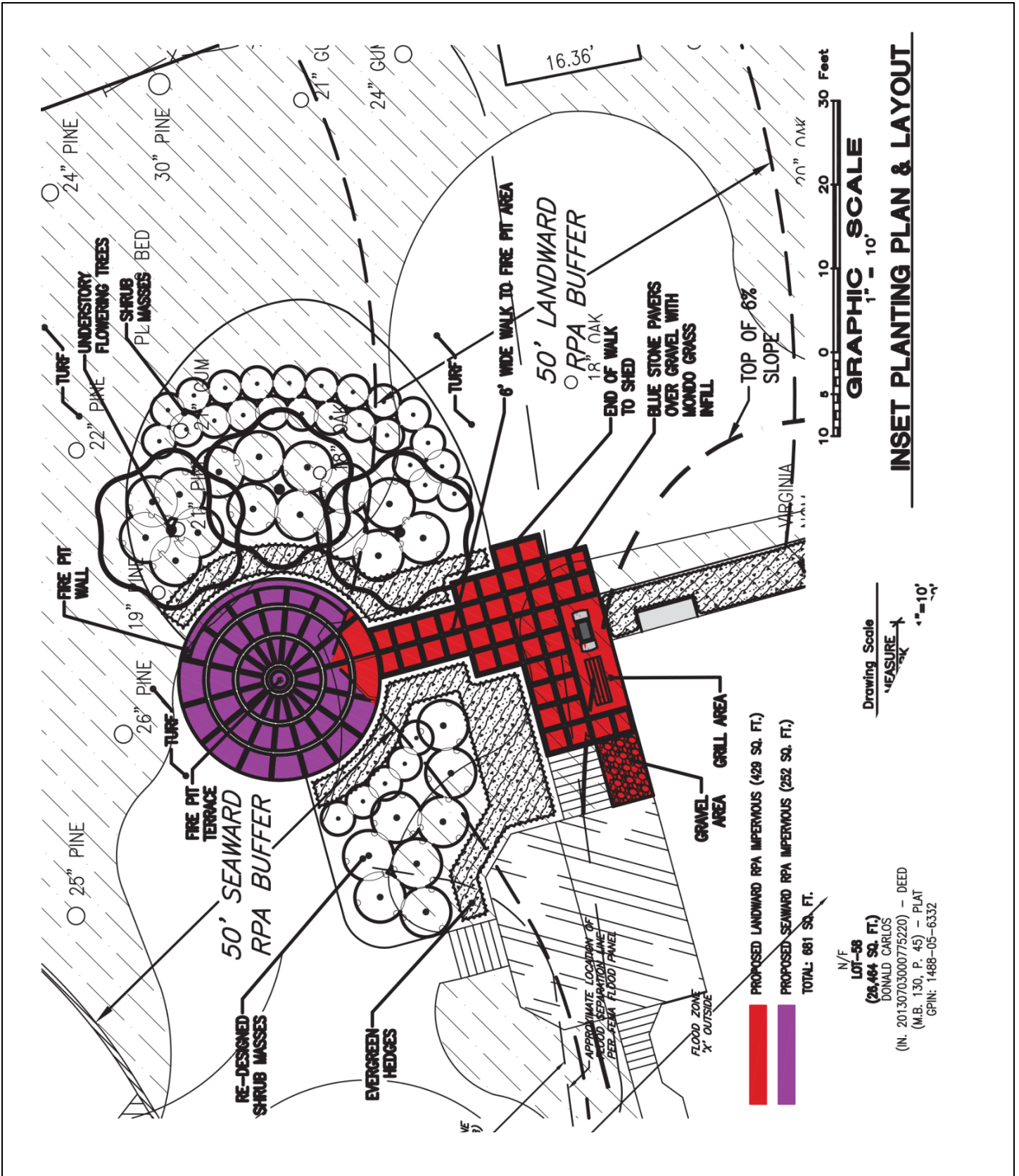
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial









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 Buffy J Barefoot & Jason A Barefoot

Does the applicant have a representative? [X] Yes [ ] No

- If yes, list the name of the representative.

R. Edward Bourdon, Jr. Esquire

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

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

Three horizontal lines for listing names of officers, directors, members, trustees, etc.

- If yes, list the businesses that have a parent-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

Two horizontal lines for listing businesses with parent-subsidiary or affiliated business entity relationships.

<sup>1</sup> "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.

<sup>2</sup> "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?

Educator - Virginia Beach Public Schools

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## 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.

Movement Mortgage and Bank of America

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

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

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

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

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

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

WPL

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

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

# Disclosure Statement



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

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

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

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

WPL

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

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

### Applicant Signature

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

Buffy Barefoot

Applicant Signature

Buffy Barefoot

Print Name and Title

3/29/21

Date

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

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

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

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



Applicant & Property Owner **Cynthia & John Trefry**  
Address **2333 Leeward Shore Drive**  
Public Hearing **May 3, 2021**  
City Council District **Lynnhaven**

Agenda Item

**8**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to redevelop pool deck and construct a circular driveway, building addition, 2 covered porches and a moveable shed.

**Applicant's Agent**

Eddie Bourdon

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 48, Page 15

Recorded 10/6/1959

**GPIN**

2500-00-2040

**SITE AREA**

20,927 square feet or 0.4801 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

20,635 square feet or 0.474 acres

**EXISTING IMPERVIOUS COVER OF SITE**

6,899 square feet or 33 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,592 square feet or 37 percent of site

**Area of Redevelopment in RPA**

5,237 square feet

**Area of New Development in RPA**

2,355 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

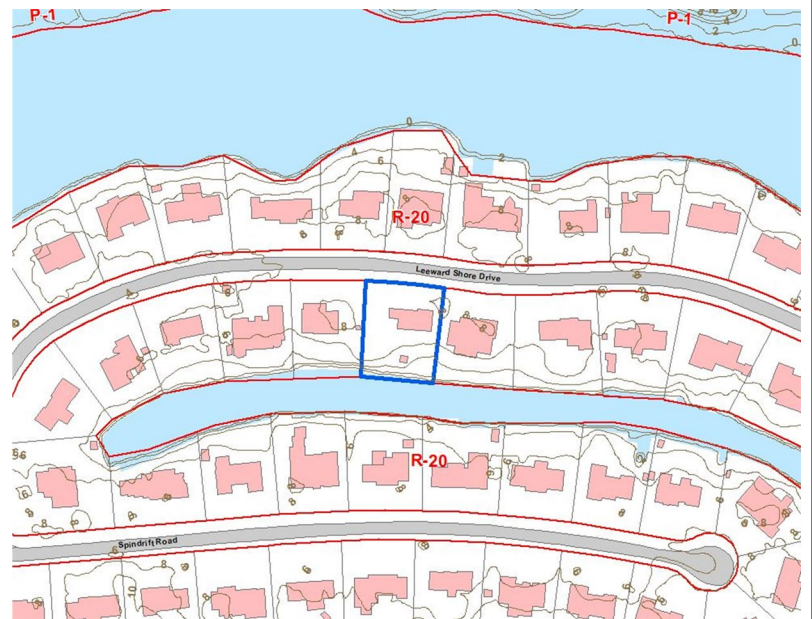
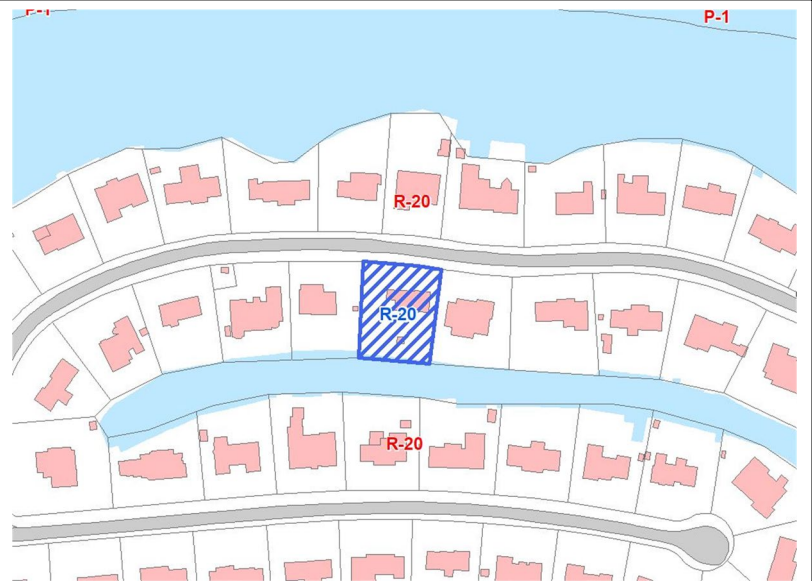
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Concrete and gravel driveway
- Front porch with associated walkway
- Frame pump house/shed
- In-ground pool and associated concrete pool patio

### Construction Details

- 2-story building additions with attached garage and associated covered porches (front and rear)
- Moveable frame shed
- Pool patio – redeveloped within the same footprint of existing pool patio
- Circular concrete driveway

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Multiple Zones – 0.2% Annual Chance of Flooding and AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

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

### Shoreline

Shoreline is hardened with a wood bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 4 in total with all 4 trees having a diameter at breast height (DBH) less than 6 inches.

## 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.

## Evaluation and Recommendation

The applicant is proposing to redevelop the existing single-family residence and swimming pool. With the redevelopment of the lot, the applicant is proposing a 2-story addition, attached garage, and associated concrete driveway. Of the proposed 2,355 square feet of new impervious cover associated with the redevelopment of this lot,

approximately 469 square feet or 20 percent in the RPA is proposed within the upper reach of the 50-foot landward buffer with the remaining new impervious cover proposed within the City's variable width buffer.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1958 and the existing building constructed in 1967, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that the majority of the new impervious cover associated with the redevelopment of this lot is proposed within the City's variable width RPA buffer.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffers cover over 95% of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the additions and improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts in the critical buffer areas."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal."* Staff is of the opinion that the recommended conditions provided below, specifically recommended conditions 3 and 4, offer best management practices towards water quality and water quantity management that the existing improvements do not currently provide.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers that the granting of this variance would require those best management practices to remain functioning, as intended, in perpetuity.

Given the above comments, Staff recommends the following 14 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: **2,355 square feet x 200 percent = 4,710 square feet**. At a minimum, 70 percent of the required buffer restoration square footage shall be located in the 50-foot seaward buffer with the remain amount situated on the lot to intercept stormwater sheet flow to the greatest extent practicable in areas that do not impact the critical root zones of the existing canopy trees.

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: **12 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs**.

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) 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.

- 11) 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.
- 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) \*\* 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 \$539.68 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.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated February 25, 2021, prepared by WPL, signed March 25, 2021 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. 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









# 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** Cynthia W Trefry & John A Trefry, III

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

R. Edward Bourdon, Jr. Esquire

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)

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- If yes, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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<sup>1</sup> "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.

<sup>2</sup> "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.

Cardinal Financial Company, LP

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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.

Define Design, LLC

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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.
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Applicant & Property Owner **Winnie Musa & Jeffrey Piper**  
Address **1116 Bruton Lane**  
Public Hearing **May 3, 2021**  
City Council District **Lynnhaven**

Agenda Item

**9**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition and wood deck.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7, Page 144

Recorded 4/26/1926

**GPIN**

2418-27-9575

**SITE AREA**

18,519 square feet or 0.425 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

16,707 square feet or 0.384 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,124 square feet or 30.6 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

5,124 square feet or 30.6 percent of site

**Area of Redevelopment in RPA**

1,103 square feet

**Area of New Development in RPA**

387 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

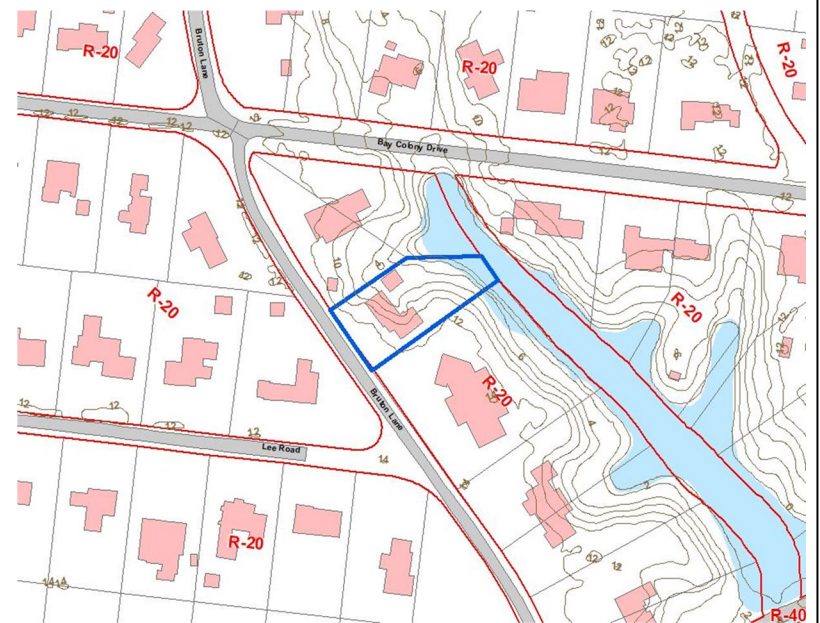
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Portion of concrete driveway located at the rear of the residence
- Porch and wood steps located at the rear of residence
- Paver walkway and portion of patio

### Construction Details

- Addition to the primary structure
- Wood deck with associated walkway and stairs

## 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 in a natural state.

### Riparian Buffer

Heavily to moderately wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct a 972 square foot addition to the existing single-family residence with a 400 square foot wood deck. The proposed addition occurs over existing impervious cover and does not encroach further into the RPA feature than the existing concrete driveway. The proposed wood deck encroaches further into the RPA feature; however, the applicant has provided a no net increase in impervious cover on the lot with this variance request. The no net increase in impervious cover is accomplished through the removal of a portion of the existing brick paver patio.



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 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 home was built and the lot recorded many years prior to the adoption of the Bay Act which creates a justifiable hardship since avoidance of the buffer is not possible many other homes in the vicinity have been redeveloped in a similar fashion since adoption of the Act."* Staff concurs.
- 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 Act was adopted in 1990 and existing properties like this are now required to meet certain performance standards that properties directly across the street do not have to comply with thus the Owner did not create the hardship it was there once the law was adopted never to be removed."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the existing impervious cover and the proposed impervious cover are the same amount and this is being achieved through the redevelopment of the lot to the greatest extent practicable and removing a small amount of existing impervious cover to make sure the net result is zero new impervious cover."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the Act was adopted to improve water quality by reducing runoff and protecting riparian buffer areas. The applicant has very little new impervious cover, the lot is in a natural state and stormwater treatment will remain via the retention of the natural vegetation post construction."* Staff concurs.
- 5) The applicant agent provides that *"a means to manage towards a no net increase in nonpoint source pollution load strict E&S measures during all phases of construction are very important since this is when silt can enter adjoining waters. Stockpiling on existing hard surfaces and leaving areas that are natural undisturbed along with additional buffer restoration will ensure there will be no net increase in nonpoint source pollution."* Staff concurs.

Given the above comments, Staff recommends the following 14 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.
  - 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.
  - For all naturalized areas, established forest floor area and existing planting beds outboard of the limits of construction that are encroached upon, replacement of existing natural or vegetated area (square footage) shall be provided at a 1 to 1 ratio.

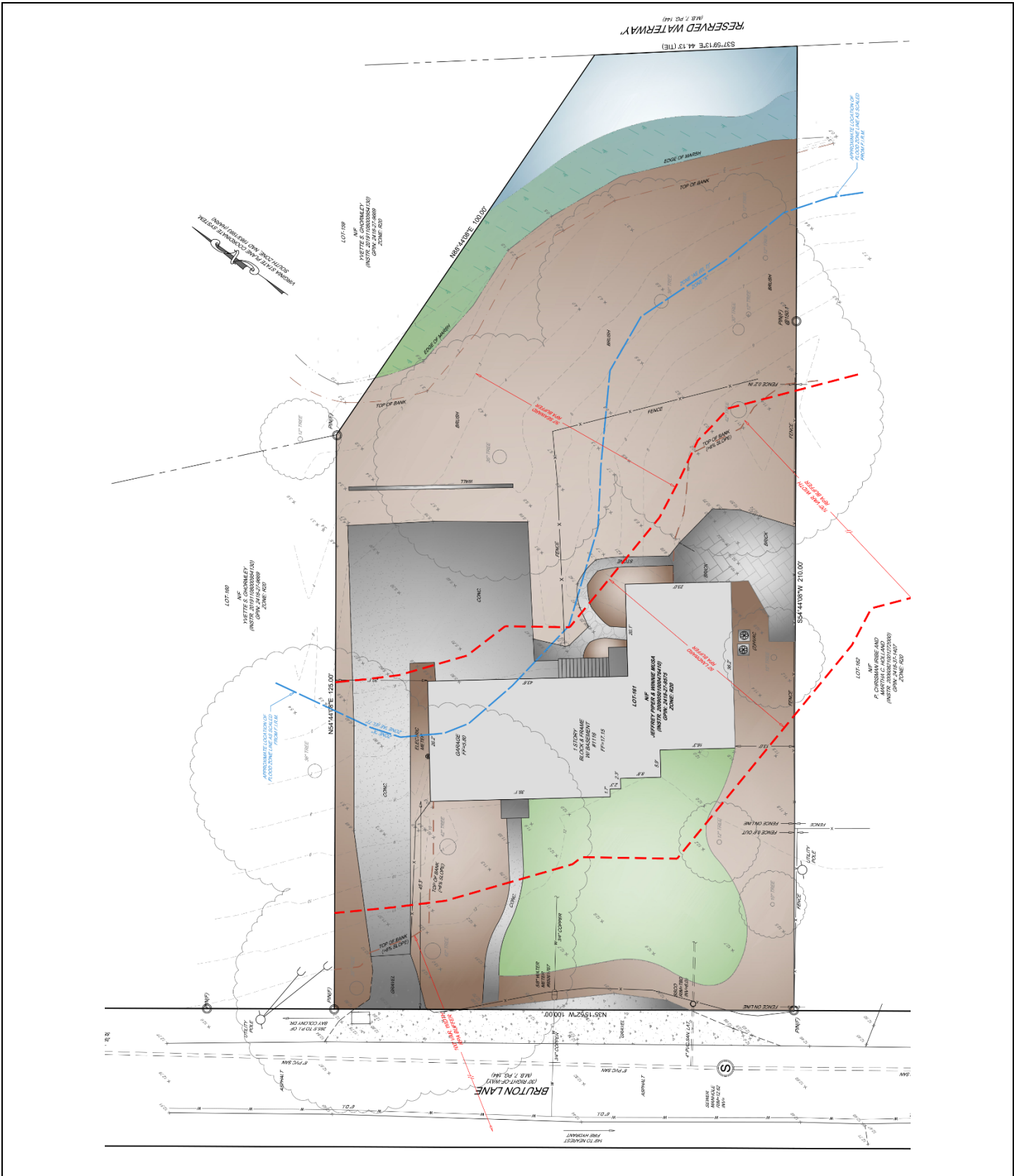
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) 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.**
- 7) 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.
- 8) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 9) 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.
- 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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) **\*\*** 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 \$88.68 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.
- 14) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, LLC, signed March 24, 2021 by Michael 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. 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.



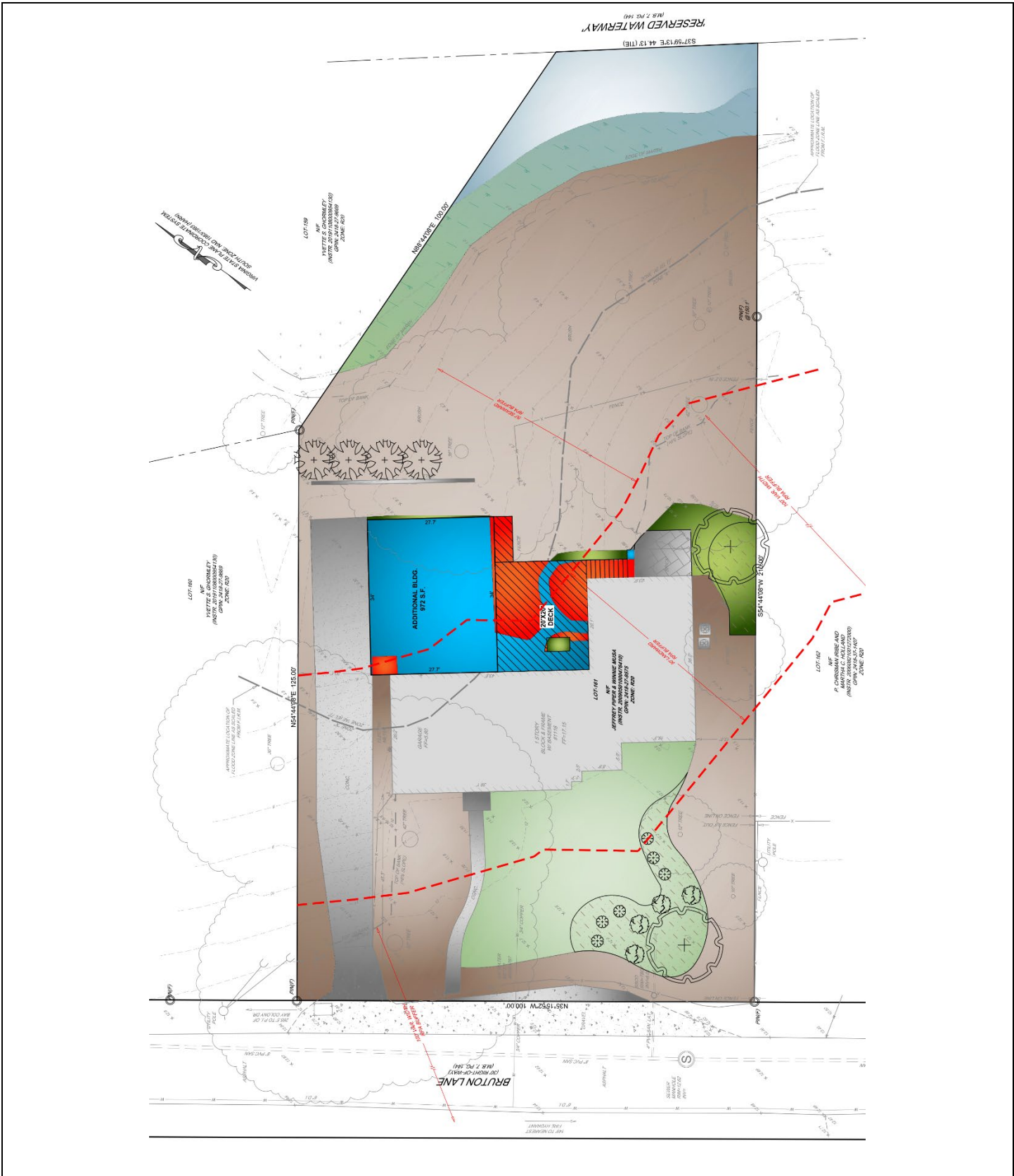
# CBPA Exhibit – Existing Conditions







# CBPA Exhibit – Color Analysis





# Disclosure Statement



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

### Applicant Disclosure

Applicant Name JEFFREY & WINNIE PIPER

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

Billy BARRINGTON GPC

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-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

<sup>2</sup> "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.

TIDEWATER MORTGAGE SERVL. INC.

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.

STAR TAX SERVL.

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.

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.

*[Handwritten Signature]*

Applicant Signature

Jeffrey Piper

Print Name and Title

3/31/21

Date

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

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

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

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

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Applicant & Property Owner **Malania Haga & Ryan Dunlap**  
Address **1028 Michaelwood Drive**  
Public Hearing **May 3, 2021**  
City Council District **Lynnhaven**

Agenda Item

**10**

**The applicant is requesting a deferral of this application to the July 5, 2021 CBPA Board Public Hearing.  
Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a garage addition with gravel drive, covered porch, paver area, swimming pool and walkway to dock.

**Applicant's Agent**

Beth Anne Campbell

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 31 Page 51  
Recorded 3/11/1954

**GPIN**

1488-55-3453

**SITE AREA**

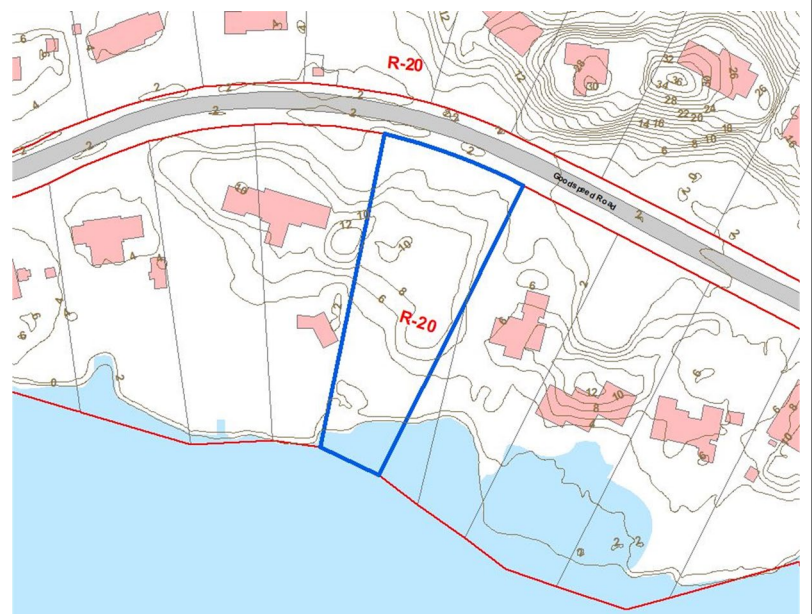
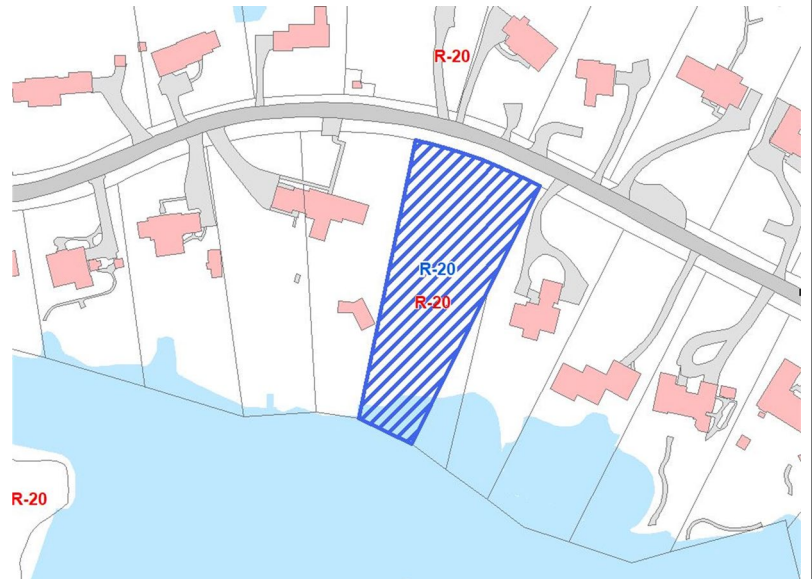
60,377 square feet or 1.386 acre

**SITE AREA OUTSIDE OF WATER/WETLANDS**

41,666 square feet or 0.957 acres

**EXISTING IMPERVIOUS COVER OF SITE**

8,247 square feet or 19.8 percent of site



Site Aerial





Applicant & Property Owner **Christina & David Burchett**  
 Address **1257 Tanager Trail**  
 Public Hearing **May 3, 2021**  
 City Council District **Lynnhaven**

Agenda Item  
**11**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7 Page 192  
 Recorded 07/19/1926

**GPIN**

2418-30-7135

**SITE AREA**

26,444 square feet or 0.607 acre

**SITE AREA OUTSIDE OF WATER/WETLANDS**

26,124 square feet or 0.600 acre

**EXISTING IMPERVIOUS COVER OF SITE**

6,447 square feet or 24.7 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

8,483 square feet or 32.8 percent of site

**Area of Redevelopment in RPA**

190 square feet

**Area of New Development in RPA**

2,128 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

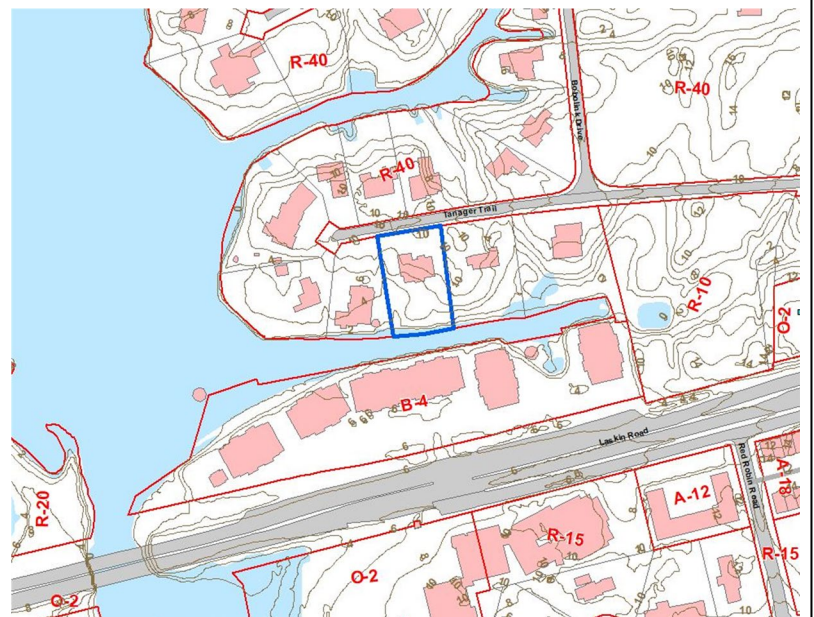
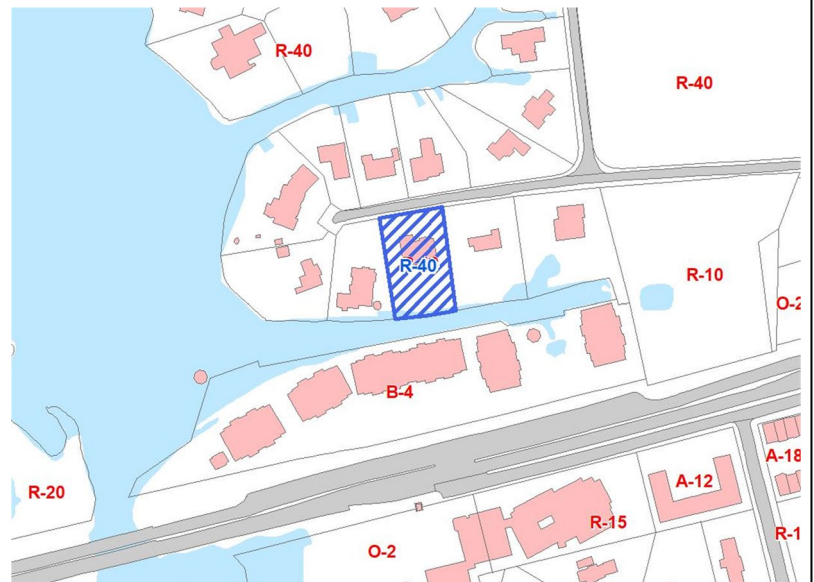
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approve as conditioned



## Summary of Proposal

### Demolition Details

- Remove existing walkway

### Construction Details

- Swimming pool with concrete pool patio

## CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report. An administrative variance was granted for the redevelopment of the single-family residence on this lot.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

State Series (deep, well-drained soils)

Rumford Series (highly erodible soils)

### Shoreline

Shoreline is hardened with a bulkhead.

### Riparian Buffer

Moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 5
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as approximately 10 feet outboard the proposed improvements.

## 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.

## Evaluation and Recommendation

The applicant is proposing to construct a 630 square foot swimming pool with a 1,772 square foot pool deck and surround. Inclusive of the proposed pool deck, approximately 209 square feet is allocated to redevelopment with the removal of the existing concrete walkway along the rear of the residence.

The initial submittal for the variance request proposed an overall impervious cover of 9,135 square feet or 35 percent of the lot above water and wetlands. During the variance request review time leading up to the May CBPA Board public



hearing, the applicant's agent revised the CBPA Exhibit reducing the overall impervious cover to 8,568 square feet or 32.8 percent of the lot above water and wetlands and a second revision from 8,568 square feet to 8,483 square feet or 32.4 percent of the lot above water and wetlands. The reduction in overall impervious cover primarily comes from the reduction of the proposed pool surround from 2,357 square feet to 1,772 square feet. Staff has evaluated this decrease in impervious cover in relation to the findings of the CBPA Ordinance, Section 110(H). It is Staff's position that the dimensions of the proposed pool are minimally greater than the average residential swimming pool (16 feet by 32 feet) and the layout of the proposed pool deck, given that the existing paver deck will remain, does not reflect the minimal necessary to afford relief. Staff offers the following comment related to this position regarding the proposed improvements.

- The proposed swimming pool is minimally larger than the average residential swimming pool with a paver patio of approximately 1,772 square feet. A minimal pool surround for providing access around the swimming pool would be approximately 592 square feet, not taking into consideration for additional seating. As a compromise, Staff recommends a condition below that the size of the overall new impervious cover be reduced as a means towards being the minimum necessary to afford relief. Staff does support the location of the proposed swimming pool and pool deck being landward of the 50-foot seaward buffer.

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 are appropriate based off the conveniences of others within the neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property is a previously developed waterfront lot, and any improvements in the back yard will be located within the 100' CBPA buffer. Similar developments to this have been permitted."* Staff acknowledges the statement provided by the applicant's agent and the fact that similar developments have been permitted within the neighborhood. However, important to each review of a variance request to the CBPA Ordinance is the extent of the proposed improvements to the existing environmental conditions and the extent of the proposed encroachments into to the 100-foot RPA buffer. As such, Staff offers the recommended conditions below.
- 1) 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 lot was recorded well before the CBPA Act. The removal in 2015 of the prior pool closer to the water allows for this more environmentally sensitive development."* Staff concurs with the applicant's agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 2) The variance is the minimum necessary to afford relief because *"the homeowner has a large back yard for outdoor living and entertaining opportunities of a waterfront property. The project is reasonable and responsible."* Staff offers that the proposed improvements increases the overall amount of impervious cover on the lot by 2,128 square feet within the 100-foot RPA buffer and offers 190 square feet of redevelopment. Staff is of the opinion that the addition of the proposed swimming pool and pool deck and retention of the existing paver deck within the 100-foot RPA buffer does not provide the minimum necessary to afford relief.
- 3) 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 stormwater management improvements from 2005 will be confirmed and supplemented, the*

*project will result in a new improvement of stormwater quality.” Staff concurs with the statement provided and is of the opinion with the spot grade elevations provided on the CBPA Exhibit that the creation of a riparian buffer ecosystem within the 50-foot seaward buffer would provide substantial water quality benefits by slowing runoff velocities and allowing sediment and attached pollutants to infiltrate prior to discharge into the adjacent waterways.*

- 4) *“The bioretention BMPs and buffer restoration will treat the stormwater that runs off the property today and will provide environmental benefits to mitigate the impervious cover”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) The maximum impervious cover of the parcel shall not exceed 7,837 square feet or 30 percent of the lot above water or wetlands.
- 2) The proposed walkway between the pool deck and pave deck shall be constructed of organic material (mulch), and maximum of 4 feet in width, with stepping stones not to exceed 50 percent of the path area.
- 3) The proposed pool decking shall be reduced by 500 square feet.
- 4) 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.
- 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: **1,700 square feet x 200 percent = 3,400 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, 18 large shrubs, and 27 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 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.
- 12) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 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) \*\* 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 \$389.58 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated April 22, 2021, prepared by Clark Design Group, signed April 22, 2021 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 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.

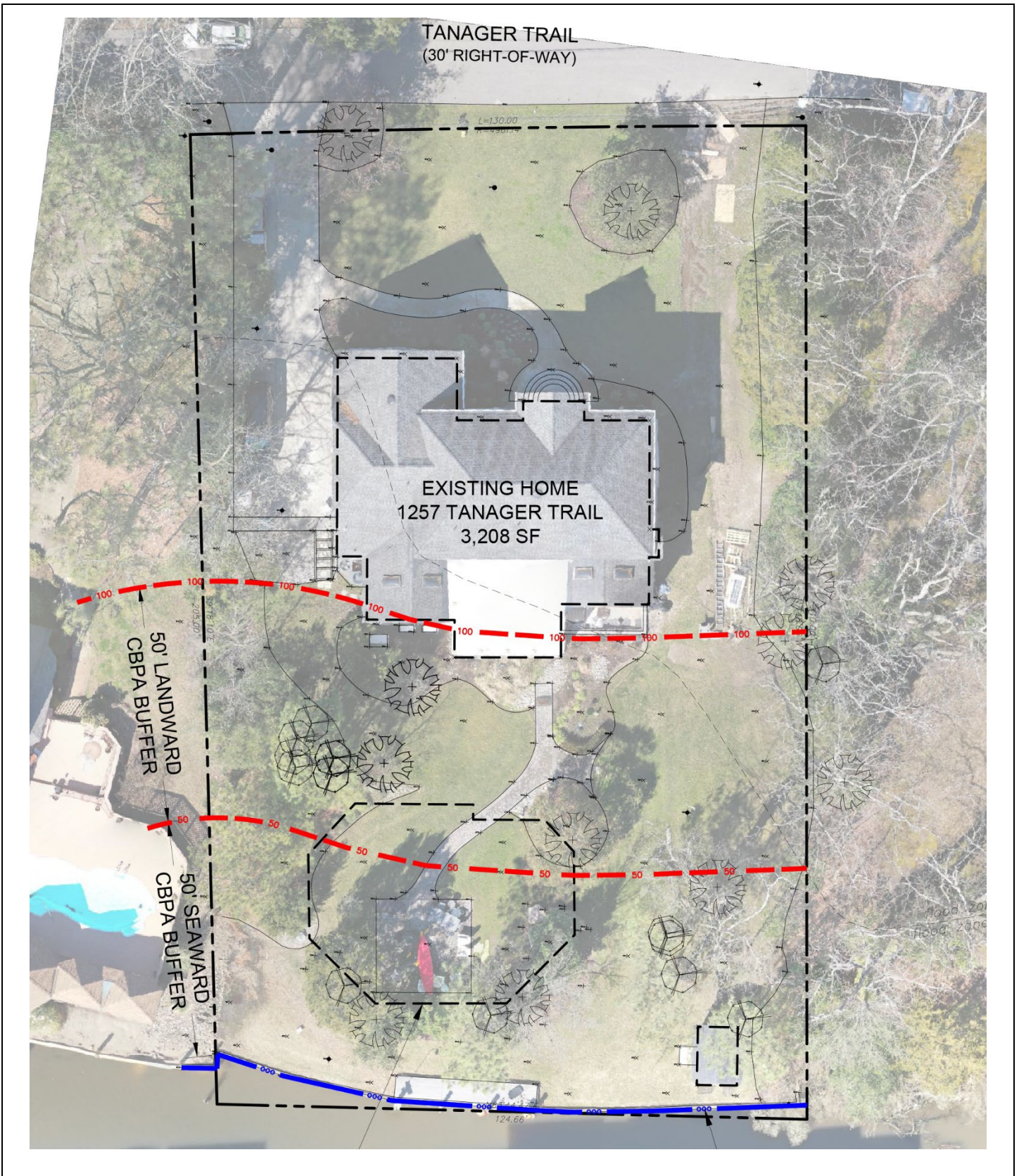
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

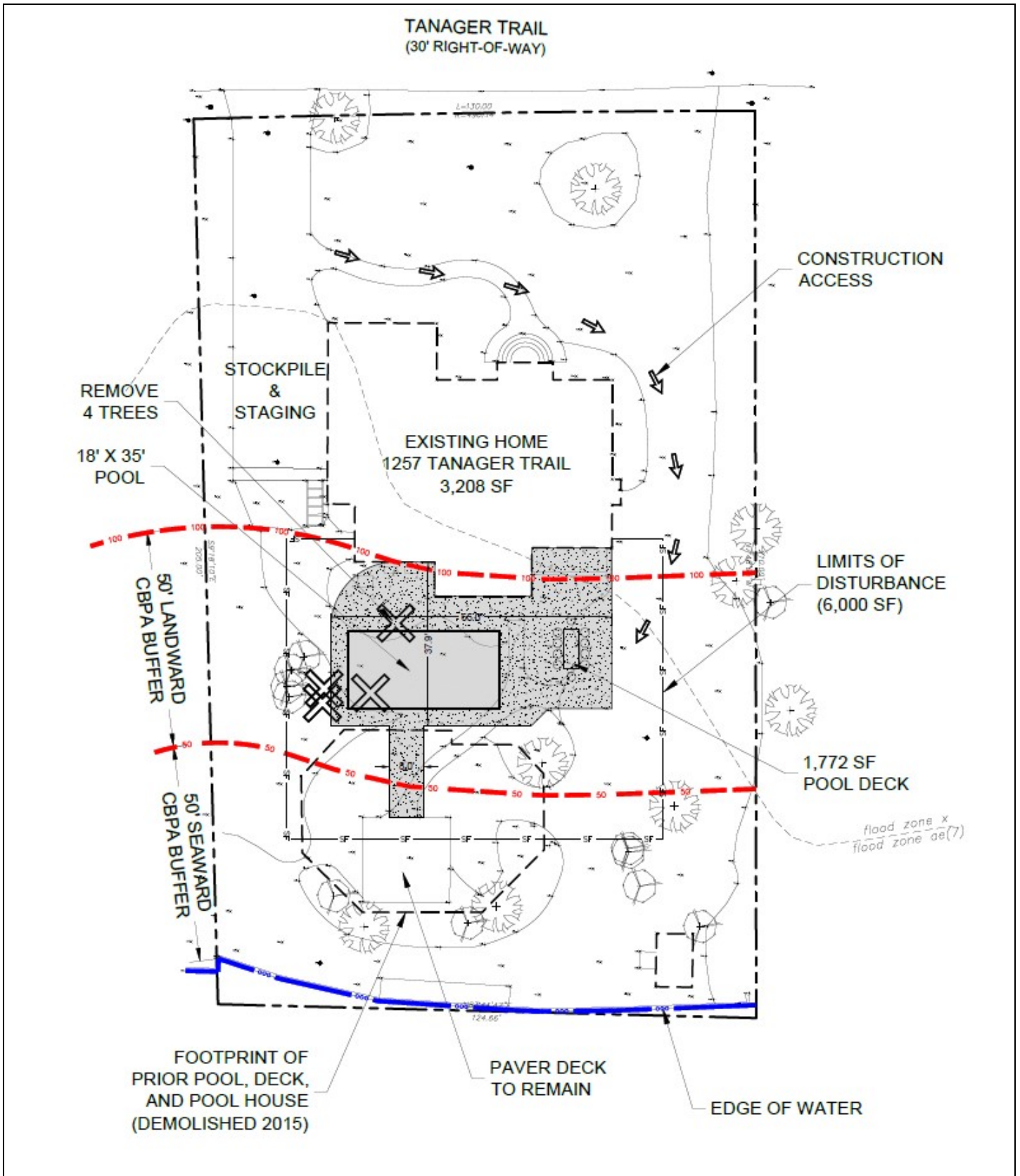




**CBPA Exhibit – Existing Conditions with Aerial Underlay**

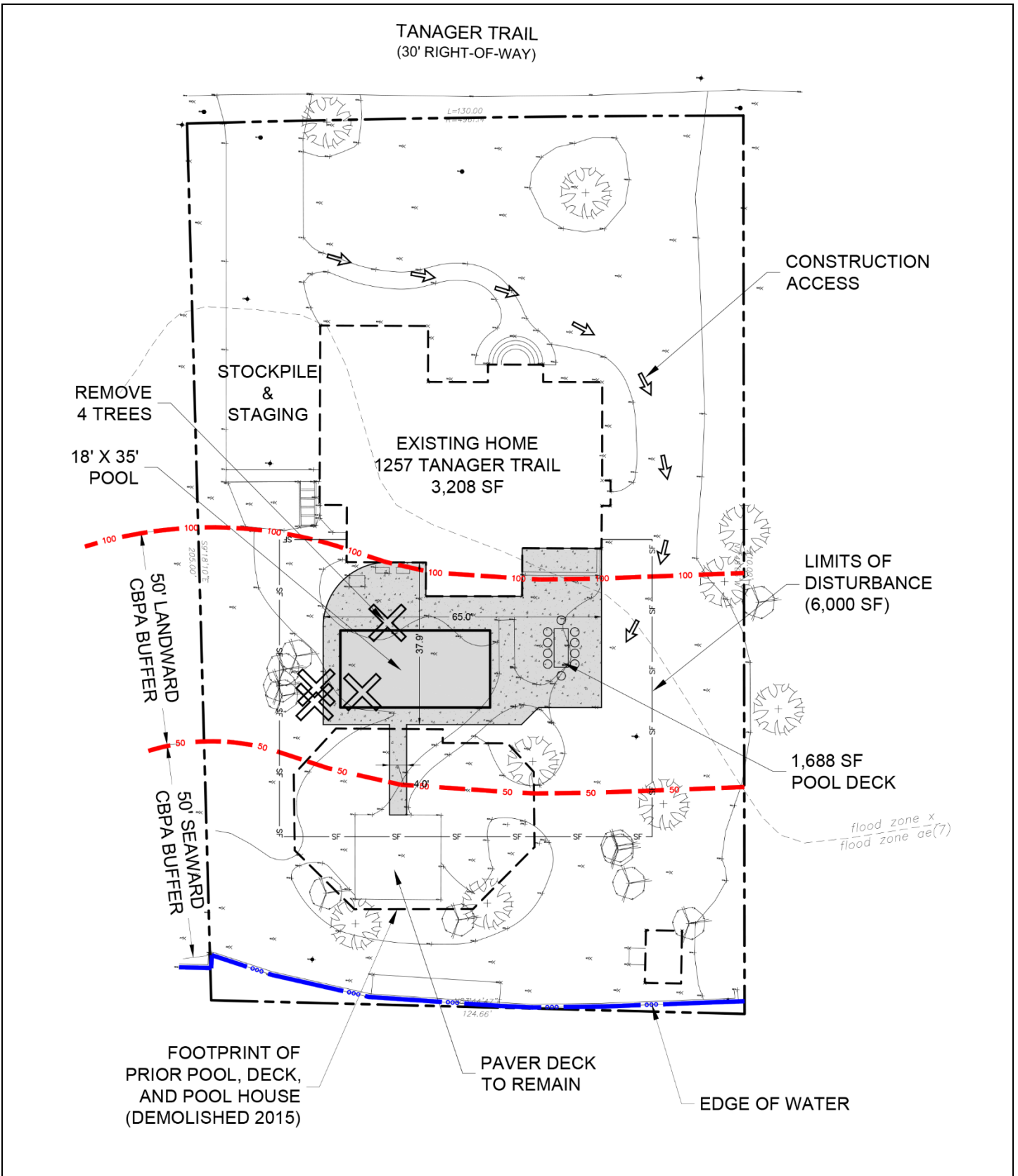


CBPA Exhibit – Proposed Improvements, As Submitted April 15, 2021





CBPA Exhibit – Proposed Improvements, As Submitted April 22, 2021

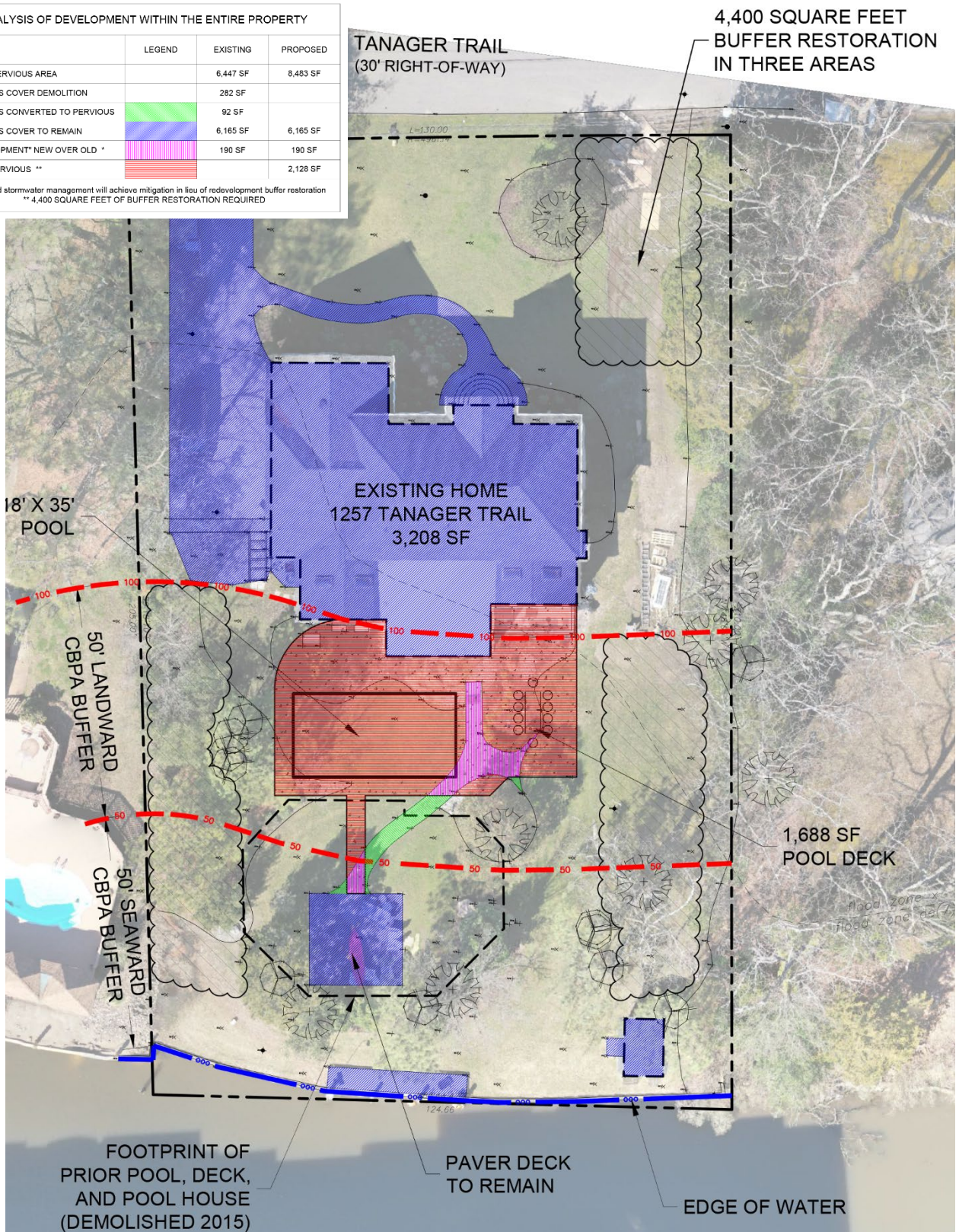


# CBPA Exhibit – Color Analysis

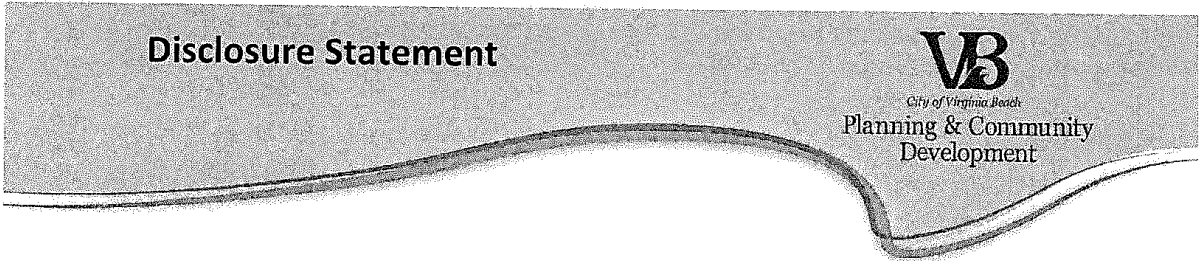
ANALYSIS OF DEVELOPMENT WITHIN THE ENTIRE PROPERTY

	LEGEND	EXISTING	PROPOSED
TOTAL IMPERVIOUS AREA		6,447 SF	8,483 SF
IMPERVIOUS COVER DEMOLITION		282 SF	
IMPERVIOUS CONVERTED TO PERVIOUS		92 SF	
IMPERVIOUS COVER TO REMAIN		6,165 SF	6,165 SF
*REDEVELOPMENT* NEW OVER OLD *		190 SF	190 SF
**NEW** IMPERVIOUS **			2,128 SF

\* proposed stormwater management will achieve mitigation in lieu of redevelopment buffer restoration  
 \*\* 4,400 SQUARE FEET OF BUFFER RESTORATION REQUIRED



# 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 BURCHETT

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)

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)

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- If yes, list the businesses that have a parent-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

---

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<sup>1</sup> "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.

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

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

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

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

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

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

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

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

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

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

# Disclosure Statement



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

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

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

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

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

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

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

### Applicant Signature

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

Applicant Signature  
DAVID BURCHETT, OWNER & APPLICANT

Print Name and Title  
MARCH 30, 2021

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Abby & Brenda Horwitz**  
 Address **1308 Wren Place**  
 Public Hearing **May 3, 2021**  
 City Council District **Lynnhaven**

Agenda Item

**12**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7, Page 193

Recorded 7/19/1926

**GPIN**

2418-13-9225

**SITE AREA**

65,876 square feet or 1.512 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

65,876 square feet or 1.512 acres

**EXISTING IMPERVIOUS COVER OF SITE**

13,256 square feet or 20.1 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

15,136 square feet or 23 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

1,880 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

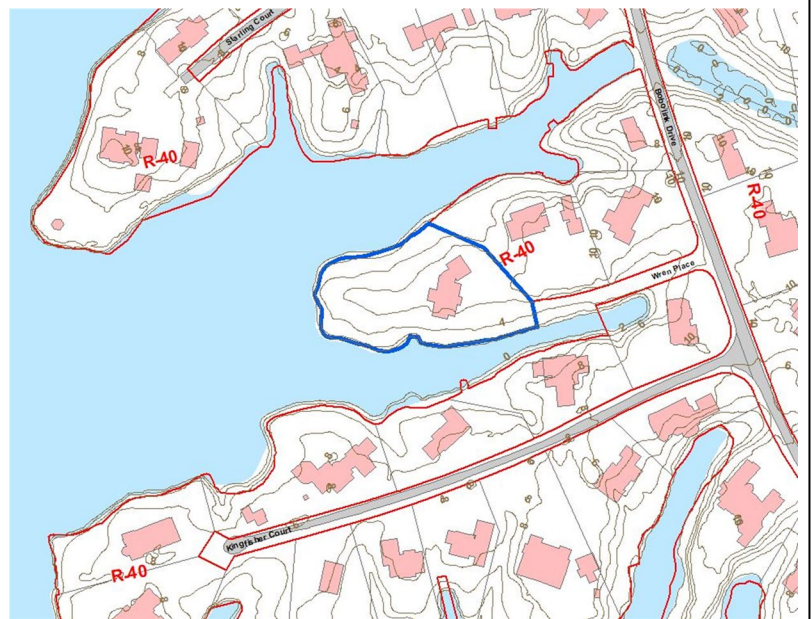
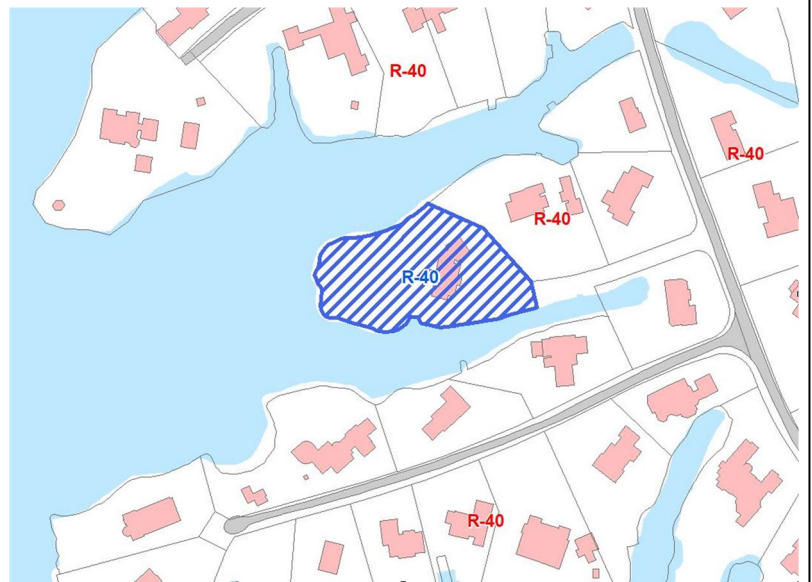
50-foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with associated pool surround and retaining wall
- Pool house

## 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)

Yeopim Series (deep and moderately well-drained soils)

### Shoreline

Shoreline is hardened with a riprap revetment and wood bulkhead

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

The 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.

## Evaluation and Recommendation

The applicant is proposing to construct a 648 square foot swimming pool with a 696 square foot pool surround. The proposed swimming pool is minimally larger than the average residential swimming pool with a minimal pool surround for providing access around the swimming pool with a slight increase in surround width occurring in front of the proposed pool house. Staff is of the opinion that the proposed improvements provide merit towards being the minimal necessary to afford relief but is concerned with the encroachment of the pool house into the 50-foot seaward buffer. As such, Staff offers recommended condition 1 below in-lieu of the proposed pool house being moved to the western end of the proposed swimming pool and out of the 50-foot seaward buffer.

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



- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.”* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“the buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is not on these properties will never go away.”* Staff concurs with the applicant’s agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed size and layout of the improvements given the shape of this lot and impact of the 50-foot seaward buffer along the entire reach of the shoreline as delineated on the CBPA Exhibit for this variance request.
- 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 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.”* As stated above, Staff is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed size and layout of the improvements given the shape of this lot and impact of the 50-foot seaward buffer along the entire reach of the shoreline.
- 5) *“Strict erosion and sedimentation control measures do more to halt non-point source pollution, stockpiling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the 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 to turf and integrating the revegetation of a riparian buffer into the design plan. Staff offers that the introduction and placement of buffer restoration should be accomplished in a manner that preserves the existing established shoreline and is cognitive of potential tidal flooding and storm surge elevations on the lot.

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) The proposed pool house shall be reduced 176 square feet and shall not encroach any further seaward with the reduction in size.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,704 square feet x 200 percent = 3,408 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: **8 canopy trees, 8 understory trees, 16 large shrubs and 24 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall 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 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
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.

- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$390.50 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 1, 2021, prepared by Gallup Surveyors & Engineers, signed April 1, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. 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.

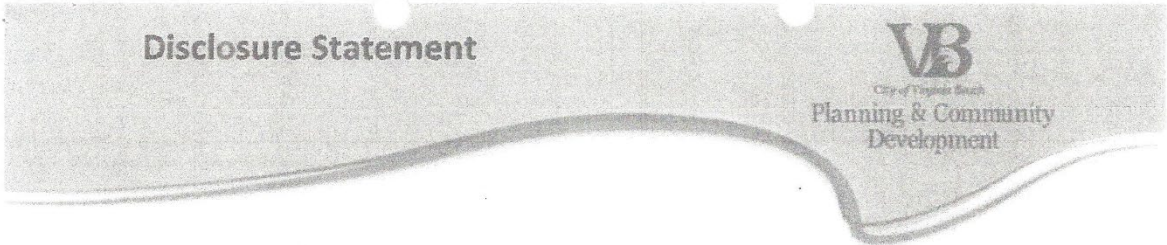
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





# 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 Abbey & Brenda Horwitz

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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

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

## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

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

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

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

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

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

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

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

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

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

# Disclosure Statement



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

### Applicant Signature

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

Applicant Signature

Abby Horwitz

Print Name and Title

3/8/2021

Date

Brenda Horwitz-owner

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 **Boyd Melchor & Deona Oliver**  
 Address **1244 Crystal Lake Circle**  
 Public Hearing **May 3, 2021**  
 City Council District **Lynnhaven**

Agenda Item

**13**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct redevelop and expand pool deck and redevelop pool house.

**Applicant's Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7, Page 166

Recorded 7/9/1926

Instrument No. 20080417000441180

Recorded 4/17/2008

*\*to vacate interior property line*

**GPIN**

2418-88-7136

**SITE AREA**

63,491.8 square feet or 1.458 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

60,972 square feet or 1.4 acres

**EXISTING IMPERVIOUS COVER OF SITE**

13,347 square feet or 21.8 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

13,921 square feet or 22.8 percent of site

**Area of Redevelopment in RPA**

1,009 square feet

**Area of New Development in RPA**

574 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

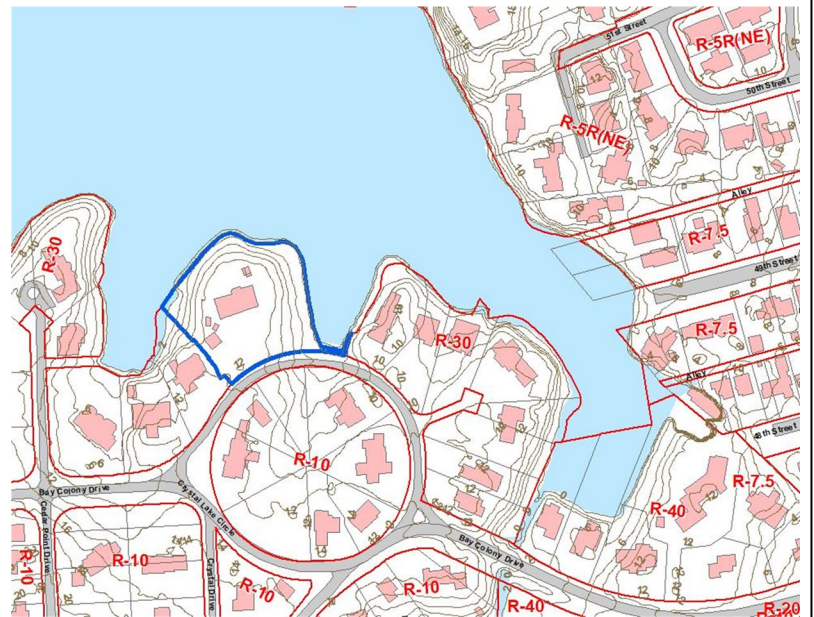
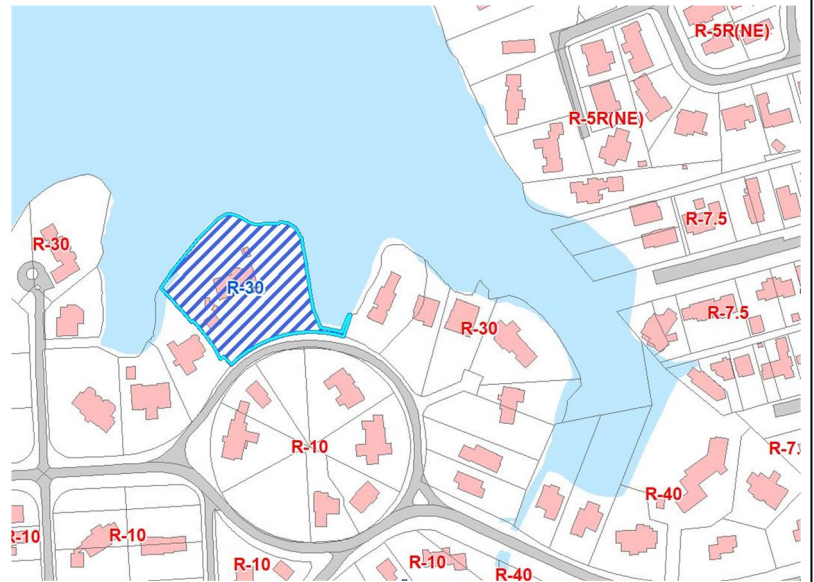
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Bluestone patio area and pool surround
- Pool house

### Construction Details

- Patio area and pool surround – redeveloped in same footprint and expanded along the western side
- Pool house – redeveloped in same footprint and expanded along the eastern side

## CBPA Ordinance Variance History

**August 27, 2007 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct one-story and two-story room additions, a two-story detached garage/studio, equipment pads, driveway repair and replacement, walkways, swimming pool and greenhouse with the following conditions:**

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 15' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
7. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
8. *All improvements shall be built into the slope with no perimeter fill.*
9. *All interior property lines shall be vacated prior to issuance of a certificate of occupancy permit.*
10. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
11. *The pool shall be constructed prior to or concurrent with the residential additions.*
12. *\*\*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 \$779.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 850 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*

13. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
14. *Buffer restoration shall be installed within the 50 ft. seaward buffer above the 5 ft. contour and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. Additionally, the interior portion of the circular driveway shall be converted to an all-natural area (mulch / leaf litter). In addition to the aforementioned buffer restoration area, a minimum of thirty-four (34) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
15. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
16. *The conditions and approval associated with this variance are based on the site plan dated June 27, 2007, prepared by Gallup Surveyors and Engineers Ltd.*
17. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
18. *It is the opinion of the Bay Board that the impervious cover granted is the maximum the site can support.*

**June 23, 2008 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted with the property owners refining the approved site plans of the 2007 CBPA Variance with the following conditions:**

1. *This variance and conditions of approval will supersede the variance and all conditions granted by the August 27, 2007 variance.*
2. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
3. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) 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.*
4. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *5. Construction limits shall lie a maximum of 15' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
8. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*

9. *All improvements shall be built into the slope with no perimeter fill.*
10. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
11. *The pool shall be constructed prior to or concurrent with the residential additions.*
12. *\*\*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 \$730.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 797 sq. ft., 12- inch deep oyster shell plant within the Lynnhaven River Basin.*
13. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (natural leaf cover) left intact.*
14. *Buffer restoration shall be installed in substantial compliance with the landscape plan dated 5-19-08 prepared by William D. Almond of WPL and shall utilize bayscape landscaping principles which achieves three trophic layers of vegetation (canopy trees, understory trees, shrubs and groundcovers). The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of forty (40) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
15. *A separate landscape / buffer restoration plan shall be submitted concurrent 14 with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
16. *The conditions and approval associated with this variance are based on the site plan dated June 27, 2007, with a revision date of May 5, 2008, prepared by Gallup Surveyors and Engineers Ltd and the Landscape Plan dated 5-19-08 prepared by WPL.*
17. *It is the opinion of the Bay Board that the impervious cover granted is the maximum the site can support.*
18. *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 June 23, 2008 Board granted variance was acted upon

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

### Shoreline

Shoreline is hardened with a wood bulkhead.

## Riparian Buffer

Moderately to sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to redevelop the existing pool surround and patio area due to subbase structural issues with the existing concrete slab. With the redevelopment of the existing pool surround, the applicant is proposing to expand the patio area by 290 square feet. The majority of the expansion occurs within the 50-foot landward buffer. In addition to the redevelopment and expansion of pool deck, the applicant is proposing to redevelop and expand the existing pool house to provide an enclosed area for the pool equipment, storage space and additional covered area. Staff is of the opinion that the scope of the redevelopment activities associated with this variance request will not be detrimental to water quality. This position is supported due to the confined amount of land disturbance associated with necessary repairs need to the existing improvements.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the redevelopment and proposed improvements are similar to those constructed on adjacent lots."* Staff concurs.
- 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 *"is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA."* Staff concurs and offers that subsequent plats were recorded due to the vacating of interior lot lines thus limiting the development to a single-family residence.
- 3) The variance is the minimum necessary to afford relief because the request is *"a small expansion with the necessary redevelopment of existing impervious cover."* Staff concurs and offers that the applicant has provided a layout the is cognitive of the existing condition of the lot and delineated RPA feature.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements *"do not drastically increase impervious cover of the lot."* Staff concurs and offers that the existing landscaping and moderately well drained soil aides in the infiltration of rainwater within the subject lot.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"the redevelopment of existing impervious cover and expansion of accessory structures occurring within the area of the lot with relatively flat topography provides merit towards managing land disturbance."* Staff concurs.

Given the above comments, Staff recommends the following 11 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. A Single-Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
- 2) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **574 square feet x 200 percent = 1,148 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: **3 understory trees, 6 large shrubs, and 9 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.

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) 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.
- 5) 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.**
- 6) 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.

- 7) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 8) 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.
- 9) 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted June 23, 2008.

\*\* 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

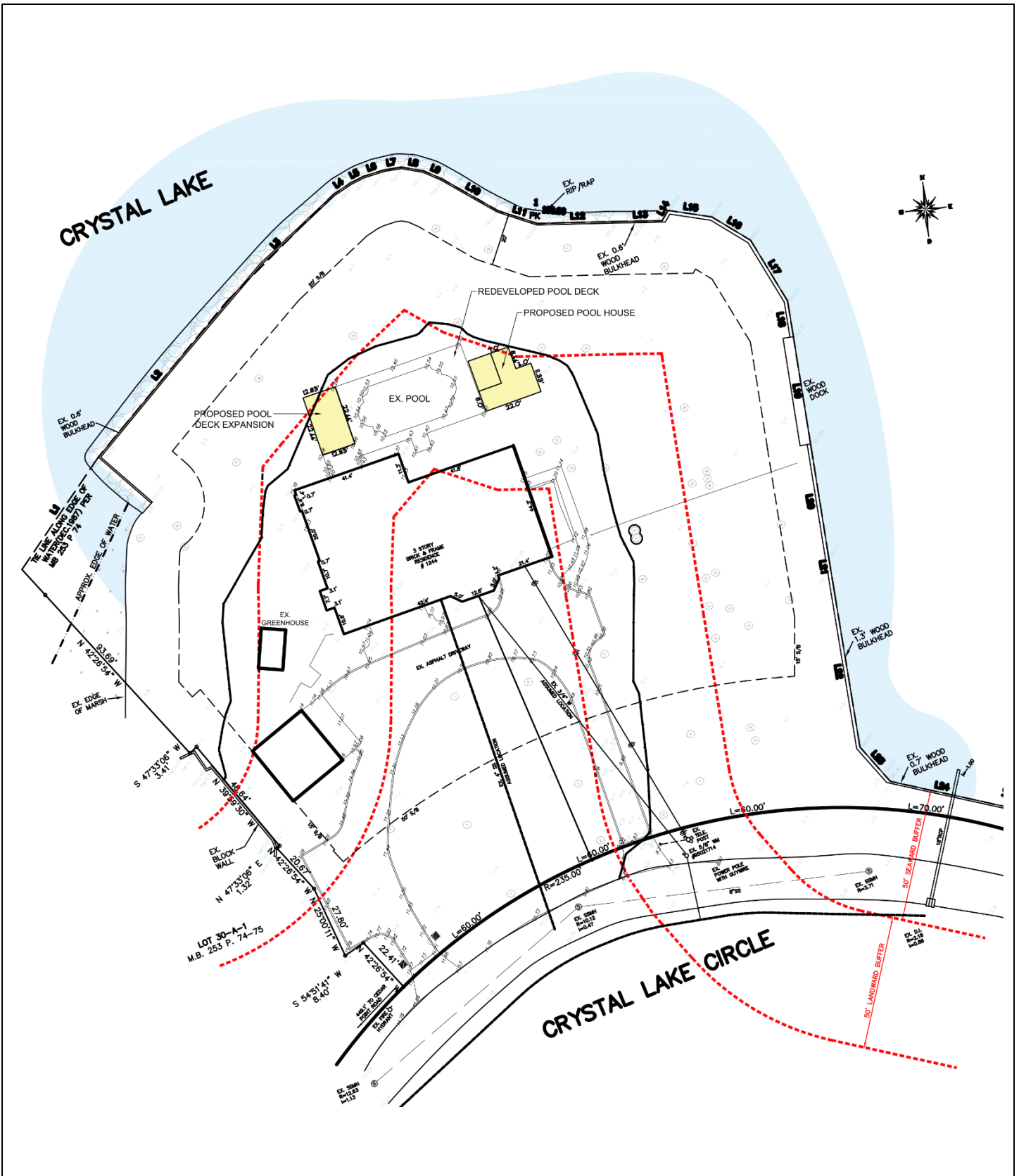








# CBPA Exhibit – Proposed Improvements



# 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 Robert Boyd Melchor

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

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

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

- If yes, list the businesses that have a parent-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

<sup>1</sup> "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.

<sup>2</sup> "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?

Deona Branch Oliver -VB Planning Commissioner

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## 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.

Lien held by Rushmore Loan Co.

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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.
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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.

Gallop Surveyors

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

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

# Disclosure Statement



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

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

Gallop Surveyors

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

### Applicant Signature

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

Applicant Signature

R. Boyd Melchor

Print Name and Title

04/15/2021

Date

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

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

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

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