

# Chesapeake Bay Preservation Area Board Agenda

August 2, 2021





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# CHESAPEAKE BAY PRESERVATION AREA BOARD

## NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area Board will be held on Monday, August 2, 2021 at 10:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA. During the informal session, Staff briefs the Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing that follows. For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-4621 or go to [www.vbgov.com/cbpa](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 the items that it believes should be on the Consent Agenda, it will vote at one time for all the items, announcing the number of each item being voted on. Pay attention to the list of items being voted on.

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

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

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

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

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

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





# CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **August 2, 2021**

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

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

## OLD BUSINESS AGENDA ITEMS

- 1. 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 5



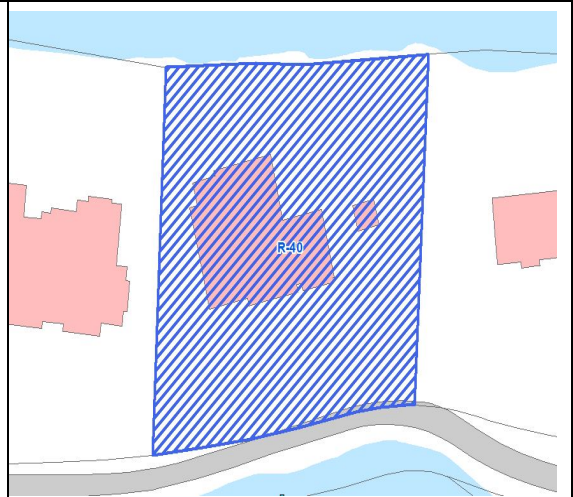
## NEW BUSINESS AGENDA ITEMS

- 2. Bennett & Elizabeth Thomas**  
[Applicant & Property Owner]

**3016 Island Ln**  
GPIN 1499-17-0438  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00041

**Variance Request** – Encroachment into the RPA to construct a gravel pad, patio areas with access path, and redevelop existing driveway.

**Staff Planner** – Chuck Payne  
**Staff Report** – page 19



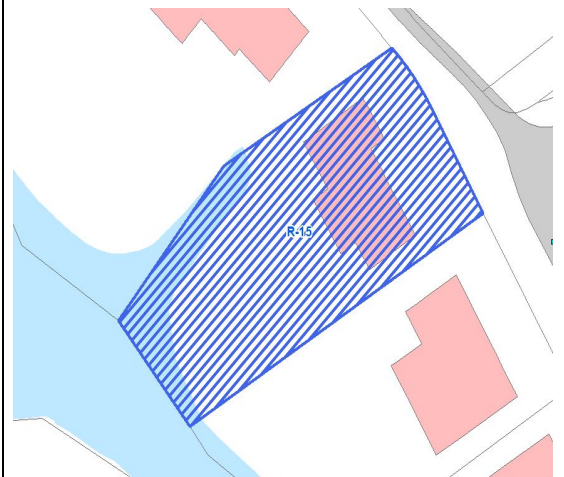
## NEW BUSINESS AGENDA ITEMS

**3. Mark Epley & Dawn Morgan**  
[Applicant & Property Owner]

**633 Chesopeian Trl**  
GPIN 1497-59-4154  
Council District – Beach  
Accela Record 2021-CBPA-00042

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

**Staff Planner** – Chuck Payne  
**Staff Report** – page 33

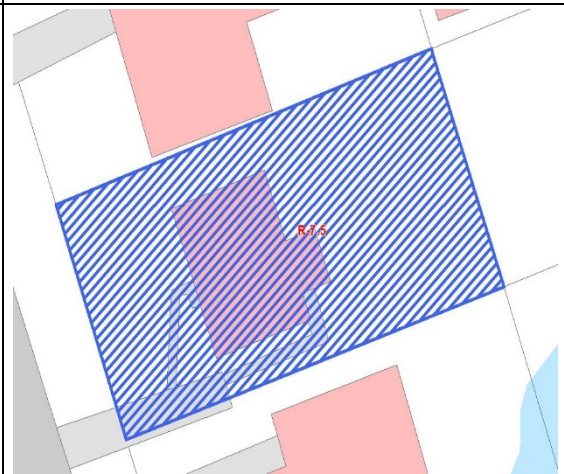


**4. Aaron McLellan**  
[Applicant & Property Owner]

**2114 Maple St**  
GPIN 1499-59-7315  
Council District – Lynnhaven  
Accela Record 2021-CBPA-00043

**Variance Request** – Encroachment in the RPA to construct a deck addition off rear of residence.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 47

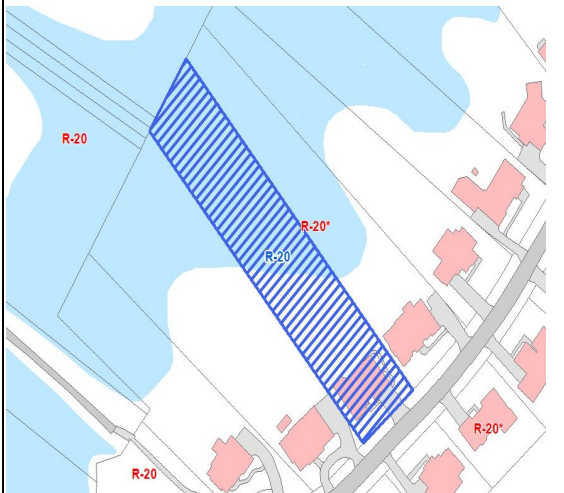


**5. Saunora & Leslie Prom**  
[Applicant & Property Owner]

**4113 Cheswick Ln**  
GPIN 1478-92-2170  
Council District – Bayside  
Accela Record 2021-CBPA-00045

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 55



*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.*





Applicant & Property Owner **Anthony & Cynthia Disilvestro**  
Address **1680 Godfrey Lane**  
Public Hearing **May 3, 2021**  
City Council District **Lynnhaven**

Agenda Item

**1**

**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  
Waterfront Consultants, Inc.

**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

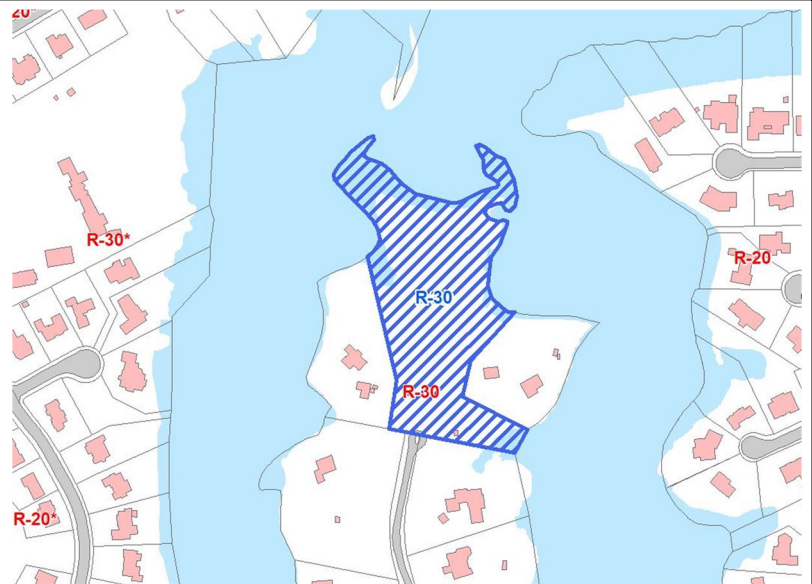
100-foot Variable Width Buffer

**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

This CBPA Board agenda item was deferred at the May 3, 2021 CBPA Board public hearing to the August 2, 2021 CBPA Board public hearing.

**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

Staff write up from the May 3, 2021 Chesapeake Bay Preservation Area (CBPA) Board public hearing.

*"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 opinioned 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."

Since the May 2021 CBPA Board public hearing the applicant's agent has worked with the applicant towards observing drainage patterns on the property and current conditions along the relocated gravel driveway at the front of the residence. The applicant has observed this area during storm events and has stated to Staff that the swale and associated BMP are containing water as intended. The applicant and the applicant's agent have meet with Staff in the field to discuss modifications to the BMP located at the front of the residence to allow for additional infiltration. Review of the stormwater plan will proceed after the outcome of the CBPA Board public hearing.

- 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.

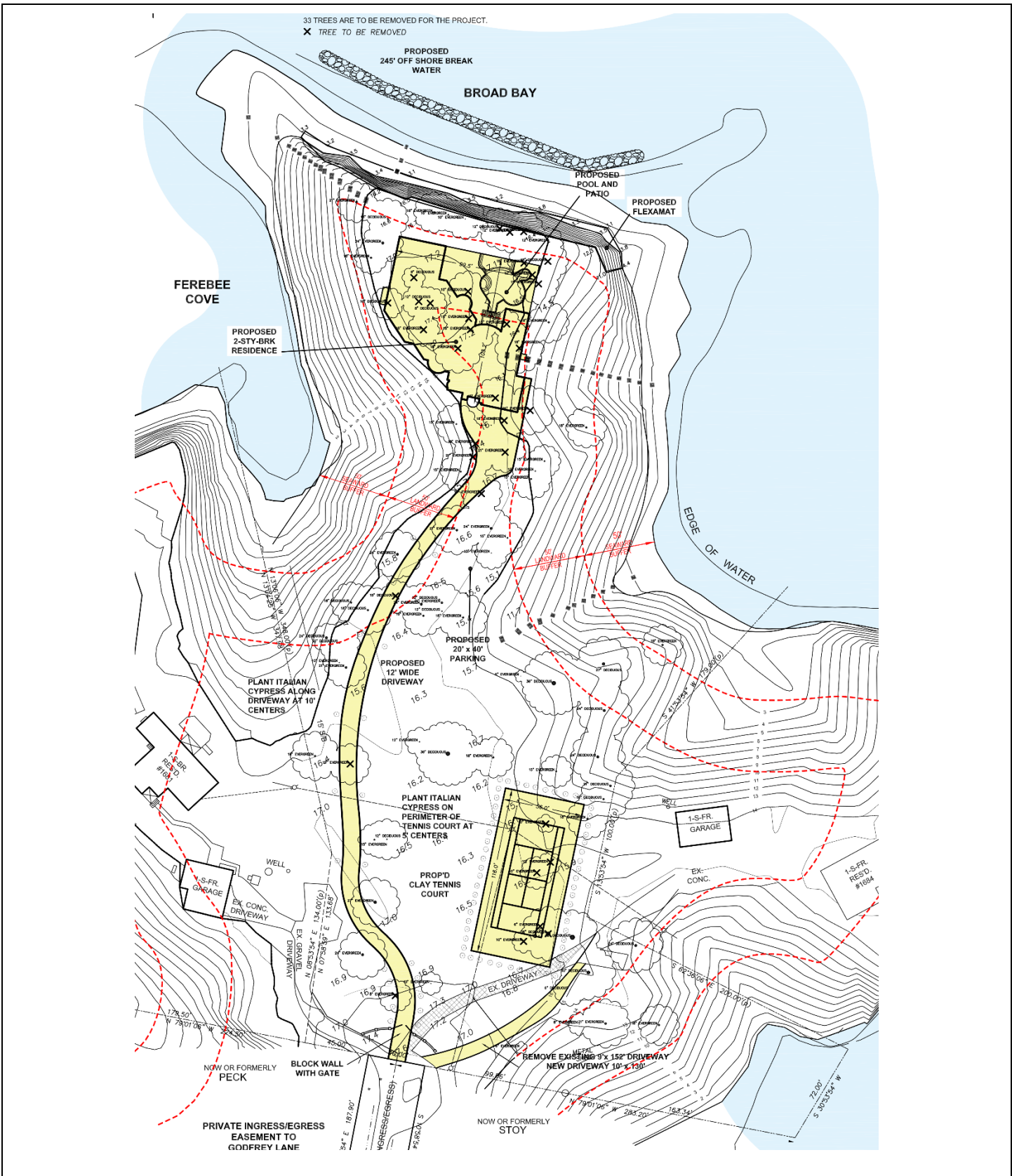
**\*\*\*NOTE:** The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation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



# Site Aerial

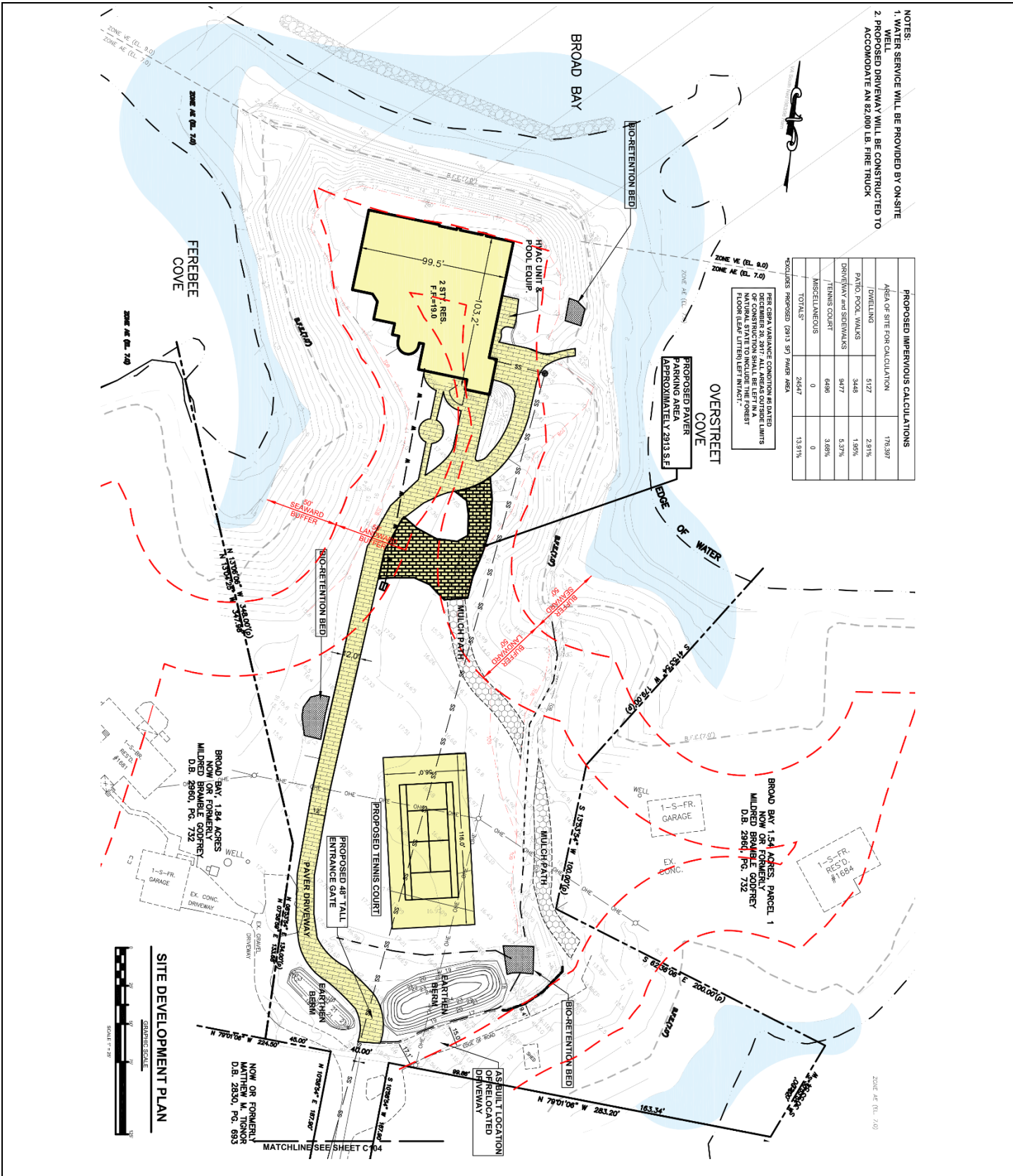


# December 20, 2017 CBPA Board Variance Exhibit

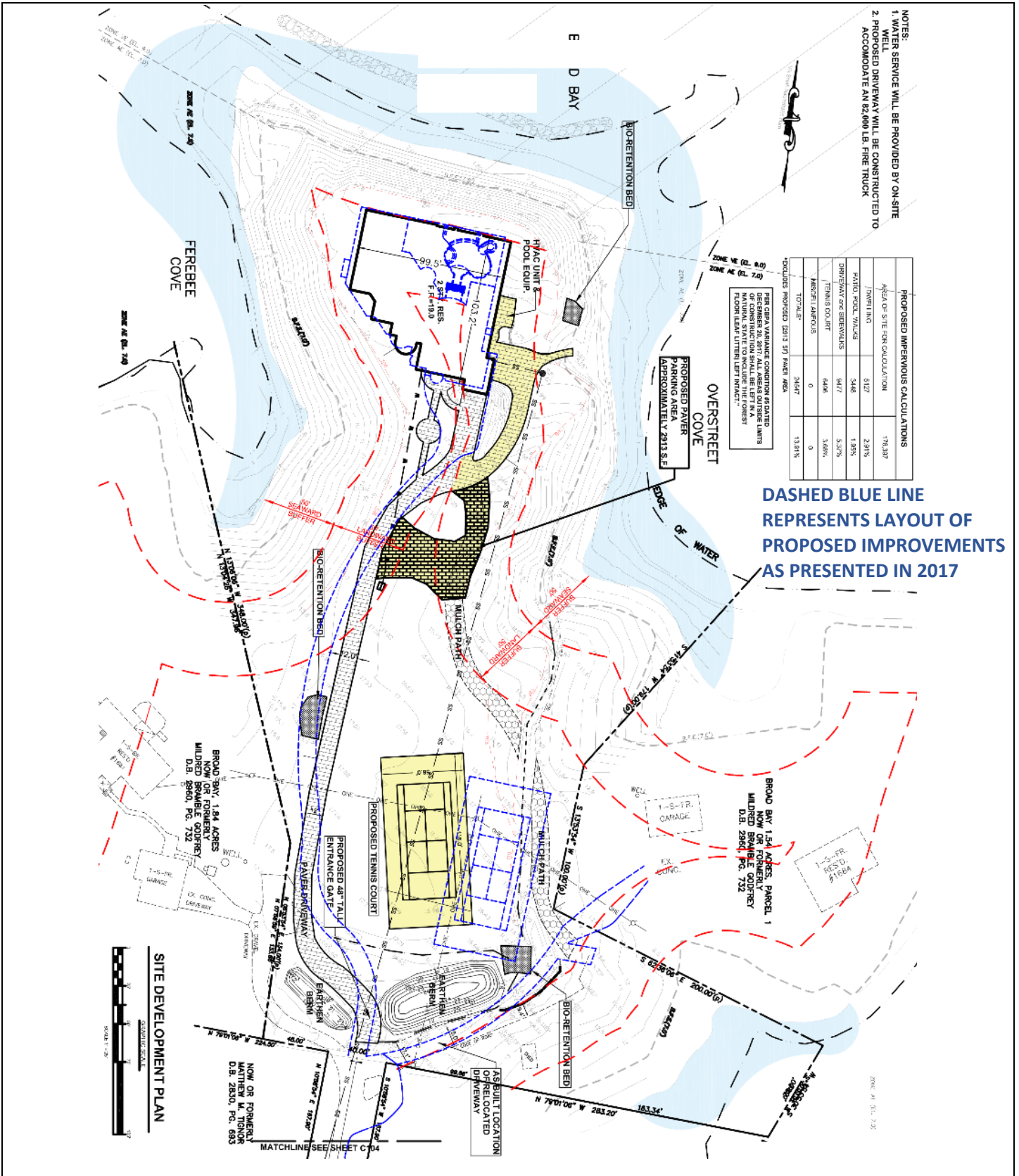




# CBPA Exhibit – Existing and Proposed Improvements as submitted



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





# 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)

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

- 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?

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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 **Bennett & Elizabeth Thomas**  
Address **3016 Island Lane**  
Public Hearing **August 2, 2021**  
City Council District **Lynnhaven**

Agenda Item

**2**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a gravel pad, patio areas with access path and redevelop existing driveway.

**Applicant's Agent**

Billy Garrington  
Governmental Permitting Consultants

**Staff Planner**

Chuck Payne

**Lot Recordation**

Map Book 24 Page 46  
Recorded 9/30/1949

**GPIN**

1499-17-0438

**SITE AREA**

24,266 square feet or 0.557 acre

**SITE AREA OUTSIDE OF WATER/WETLANDS**

22,697 square feet or 0.521 acre

**EXISTING IMPERVIOUS COVER OF SITE**

8,399 square feet or 36.7 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

9,028 square feet or 39.8 percent of site

**Area of Redevelopment in RPA**

2,635 square feet

**Area of New Development in RPA**

771 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

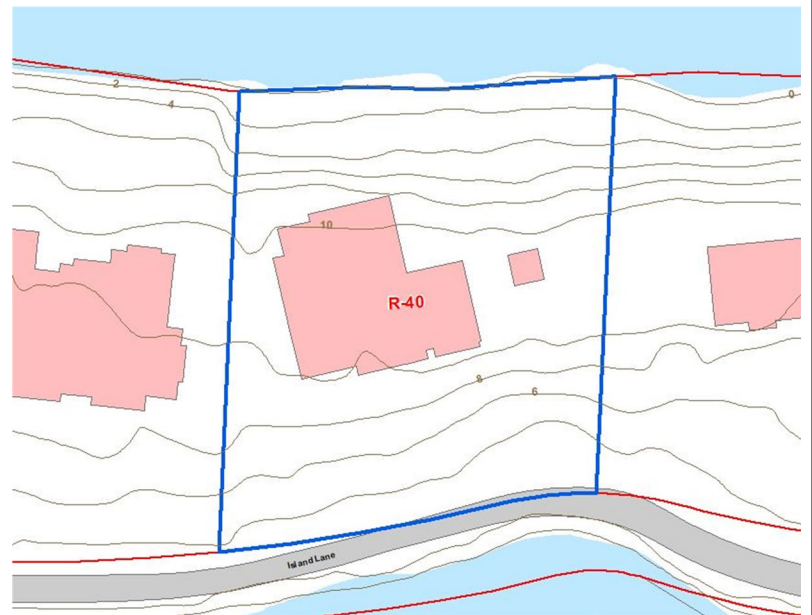
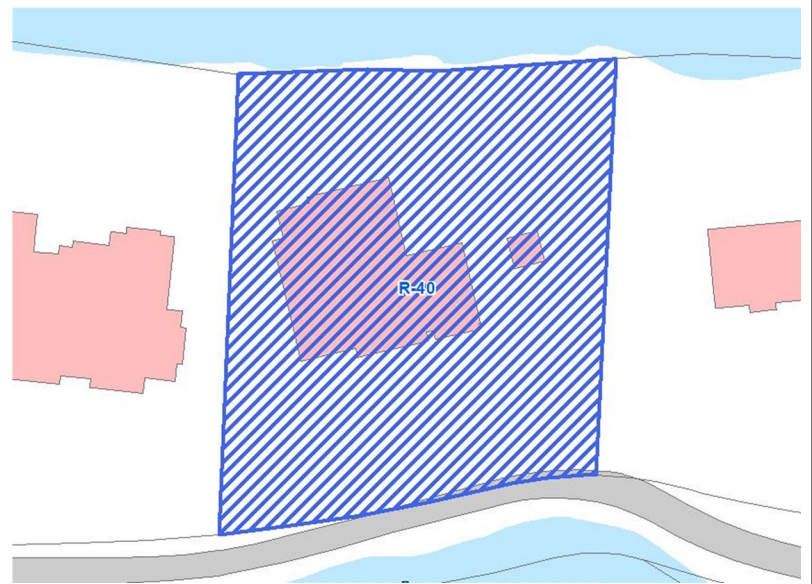
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned





## Summary of Proposal

### Demolition Details

- Existing circular concrete driveway and concrete walkway to the front porch

### Construction Details

- Gravel pad
- Patio, access path and generator pad
- Circular driveway with increased radii at entrances and garage

## CBPA Ordinance Variance History

**November 25, 2029 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct two wooden decks and an at grade patio area with the following conditions:**

1. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
2. *A maximum of 1,500 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50-foot seaward buffers. Within the RPA, 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 with all remaining pervious areas preserved as riparian buffer. 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable: **3 understory trees, 6 large shrubs, and 9 small shrubs.***

*The required restoration shall be located in the Resource Protection Area and 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. *Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.*
5. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*

6. *Under deck treatment of sand and gravel shall be installed.*

The November 25, 2019 Board granted variance has been acted upon.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily Wooded Lot

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

## Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that rooftop disconnection, soil amendments and preservation of existing riparian buffer will be provided as a best management practice for stormwater run-off mitigation.

## Evaluation and Recommendation

An established riparian buffer, albeit minimum in width, exists with a mature forest floor between the proposed improvements and the shoreline. The applicant intends to preserve the natural conditions of the lot and preserve the existing forest floor to the greatest extent practicable. Given the limited scope of the improvements, established riparian buffer and minimal land disturbance anticipated with the construction of the improvement, Staff is of the opinion that the existing water quality benefit afforded by the existing buffer will not be compromised by the proposal.

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) Staff is of the opinion that 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 redevelopment of the lot is consistent with improvements constructed on adjacent properties and the proposed improvements associated with this variance request do not require removal of any existing vegetation, nor will it encroach further seaward than existing improvements on adjacent parcels.

- 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 subject lot and home was created and constructed prior to October 1, 1989, prior to the adoption of the CBPA Ordinance.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“the 100-foot RPA encumbers the entire lot with Long Creek to the north and a canal to the south. The parking pad meets the zoning ordinance and is proposed in a flat area at the high point of the site. The new path to the west of the home is also at a higher point on the site and will provide safe access from the garage and driveway to the side entry and deck while also accommodating a small area for a generator. No trees will need to be removed, and in this regard, the proposed improvements are in the most logical locations.”* Staff concurs and offers that although a minimal increase in overall impervious cover is proposed, Staff is of the opinion that the materials associated with the proposed improvements offer merit towards ecological benefits by providing minimal water quality maintenance and rainwater infiltration.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the existing buffer on this lot is largely comprised of grass with some mature canopy trees (several live oaks) and some buffer landscaping along the eastern and western property lines in addition to a salt marsh to the north along Long Creek. The applicant's request requires no vegetation to be removed. This request will require the establishment of additional vegetation within the buffer to aid in the capture of runoff from the proposed improvements. This request will not be injurious to the neighborhood and with the addition of vegetation, will not be a detriment to water quality as the applicant is mitigating the impacts within the buffer to help with the increase in runoff generated by the proposed improvements. The proposed request is not expected to be injurious to the public welfare and is not of substantial detriment of water quality.”* Staff concurs.
- 5) *“It is expected that City Staff will work with the applicant to ensure that the landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscaping that should aid in slowing the velocity of stormwater leaving the site while also allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs within the RPA buffer”* 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 20 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance granted November 25, 2019, specifically the required buffer restoration 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: **771 square feet x 200 percent = 1,542 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

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

- 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 5 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.



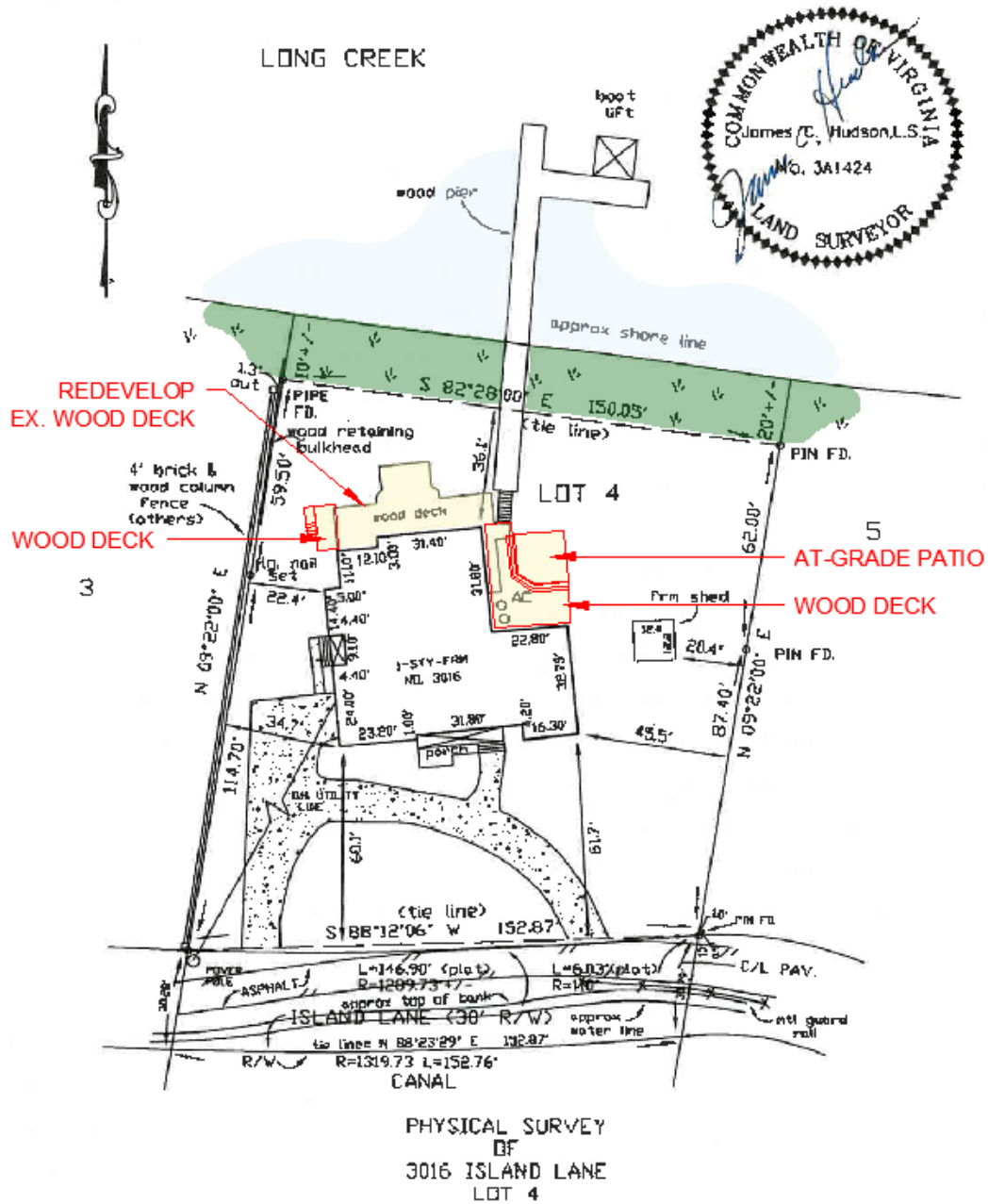
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed circular portion of the driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 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 \$176.68 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.
- 18) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 19) This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 25, 2019.
- 20) The conditions and approval associated with this variance are based on the exhibit plan dated June 30, 2021, prepared by Painted Fern Landscape Architecture, signed June 30, 2021 by Jessica Nelson. 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.

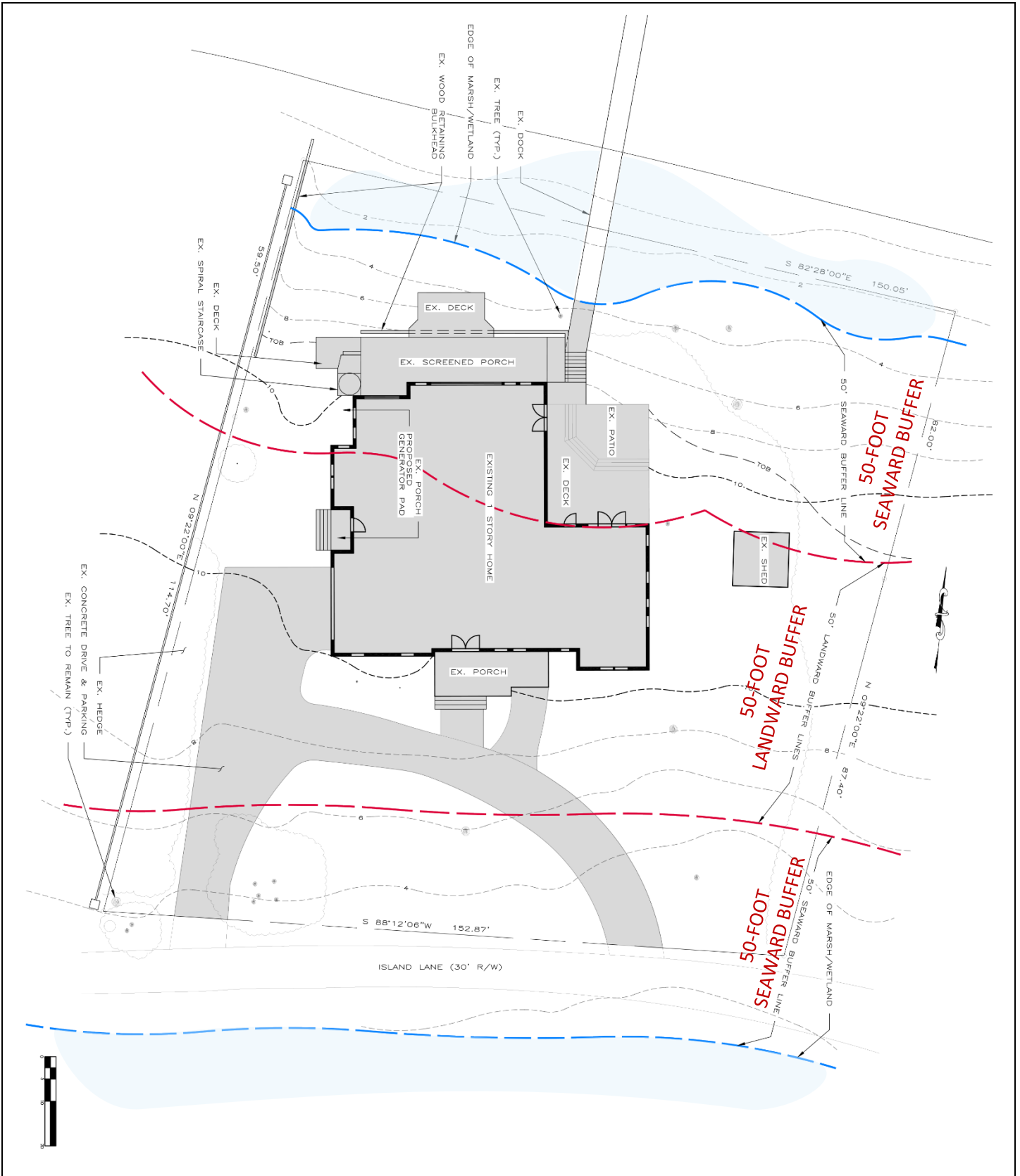
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial



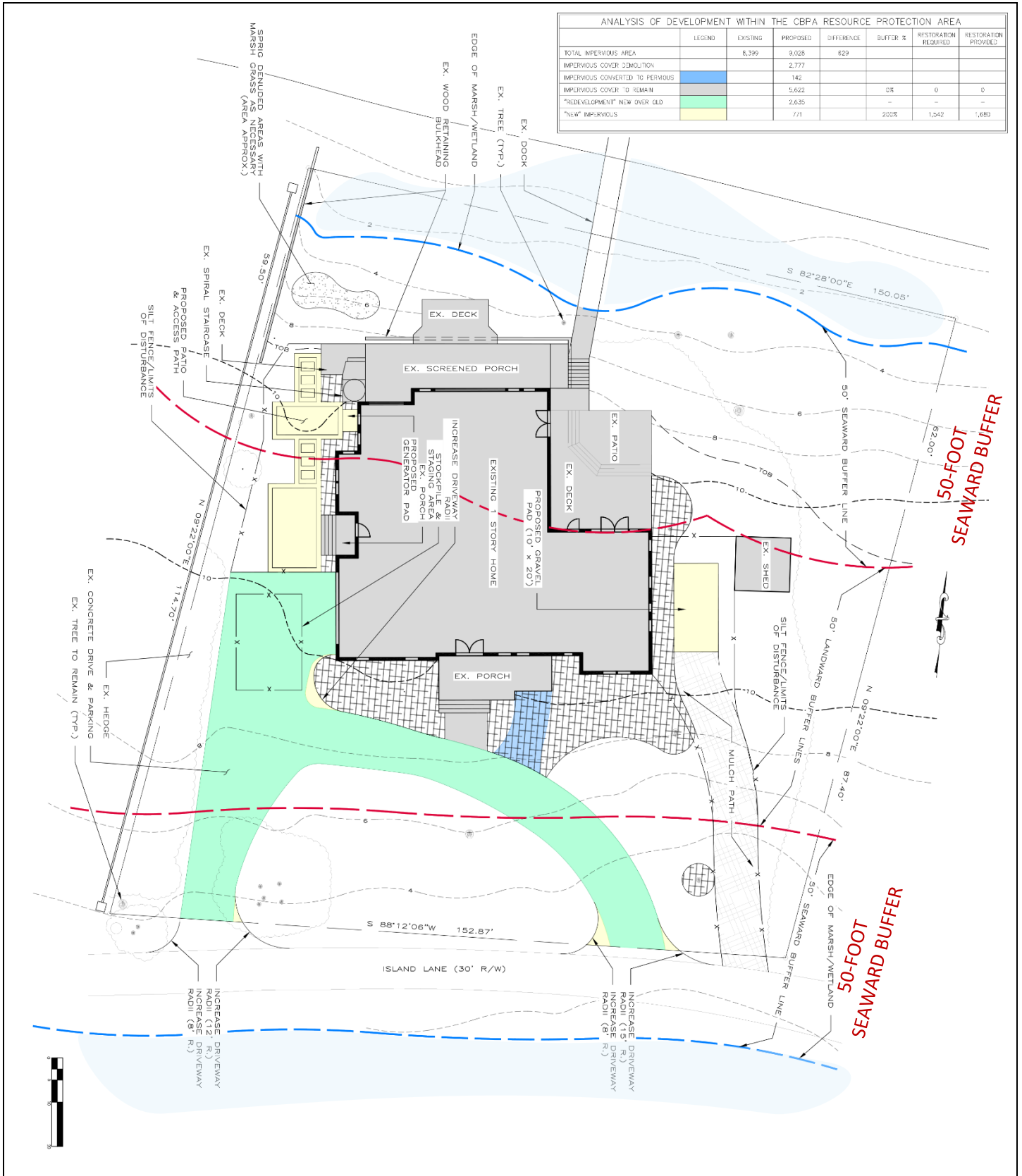


# CBPA Exhibit – Existing Conditions





# 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 BENNETT & ELIZABETH THOMAS

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)

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

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

# 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.

AMERIHOMEMORTGAGE COMPANY, LLC

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

Yes  No

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

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

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

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

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

PAINTED FERN, JASON THOMAS

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.

*[Handwritten Signature]*      *[Handwritten Signature]*  
 Applicant Signature  
 Bennett Thomas      Elizabeth Thomas  
 Print Name and Title  
 6-28-2021  
 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 **Mark Epley & Dawn Morgan**  
 Address **633 Chesapeake Trail**  
 Public Hearing **August 2, 2021**  
 City Council District **Beach**

Agenda Item

**3**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultants

**Staff Planner**

Chuck Payne

**Lot Recordation**

Map Book 41 Page 22  
 Recorded 4/25/1956

**GPIN**

1497-59-4154

**SITE AREA**

19,260 square feet or 0.442 acre

**SITE AREA OUTSIDE OF WATER/WETLANDS**

17,543 square feet or 0.403 acre

**EXISTING IMPERVIOUS COVER OF SITE**

4,777 square feet or 27 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,013 square feet or 34 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

1,236 square feet

**Location of Proposed Impervious Cover**

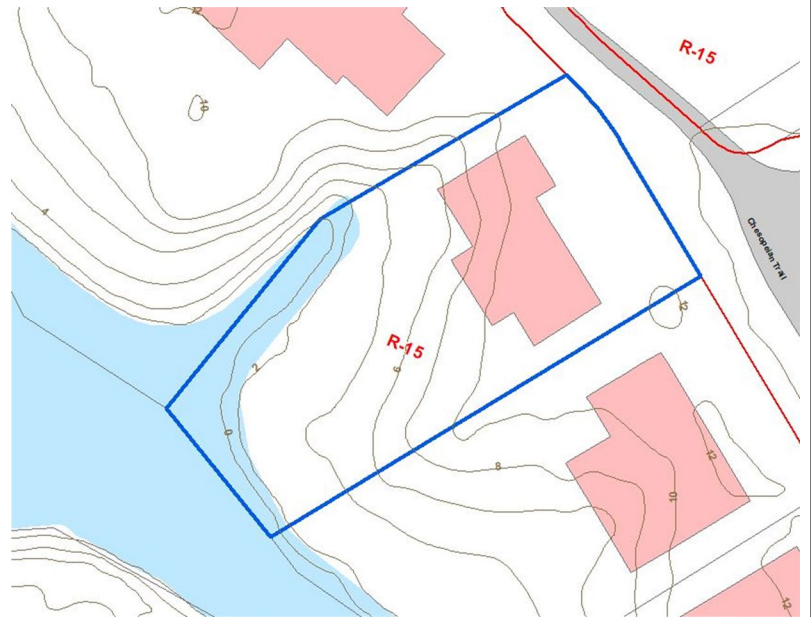
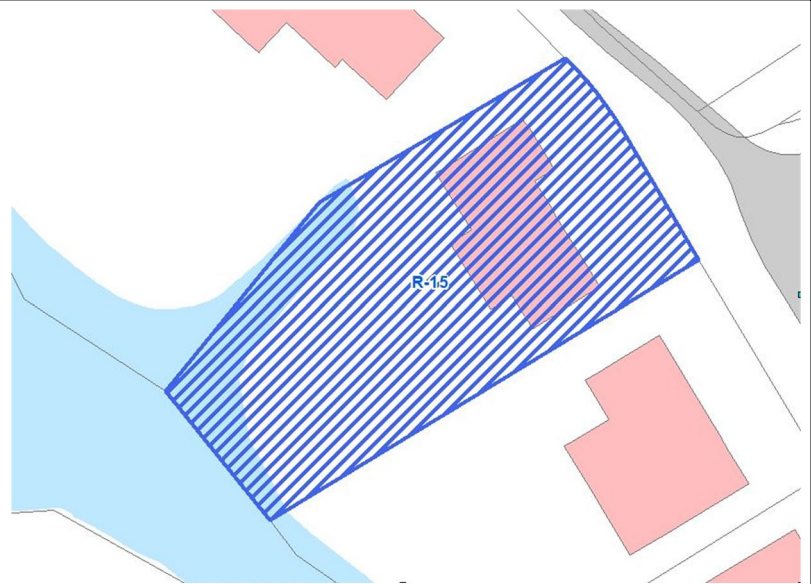
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with concrete pool patio and associated retaining wall

## CBPA Ordinance Variance History

**September 26, 2016 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a wood deck:**

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. 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. *Construction limits shall lie a maximum of 15' seaward of improvements.*
5. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3:1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
6. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
7. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
8. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: **261 sq. ft. x 200% = 522 sq. feet.***

*Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory, and 6 shrubs.***

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

9. *Under deck treatment of sand and gravel shall be installed in the area of existing turf on the eastern side of the existing concrete patio and wall.*
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 \$59.58 and is based on 25% of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 65 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
11. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.*

The September 26, 2016 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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 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, 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 has proposed to build a 14.5-foot x 33-foot inground pool with a pool surround that is 4 feet wide on each side, 6 feet wide on the shallow end and 10 feet wide on the deep end. Most of the proposed improvements are below the top of bank within the 50-foot landward buffer portion of the RPA. Although the topography of the site and existing improvements prevent locating the pool above the top of bank, reducing the pool surround to a maximum width of 4



feet along the shallow end and a maximum width of 8 feet along the deep end would reduce impacts within this portion of the RPA 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 1955 prior to the Chesapeake Bay Preservation Act and the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* 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 *"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. The CBPA buffers cover over 100% of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"The owners have designed the improvements in the area deemed to be the best area to minimize site impacts in the critical buffer areas."* Staff agrees that, based on the topography of the site, the proposed location of the pool is suitable, but offers that the size of the pool and associated decking could be reduced to decrease the overall impervious cover of the site and reduce impacts within the buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, 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 concurs.
- 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.

Given the above comments, Staff recommends the following 18 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration 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: **1,236 square feet x 200 percent = 2,472 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, 6 understory trees, 12 large shrubs, and 18 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.

- 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) Pool decking shall be a maximum of 4 feet x 4 feet x 4 feet x 8 feet (diving board end).
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$283.25 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 26, 2016.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated April 15, 2021, prepared by WPL, signed June 30, 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.

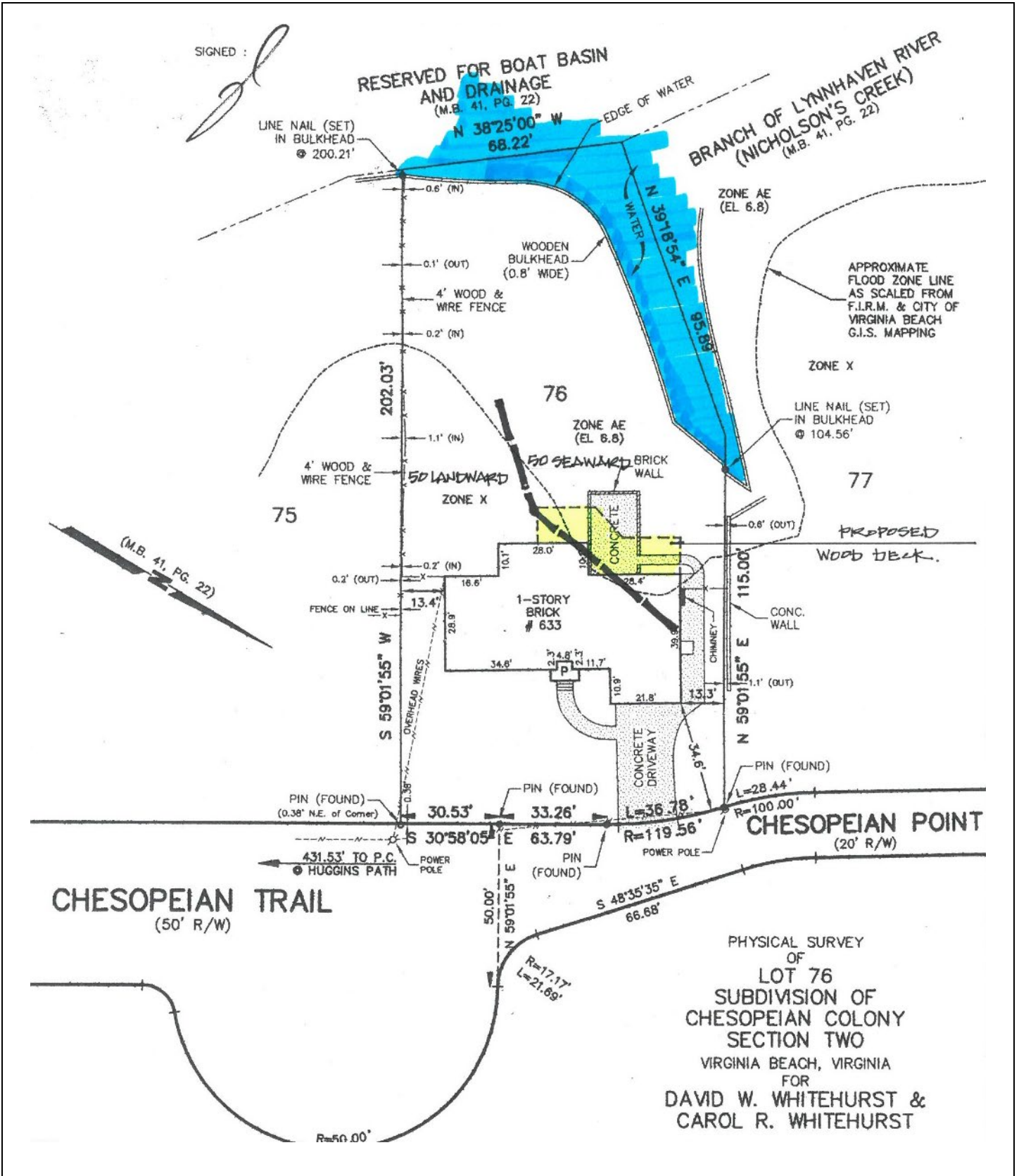
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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



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** Mark J Epley and Dawn M Morgan

**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)

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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 providing the service.

Towne Mortgage

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

Yes  No

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

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

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

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

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

WPL

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

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


## Disclosure Statement



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

### Applicant Signature

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

  
Applicant Signature  
Mark J Epley and Dawn M Morgan

Print Name and Title

06/25/2021

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	



**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a porch addition

**Applicant's Agent**

Self-represented

**Staff Planner**

Cole Fisher

**Lot Recordation**

Map Book 32, Page 8-A  
 Recorded 04/24/52

**GPIN**

1499-59-7315

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

23 square feet

**Area of New Development in RPA**

49 square feet

**Location of Proposed Impervious Cover**

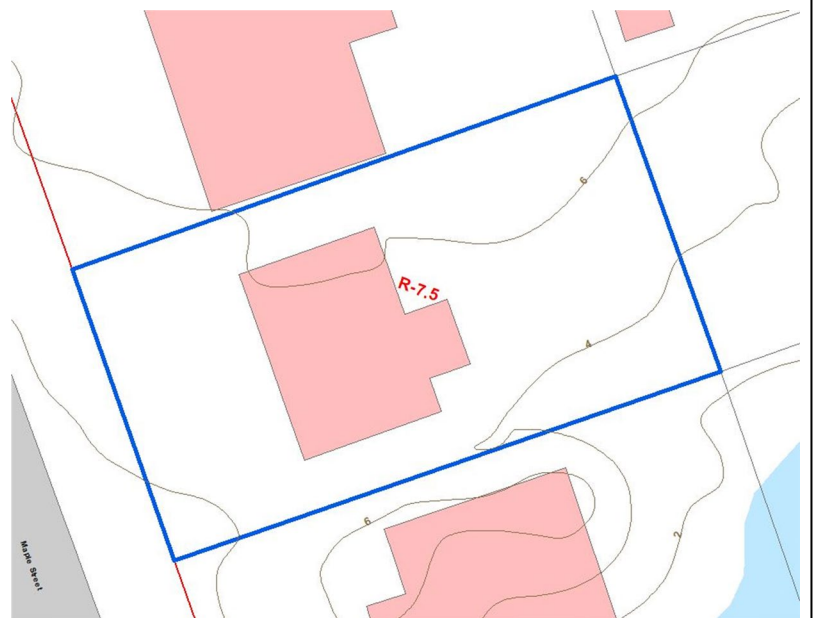
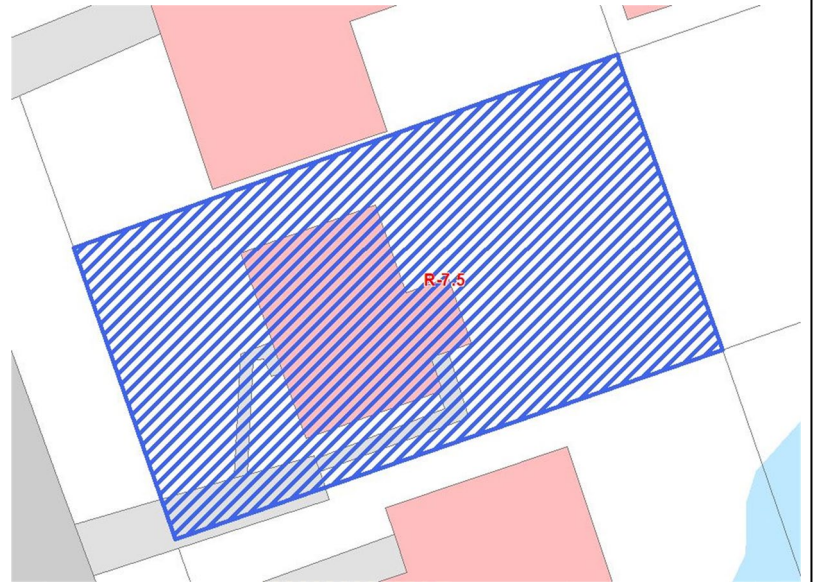
50-foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as submitted





## Summary of Proposal

### Construction Details

- Enclosed rear porch addition

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Newhan Series (deep, excessively drained soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant recently bought this property and desires to enhance the living conditions and their quality of life by making improvements to their home, including this request for an addition to their existing porch in their rear yard. Staff is of the opinion that the scope of the activities associated with this variance request will not be detrimental to water quality due to the limited amount of land disturbance in a confined area associated with the proposed 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 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 dwelling was built in 1972 which was before the Chesapeake Bay Preservation Act and the city CBPA ordinance. We have recently bought the property in 2021 and plan to do more improvements."* 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 property was originally platted prior to the Chesapeake Bay Preservation Act and the city CBPA ordinance.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“the location and size of proposed deck addition was designed to minimize impacts as best as possible to the 50 ft seaward buffer. Buffer restoration plantings will mitigate any impacts of the addition.”* 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 location and size of the proposed addition does not contribute a substantial detriment to the water quality of the Chesapeake Bay Watershed.”* Staff offers that the modest increase in impervious cover will not significantly increase stormwater runoff from the site.
- 5) *“We are not proposing any tree removal with this request. We also plan to plant more trees and shrubs to help with water run off”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that this variance request will benefit the Chesapeake Bay Watershed given that the sight is currently sparsely wooded, and the applicant wishes to plant additional native trees and plant species on the site.

Given the above comments, Staff recommends the following 4 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 400 square feet of buffer restoration shall be installed. 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: **1 canopy trees, 2 understory trees, and 3 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

3. 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.
4. 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.

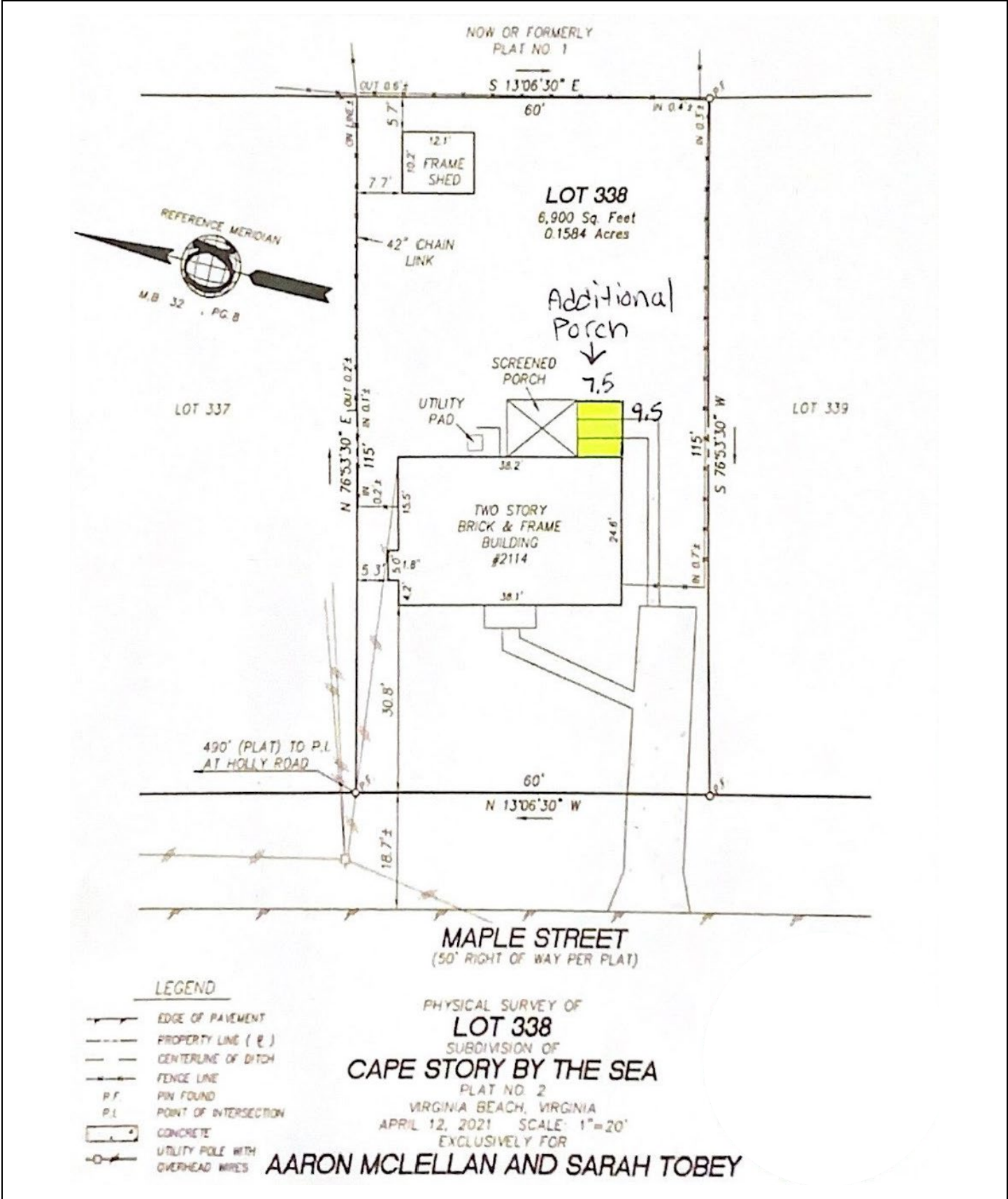
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





**CBPA Exhibit – Proposed Improvements**







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** Aaron McLellan

**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.



**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.  
Mancoll Contracting LLC, Matt Mancoll
- 
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

*Aaron McLellan*

Print Name and Title  
Aaron McLellan, Owner

Date 7/5/21

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

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

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



Applicant & Property Owner **Saunora & Leslie Prom**  
Address **4113 Cheswick Lane**  
Public Hearing **August 2, 2021**  
City Council District **Bayside**

Agenda Item

**5**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with a paver patio

**Applicant's Agent**

Robert Simon  
Waterfront Consultants, Inc.

**Staff Planner**

Cole Fisher

**Lot Recordation**

Map Book 2763, Page 0195  
Recorded 08/25/1988

**GPIN**

1478-92-2170

**SITE AREA**

51,759 square feet or 1.19 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

19,093 square feet or 0.44 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,263 square feet or 22.3 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

5,785 square feet or 30.3 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

1,522 square feet

**Location of Proposed Impervious Cover**

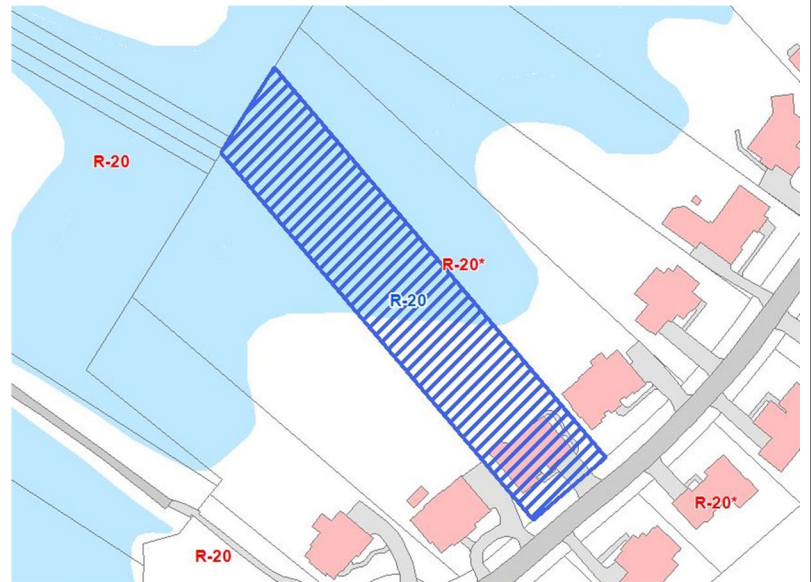
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned





## Summary of Proposal

### Construction Details

- Swimming pool with paver patio

## CBPA Ordinance Variance History

**On October 24, 1994, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence with a deck and driveway with the following conditions:**

1. *The residence shall be moved landward to the minimum required front yard setback of 30 feet. Recessed steps shall be used for the entrance.*
2. *BMP planting beds shall be located at least fifteen feet landward of the top-of-bank.*
3. *The deck shall be reconfigured to maintain at least ten feet landward of the top-of-bank.*
4. *The area below the top-of-bank shall be left in its natural state. A note to this effect shall be added in bold on the site plan.*
5. *A revised plan meeting the above condition(s) shall be submitted to the Planning Department for a full plan of development review and approval prior to the issuance of a building permit. The applicant shall install all erosion control and tree protection devices and must contact Waterfront Inspections at 427-8246 for an inspection prior to any further land disturbance including clearing, grading, footing, excavation, etc.*

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Rappahanock Series (deep and poorly drained soils)

### 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: 5
- 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 for the proposed pool and paver patio.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

This variance request includes the removal of five pine trees in the limits of construction of a proposed pool with associated paver patio. As submitted, the proposal increases the overall impervious cover of the lot from 4,263 square feet to 5,785 (22.3 percent to 30.3 percent of the total lot area) above water and wetlands. The applicant has taken means to keep all improvements above the top of bank to eliminate the need for a retaining wall and fill within the RPA. This request would enhance the existing bioretention planting beds and restore their functionality as designed in the approved 1994 CBPA Variance. Given the buffer restoration measures proposed and the measures taken by the applicant to minimize the impacts associated with this proposal, Staff supports the encroachment as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and is of the opinion that the location of the proposed improvements within the 50-foot landward buffer provide merit towards the variance application not conferring upon the applicant any special privilege or convenience not accorded other owners of the property in the neighborhood.
- 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 lot has a topographic relief that has an impact on the CBPA Buffers."* 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 because *"the proposed development is encroaching minimally into the 50' landward buffer and are all above the top of bank to eliminate the need for a retaining wall/fill in the RPA."* Staff is of the opinion that the proposed improvements, as situated in the rear yard, proximity to the existing residence, and entirely within the landward buffer, provides merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the 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. Staff concurs.

Given the above comments, Staff recommends the following 15 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the 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. Displacement of existing stormwater management facilities and all associated vegetation shall be accounted for with the construction of the proposed improvements.
- 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: **1,522 square feet x 200 percent = 3,044 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) 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.

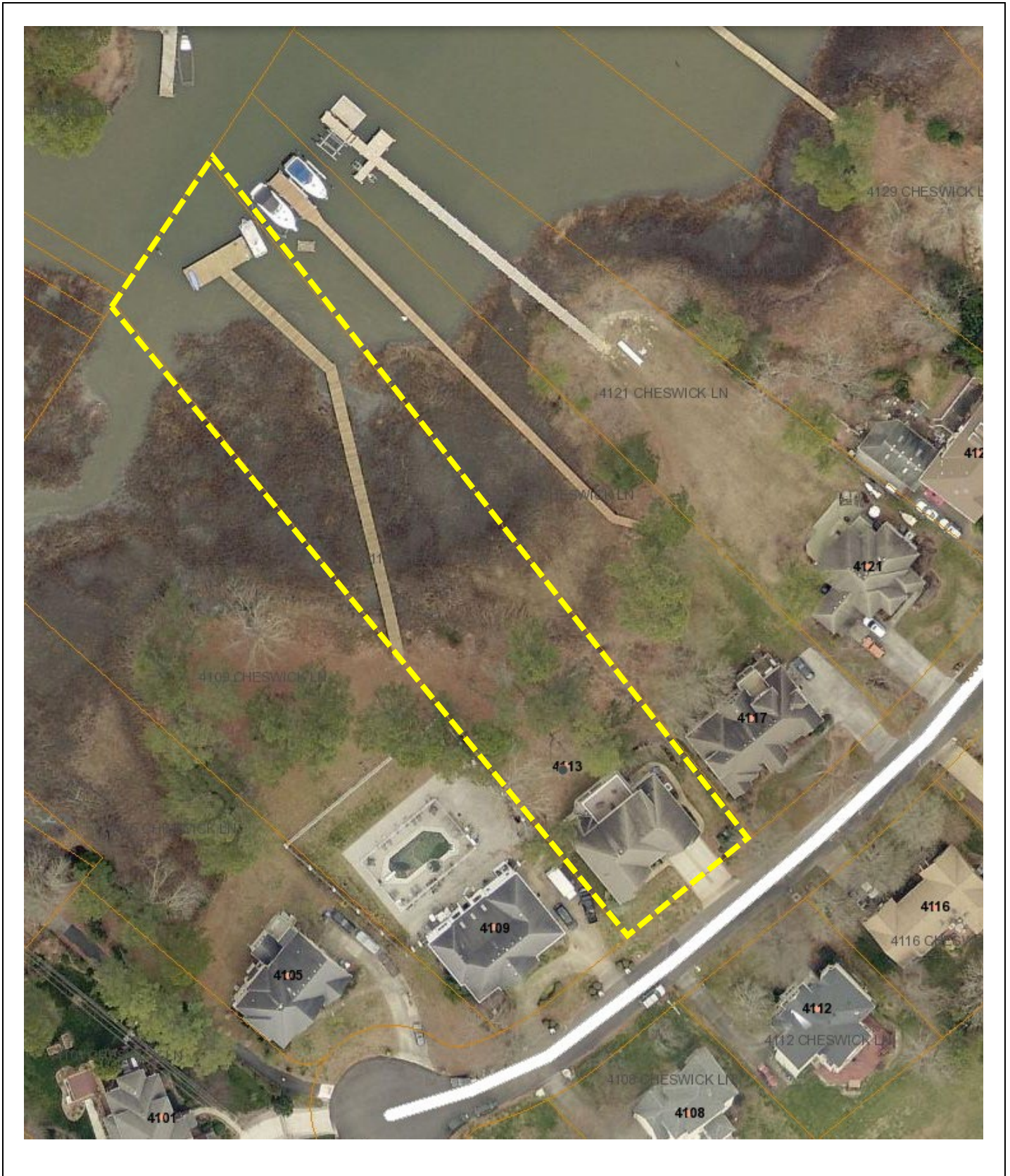
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all 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 \$348.79 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted on October 24, 1994.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 29, 2021, prepared by Chesapeake Bay Solutions, Inc., signed June 29, 2021 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

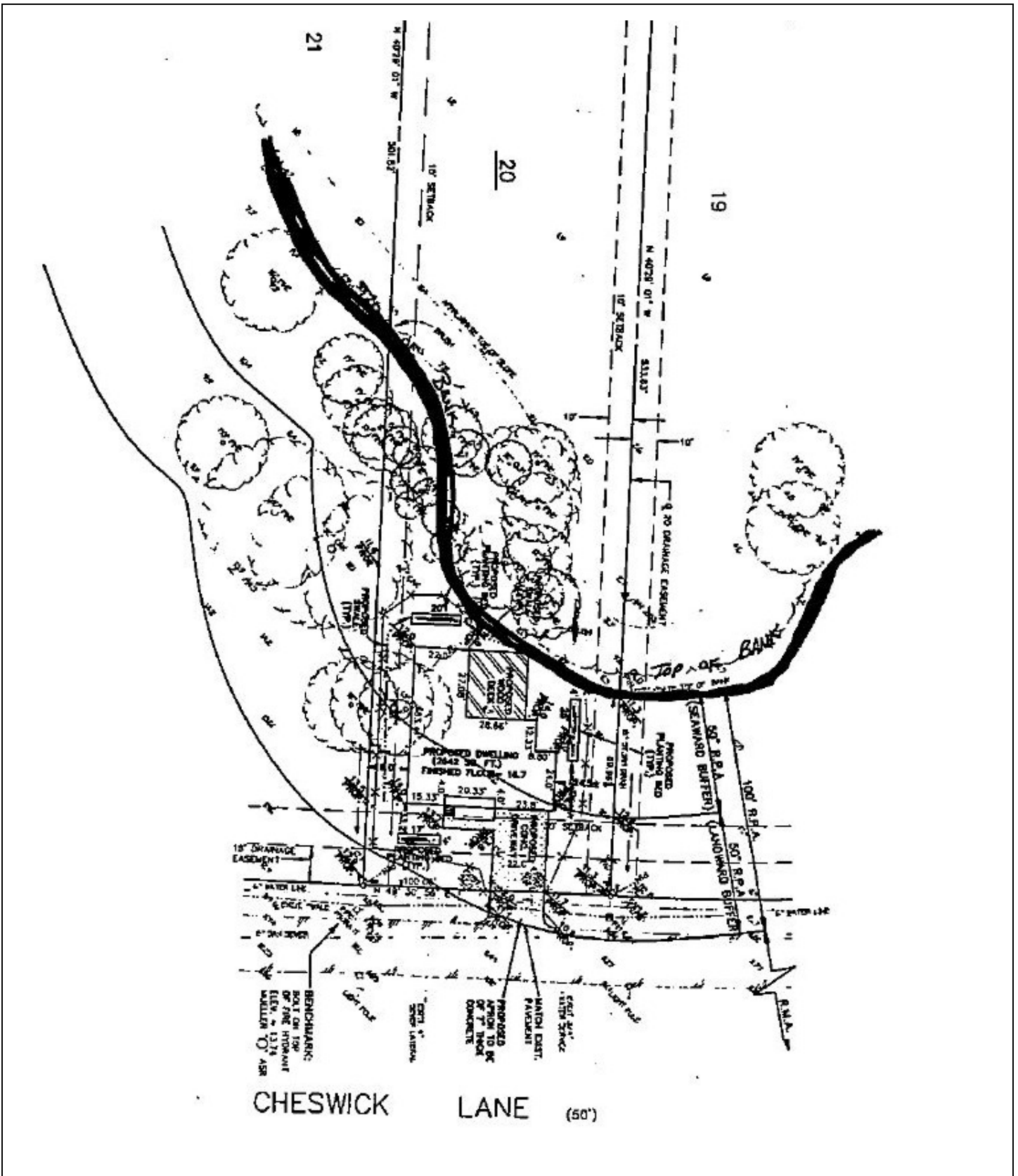
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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.



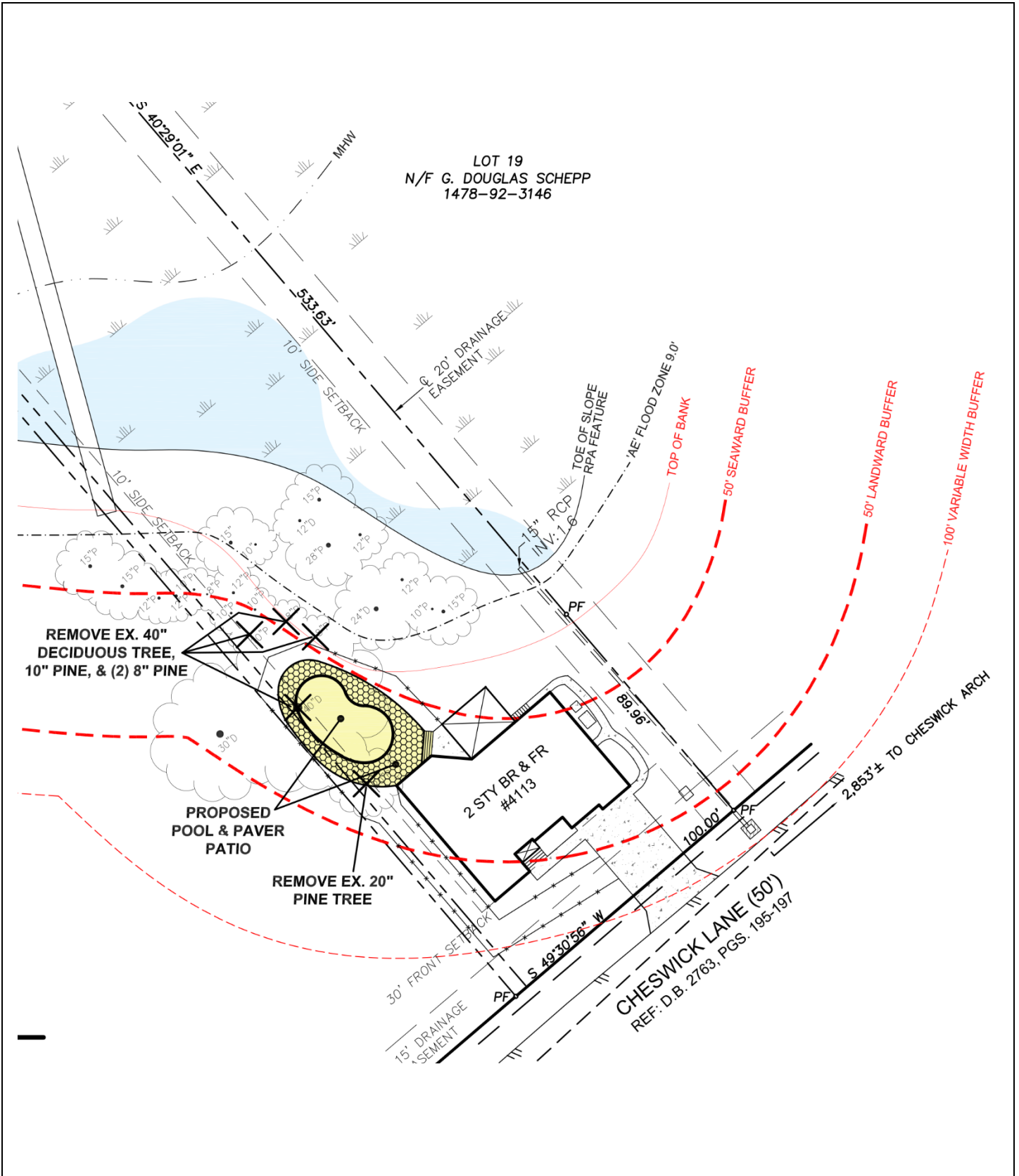
Site Aerial







# 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** Saunora & Leslie Prom

**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?
- 

## Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

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

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

# Disclosure Statement



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

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

WCI, 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.**

*Saunora Prom*      *Leslie Prom*

Applicant Signature

Print Name and Title

7/1/2021

### **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