

Chesapeake Bay Preservation Area Board Agenda

November 1, 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, November 1, 2021** at 10:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA. During the informal session, Staff briefs the Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing that follows. For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-4621 or go to www.vbgov.com/cbpa or visit the Department of Planning and Community Development, 2875 Sabre Street, Suite 500, Virginia Beach, Virginia by appointment.

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

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

THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

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

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

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

- 2. CONSENT AGENDA:** The second order of business is consideration of the "consent agenda." The consent agenda contains those items:
 - a. that the Board believes are unopposed and
 - b. which have a favorable Staff recommendation.

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

Process for the Consent Agenda:

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

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

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

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

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

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

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

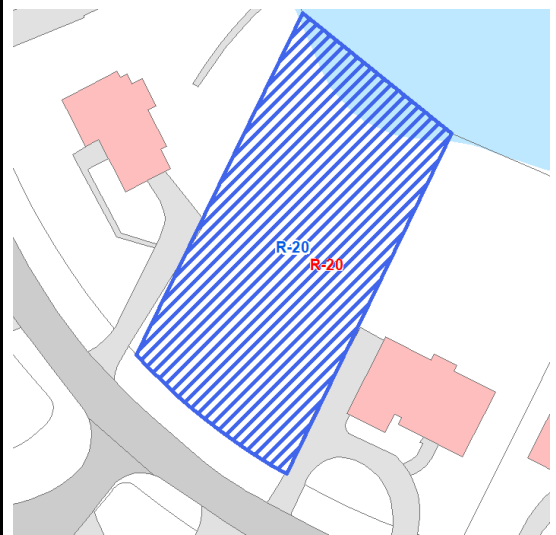
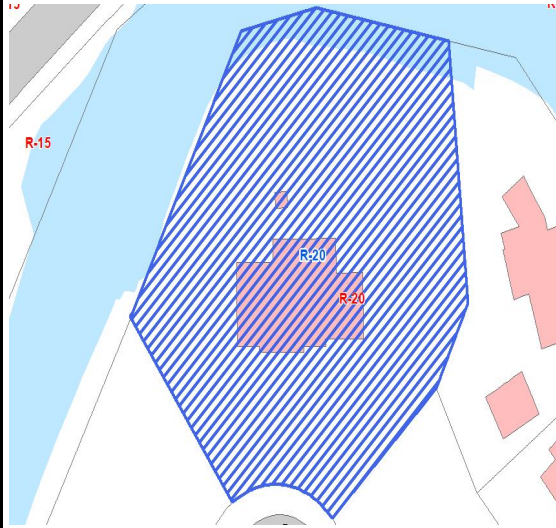


CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **November 1, 2021**

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

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

OLD BUSINESS AGENDA ITEMS	
<p>1. Timothy D. Siviter [Applicant & Property Owner]</p> <p>Leeward Shore Drive GPIN 2409-19-8659 Council District – Lynnhaven Accela Record 2021-CBPA-00059</p> <p>Variance Request – Encroachment into the RPA to construct a single-family home and swimming pool.</p> <p>Staff Planner – Cole Fisher Staff Report – page 7</p>	
<p>2. William & Louise Donigan [Applicant & Property Owner]</p> <p>452 Discovery Rd GPIN 2419-51-6852 Council District – Lynnhaven Accela Record 2021-CBPA-00057</p> <p>Variance Request – Encroachment into the RPA to construct a swimming pool, stone pool deck, and retaining walls.</p> <p>Staff Planner – Cole Fisher Staff Report – page 21</p>	

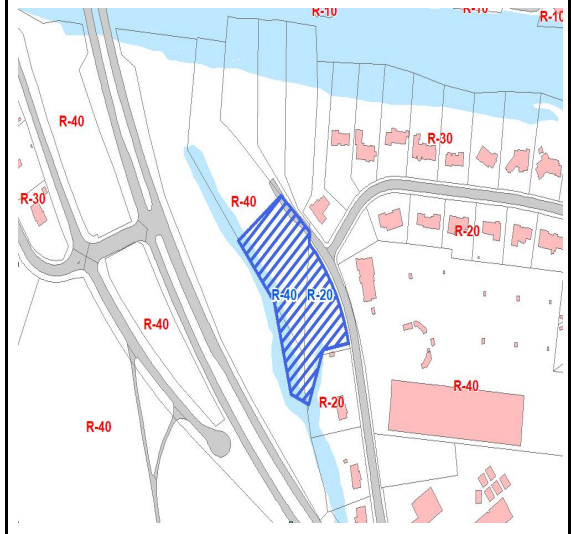
OLD BUSINESS AGENDA ITEMS (CONTINUED)

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

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

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

Staff Planner – PJ Scully
Staff Report – page 35



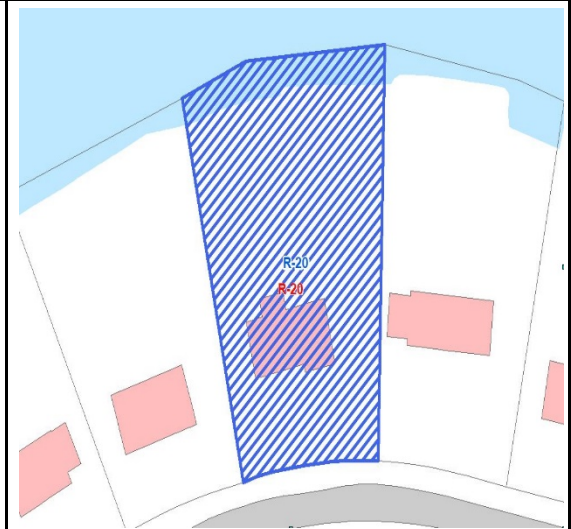
NEW BUSINESS AGENDA ITEMS

4. Colin & Courtney Kelly
[Applicant & Property Owner]

2232 Windward Shore Dr
GPIN 2409-19-0274
Council District – Lynnhaven
Accela Record 2021-CBPA-00066

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

Staff Planner – PJ Scully
Staff Report – page 49

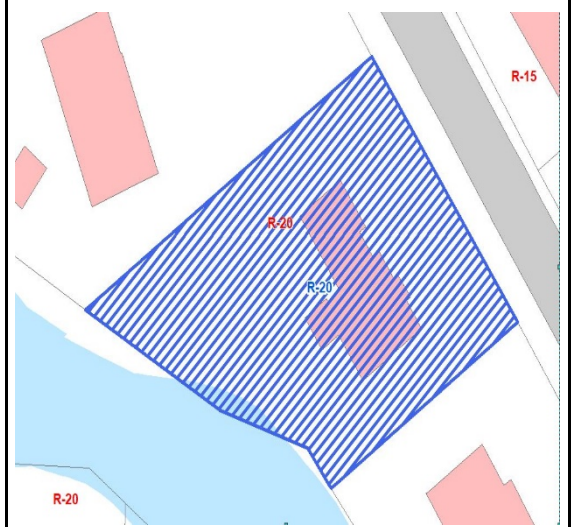


5. Luke & Thao Balsamo
[Applicant & Property Owner]

325 Susan Constant Dr
GPIN 2419-61-8714
Council District – Lynnhaven
Accela Record 2021-CBPA-00064

Variance Request – Encroachment into the RPA to construct a new driveway with associated walks, patio area and shed.

Staff Planner – Cole Fisher
Staff Report – page 61



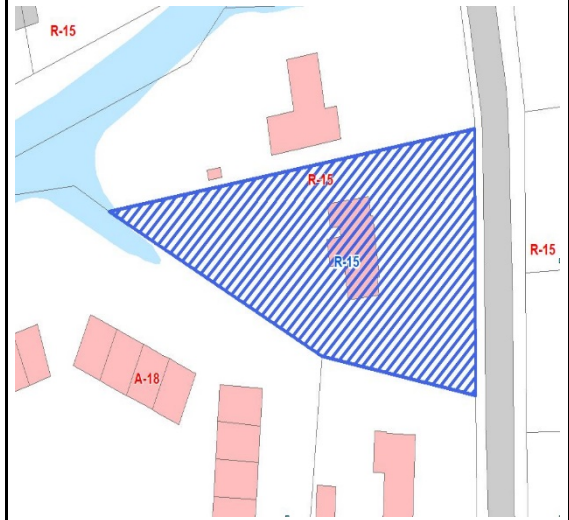
NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. John Davis
[Applicant & Property Owner]

505 Mockingbird Dr
GPIN 2417-49-8082
Council District – Beach
Accela Record 2021-CBPA-00065

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

Staff Planner – PJ Scully
Staff Report – page 75

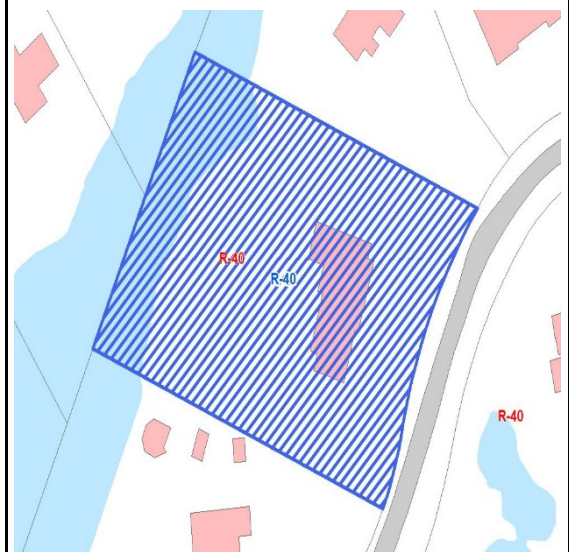


7. Nicholas & Sarah Nestor
[Applicant & Property Owner]

1924 W Twin Cove Rd
GPIN 1499-16-3514
Council District – Lynnhaven
Accela Record 2021-CBPA-00067

Variance Request – Encroachment into the RPA to construct a 2-story garage addition, swimming pool with associated patio and pool house.

Staff Planner – PJ Scully
Staff Report – page 87



TENTATIVE 2022 CBPA BOARD PUBLIC HEARING DATES

Monday	January 3rd	Friday	July 8th
Monday	February 7th	Monday	August 1st
Monday	March 7th	Thursday	September 8th
Monday	April 4th	Monday	October 3rd
Monday	May 2nd	Monday	November 7th
Monday	June 6th	Monday	December 5th

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

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Applicant & Property Owner **Timothy D. Siviter**
 Address **2220 Leeward Shore Drive**
 Public Hearing **November 1, 2021**
 City Council District **Lynnhaven**

Agenda Item

1

Variance Request

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

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 70, Page 47
 Recorded 02/28/1966

GPIN

2409-19-8659

SITE AREA

21,418 square feet or 0.49 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,682 square feet or 0.45 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet

PROPOSED IMPERVIOUS COVER OF SITE

6,397.6 square feet or 29.9 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,126.2 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

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

CBPA Ordinance Variance History

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

This CBPA Variance request was deferred at the October 4, 2021 CBPA Board Public Hearing to the November 1, 2021 CBPA Board Public Hearing.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

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

Riparian Buffer

Undeveloped lot – heavily wooded

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

the recommended conditions for limits of construction and tree preservation offers merit towards limiting land disturbance, which enables the preservation of as much of the existing mature canopy tree cover as reasonable.

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff’s write-up from the October 4, 2021 CBPA Board Staff Report.

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

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

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

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

Since the deferral request at the October 2021 CBPA Board public hearing, the applicant’s consulting team met Staff in the field to review the environmental conditions of the lot, specifically the existing grade elevations along the western property from the shoreline to Leeward Shore Drive. The applicant’s consulting team provided analysis regarding the low-lying area adjacent to Leeward Shore Drive pertaining to soil hydrology, vegetation, topography

and human disturbance with the development of Bay Island. Given the environmental conditions of the lot as reviewed by the applicant's consulting team, they are of the position that the lot is a developable lot. To further support the development of this lot, the consultant team is of the opinion that the proposed improvements are situated to reduce impacts to the more sensitive portions of the lot, specifically the 50-foot seaward buffer and wester portion of the lot.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this is the last infield lot to be developed on Bay Island and other properties have recently been developed in similar fashion."* Staff concurs and provides that this exception is intended to make sure that the variance request would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. CBPA Variance records indicate that approximately 16 CBPA Variances have been granted to properties located along Leeward Shore Drive with similar improvements.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"this site has never been developed and the CBPA ordinance now impacts over half the upland of the site."* Staff concurs that this lot was platted in 1966 before the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, thereby placing portions of the site in the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the variance allows for the development of the property in keeping with other properties for size and coverage."* Staff concurs and is of the opinion that the owners have designed the improvements to minimize site impacts in the critical buffer areas of the Chesapeake Bay Preservation Area. In addition, Staff's recommended conditions specifically address post-plan approval implementation of the proposed improvements to preserve existing conditions of the seaward buffer of the RPA and mature canopy trees on the lot beyond the limits of construction.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements have been moved forward to avoid the most sensitive portion of the site. A BZA variance has been requested."* Staff is of the opinion that the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality subject to the recommended conditions provided in this Staff report that include the installation of both structural and nonstructural best management practices to promote infiltration of stormwater.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"the site currently has no BMPs, and all stormwater runoff continues to erode the unprotected shoreline. The proposed rip rap and installation of BMPs will halt erosion and achieve a no additional non-point source pollution load."* Staff is of the opinion that the BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 3) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.
 - Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 4) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 5) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.
- 6) All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that “All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence.”
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 8) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 9) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 10) A certified arborist report shall be provided for review during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 13) A maximum of 2,500 square feet of turf is permitted for this lot. Said turf shall not be permitted within the 50-foot seaward buffer or outboard of the conditioned limits of construction (conditioned as 10 feet outboard the proposed improvements). All remaining pervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable consisting of **12 understory trees, 32 large shrubs, and 48 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
- 14) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located within the conditioned limits of construction.
- 15) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 16) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 17) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the limits of construction.
- 18) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$716.37 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated August 10, 2021, prepared by Chesapeake Bay Site Solutions. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

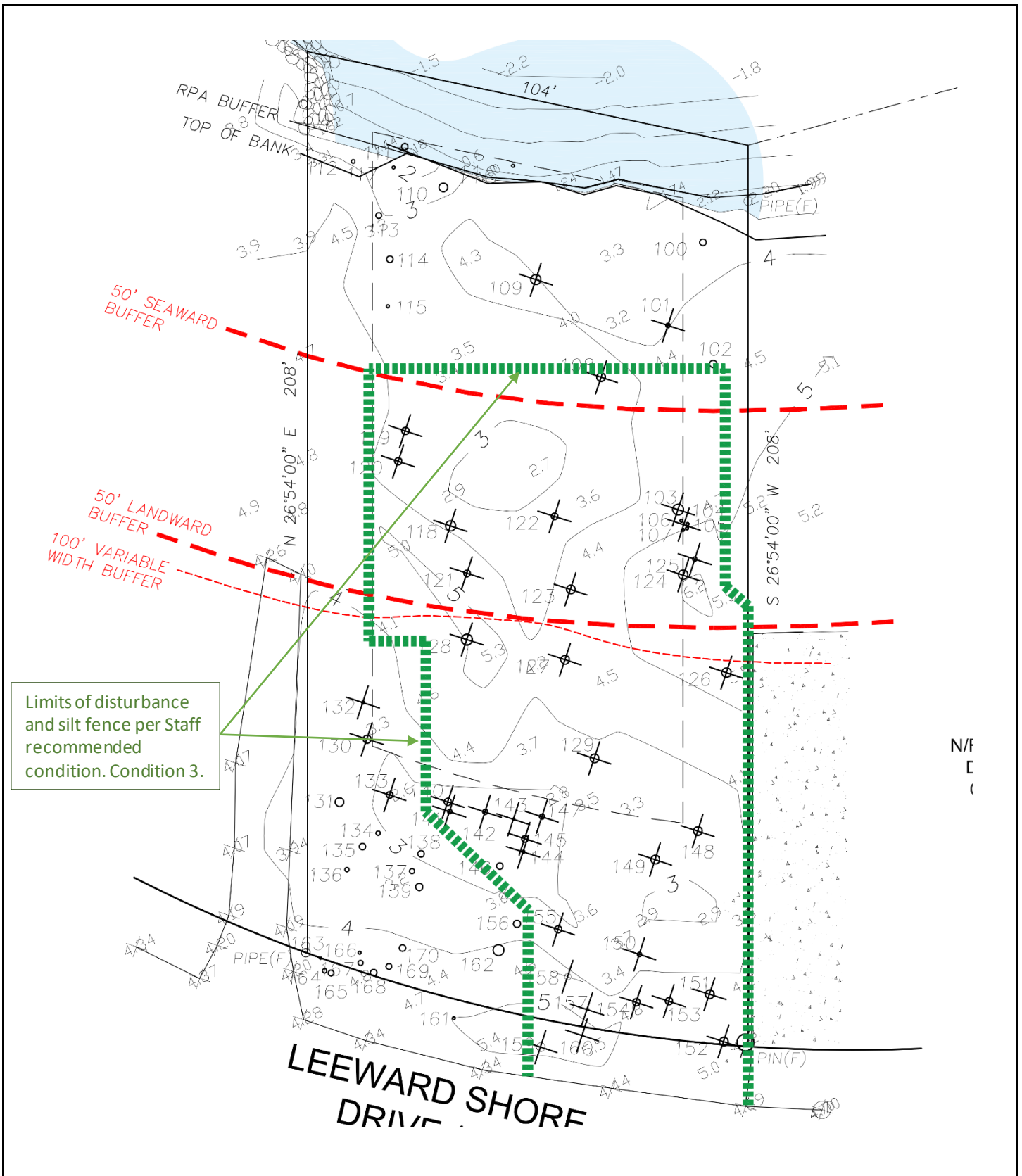
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial

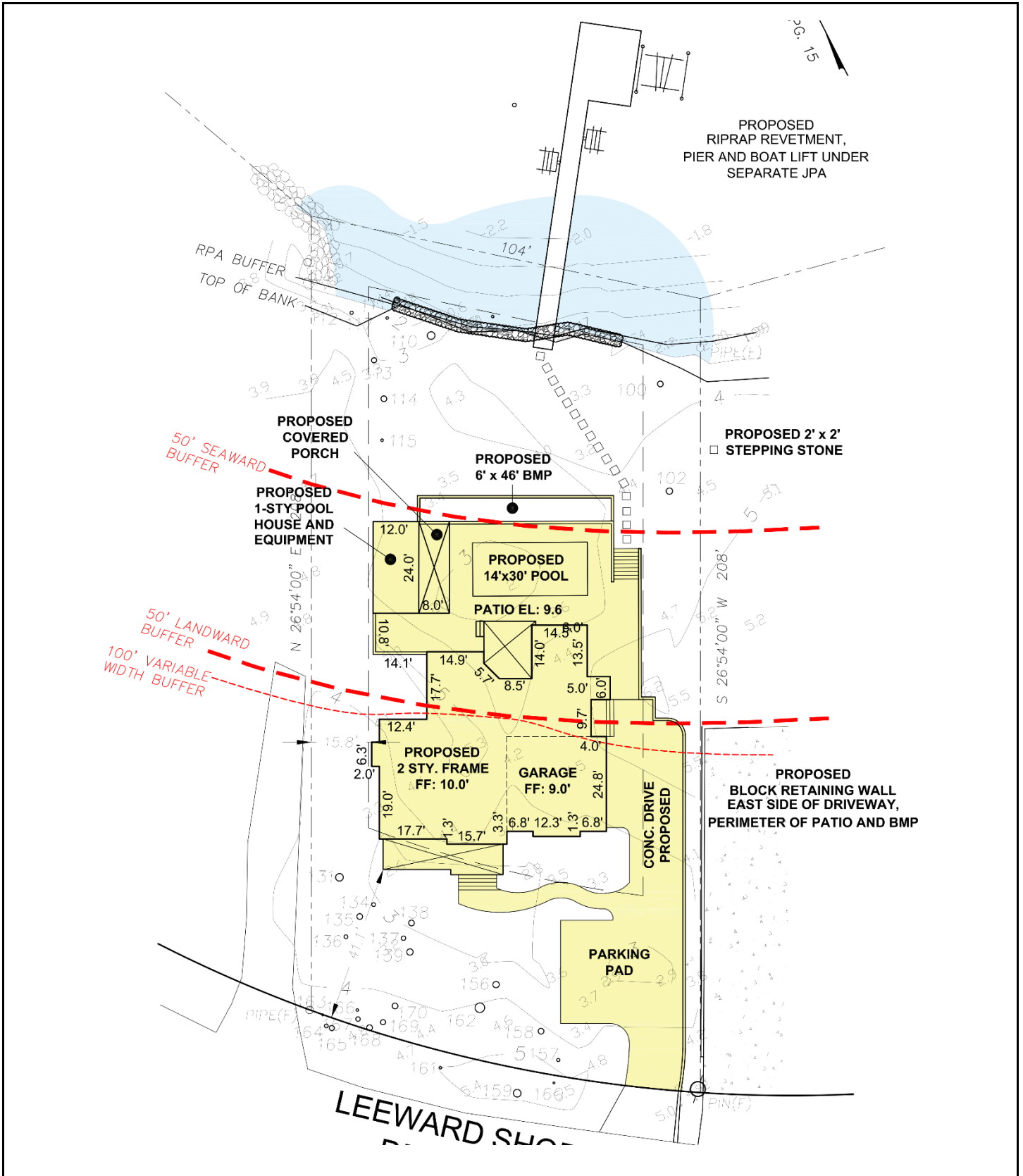


Existing Conditions

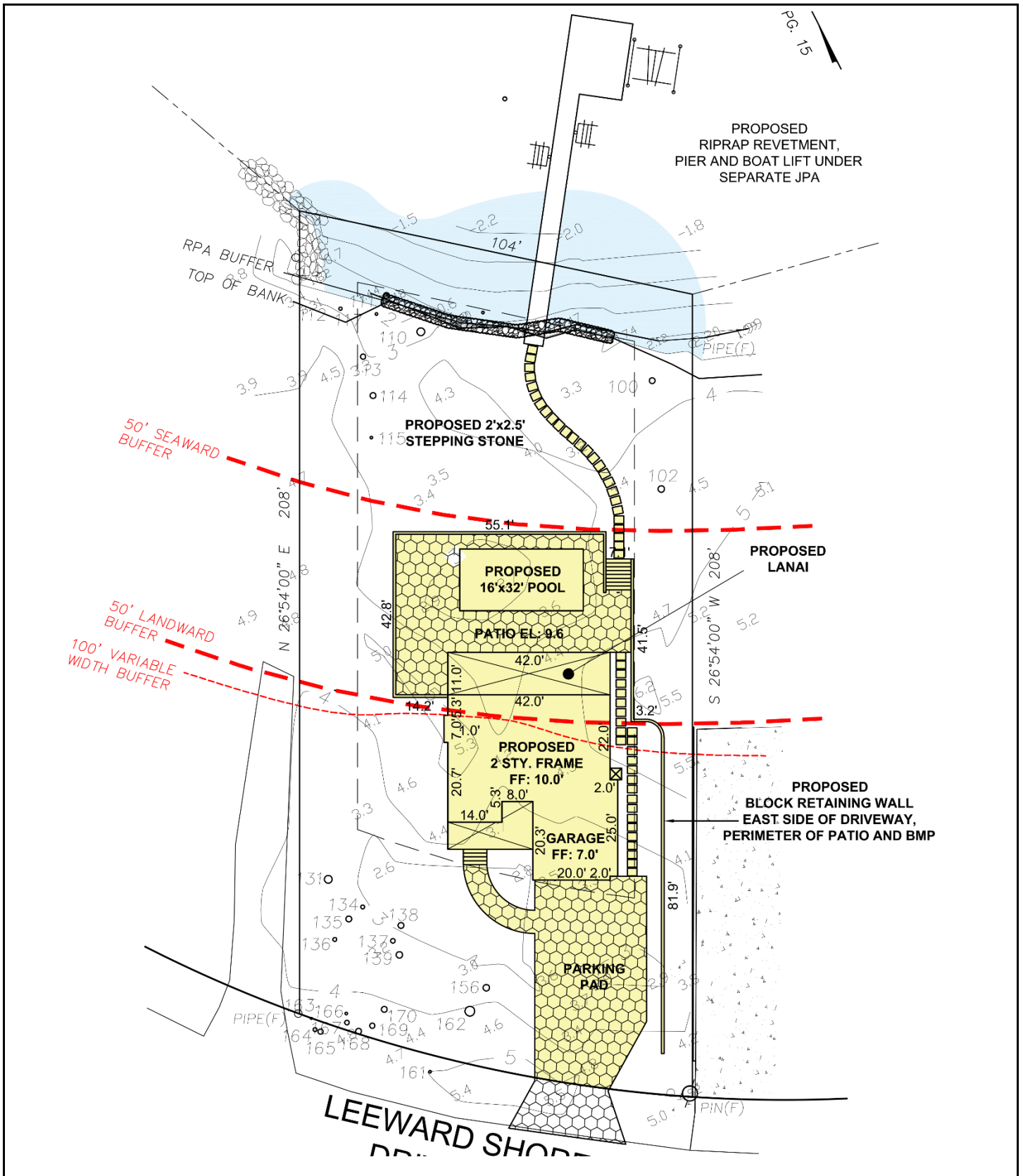


Limits of disturbance and silt fence per Staff recommended condition. Condition 3.

July 2020 CBPA Exhibit – Proposed Improvements, Item Deferred Indefinitely



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name Timothy D. Siviter

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

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

Robert Simon, Waterfront Consulting, Inc

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the construction contractor.
- Stephen Alexander Homes
-
7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the engineer/surveyor/agent.
- Waterfront Consulting, Inc and Chesapeake Bay Site Solutions
-
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the name of the attorney or firm providing legal services.
-

Applicant Signature

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

Applicant Signature

Timothy D. Siviter

Print Name and Title

Timothy D. Siviter

Date

9/20/21

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

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

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

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



Applicant & Property Owner **William & Louise Donigan**
 Address **452 Discovery Road**
 Public Hearing **November 1, 2021**
 City Council District **Lynnhaven**

Agenda Item

2

Variance Request

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

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

2419-51-6852

SITE AREA

43,494 square feet or 0.998 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

40,481 square feet or 0.929 acres

EXISTING IMPERVIOUS COVER OF SITE

10,253 square feet or 23.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,162 square feet or 28 percent of site

Area of Redevelopment in RPA

1,194 square feet

Area of New Development in RPA

2,740 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

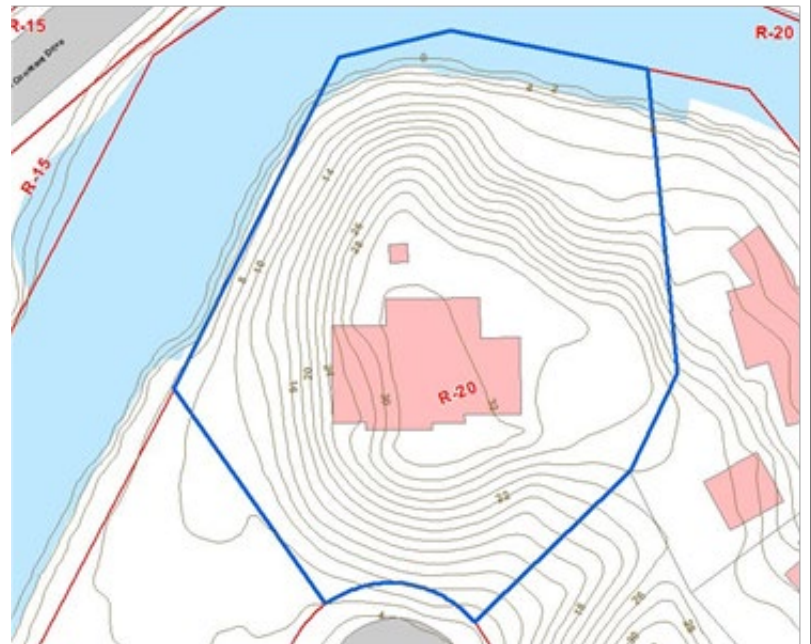
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Stone patio with associated retaining wall

Construction Details

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

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report. This CBPA Variance request was deferred at the October 4, 2021 CBPA Board Public Hearing to the November 1, 2021 CBPA Board Public Hearing.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is stabilized by a bulkhead.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff's write-up from the October 4, 2021 CBPA Board Staff Report.

"This variance requests proposes to remove the existing stone patio, retaining walls, and hot tub to construct a new stone pool deck, fire pit, pool, and hot tub area. This property is characterized by a very steep grade in the front and

rear yard with approximate topographic elevations adjacent to the bulkhead of 5 to 6 feet above sea level to and approximate topographic elevations adjacent to the single-family residence of 32 feet above sea level. Given these existing elevations of the lot, the applicant proposes to construct a retaining wall contiguous to the seaward edge of the proposed swimming pool and patio area as a means to prevent rainwater runoff at the rear yard of the property where these improvements are proposed. In addition, due to the significant change in topography, to provide safe pedestrian access to the water the applicant proposes to construct a five-foot wide gravel path from the cul-de-sac on the western side of the house running along and adjacent to the existing bulkhead to the pier. The location of this path avoids the steepest portions of the site; however, the gravel path is counted towards the percentage of impervious cover. During the site visit, Staff was informed of an emergency where the Virginia Beach Fire Department had to float an individual requiring medical assistance across the canal on a paddle board to Susan Constant Drive due to lack of access to the rear yard and existing pier area.

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

Since the deferral request at the October 2021 CBPA Board public hearing, the applicant’s agent informed Staff that the adjacent property owner who expressed opposition to the variance request has been contacted and a meeting was held to discuss the layout of the proposed improvements. To Staff’s knowledge at the time of writing this report there remains concern, specifically to the removal of existing vegetation and grading for the proposed gravel path adjacent to existing bulkhead from cul-de-sac to existing pier/boat lift.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“no special privilege by this plan. In concert, with similar variance requests.”* Staff concurs and is of the opinion that the applicant has designed the proposed improvements in a manner that complements the existing topography of the lot with the use of materials to limit imperviousness and limit land disturbance with the use of retaining walls.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *the existing lot is wholly located in the RPA and contains tremendous contour relief from the existing house to the water’s edge. The lot was developed prior to the creation of the Chesapeake Bay Preservation Ordinance.”* Staff concurs with the applicant’s agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because *the proposed improvements are located near the main house and contained with retaining walls to limit the extends of grading and fill. The proposed gravel path is needed to safely access the rear of the property.”* Staff acknowledges the statement provided by the applicant’ agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA ordinance findings with the proposed size and locations of the structures. Staff is of the opinion that the proposed structures offer merit towards the variance being the minimum necessary to afford relief.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the existing locations of buffer are heavily wooded and will remain so. The existing buffer plus the proposed buffer mitigation will help enhance water quality.”* Staff is of the opinion that the proposed improvements with this variance request will not be of substantial detriment to water quality. This lot has a mature tree canopy, and the applicant has taken measures to minimize impacts in the RPA by keeping the main improvements in the landward buffer and above the top of bank. The applicant is also proposed 5,526 square feet of buffer restoration, which is above the minimum requirement of 5,480 square feet.
- 5) *“Stormwater from the development will drain via overland flow and shallow concentrated pathways to the point of discharge at the property limits. No change in flow patterns is proposed.”* Staff is of the opinion that with the proposed buffer restoration measures will contribute to the goal of no net increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The proposed gravel path shall be constructed of a noncompacted organic material (gravel), shall have a maximum width of 5 feet, and shall be constructed in harmony with the existing grades on the property to the greatest extent practicable. The installation of an asphalt or concrete path or any other impervious material for the path, notwithstanding the noncompacted gravel, shall be prohibited.
- 3) The proposed gravel path shall be staked in the field by the Engineer of Record and reviewed by Civil Inspections Staff during the preconstruction meeting.
- 4) The pool shall be constructed concurrent with all proposed improvements proposed in this variance application that will be adjacent to the existing single-family residence.
- 5) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements, shall be authorized outboard or seaward of the proposed improvements.
- 6) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 7) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 8) 5,526 square feet of buffer restoration shall be installed on the lot as depicted on the CBPA Exhibit provided for the CBPA Variance request. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification &

Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

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

- 9) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 10) A pre-construction meeting shall be held with the CBPA Inspector and Civil Inspections Staff prior to any land disturbance, including demolition.
- 11) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 12) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.
 - Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
- 13) Construction limits and all construction activities shall be contained within the limits of the condition silt fence.
- 14) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (**to the greatest extent practicable**) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 15) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 16) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 17) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$627.91 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated August 31, 2021, prepared by Gaddy Engineering Services. The conditions and approval associated with this variance are based on

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

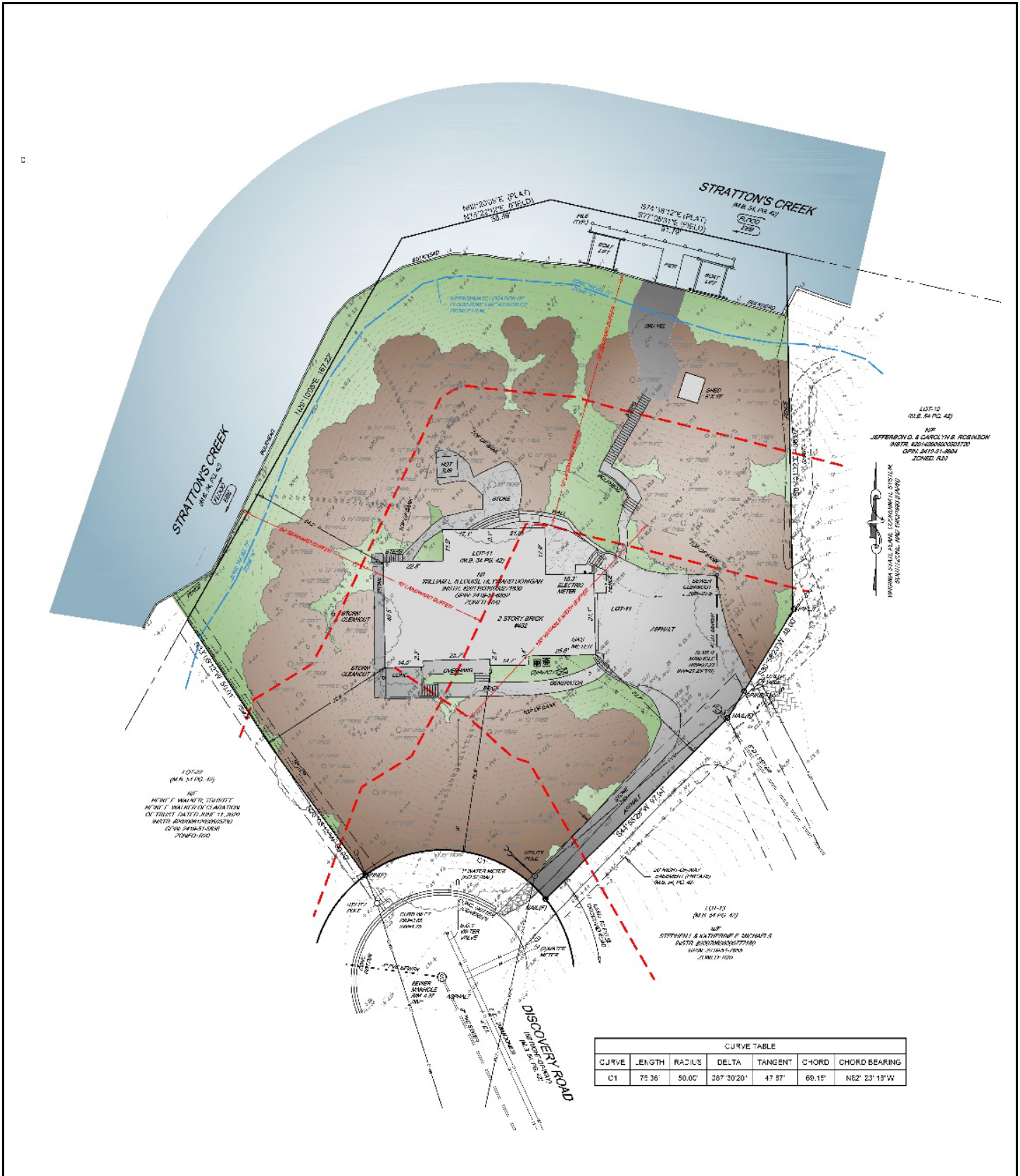
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

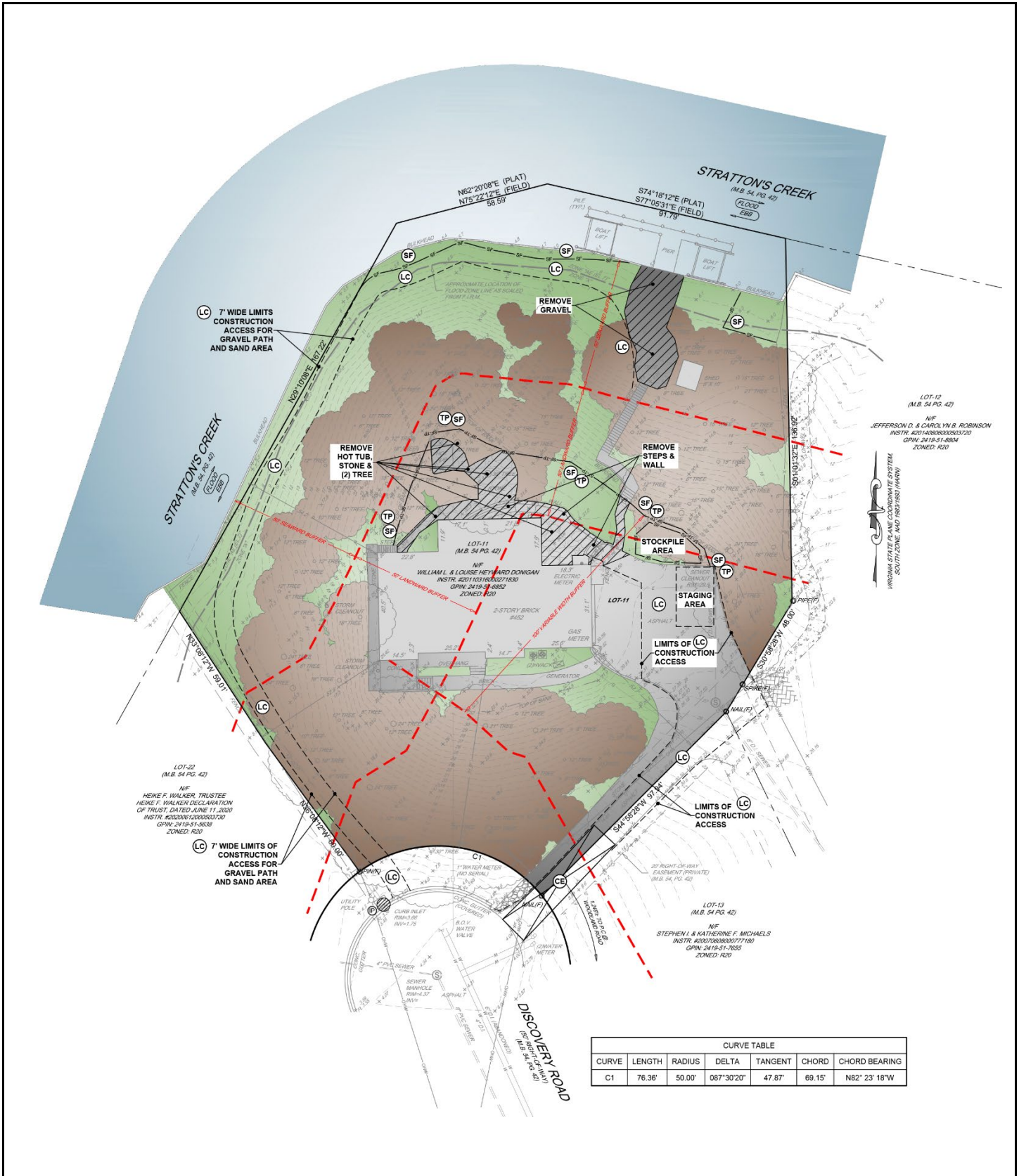
Site Aerial



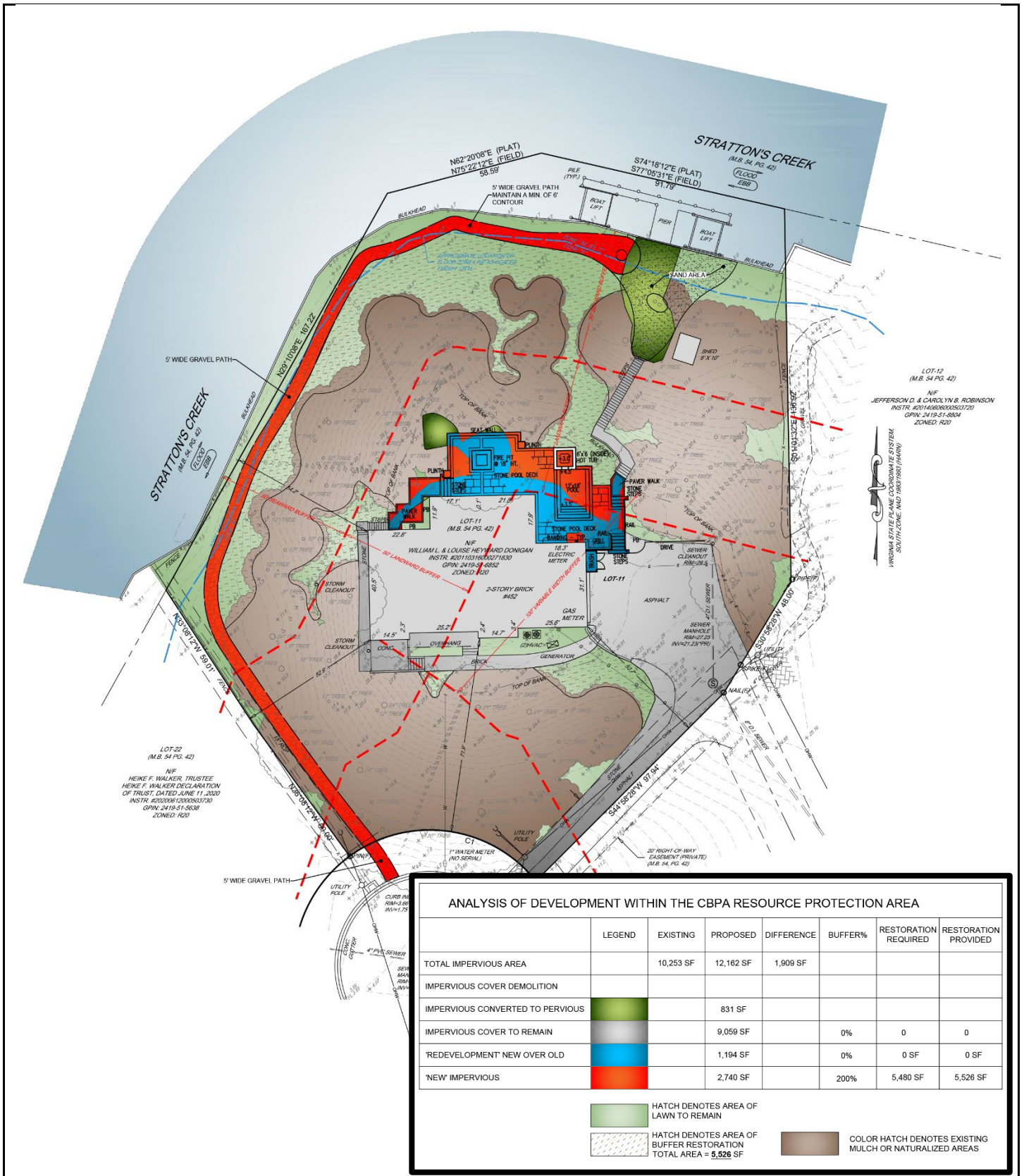
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Demolition Plan



CBPA Exhibit – Proposed Improvements and Color Analysis



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Heyward
William and Louise Donigan

Does the applicant have a representative? Yes No

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

Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Towson Bank equity line

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

Yes No

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

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

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

Richard Tobin, Tobin & Collins New Jersey

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

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

Siska Aurand (Landscape Architect) - John Watson

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

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

Disclosure Statement



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

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

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

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

Gaddy Engineering Services, LLC - Mike Gaddy

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

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

Applicant Signature

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

Heyward Donigan
Applicant Signature
Heyward Donigan
Print Name and Title
8/31/21
Date

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

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

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

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

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Applicant & Property Owner **Virginia Beach Racquet Club, Etc.**
 Address **1951 Thomas Bishop Lane**
 Public Hearing **November 1, 2021**
 City Council District **Lynnhaven**

Agenda Item

3

Variance Request

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

Applicant’s Agent

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

Staff Planner

Cole S. Fisher

Lot Recordation

Deed Book 1632, Page 481
 Map Book 98, Page 28
 Recorded 07/25/1973

GPIN

1499-46-9576

SITE AREA

122,782 square feet or 2.819 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

99,655 square feet or 2.288 acres

EXISTING IMPERVIOUS COVER OF SITE

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

PROPOSED IMPERVIOUS COVER OF SITE

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

Area of Redevelopment in RPA

25,250 square feet

Area of New Development in RPA

14,989 square feet

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

Location of Proposed Impervious Cover

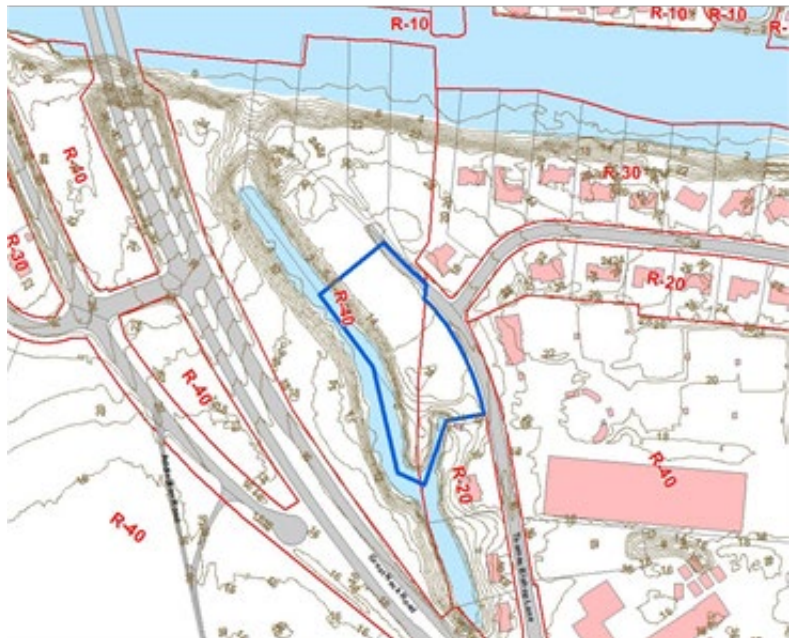
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete tennis courts with associated asphalt paved parking lot

Construction Details

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

CBPA Ordinance Variance History

There is no known Chesapeake Bay Preservation Area (CBPA) Board variance history to report. This CBPA Variance request was deferred at the October 4, 2021 CBPA Board Public Hearing to the November 1, 2021 CBPA Board Public Hearing.

Environmental Conditions

Flood Zone

Flood Zone – Zone X

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff's write-up from the October 4, 2021 CBPA Board Staff Report.

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

Virginia Beach Racquet Club, Etc.

Agenda Item 3

Page 36

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

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

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

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

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

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because “regardless of the developer, the residential development of these lots must meet requirements set forth by the R-40 zoned subdivision. It is located within R-40 zoning and requires 40,000 square foot lots and a 50’ setback from the road right-of-way.” Staff is of the opinion that the overall reduction of impervious cover within the RPA, down zoning the R-20 portion of the

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

- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“regardless of the developer, the residential development of these lots must meet requirements set forth by the R-40 zoned subdivision. It is located within R-40 zoning and requires 40,000 square foot lots and a 50’ setback from the road right-of-way.”* Although the lot will be subdivided after the adoption of the CBPA Ordinance, Staff is of the opinion that the applicant has maintained a functional RPA buffer despite the existing encroachments and has complied with the performance standards of the CBPA Ordinance. This includes specifically limiting land disturbance to the area necessary to provide for the proposed use and preserving the existing vegetation to the maximum extent practicable. Although the action to create these lots is self-imposed, it is recognized that the redevelopment of the lot will provide an overall reduction of impervious cover in the RPA.
- 3) The variance is the minimum necessary to afford relief because *“there is an existing need for single-family residential homes and R-40 zoning requirements are being met.”* While Staff acknowledges the statement provided by the applicant, Staff is of the opinion that the reduction in the overall impervious cover coupled with the recommended condition that the future development of the individual single-family residences be limited to a maximum of 30 percent provides merit to the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“this variance request provides a net decrease in impervious area within the CBPA buffer”* Staff concurs and further offers and that the retention of the existing vegetation in the RPA buffer to the greatest extent practicable as well as the introduction of additional buffer restoration mitigation and stormwater management for the individual single-family lots provides significant merit towards the variance request not being of substantial detriment to water quality taking into account that a viable riparian buffer can achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients [City Code, Appendix F, Sec 106 (B)(3)(a)].
- 5) *“Net reduction in impervious area within the buffer and installation of stormwater BMPs”* will serve as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

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

- 2) There shall be no encroachment of proposed impervious cover, redevelopment of existing impervious cover, or placement of fill material within the 50-foot seaward buffer Resource Protection Area (RPA) or within 20 feet of the top of bank feature, whichever is greater as delineated on the CBPA Exhibit.
- 3) Individual Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval of each lot prior to the issuance of a building permit.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including tree removal.
- 5) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed along the 50-foot seaward buffer of the RPA or along the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit, whichever is greater.
 - Along the remain portions of the property the required silt fence shall be installed 15 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 6) **Specific for Lot 1A, the silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 7) Construction limits and all construction activities, including the installation of the stormwater management practices, shall be contained within the limits of the construction silt fence.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 9) All areas outside the limits of construction within the 50-foot seaward buffer shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that "All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence."
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 11) No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 12) The 100-foot RPA buffer shall be restored for each lot with a full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable. The required restoration shall be located in the 100-foot Resource

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

- 13) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. All stormwater management facilities shall be located landward of the 50-foot seaward buffer of the RPA and the 20-foot offset from the top of bank feature as delineated on the CBPA Exhibit.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with the site plan approval for each individual lot. Payment for each lot shall be in the following amount per lot.
- **Impervious cover in the RPA feature associated with the proposed improvements on each lot divided by 4, then divided by 27, then multiplied by 15 and then multiplied by 1.65 for the total dollar amount to be paid.**

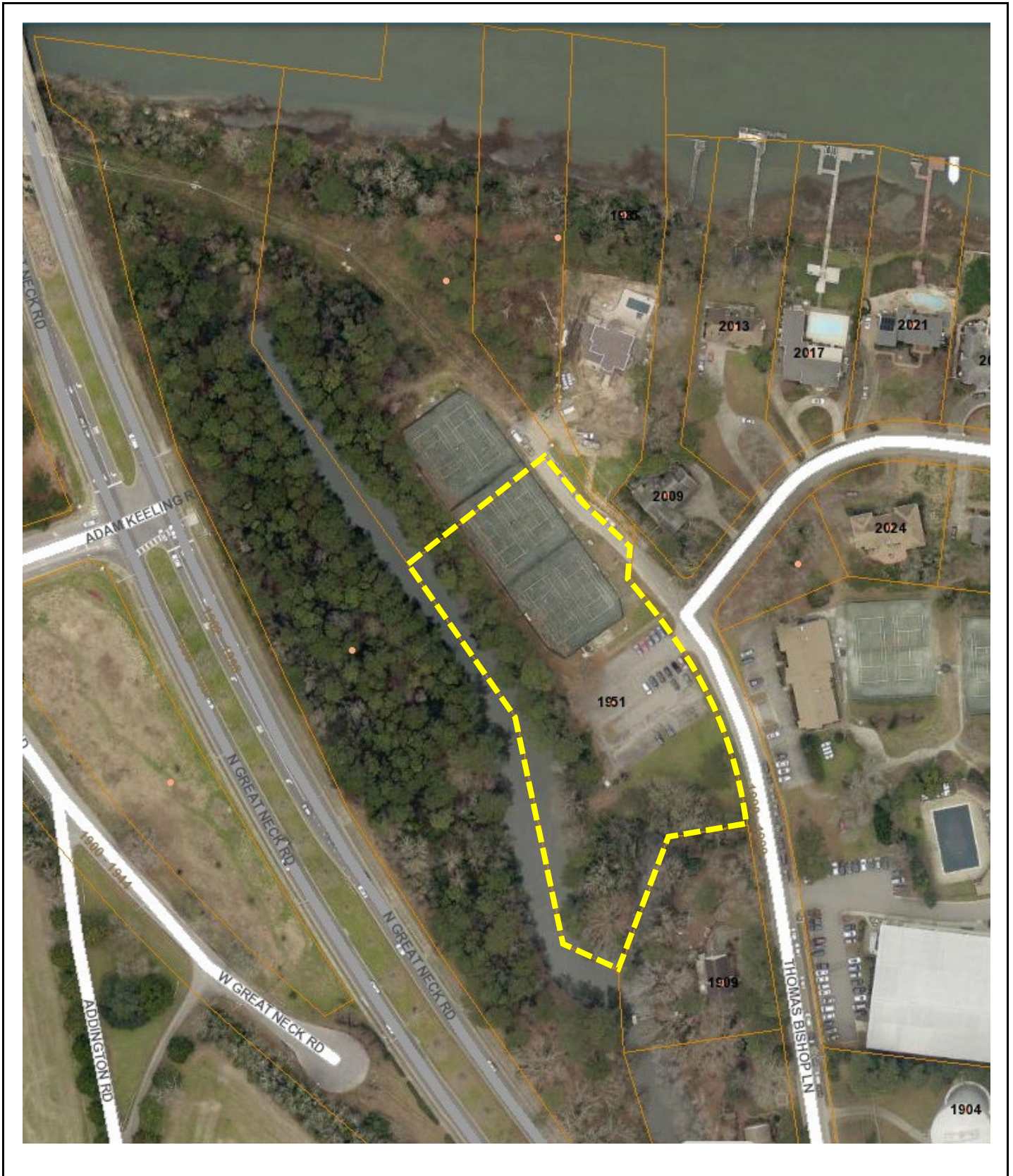
Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

- 15) The conditions and approval associated with this variance are based on the subdivision exhibit plan dated January 15, 2021, prepared by Todd H. French, LS of Timmons Group. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

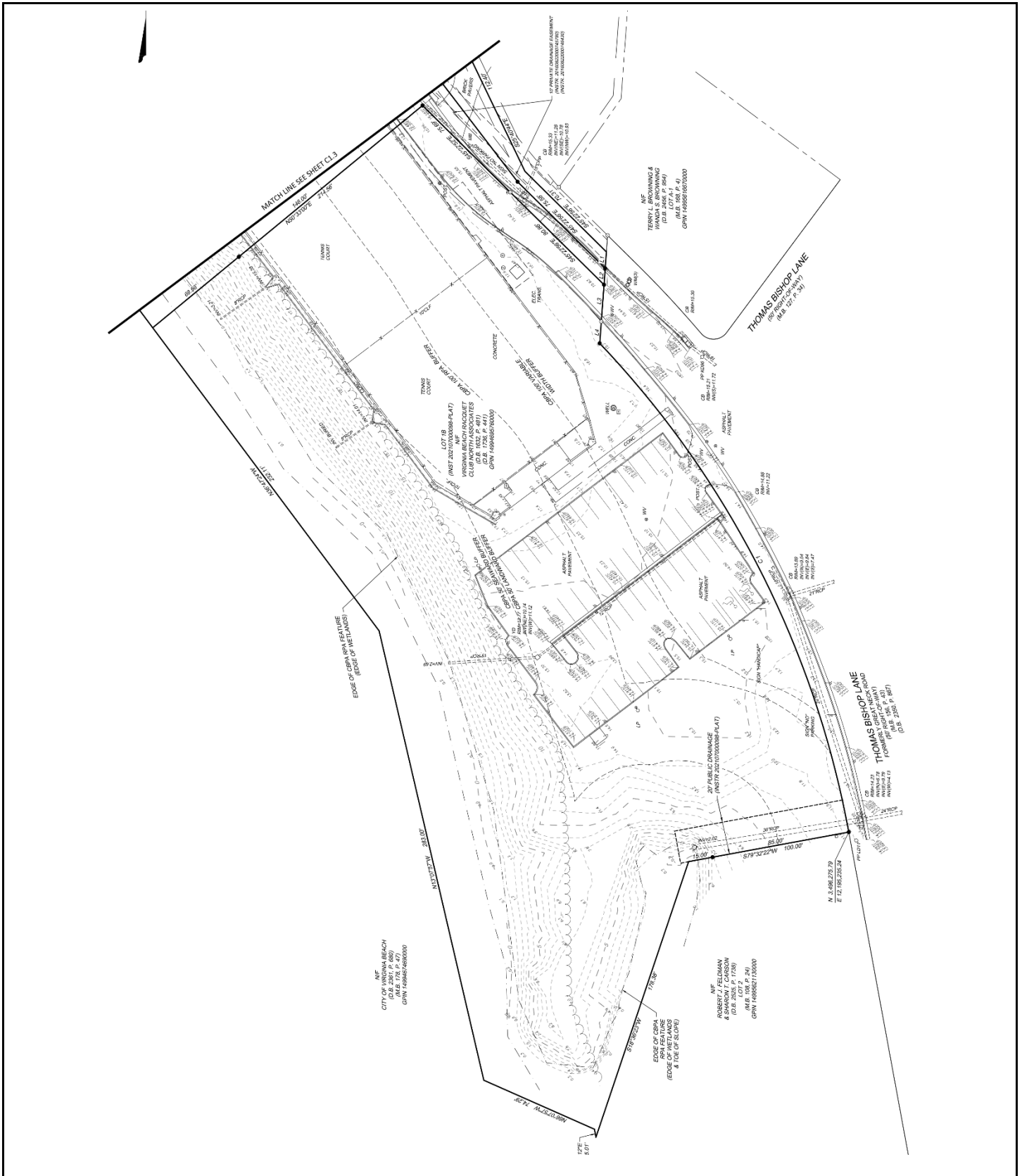
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

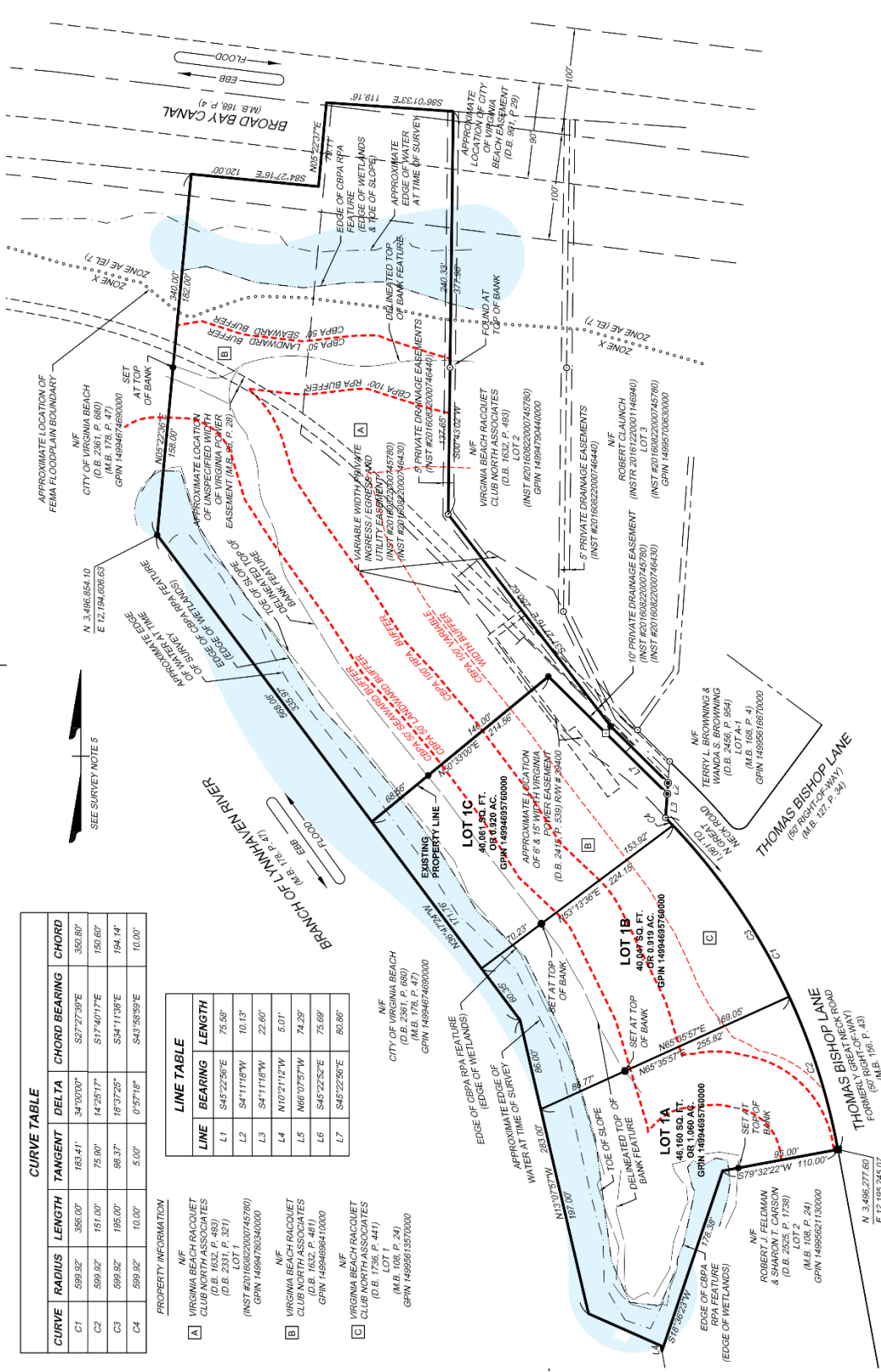
Site Aerial



CBPA Exhibit – Existing Conditions



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



CURVE TABLE

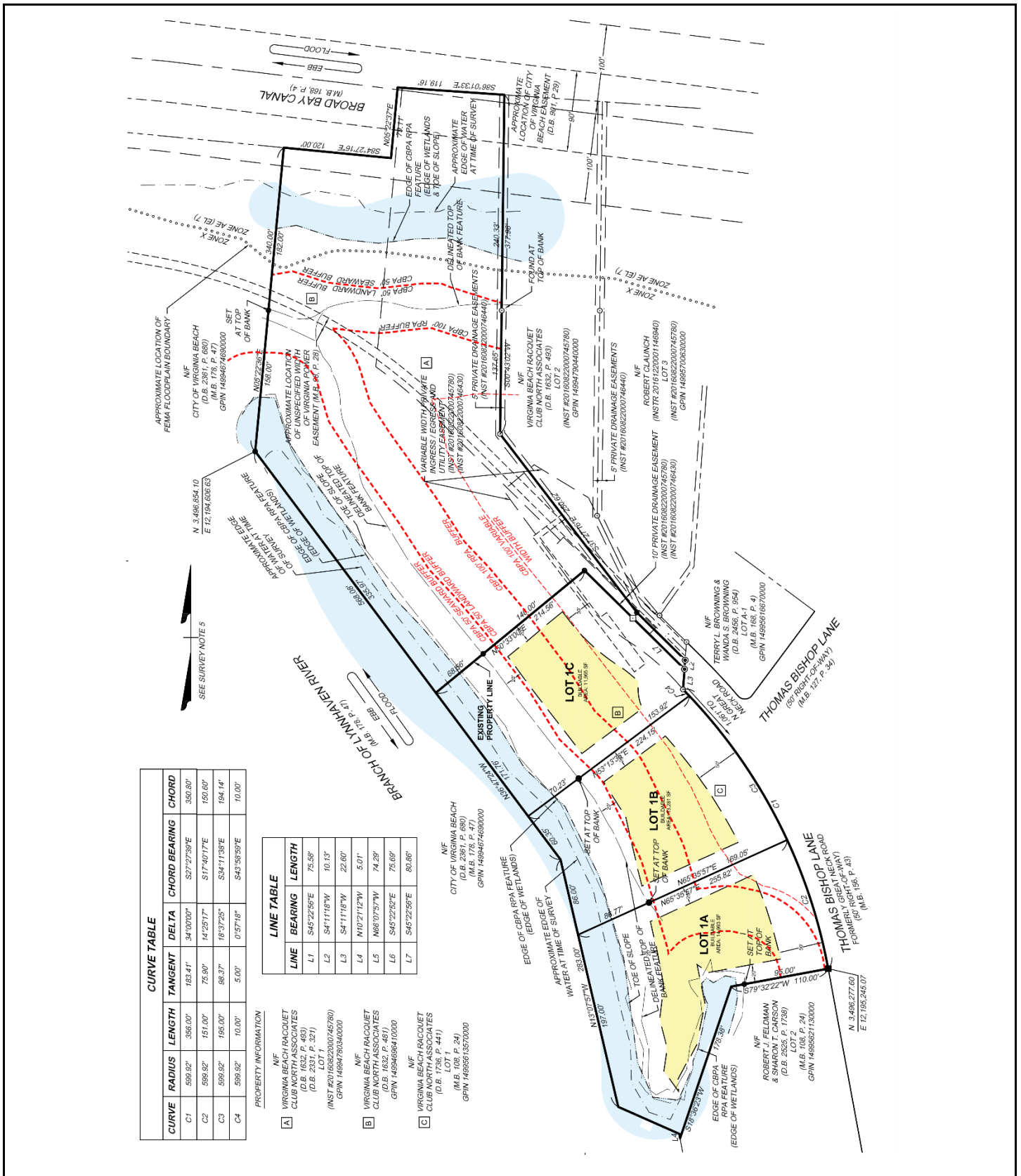
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD BEARING	CHORD
C1	599.92'	365.00'	163.41'	34°00'00"	S27°27'39"E	350.80'
C2	599.92'	151.00'	75.90'	14°25'17"	S17°40'17"E	150.60'
C3	599.92'	195.00'	98.37'	18°37'25"	S34°11'38"E	194.14'
C4	599.92'	10.00'	5.00'	0°57'18"	S43°58'59"E	10.00'

LINE TABLE

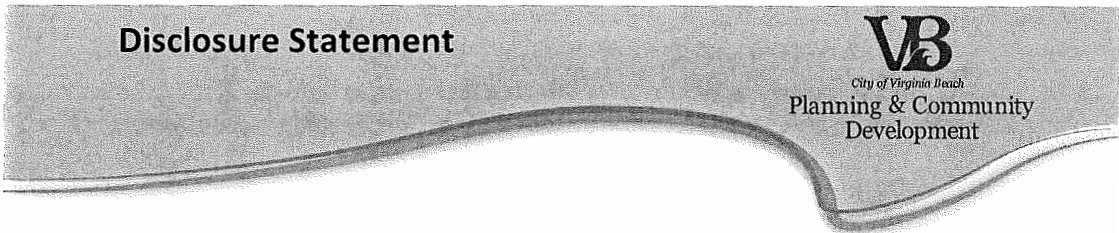
LINE	BEARING	LENGTH
L1	S45°22'56"E	75.58'
L2	S41°11'18"W	10.13'
L3	S41°11'18"W	22.60'
L4	N10°27'12"W	5.01'
L5	N65°07'57"W	74.29'
L6	S45°22'56"E	75.68'
L7	S45°22'56"E	80.66'

- PROPERTY INFORMATION**
- NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 483) (M.B. 178, P. 47) GFIN 14594674630000 (INST #20160822000745780) (LOT 1)
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 481) GFIN 14594698410000
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 441) (M.B. 108, P. 24) (LOT 1)
 - NF VIRGINIA BEACH RACQUET CLUB NORTH ASSOCIATES (D.B. 1832, P. 483) GFIN 14595613570000

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



Disclosure Statement



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

Applicant Disclosure

Applicant Name Virginia Beach Racquet Club North Associates

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.
R. Edward Bourdon Jr.

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

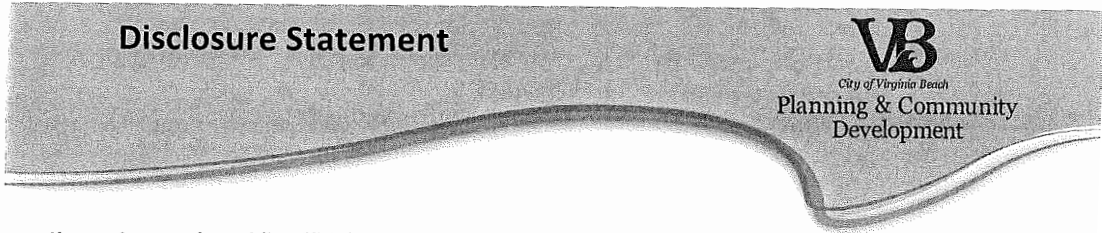
- If yes, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)
Harvey H. Shiflet III (President),²⁰¹⁵ General Partner, Virginia Racquet Club North Associates

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

Towne Bank

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

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

Berkshire Hathaway Towne Realty / Jonathan P. Decker

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

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

Wall EINHORN and Chernitzer

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

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

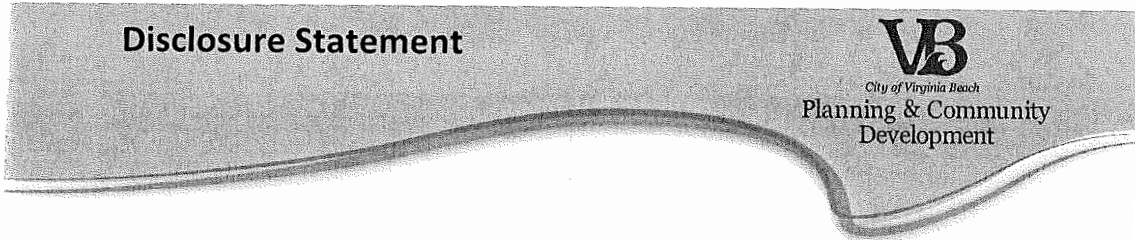
Timmon's Group / Roger Rodriguez

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

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

C. Torrey Breeden

Disclosure Statement



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

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

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

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

Timmon's Group / Roger Rodriguez

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

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

Sykes, Bourdon, Ahern & Levy, P.C. / Howard R. Sykes Jr.

Applicant Signature

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

Harvey H. Shiflet III
 Applicant Signature

Dr. Harvey H. Shiflet III, General partner
 Print Name and Title

Virginia Beach Racquet Club North Associates / Harvey H. Shiflet III (President) *General partner*

Date *9-20-21*

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

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

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

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

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

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole Fisher

Lot Recordation

Map Book 045, Page 0037
 Recorded 08/58

GPIN

2409-19-0274

SITE AREA

31,263 square feet or 0.718 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

28,425 square feet or 0.653 acres

EXISTING IMPERVIOUS COVER OF SITE

5,008 square feet or 18 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,167 square feet or 25 percent of site

Area of Redevelopment in RPA

233 square feet

Area of New Development in RPA

2,186 square feet

Location of Proposed Impervious Cover

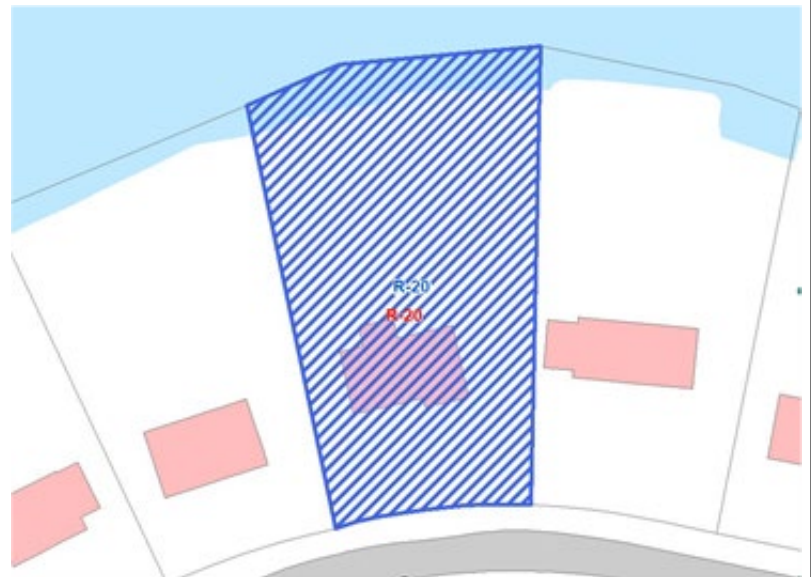
50-foot Landward Buffer
 100-foot Variable Width Buffer
 Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Moveable shed frame
- Sandbox with timbers

Construction Details

- Swimming pool with patio, turf surround area, and associated retaining walls
- Detached pool house with deck and equipment pad
- Covered porch with steps
- Paver patio with stone fire pit
- Paver walkway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: One oak tree is being requested for removal and it is within the delineated limits of construction for the proposed pool house, deck, and equipment pad area.

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 desires to construct the proposed improvements in the rear yard of the lot contiguous to a manmade canal of Broad Bay, which includes the construction of a new swimming pool and pool patio with a pool house and

associated accessory structures. This request increases the overall impervious cover of the lot from 18 percent to 25 percent with 2,186 square feet of new development within the RPA all of which has been situated within the 50-foot landward buffer of the Resource Protection Area (RPA). Of the 2,186 square feet of new development in the RPA, approximately 860 square feet is proposed to be artificial turf. The applicant's agent has calculated this area as new impervious cover. While this area of new development is artificial, Staff is of the opinion that the use of artificial turf does provide infiltration of rainwater given the material specified for the installation of an artificial turf product. Staff offers that the application of artificial turf to the minimal extent proposed with this variance request provides merit towards minimizing impervious cover similar to the use of a permeable paver system consistent with some of the performance standards set forth in Section 106(A)(3)(c)(3) of the CBPA Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1958 prior to the Chesapeake Bay Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Given the overall impervious cover of the site proposed at 25 percent of the lot above water and wetlands and location of the proposed improvements within the RPA buffer, Staff is of the opinion that should the CBPA Board grant a variance to this request that the action would not confer a special privilege to the owner given the situation of the impervious cover and location of the proposed improvements.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements in an area deemed to be the best area to minimize site impacts in the critical buffer areas."* Staff concurs given the existing environmental conditions of the lot and the proposed improvements situated in an area currently devoted to turf.
- 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 manmade canal."* Staff offers that the location of the proposed improvements landward of the 50-foot seaward buffer and reestablishment of a riparian buffer ecosystem within the lot provides merit towards a long-term benefit to water quality initiatives and rainwater infiltration.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the adjacent man-made canal."* In addition to this statement provided by the applicant's agent, Staff offers that the application of artificial turf to the minimal extent proposed with this variance request provides merit towards minimizing impervious cover similar to the use of a permeable paver system consistent with some of the performance standards set forth in Section 106(A)(3)(c)(3) of the CBPA Ordinance.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,186 square feet x 200 percent = 4,372 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 20 large shrubs, and 30 small shrubs.**

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

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

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$500.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated October 6, 2020, prepared by WPL, signed October 1, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

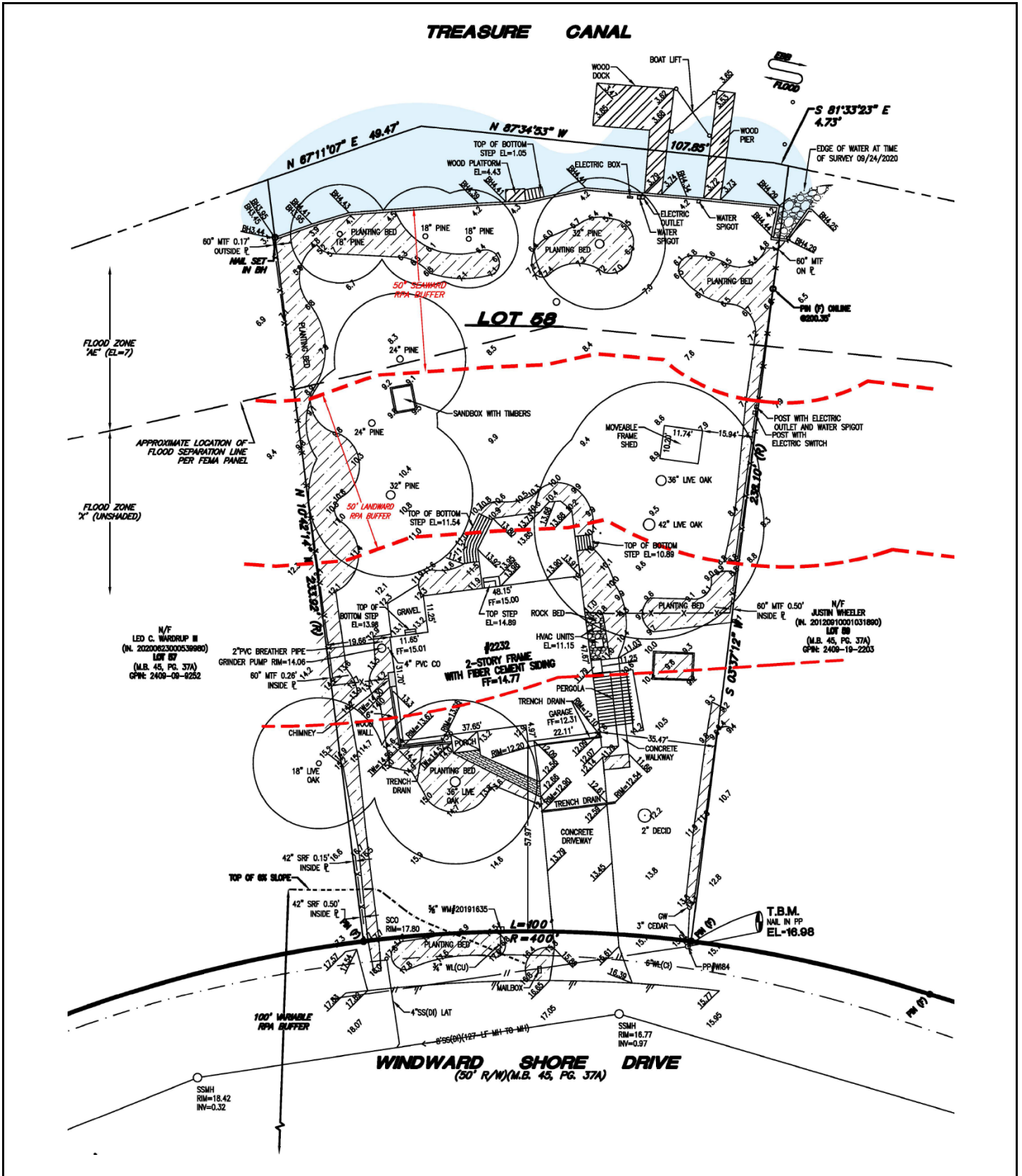
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

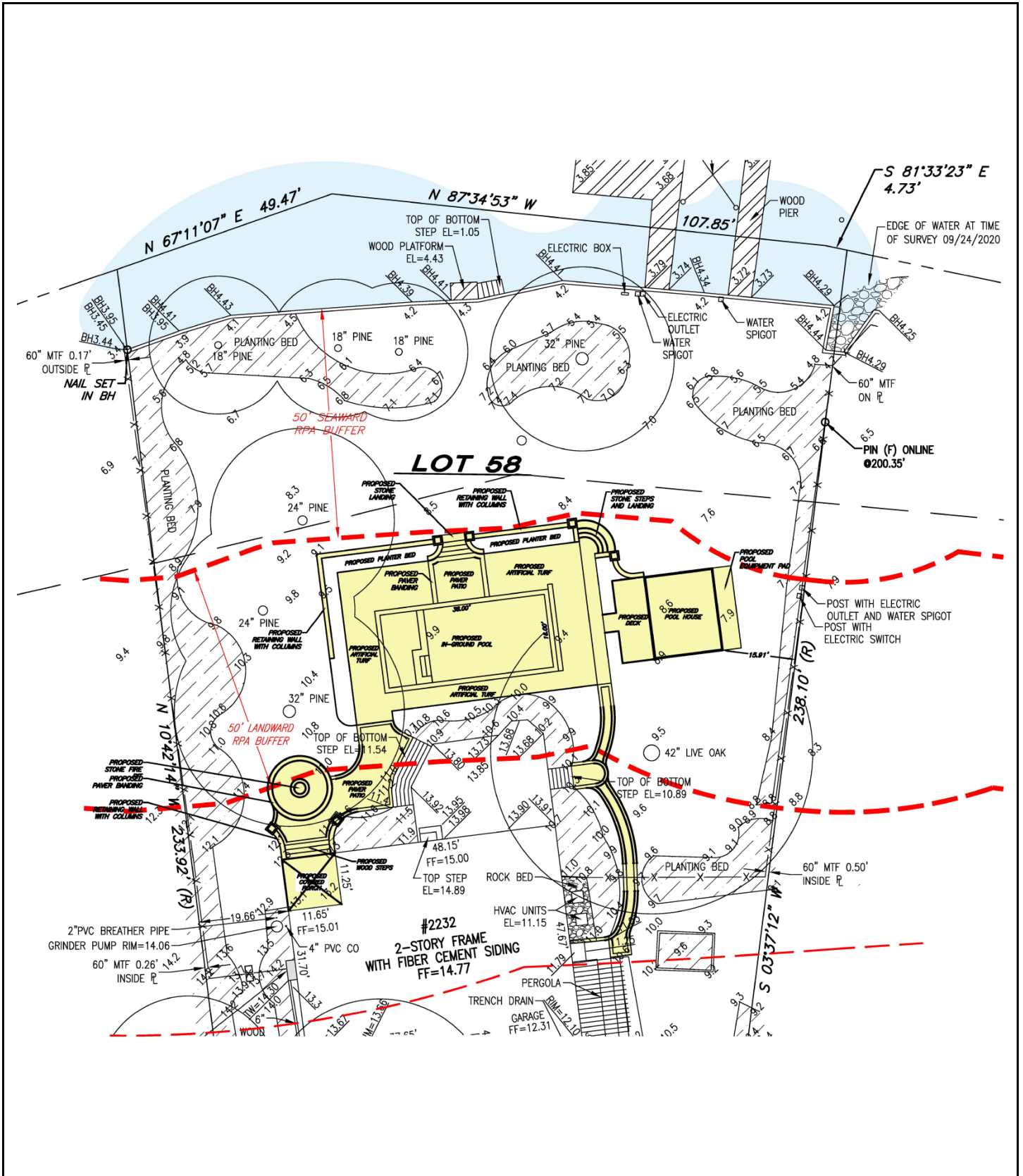
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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Applicant Disclosure

Applicant Name Colin Kelly & Courtney Kelly

Does the applicant have a representative? Yes No

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

Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

United Wholesale 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

Colin Kelly & Courtney Kelly

Print Name and Title

09/29/2021

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 **Luke & Thao Balsamo**
 Address **325 Susan Constant Drive**
 Public Hearing **November 1, 2021**
 City Council District **Lynnhaven**

Agenda Item

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a driveway with associated walks, patio area, and shed.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 60, Page 30
 Recorded 12/2/1963

GPIN

2419-61-8714

SITE AREA

24,666 square feet or 0.566 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

24,234 square feet or 0.556 acres

EXISTING IMPERVIOUS COVER OF SITE

7,295 square feet or 30.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,455 square feet or 34.9 percent of site

Area of Redevelopment in RPA

584 square feet

Area of New Development in RPA

742 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

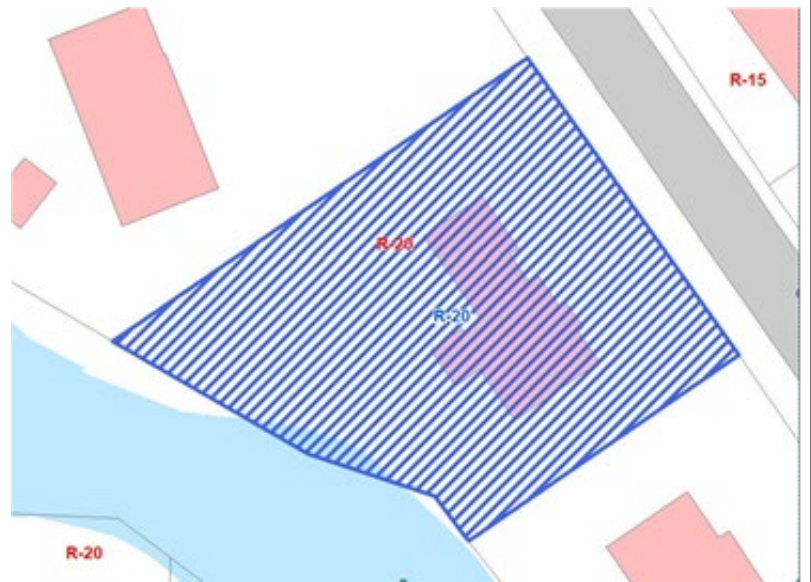
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing shell driveway and brick paver walkway
- Framed shed

Construction Details

- New paver driveway
- Stone patio with firepit and paver walkway

CBPA Ordinance Variance History

On July 25, 2016 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a 16' x 12' covered wood deck with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *Wire reinforced 36" silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
4. *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.*
5. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: 135 sq. ft. x 200% = 270 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: 1 canopy trees, 2 understory, and 3 shrubs. The required restoration shall be located entirely in the 50-foot seaward portion of the buffer, in areas currently devoted to turf or where impervious cover is removed. The restoration 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.*
6. *Under deck treatment of sand and gravel shall be installed.*
7. ***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 \$170.04 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 34 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*

8. *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.*
9. *The applicant is required to obtain a copy of the approved CBPA Exhibit and CBPA Variance conditions from the Planning and Community Development Department prior to obtaining a building permit. Please contact the Planning at Community Development Department at (757) 385-4621. Permits and Inspections may require additional information that may affect the release of a building permit.*

The July 25, 2016 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is stabilized by a bulkhead. A Waterfront Permit was approved in September 2020 for the bulkhead to be replaced with a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: No trees are proposed for removal with this variance request.

Stormwater Management Methodology

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

Evaluation and Recommendation

The proposed improvements associated with this variance request occur within the 50-foot landward buffer of the Resource Protection Area (RPA) and Resource Management Area (RMA) of the Chesapeake Bay watershed. The redevelopment and expansion of the existing circular driveway and the proposed patio area with associated shed will increase the overall impervious cover of the lot from 7,295 square feet or 30.1 percent of the lot above water and wetlands to 8,455 square feet or 34.9 percent of lot above water and wetlands. Of the approximately 1,160 square feet of new impervious cover associated with this variance request, approximately 742 square feet is located within the 50-foot landward buffer of the RPA. Although the overall impervious cover of the lot increases by 5 percent, Staff is of the opinion that the redevelopment within the Resource Management Area (RMA) provides merit towards the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance should the variance be granted with the recommended conditions below, specifically recommended condition 3 regarding the redevelopment and expansion of

the existing driveway. Given the flat topography of the lot and underlying soils conditions conducive to moderately and well drained characteristics, the use of a permeable pavement systems offer infiltration potential for a substantial portion of impervious cover on the lot.

The applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"numerous homes in the area have been redeveloped just recently and when you have homes built many years prior to the Bay Act being adopted the hardship will never be removed from the property."* Staff acknowledges the statement provided by the applicant and offers that the redevelopment of this lot within the R20 Zoning District specific to this neighborhood is consistent with the overall impervious cover averages for other lots that have been redeveloped or granted variances to encroach within the RPA buffer of the Chesapeake Bay watershed.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owner has tried to locate the development over existing impervious cover as much as possible to get as much redevelopment as possible and locate flat areas as far removed from the feature as possible."* Staff offers that approximately 742 square feet of the new impervious cover associated with this variance request is located within the 50-foot landward buffer of the RPA with the remaining new impervious cover is located within the RMA.
- 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 new development will require significant buffer restoration in areas currently devoted to turf, with land disturbance over 2,500 square feet therefore being required to treat significant rainwater that currently is not being treated and they will also do off-site treatment through the Oyster Heritage Fund."* Staff concurs with the applicant's statement and is of the opinion that the redevelopment and expansion of the circular driveway offer infiltration potential for rainwater given the recommended conditions below, specifically condition 3 that utilizes a permeable pavement system for increased infiltration.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"strict E&S measures will be installed before any work will begin and will remain in place and in good working order until vegetative cover is established. Single point accessway and stockpiling of materials on flat areas and on existing impervious cover where possible will all help water treatment plus new buffer restoration equal to 200 percent of all new impervious cover."* Staff concurs with the statement provided by the applicant's agent and offers the recommended conditions below as a comprehensive approach towards the management of this request towards a no net increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) The proposed circular portion of the driveway redevelopment 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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **742 square feet x 200 percent = 1,484 square feet.**

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

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

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed/ denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 25, 2016.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated September 23, 2021, prepared by Gaddy Engineering Services, LLC, signed by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

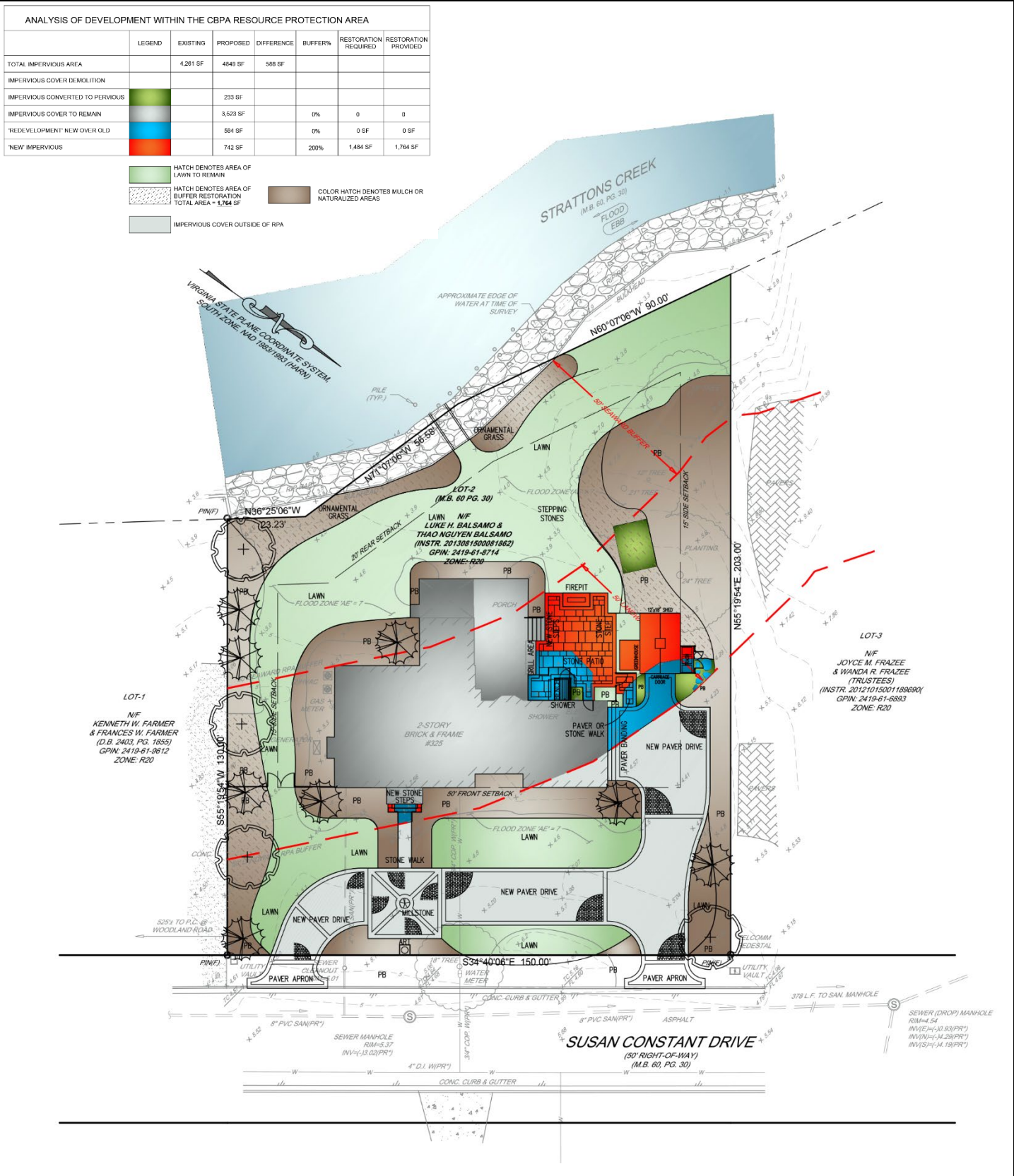
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

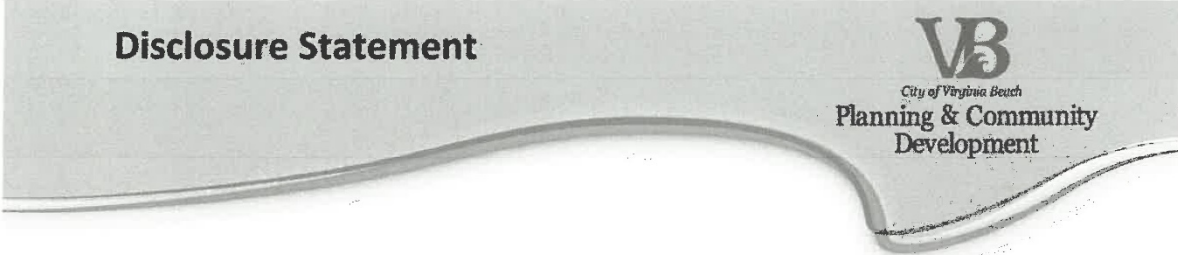
Site Aerial



CBPA Exhibit – Color Analysis, Proposed Impervious Cover



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 Luke & Thao Balsamo

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garritson GRE

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

PENNYDAR

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.

ERIC MULKEY

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

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

JOHN WATSON, SISKI CURTIS

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.

Mike Godby, Godby Eng.

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

- If yes, identify the 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]

Applicant Signature

THAO BALSAMO

Print Name and Title

Date *9/30/21*

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 **John Davis**
 Address **505 Mockingbird Drive**
 Public Hearing **November 1, 2021**
 City Council District **Beach**

Agenda Item

6

Variance Request

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

Applicant’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 54, Page 7
 Recorded 8/15/1961

GPIN

2417-49-8082

SITE AREA

40,683.2 square feet or 0.93 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,714.5 square feet or 0.84 acres

EXISTING IMPERVIOUS COVER OF SITE

9,256 square feet or 25.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,525 square feet or 28.6 percent of site

Area of Redevelopment in RPA

36 square feet

Area of New Development in RPA

1,269 square feet

Location of Proposed Impervious Cover

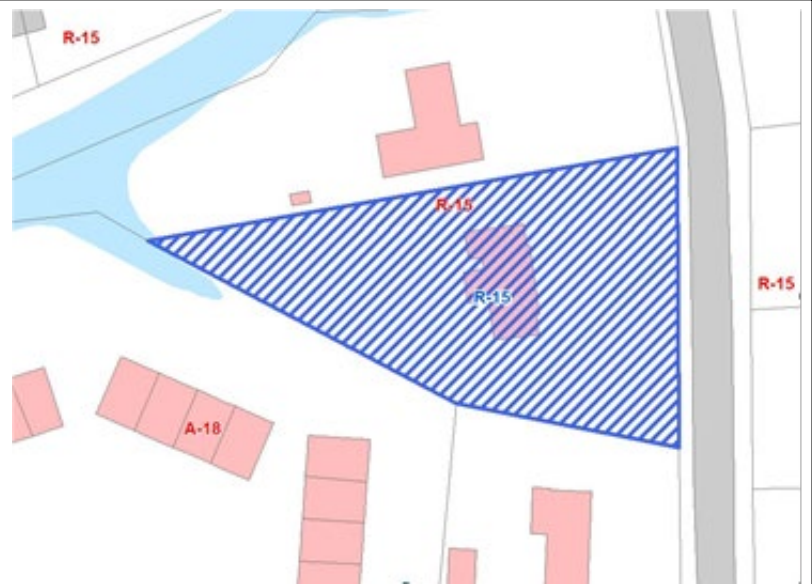
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portion of sidewalk

Construction Details

- Swimming pool with associated pool surround

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1

Stormwater Management Methodology

The applicant provided in the Water Quality Impact Assessment (WQIA) that the land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required.

Evaluation and Recommendation

The applicant is proposing to construct a 648 square foot (18 feet by 36 feet) swimming pool with a 654 square foot pool surround. Inclusive of the proposed pool surround, approximately 36 square feet is allocated to redevelopment with the removal of a portion of the existing walk. As a means to minimize encroachment towards the tidal shoreline and provide a safe distance from the foundation of the existing residence with the proposed location of the swimming pool, the applicant has situated the desired pool surround area, utilized for gathering and seating, adjacent to the existing residence. The remaining portions of the pool surround are proposed at a 3-foot width along the north, west and south sides of the proposed swimming pool.

The initial submittal for the variance request proposed an overall area of new development within the RPA of approximately 1,728 square feet with the desire for a larger swimming pool and pool surround for the family. Staff met with the applicant's leading up to the November CBPA Board public hearing to review and discuss the CBPA Exhibit reducing the overall area of new development within the RPA to 1,302 square feet. The reduction in overall impervious cover comes from the reduction of both the pool size and pool surround. In addition, the applicants revised the location of the proposed improvements by rotating the layout to be parallel to the existing single-family residents and along the norther portion of the lot to the greatest extent practicable to avoid encroachment into the 50-foot seaward buffer.

Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1963 and the proposed improvements are in keeping with the development of the neighborhood."* Staff offers that all the lots located on Mockingbird Drive and Bluebird Drive along the tidal feature have improvements, both primary and accessory structures that encroach into the Resource Protection Area (RPA) buffer. Of the 8 lots within the RPA buffer along these street 2 lots have existing swimming pools. To redevelop any of the subject lots would occur within the 100-foot RPA buffer of the Chesapeake Bay watershed.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the pool is located near the house along the right side of the property, which keeps the patio and pool outside of the 50-foot seaward buffer."* Staff offers that the applicant engaged Staff to review the proposed improvements prior to the submittal of the CBPA Variance application. During said meeting, the applicant reduced the size of the overall proposed improvements and rotated the layout of the proposed improvements as a means to reduce the encroachment request into the RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood."* Staff acknowledges the statement provided by the applicant and offers that the location of the proposed improvements and existing topography of the lot offers a means for sheet flow and infiltration to occur prior to runoff reaching the adjacent tidal feature.
- 5) To manage towards a no net increase in nonpoint source pollution load the applicant provided that *"they will stockpile material on existing hard surfaces along with a single construction entrance on the right side of home away from the water. All construction access will be on hard surfaces. The site currently does not have any BMPs, and the location of the project variance will not cause further source pollution as it is on level ground and there is level ground between the project site area and the bank."* Given the location of the proposed improvements from the tidal feature and flat topography of the area adjacent to the proposed improvements Staff offers that the applicant's management of the project during the construction of the proposed improvements is import towards a no net increase in nonpoint source pollution. To ensure the management of the construction methodology as provided by the applicant above Staff offers the recommended conditions below.

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

Recommended Conditions

- 1) The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said Exhibit with a Landscape Plan shall be submitted to the Development Services Center for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the CBPA Exhibit shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,269 square feet x 200 percent = 2,538 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 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 be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Construction matting shall be used along the northern side of the residence for the construction accessway from the existing driveway to the rear of the residence.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed **5 feet** from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) 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) 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

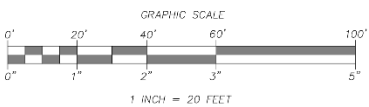
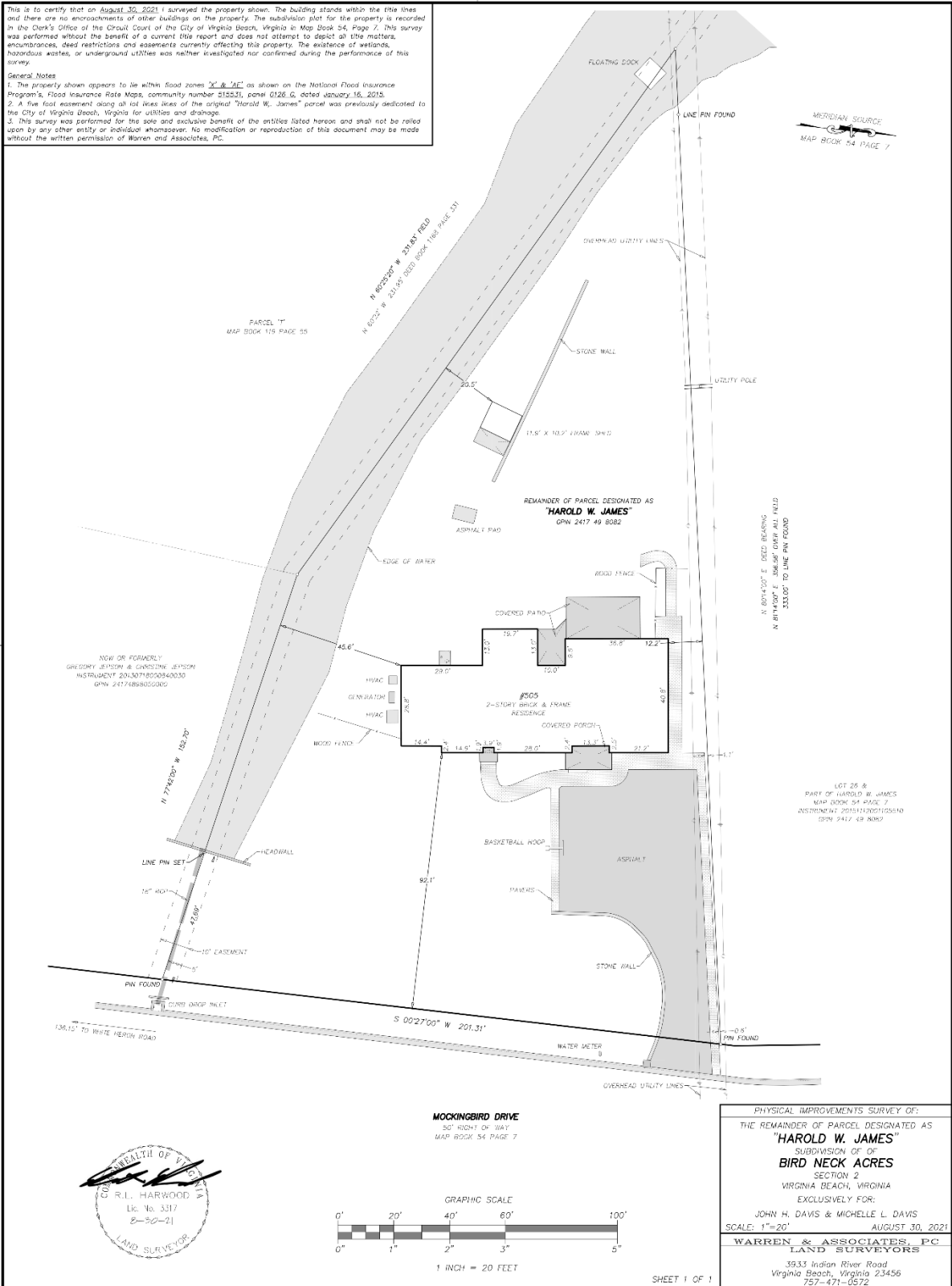


CBPA Exhibit – Existing Conditions

This is to certify that on August 30, 2021 I surveyed the property shown. The building stands within the title lines and there are no encroachments of other buildings on the property. The subdivision plot for the property is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 54, Page 7. This survey was performed without the benefit of a current title report and does not attempt to depict all title matters, encumbrances, deed restrictions and easements currently affecting this property. The existence of wetlands, hazardous wastes, or underground utilities was neither investigated nor confirmed during the performance of this survey.

General Notes

1. The property shown appears to be within flood zones "X" & "AE" as shown on the National Flood Insurance Program's Flood Insurance Rate Maps, community number 515531, panel 0126 G, dated January 16, 2015.
2. A five foot easement along all lot lines lies of the original "Harold W. James" parcel was previously dedicated to the City of Virginia Beach, Virginia for utilities and drainage.
3. This survey was performed for the sole and exclusive benefit of the entities listed herein and shall not be relied upon by any other entity or individual whatsoever. No modification or reproduction of this document may be made without the written permission of Warren and Associates, PC.

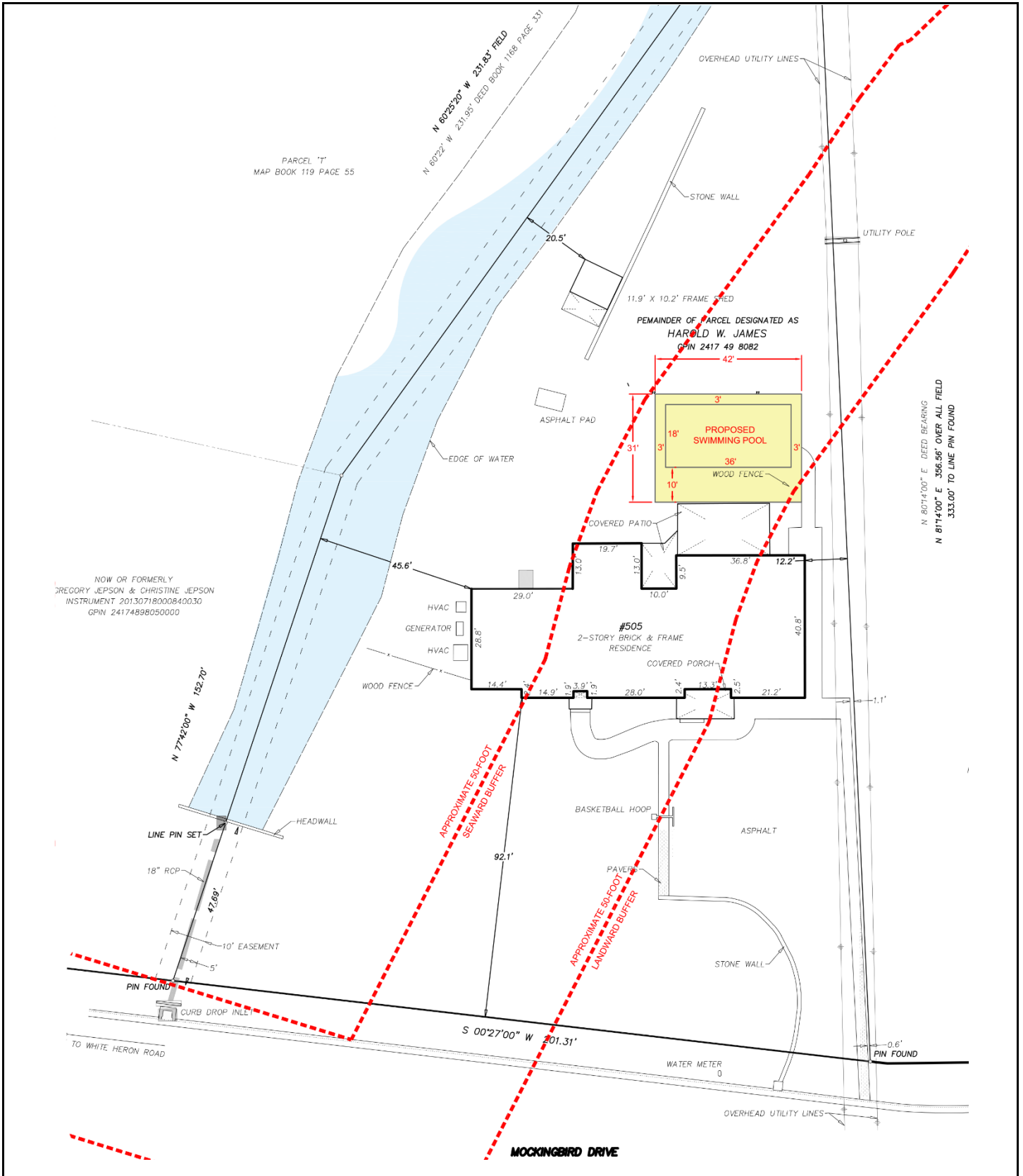


PHYSICAL IMPROVEMENTS SURVEY OF:
 THE REMAINDER OF PARCEL DESIGNATED AS
"HAROLD W. JAMES"
 SUBDIVISION OF OF
BIRD NECK ACRES
 SECTION 2
 VIRGINIA BEACH, VIRGINIA
 EXCLUSIVELY FOR:
 JOHN H. DAVIS & MICHELLE L. DAVIS
 SCALE: 1"=20' AUGUST 30, 2021

WARREN & ASSOCIATES, PC
 LAND SURVEYORS
 3933 Indian River Road
 Virginia Beach, Virginia 23456
 757-471-0572

SHEET 1 OF 1

CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name John Davis

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

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

Yes **No**

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

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

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

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

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

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

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

Disclosure Statement



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

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

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

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

Harold Warren

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]

Applicant Signature

John Davis, owner

Print Name and Title

9/28/21

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Nicholas & Sarah Nestor**
Address **1924 W Twin Cove Road**
Public Hearing **November 1, 2021**
City Council District **Lynnhaven**

Agenda Item

7

Variance Request

Encroachment into the RPA to construct a 2-story garage addition, swimming pool with associated patio and pool house.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 40, Page 36
Recorded 01/12/1956

GPIN

1499-16-3514

SITE AREA

68,794 square feet or 1.579 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

55,500 square feet or 1.274 acres

EXISTING IMPERVIOUS COVER OF SITE

7,335 square feet or 13 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,337 square feet or 20 percent of site

Area of Redevelopment in RPA

3,191 square feet

Area of New Development in RPA

3,721 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

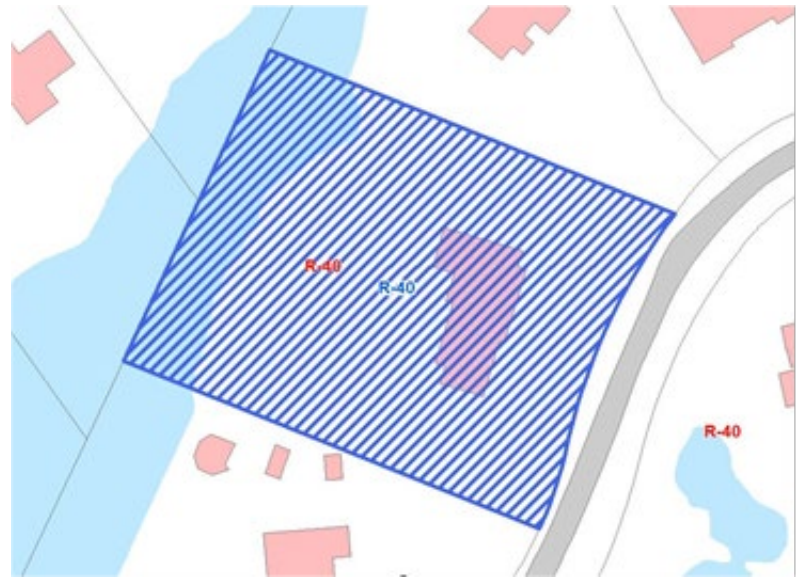
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete driveway
- Front brick porch with steps and associated walkway
- Rear brick stoop with steps and associated brick wall

Construction Details

- Driveway replacement in existing footprint
- Swimming pool with associated concrete patio and retaining wall
- 2-story attached addition with a garage and breezeway on northern portion of the existing residence
- 1-story addition with a sunroom and pool house
- Front covered porch and walkway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Rumford Series (deep, well drained soils)

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily wooded lot

- Number of existing canopy trees requested for removal within the RPA: 14
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: Trees being requested for removal within the rear yard are within the delineated limits of construction of the proposed swimming pool/patio area and building addition areas. Staff is of the opinion that the trees requested for removal in the front yard of the property can be avoided given that the site access is via the existing driveway area to the north. Staff has provided the recommended conditions, specifically condition 3 below to address this concern regarding the proposed tree removal requests associated with this variance request.

Stormwater Management Methodology

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

Nicholas & Sarah Nestor

Agenda Item 7

Page 88

Evaluation and Recommendation

The applicant is proposing to construct two separate building additions on the north and south side of the existing residence as well as a new swimming pool and patio surround in the rear yard. The existing residential lot is encumbered by the 100-foot Resource Protection Area (RPA) buffer along the rear portion of the lot, with the front yard of the lot being located within the landward and variable width buffers. This lot was platted approximately three decades prior to the adoption of the CBPA Ordinance, and the existing residential structure was built in 1959.

The two-story building addition at the northern portion of the residence includes new attached garage with a breezeway to connect to the main residence. There is a moderate slope in the rear yard and the applicant is proposing to construct a new swimming pool and associated patio directly behind the main residence with a retaining wall to keep improvements above the top of bank. Additionally, a second building addition is proposed at the southern portion of the residence to include a new pool house and sunroom. The applicant and the applicant's agent have taken means to keep the proposed improvements in the upper reach of the 50-foot landward buffer to avoid impacts to the 50-foot seaward buffer of the RPA. This variance request increases the overall impervious cover of the lot from 7,335 square feet to 11,337 (13 percent to 20 percent) of the total lot area above water and wetlands. With this increase in impervious cover, approximately 717 square feet is located in the 50-foot landward buffer and the remaining new impervious cover is located in the variable width buffer of the RPA. Staff is of the opinion that the layout of the proposed improvements are acceptable, and the required buffer restoration coupled with the stormwater management best practices will provide further benefits to the Chesapeake Bay Watershed.

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

- 1) This variance request will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this property was platted in 1956 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the adoption of the City's CBPA Ordinance and offers that the redevelopment of this lot is consistent with development patterns in the neighbor and similar to improvements on surrounding lots specific to this neighborhood.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant because *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot 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 acknowledges that this lot is encumbered by the Resource Protection Area (RPA) buffer and is encumbered by the 100-foot RPA buffer and a substantial amount of the Variable Width buffer.
- 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 is of the opinion that the applicant and applicant's agent have designed the proposed improvements minimize impacts by keeping the improvements located out of the 50-foot seaward buffer of the RPA with

a significant amount of redevelopment being proposed that will replace existing improvements without expanding the current footprint.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal.”* Staff is of the opinion that the recommended conditions provided below offer best management practices towards water quality and water quantity management that the lot does not currently provide.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers that the granting of this variance would require those best management practices to remain functioning as intended in perpetuity.

Given the above comments, Staff recommends the following 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) Construction limits along the entire perimeter of the project shall lie a maximum of 10 feet outboard of the improvements, both existing and proposed.
- 3) No trees outboard of the construction limits, 10 feet outboard of the improvements both existing and proposed shall be removed as shown on the Recommended Tree Preservation Exhibit provided in the Staff report. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
- 4) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 5) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 6) 3,721 square feet of buffer restoration shall be installed within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 20 large shrubs, and 30 small shrubs.**

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

- 7) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 9) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$852.72 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated September 16, 2021, prepared by WPL, signed September 30, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

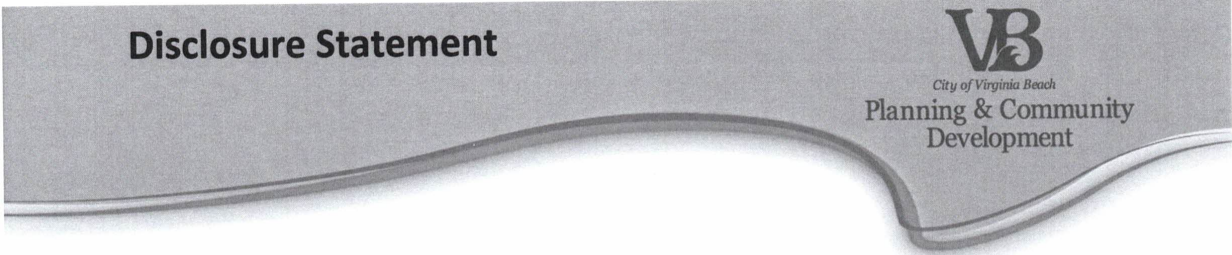
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



Disclosure Statement



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Applicant Disclosure

Applicant Name Nicholas M Nestor & Sarah H Nestor

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

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

Billy Garrington, GPC, Inc

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

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

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

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

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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.

Southern Bank & Trust Company

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.

D.W. Chase Architecture

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

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

Disclosure Statement



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

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

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.

[Handwritten Signature]

Applicant Signature

NICHOLAS NESTOR OWNER

Print Name and Title

10/1/2021

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	