

Chesapeake Bay Preservation Area Board Agenda

December 6, 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, December 6, 2021** at 10:00 a.m. in the Council Chamber - City Hall, Building 1, Second Floor, 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 **December 6, 2021**

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

ADMISTRATIVE AGENDA ITEMS

- 1. Election of 2022 Chesapeake Bay Preservation Area Board Officers**
Chairman, Vice Chairman and Secretary

Staff Report – page 7

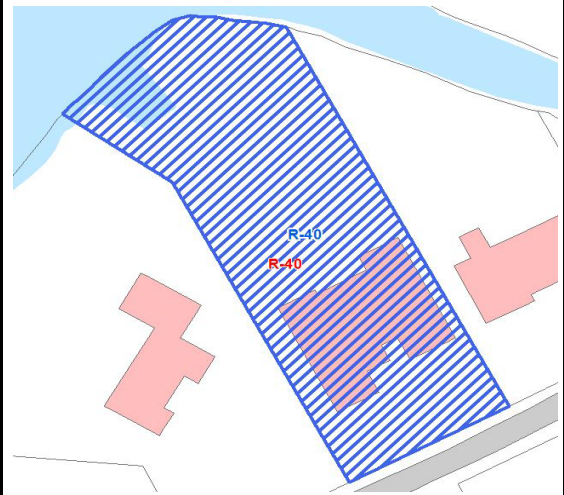
OLD BUSINESS AGENDA ITEMS

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

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

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

Staff Planner – PJ Scully
Staff Report – page 9

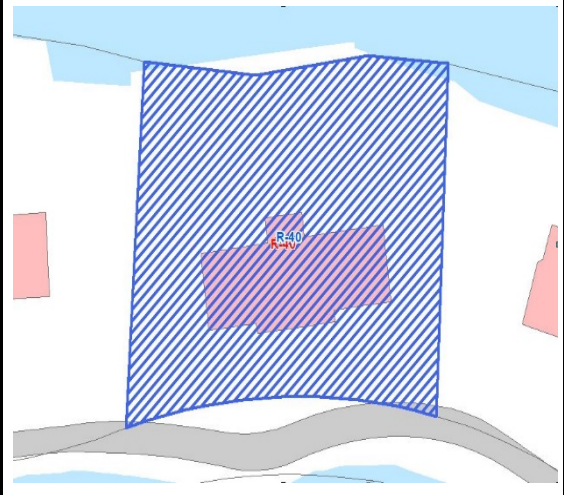


- 3. Ron Tesnow**
[Applicant & Property Owner]

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

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

Staff Planner – PJ Scully
Staff Report – page 21



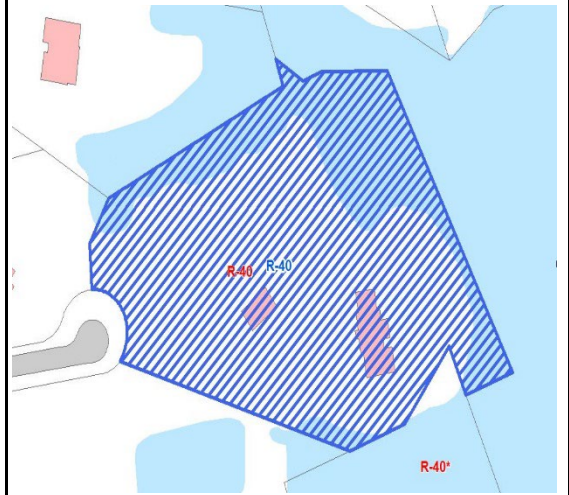
NEW BUSINESS AGENDA ITEMS

4. Linda Jean Thorp
[Applicant & Property Owner]

1100 Wishart Point Rd
GPIN 1478-87-3935
Council District – Bayside
Accela Record 2021-CBPA-00068

Variance Request – Removal of 10 trees in the RPA.

Staff Planner – PJ Scully
Staff Report – page 35

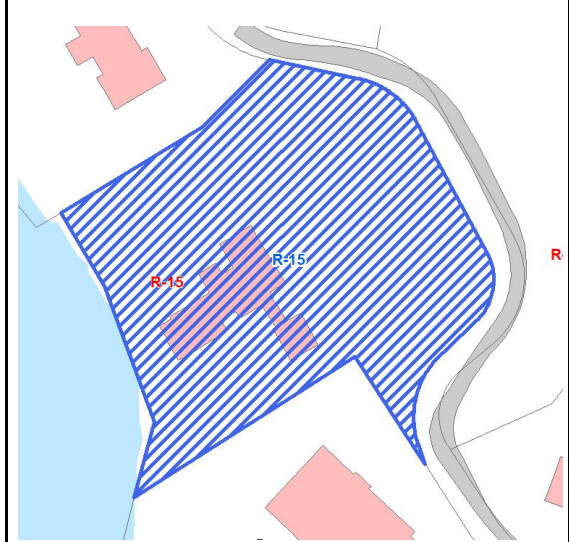


5. Lauren Graham
[Applicant & Property Owner]

665 Chesapeake Pt
GPIN 1497-59-3425
Council District – Beach
Accela Record 2021-CBPA-00069

Variance Request – Encroachment into the RPA to construct a detached garage, entry drive, mulched seating area, swimming pool with patio area.

Staff Planner – PJ Scully
Staff Report – page 51

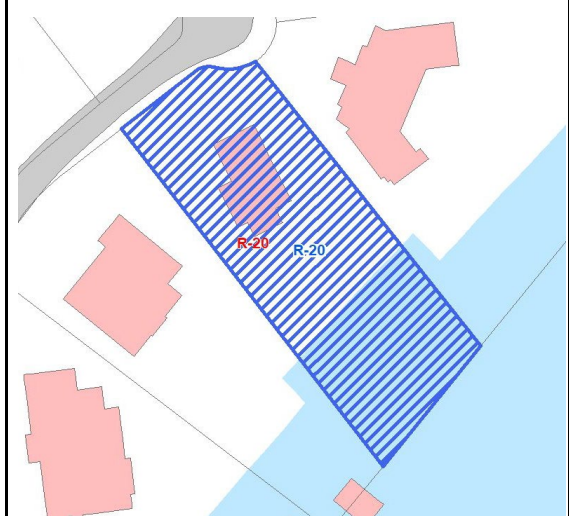


6. Carol F Voorhees RT
[Applicant & Property Owner]

685 Thalia Point Rd
GPIN 1488-01-6268
Council District – Lynnhaven
Accela Record 2021-CBPA-00070

Variance Request – Encroachment into the RPA to construct a concrete patio with associated walk and driveway expansion.

Staff Planner – PJ Scully
Staff Report – page 65



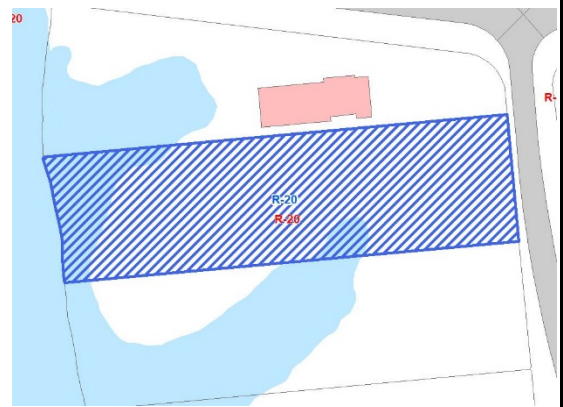
NEW BUSINESS AGENDA ITEMS (CONTINUED)

7. South Linkhorn Bay Trust & et al
[Property Owner & Applicant]

Lot 196, N. Linkhorn Park Extended, York Ln
GPIN 2418-47-4423
Council District – Lynnhaven
Accela Record 2021-CBPA-00074

Variance Request – Encroachment into the RPA to construct a single-family residence and associated accessory structures, consideration to modify Condition 1 of the November 25, 2002 CBPA Variance for the construction of a single-family residence.

Staff Planner – Cole Fisher
Staff Report – page 79

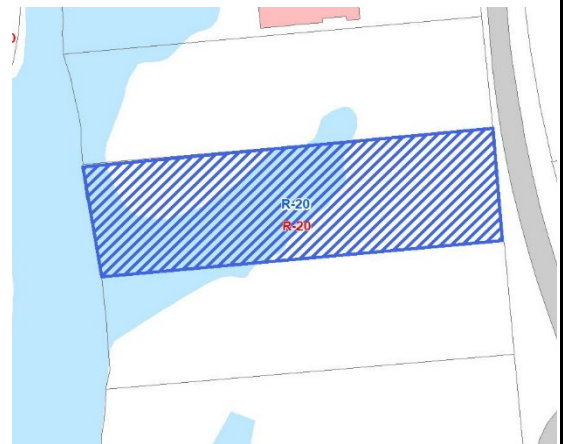


8. South Linkhorn Bay Trust & et al
[Property Owner & Applicant]

Lot 197, N. Linkhorn Park Extended, York Ln
GPIN 2418-47-4423
Council District – Lynnhaven
Accela Record 2021-CBPA-00075

Variance Request – Encroachment into the RPA to construct a single-family residence and associated accessory structures, consideration to modify Condition 7 of the December 23, 2002 CBPA Variance to construct a single-family residence.

Staff Planner – Cole Fisher
Staff Report – page 95

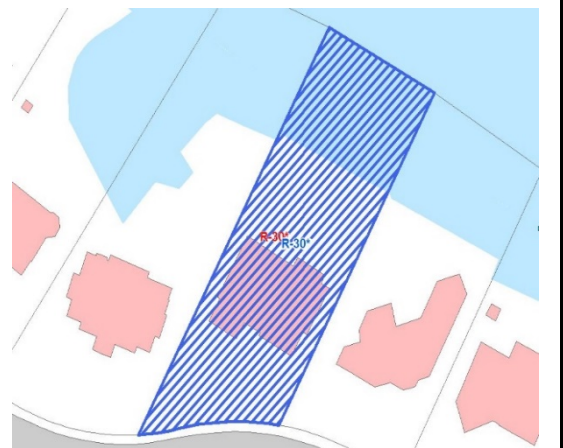


9. Kenneth & Karen Bagwell
[Applicant & Property Owner]

2333 Haversham Ct
GPIN 2409-05-6860
Council District – Lynnhaven
Accela Record 2021-CBPA-00076

Variance Request – Encroachment into the RPA to construct a paver stone patio and walk.

Staff Planner – Cole Fisher
Staff Report – page 111



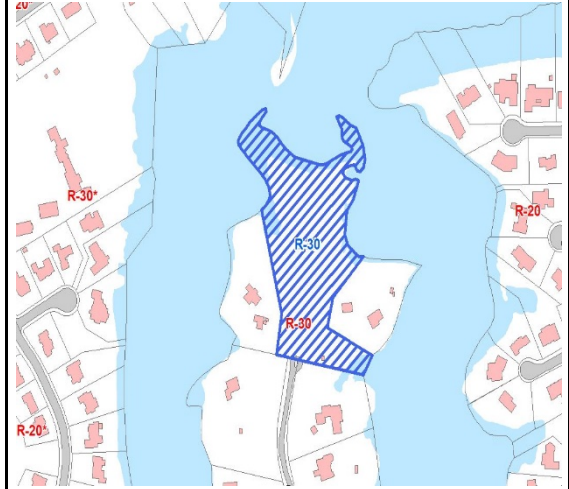
SHOW CAUSE ITEM

10. Anthony & Cynthia Disilvestro
[Applicant & Property Owner]

1680 Godfrey Ln
GPIN 2409-23-0703
Council District – Lynnhaven
Accela Record 2021-CBPV-00002

Statement of Noncompliance –
Noncompliance to the conditions of the August 2, 2021 CBPA. Variance.

Staff Planner – PJ Scully
Staff Report – page 121



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.vb.gov/cbpa for the most updated meeting information.

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.vb.gov/cbpa. For information call (757) 385-4621.



Administrative Business

**2022 Chesapeake Bay Preservation Area Board
Election of Officers**

Public Hearing **December 6, 2021**

Agenda Item

1

2021 Chesapeake Bay Preservation Area Board Members

- June Barrett-McDaniels
- Bill Burnette
- Dave France – Vice Chairman
- Dave Jester – Chairman
- Casey Jones – Secretary
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

**2022 Chesapeake Bay Preservation Area Board
Election of Officers**

Chairman
Vice Chairman
Secretary



Applicant & Property Owner **Joel & Emily Nied**
 Address **1308 Kildeer Court**
 Public Hearing **December 6, 2021**
 City Council District **Beach**

Agenda Item

2

Variance Request

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

Applicant’s Agent

Robert Simon
 Waterfront Consulting, Inc.

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 192
 Recorded 06/1926

GPIN

2418-30-6917

SITE AREA

32,092 square feet or 0.74 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

28,216 square feet or 0.65 acres

EXISTING IMPERVIOUS COVER OF SITE

7,565.7 square feet or 26.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,799.3 square feet or 34.7 percent of site

Area of Redevelopment in RPA

185 square feet

Area of New Development in RPA

2,066.8 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

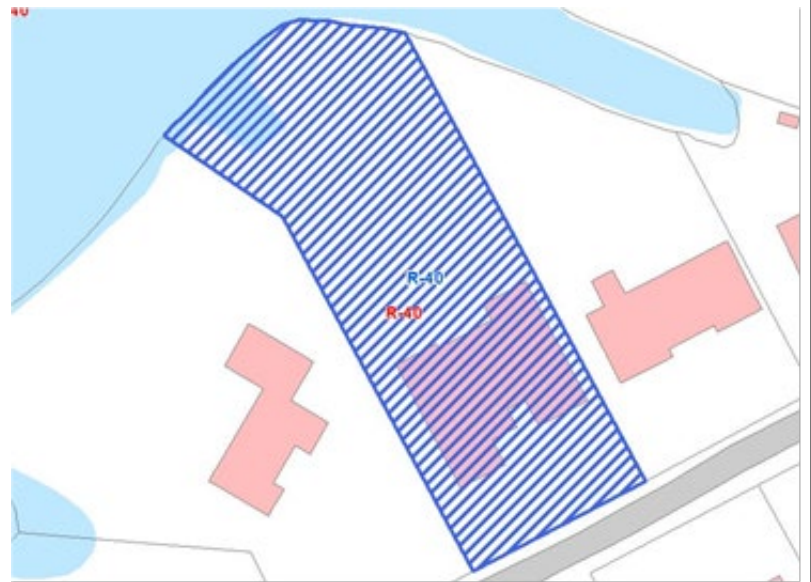
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with paver pool patio and retaining wall
- Fire pit and gravel walkways, after-the-fact

CBPA Ordinance Variance History

- This variance request was deferred at the September 9, 2021 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the October 4, 2021 CBPA Board Public Hearing.
- This variance request was deferred at the October 4, 2021 CBPA Board Public Hearing to the December 6, 2021 CBPA Board Public Hearing.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

Shoreline

Shoreline is hardened by a rip rap revetment with existing pier and wharf.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to construct a swimming pool with associated patio area and retain an existing gravel path and fire pit patio area in the rear yard of the lot contiguous to Linkhorn Bay. The impervious cover of the individual improvements area as follow.

- Proposed swimming pool approximately 450 square feet
- Proposed patio area approximately 645 square feet

- Existing fire pit patio area approximately 250 square feet
- Existing gravel path approximately 314 square feet

This request increases the overall impervious cover of the lot from 7,565 square feet or 18 percent of the lot above water and wetlands to 9,799 square feet or 34.7 percent of the lot above water and wetlands. Since the deferral request at the September 2021 CBPA Board public hearing, the applicant’s consulting team has revised the layout of the proposed swimming pool and patio area to be landward of the 100-foot Resource Protection Area (RPA) buffer. This revision removed approximately 200 square feet of new impervious cover from the 100-foot RPA buffer. At this time, the applicant desires to retain the after-the-fact gravel path and fire pit patio area, the only impervious cover within the RPA buffer. These existing improvements account for approximately 538 square feet of impervious cover within the 100-foot RPA buffer. During the site visit, Staff reviewed these improvements and is of the opinion that the location of the gravel path and fire pit patio area as constructed do not appear to be a detriment to water quality or injurious to the neighborhood. Given the applicant’s desire to retain the after-the-fact improvements, Staff has worked with the applicant’s consulting team to develop a comprehensive buffer restoration plan. The submitted buffer restoration plan provides 5,152 square feet of buffer restoration and situates the restoration areas within areas currently devoted to turf. Along the rear of the residence, the proposed buffer restoration areas will provide additional infiltration opportunities of rainwater run-off from the existing single-family residence.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated *“because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* To address this finding the applicant’s consulting team as revised the location of the proposed swimming pool and patio area to be landward of the 100-foot RPA buffer.
- 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 proposed development (after-the-fact portion of the request) is encroaching minimally into the 100-foot RPA buffer.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the encroachment into the 100-foot RPA buffer and materials used – gravel and concrete pavers - provides merit towards 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 the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMP’s will be placed to catch runoff to improve water quality.”* Staff offers that the buffer restoration plan provided gives merit towards water quality initiatives for the infiltration of rainwater runoff given the location of the buffer restoration beds in a manner that will intercept rainwater from the existing single-family residence.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“buffer restoration and bioretention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the adjacent waterway.”* Staff concurs.

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

Recommended Conditions

- 1) 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. Said buffer restoration plan shall be in substantial compliance with the Buffer Mitigation Plan submitted by Painted Fern Landscape Architecture dated November 12, 2021 signed November 12, 2021 by Jessica L. Nelson.
- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 8) 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.**
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) 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.
- 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 \$473.64 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 November 12, 2021, prepared by Painted Fern Landscape Architecture, signed November 12, 2021 by Jessica L. Nelson. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

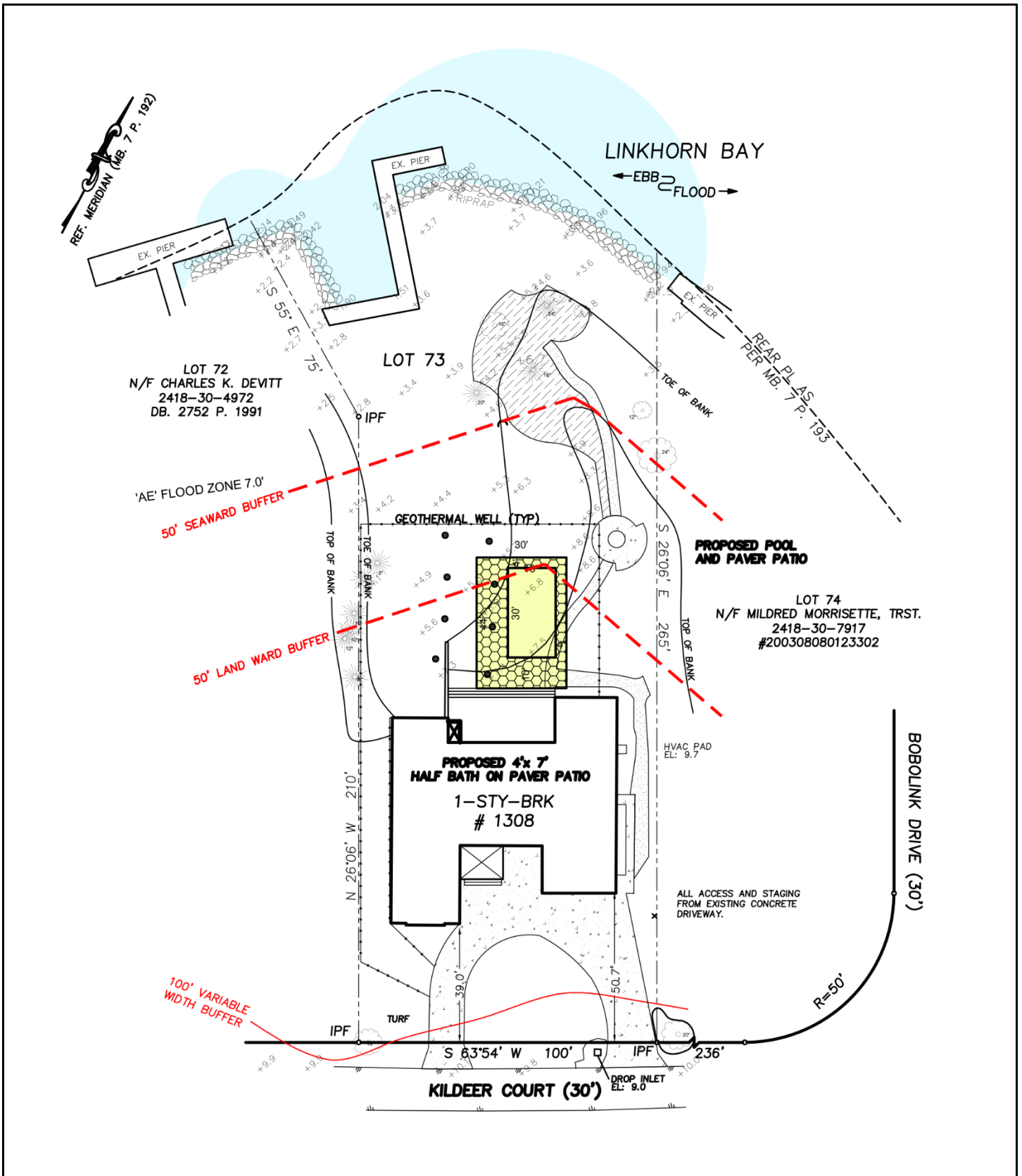
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

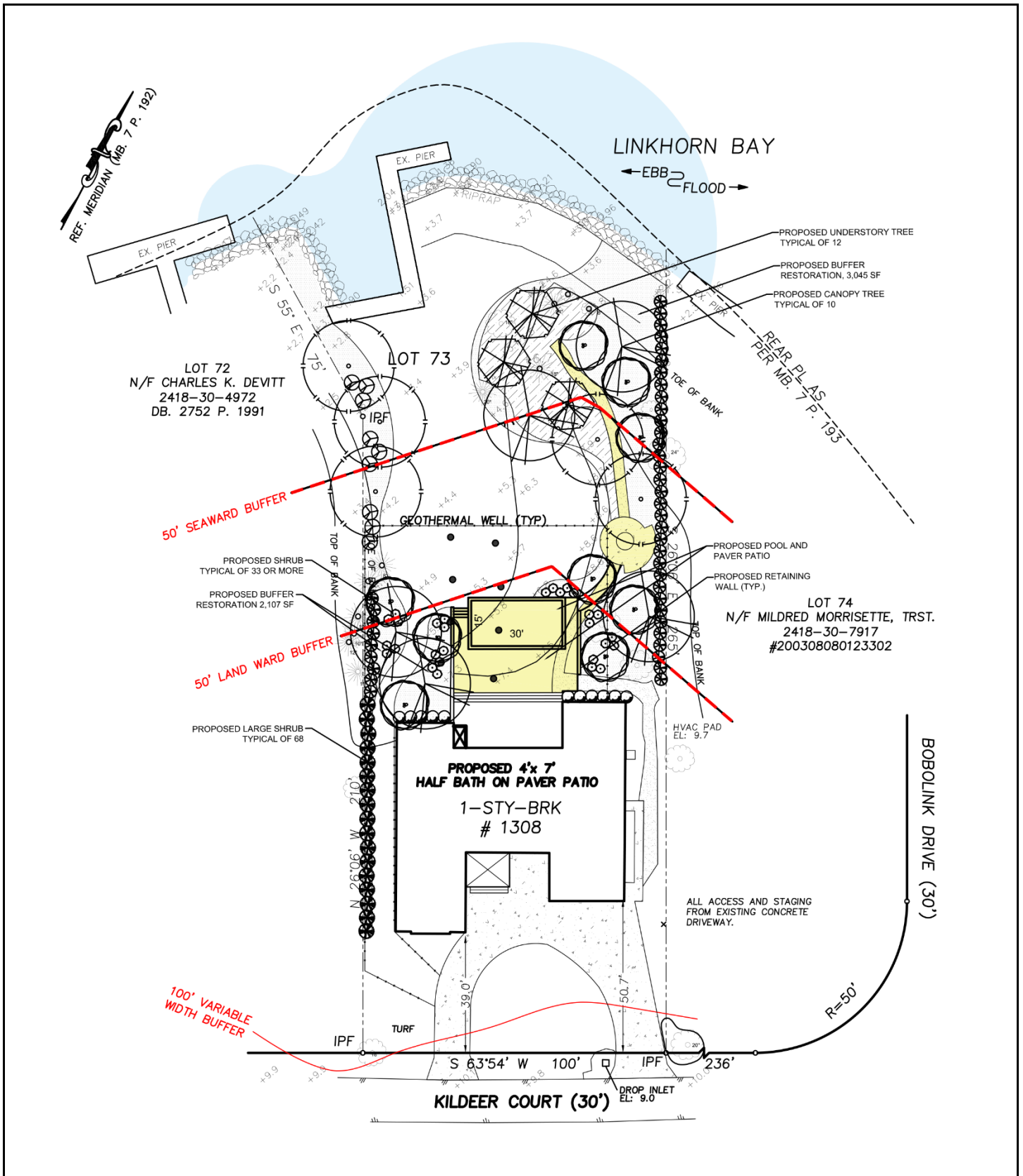
Site Aerial



CBPA Exhibit – Proposed Improvements, as submitted for the September Public Hearing



CBPA Exhibit – Proposed Improvements, Revised



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 Joel R. and Emily C. Nied

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

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

Waterfront Consulting, Inc.

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

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

- If **yes**, list the businesses that have a parent-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.

T. D. Bank

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

Yes No

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

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

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

M.N. Blum

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

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

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

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

Disclosure Statement



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

- If **yes**, identify the construction contractor.

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

- If **yes**, identify the engineer/surveyor/agent.

WCI, Chesapeake Bay Site Solutions

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

- If **yes**, identify the name of the attorney or firm providing legal services.

Applicant Signature

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

Joel R. and Emily C. Nied

Applicant Signature

Joel R. and Emily C. Nied

Print Name and Title

8-3-21

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

Variance Request

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

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 24, Page 46
 Recorded 8/12/1949

GPIN

1499-17-4498

SITE AREA

22,106 square feet or 0.508 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,817 square feet or 0.455 acres

EXISTING IMPERVIOUS COVER OF SITE

6,908.8 square feet or 34.86 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,460.6 square feet or 42.69 percent of site

Area of Redevelopment in RPA

1,412.3 square feet

Area of New Development in RPA

1,551.8 square feet

Location of Proposed Impervious Cover

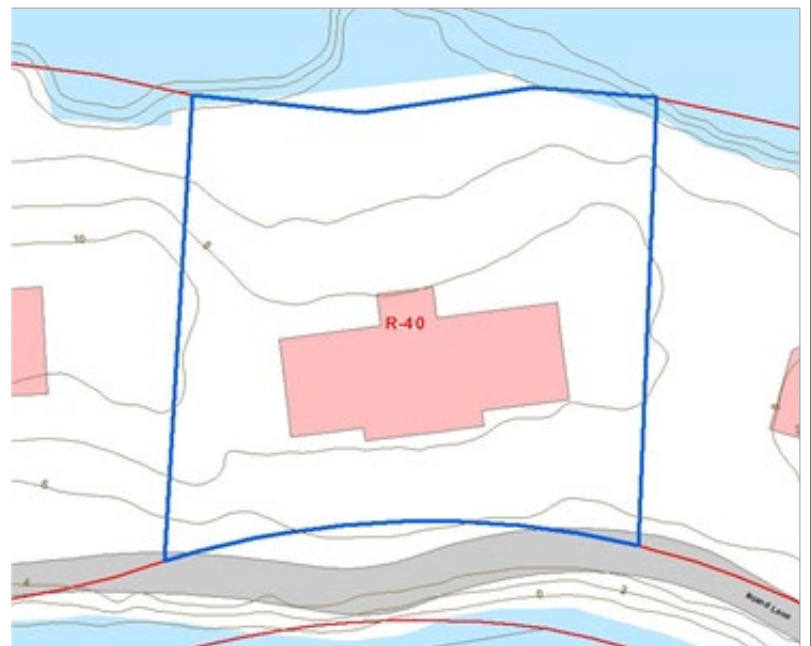
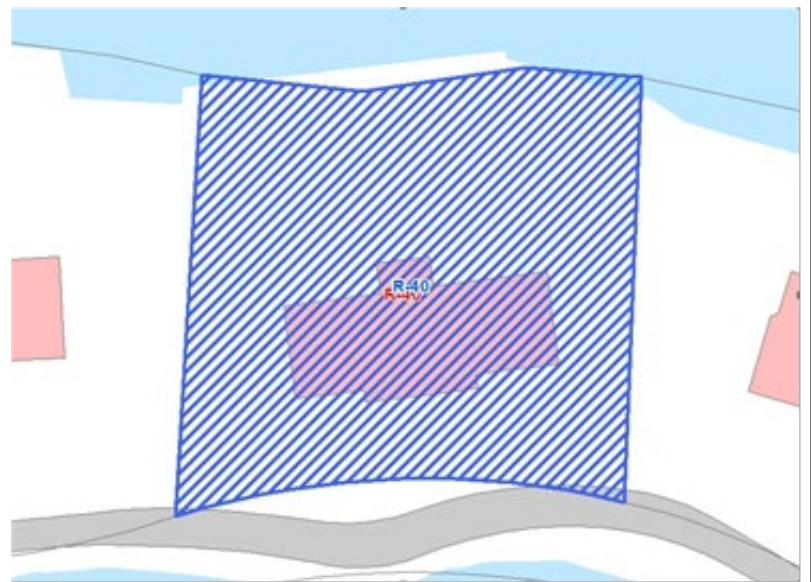
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as Conditioned



Summary of Proposal

Demolition Details

- Remove existing concrete driveway

Construction Details

- Construct swimming pool with concrete surround
- Stepping stone walkway
- Shed and driveway redevelopment

CBPA Ordinance Variance History

April 23, 2018 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of concrete paver driveway expansion, split level terrace with retaining wall, and paver patio 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. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
4. *Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.*
5. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
6. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
7. *A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
8. *Submitted concurrent with the site plan shall be a separate buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. Said buffer restoration plan shall be in substantial compliance with the CBPA variance exhibit, Sheet L1, Buffer Restoration Plan prepared by Jessica Nelson, dated March 27, 2018 and signed March 27, 2018 by Jessica Nelson. Page 20 of 22*
9. *Stormwater management depicted on the plan shall be installed where shown, in addition to any requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*

10. *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.*
11. ***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 \$475.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
12. *Upon granting of a variance, an encroachment request shall be submitted to Public Works Real Estate for review and processing. Should City Council grant the encroachment, a revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval within 30 days from the date of the Encroachment Agreement. Once the plans have been approved, a CBPA / CIVIL permit must be obtained within 30 days. All required restoration must be installed or in the process of installation within 45 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing. Any improvements within the right-of-way that are not approved by City Council shall be removed and said area converted back to a natural state.*
13. *The conditions and approval associated with this variance are based on the exhibit plan dated February 20, 2018, prepared by Gallup Surveyors and Engineers, signed April 3, 2018 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.*

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened by a vinyl bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 5
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Two of 5 trees being requested for removal are within the delineated limits of construction, as shown on the CBPA Exhibit. The remaining 3 trees are located within the 100-foot RPA buffer and are Pine trees that are exhibiting minimal signs of decline. Staff is of the opinion that these trees were impacted during previous construction activities and will slowly decline over time.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that permeable pavers will be provided as a best management practice for stormwater run-off mitigation. In addition, a substantial buffer restoration plan has been submitted with the variance request.

Evaluation and Recommendation

The applicant recently purchased the lot and is not associated with the prior activities or request associated with the April 2018 Chesapeake Bay Preservation Area (CBPA) Board Variance. Given the CBPA Variance history for the subject lot, Staff met with the applicant and their Engineer of Record to discuss the conditions of the April 2018 CBPA Variance and the current applicant's desire to construct a swimming pool.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment of the Ordinance in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owner."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance applications presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Island Lane and the fact that the lot is encumbered by the RPA buffer from both the front and rear, Staff is of the opinion that the proposed improvements would not convey any special privileges to the applicant given the location of the proposed swimming pool within the 50-foot landward buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather *"the buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff offers that the encroachment 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.
- 3) The applicant's agent provides that *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover does not exceed 30 percent of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff acknowledges the statement of the applicant's agent that the proposal is *"the minimum necessary to afford relief"* and adds that the location and size of the proposed swimming pool, given the lot's configuration with the existence of the RPA buffer from two tidal features, provides merit towards being the minimal necessary to afford relief as designed. The size of the swimming pool is in keeping with the average size of a residential swimming pool and the proposed patio area is only provided along the landward side of the swimming pool.
- 4) The applicant's agent provides that *"the purpose and intent of the Ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no stormwater treatment on site. As a result of this variance request the Owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality."* Staff is of the opinion that the introduction of stormwater management with the use of permeable pavers coupled with riparian buffer mitigation in an

area with underlying soils that are moderately well drained offers merit towards providing stormwater interception and treatment benefits. Staff offers that the selection of plant material associated with the stormwater management facilities and riparian buffer mitigation should be indigenous plants specific to the USDA Plant Hardiness Zone for this area, Zone 8a, and selected based upon valuable water uptake specific to the selected plant species.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“strict erosion and sediment control measures will do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.”* Staff is of the opinion that the extent of buffer restoration provided with this variance request, the limited amount of land disturbance, and the existing underlying soil condition all contribute to the opportunity for a reduction in annual nutrient load into the waterway.

In addition to the above comments provided by the applicant’s agent, Staff provides the following analysis of the subject lot and surrounding area for the Board’s consideration. This reach of the Island Lane peninsula of land has a tidal feature to the north and south of the lot. Given the width of the peninsula, both the front and rear portions of all the residential lots along Island Lane are within the 50-foot seaward buffer of the RPA. Of the 19,817 square feet of the subject lot above water or wetlands, approximately 9,881 square feet are located within the 50-foot seaward buffer. The environmental constraints were established when the lot was created in 1949, decades prior to the adoption of the CBPA Act and Virginia Beach’s CBPA Ordinance. Staff is of the opinion that the applicant has worked with the hardship created by the existence of the RPA buffer to provide a request that offers merit towards the findings of the CBPA Ordinance.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan for review shall be the Buffer Restoration Plan submitted with the CBPA Variance exhibit.
- 3) Buffer restoration shall be installed in substantial compliance with the Buffer Restoration Plan submitted with the CBPA Variance application dated October 26, 2021, prepared by Painted Fern Landscape Architecture, signed November 1, 2021 by Jessica L. Nelson.
- 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 prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan. – or - 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) The redevelopment of the driveway, as shown on the CBPA Exhibit 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.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$355.43 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted April 23, 2018.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 25, 2021 and revised January 4, 2021, prepared by Gallup Surveyors and Engineers, signed August 25, 2021 by David R. Bulter. 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.

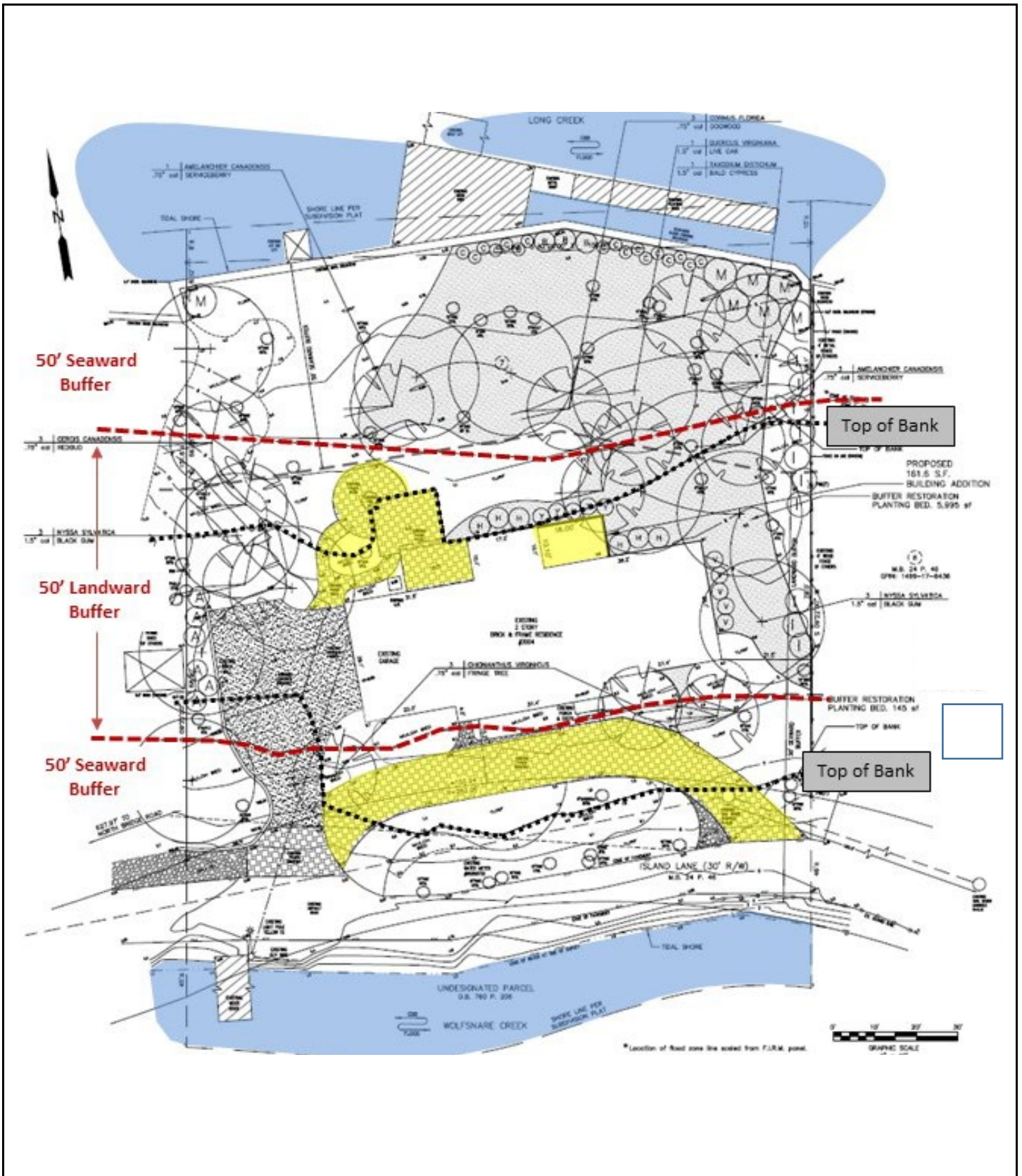
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

******* 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.

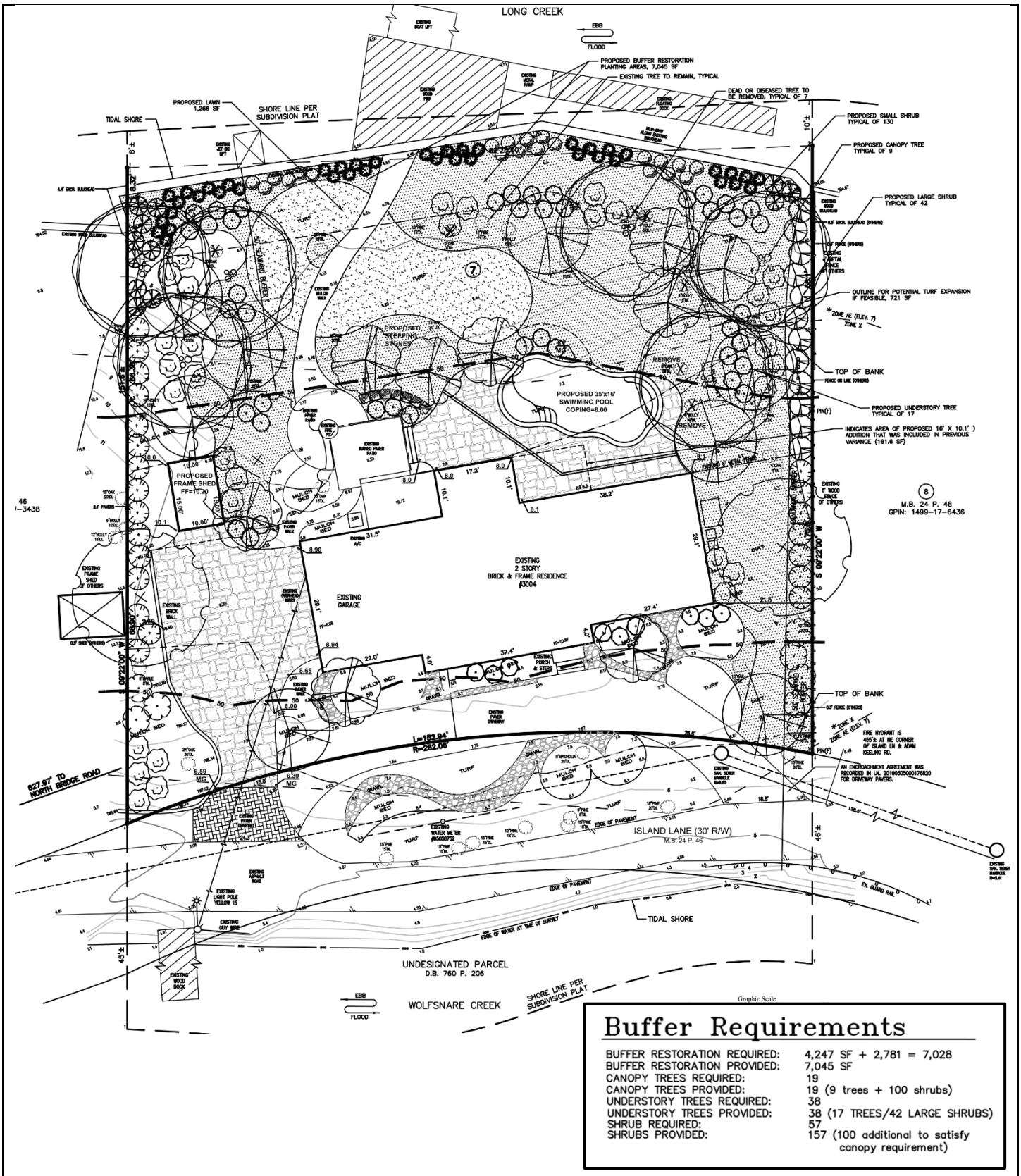
Site Aerial



April 2018 CBPA Board Variance Exhibit



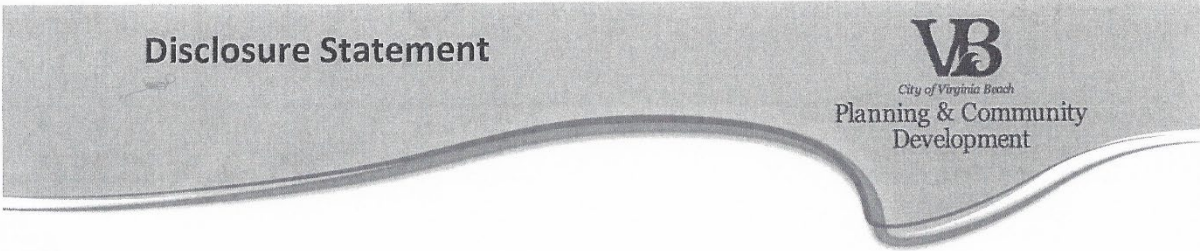
CBPA Exhibit – Buffer Restoration Plan



Buffer Requirements

BUFFER RESTORATION REQUIRED:	4,247 SF + 2,781 = 7,028
BUFFER RESTORATION PROVIDED:	7,045 SF
CANOPY TREES REQUIRED:	19
CANOPY TREES PROVIDED:	19 (9 trees + 100 shrubs)
UNDERSTORY TREES REQUIRED:	38
UNDERSTORY TREES PROVIDED:	38 (17 TREES/42 LARGE SHRUBS)
SHRUB REQUIRED:	57
SHRUBS PROVIDED:	157 (100 additional to satisfy canopy requirement)

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 Ron Tesnow

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Eddie Bourdon

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.

BB&T

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.

Jim Stevenson

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.

Shawn Anderson

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.

Shawn Anderson

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.

Gallup

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.

Eddie Bourdon

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.

Ron Tesnow

Applicant signature

Ron Tesnow

Print Name and Title

9/1/21

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 **Linda Jean Thorp**
Address **1100 Wishart Point Road**
Public Hearing **December 6, 2021**
City Council District **Bayside**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to remove 10 Loblolly Pine (*Pinus taeda*) trees on the lot.

Staff Planner

PJ Scully

Lot Recordation

Map Book 120, Page 27
Recorded 04/06/1977

GPIN

2409-43-6752

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

0 square feet

Location of Proposed Impervious Cover

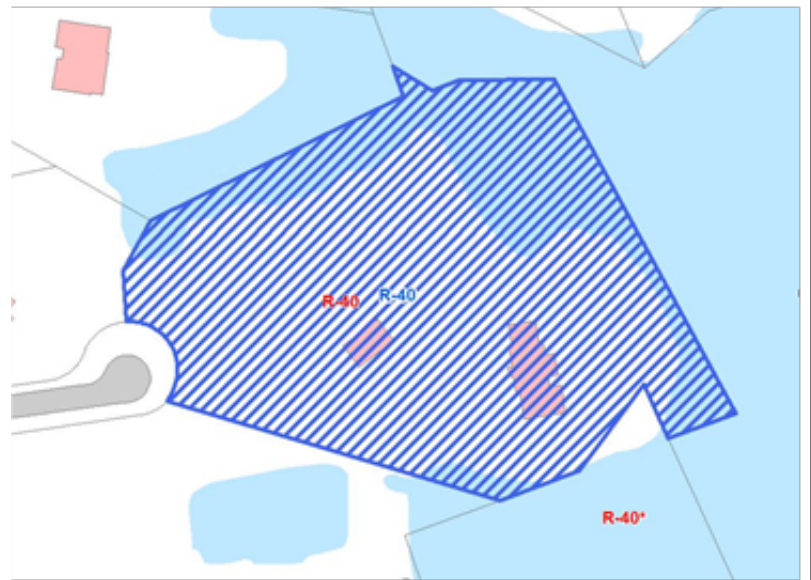
50-foot Seaward Buffer
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Remove 10 Loblolly Pine (*Pinus taeda*) trees on the lot

CBPA Ordinance Variance History

On April 27, 1998, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of an in-ground pool, retaining wall, brick pavers, gravel walks, trellises, and covered walkways with the following conditions:

1. *Landscaping shall be in accordance with the submitted landscape plan dated February 5, 1998.*
2. *A typical cross section shall be provided for the retaining wall.*
3. *Construction limits shall lie a maximum of 10 feet channelward of improvements.*
4. *The proposed planting bed shall be extended beyond the brick pavers at the end of the driveway.*
5. *A minimum of 50% of the proposed brick pavers shall be permeable.*
6. *A revised site plan shall be submitted to the Development Services Center for review and approval prior to the issuance of a building permit.*

On August 28, 1995, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the proposed impervious surfaces include gravel driveway and two-story dwelling with a total impervious area of 15% with the following conditions:

1. *The limits of land disturbance be moved to 10 feet from the top-of-bank on the northern and eastern portions of the lot.*
2. *The driveway shall be adjacent to the southerly property line to the greatest extent practicable, thereby maintaining the greatest distance from the top-of-bank.*
3. *The new dwelling shall be located 20 feet from the proposed southern property line.*
4. *A site plan shall be submitted to the Planning Department for review and approval prior to any land disturbance and issuance of a building permit.*

Both board variances have been acted upon.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 7 and 8

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is hardened by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 10
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 5 as stated by the applicant in the Water Quality Impact Assessment (WQIA).

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff met with the applicant on the property to review the trees being requested for removal. An analysis of said trees has been provided by the applicant below.

Tree #	Common Name / Species	DBH [inches]	Height (approx.) [feet]	Hazard removal?	Dead, Diseased, or Declining?	Approx. distance from... (house, garage, bulkhead, dock)	Reason for removal
1	Pine	23	75-80			35ft – house	Size and proximity to house/water; uneven weight distribution; high wind exposure; no lightning protection in place
2	Pine	28	85			45ft – house	Size and proximity to water/dock/bulkhead; uneven weight distribution towards water; high wind exposure; no lightning protection in place
3	Pine	33	80-85			60ft – house 30ft – dock/water	Size and proximity to water/dock/bulkhead; uneven weight distribution towards water; high wind exposure; no lightning protection in place;
4	Pine	17	60			60ft – house 30ft – dock/water	Size and proximity to water/dock/bulkhead; competing for space, light, etc; leaning; high wind exposure; no lightning protection in place
5	Pine	28	70-80	X	X	50ft – house <70ft – water	Struck by lightning (damage evident); size and proximity to house/water; competing; high wind exposure
6	Pine	20	65	X	X	60ft – house <70ft – water	Struck by lightning (damage evident); size and proximity to house/water; competing; high wind exposure
7	Pine	23	80-90	X	X	40ft – house <70ft – water	Struck by lightning (damage evident); size and proximity to house/water; competing; high wind exposure
8	Pine	24	80-90	X	X	30ft – house <70ft – water	Struck by lightning (damage evident); size and proximity to house/water; competing; high wind exposure
9	Pine	21	70-80	X	X	15ft – house <70ft – water	Struck by lightning (damage evident); size and proximity to house/water; competing; high wind exposure
10	Pine	26	70-80	X	X	70ft – garage 110-120ft – house	Struck by lightning (damage evident); size and proximity to garage/water; competing; wind exposure

Staff offers that a riparian buffer is a living resource that needs to be managed over time to preserve the function of the riparian ecosystem. Given the urban development of our shorelines, natural succession within the riparian buffer ecosystem is fragmented, causing a change in species composition and structure. Small saplings are developing into the next generation of trees as older canopy trees are exposed to wind throw, storm events and long-term

construction impacts that accelerate dieback and decline. In addition, events such as lightning strikes and inundation due to sea level rise can further compromise the life expectancy of vegetation within the riparian buffer. Even though these factors are a normal part of the successional process, in an urban setting, the effects of these natural forces may need to be monitored and the vegetation supplemented over time as necessary. Therefore, reasonable activities for riparian buffers to be managed should occur to assure the health of the riparian buffer composition. While Staff has concern with the extent of the applicant's request, condition 2 will ensure the opportunity to provide age diversity with regard to canopy tree species on this lot that was developed in the late 1970's. The tree mitigation will result in a mix of species age that will in turn offers merit towards extending the function and productivity of the riparian ecosystem through diversity beyond species selection alone.

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 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 *"removal of the trees that pose a threat to the main house is either due to their age, disease and/or lightning damaged."* Staff acknowledges the statement provided by the applicant and notes that Staff routinely works with property owners to manage riparian resources on their property.
- 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 is an approximate four-acre property that has a significant number of canopy trees elsewhere on the property."* Staff concurs.
- 3) Staff offers that the variance is the minimum necessary to afford relief given the applicant's preservation of the remaining canopy trees on the lot coupled with Staff's recommended condition below requiring mitigation for those trees being removed.
- 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 applicant has stated in the Water Quality Impact Assessment (WQIA) that mitigation will be provided and that *"they will ensure that the tree removal will not disturb the underlying soil conditions."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant intends to *"manage the project so that the work does not occur when the ground is soft and not after a rain event."* Staff is of the opinion that the use of a crane, as stated by the applicant to Staff during the site visit, will minimize land disturbance.

Given the above comments, Staff recommends the following 2 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 conditions shall be submitted to the Department of Planning and Community Development, Permits & Inspections Division for the issuance of a utility/right of way permit for tree removal in the RPA.

2. Mitigation for trees to be removed is required at a 2:1 ratio (10 new canopy trees to be planted). The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

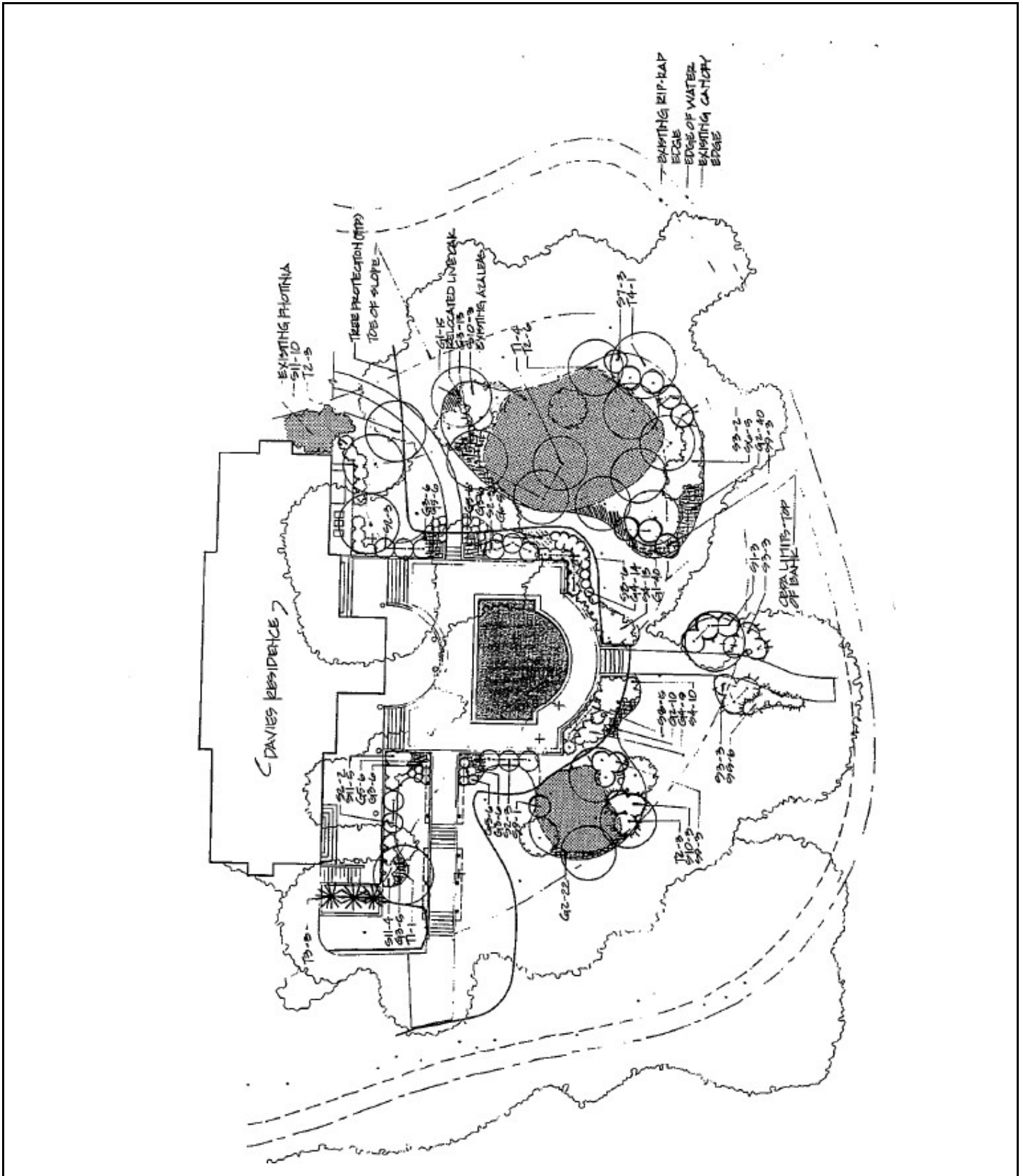
Minimum size at installation for replacement trees shall be as listed below:

- Canopy (matures to a height greater than 35') 1 ½" – 2" caliper.

***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 – Tree Removal in the RPA

Tree	Species	DBH (inches)	Height (feet)
1	Pine	23 inches	75-80 feet
2	Pine	28 inches	85 feet
3	Pine	33 inches	80-85 feet
4	Pine	17 inches	60 feet
5	Pine	28 inches	70-80 feet
6	Pine	20 inches	65 feet
7	Pine	23 inches	80-90 feet
8	Pine	24 inches	80-90 feet
9	Pine	21 inches	70-80 feet
10	Pine	26 inches	70-80 feet



CBPA Exhibit – Site Photo, Trees 1, 2, 3 and 4



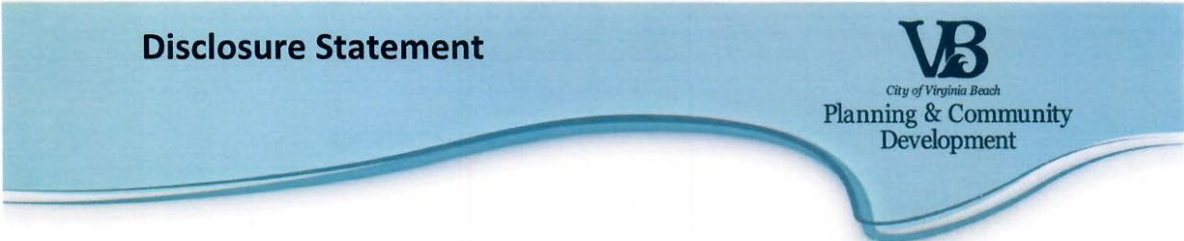
CBPA Exhibit – Site Photo, Trees 5, 6, 7, 8 and 9



CBPA Exhibit – Site Photo, Tree 10



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 Linda Thorp

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Kelly Thorp

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.
Mike's Tree 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 engineer/surveyor/agent.

- 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

Print Name and Title

Linda Thorp, Owner

Date

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

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

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

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

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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a detached garage, entry drive, mulched seating area, and swimming pool with patio area.

Applicant's Agent

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

Staff Planner

PJ Scully

Lot Recordation

Map Book 103, Page 23
 06/1970

GPIN

1497-59-3425

SITE AREA

53,731 square feet or 1.234 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

57,731 square feet or 1.234 acres

EXISTING IMPERVIOUS COVER OF SITE

7,517 square feet or 14 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

15,822 square feet or 29 percent of site

Area of Redevelopment in RPA

2,246 square feet

Area of New Development in RPA

9,682 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

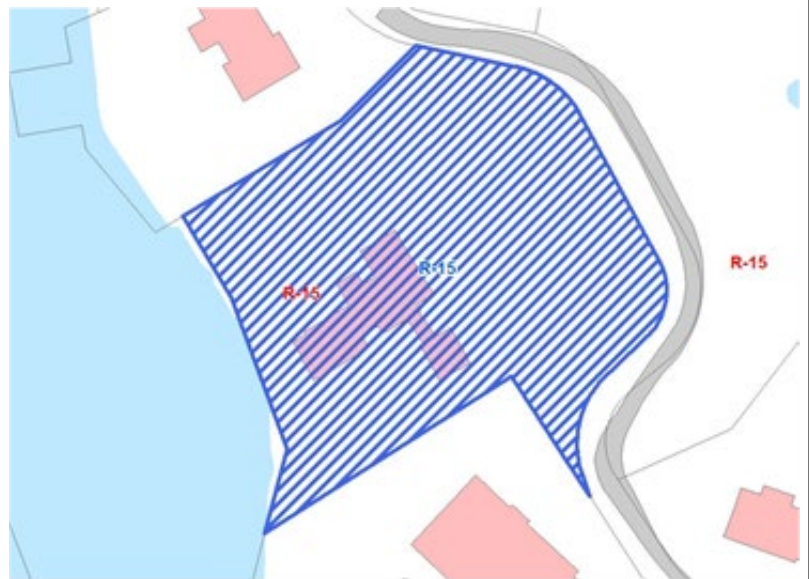
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Remove existing driveway and front sidewalks

Construction Details

- Permeable concrete driveway
- Replacement and relocation of front sidewalks with pavers
- Swimming pool with associated paver patio area
- Two-story detached garage

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): 8

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank
Udorthents Series (moderately well-drained soils altered by excavation)

Shoreline

Shoreline is currently hardened by a bulkhead. A request to remove the existing, failing bulkhead and replace with a rip rap revetment with wetlands plantings was approved at the November 15, 2021 Virginia Beach Wetlands Board hearing.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Evaluation of existing canopy tree removal request: The trees requested for removal are within the limits of disturbance associated with the proposed improvements. Of the trees being requested for removal, four are located within the City's Variable Width buffer of the RPA.

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. Provided on the CBPA Exhibit – Master Plan, page 60 of this Staff report, the proposed circular driveway is specified to be constructed using porous concrete. Staff is of the opinion that the redevelopment of this lot with the best management practices provided are in harmony with the performance standards set forth in the CBPA Ordinance, specifically Section 106 (A)(3).

Evaluation and Recommendation

The applicant recently purchased the property and is currently remodeling the existing single-family residence. Associated with this variance request, the applicant is proposing to redevelop the lot with several improvements inclusive to a swimming pool, circular driveway, detached garage, and mulched seating area. A large portion of the new impervious cover within the RPA – detached garage and porous concrete driveway - occurs within the City-designated variable width buffer. These proposed improvements occur in areas currently devoted to turf and located above the top of bank feature. Staff is of the opinion that the location of the proposed circular driveway, existing topography and underlying State soil series provides merit towards promoting infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural urban best management practices [Appendix F, Sec. 106 (A)(3)].

The proposed swimming pool and pool terrace are located within the 100-foot RPA buffer. Staff is of the opinion that the location of these proposed improvements is appropriate given the existing conditions of the site. This portion of the property is currently devoted to turf and is more appropriate for development in comparison to other areas of the site. The northern side of the residence is more wooded and has an established forested floor, while the western side or rear of the residence is located entirely within the 50-foot seaward buffer and subject to inundation at abnormal high tide events. In addition to the proposed upland improvements associated with this variance request, the applicant proposes to redevelop the existing shoreline, removing the existing bulkhead and constructing a rip rap revetment. Staff is of the opinion that the redevelopment of the shoreline, which will create approximately 100 square feet of vegetated wetlands, coupled with the recommended condition for buffer restoration will provide merit towards the redevelopment of this lot providing nonstructural vegetated water quality benefits.

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 1970 prior to the Chesapeake Bay Preservation Act and the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs with the statement provided by the applicant's agent and is of the opinion that the majority of new impervious cover proposed associated with this variance request will occur within the City's variable width buffer with the encroachments into the 100-foot RPA similar to the other variance requests in the RPA.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant *"because the lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffer covers over 90 percent of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the additions and improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts and avoid development in the 50-foot seaward buffer to the greatest extent practicable."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay, and if approved,*

the proposed redevelopment will be required to have treatment provided between the improvements and the Lynnhaven River.” Staff concurs.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the existing shoreline will be enhanced and expanded upon to compliment the site and bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharge into the river.”* Staff concurs.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) 10,000 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **12 canopy trees, 12 understory trees, 50 large shrubs, and 75 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall 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) 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.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized within the 50-foot seaward buffer.
- 15) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,218.79 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 9, 2021, prepared by WPL, signed February 9, 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 – Tree Removal



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Color Analysis

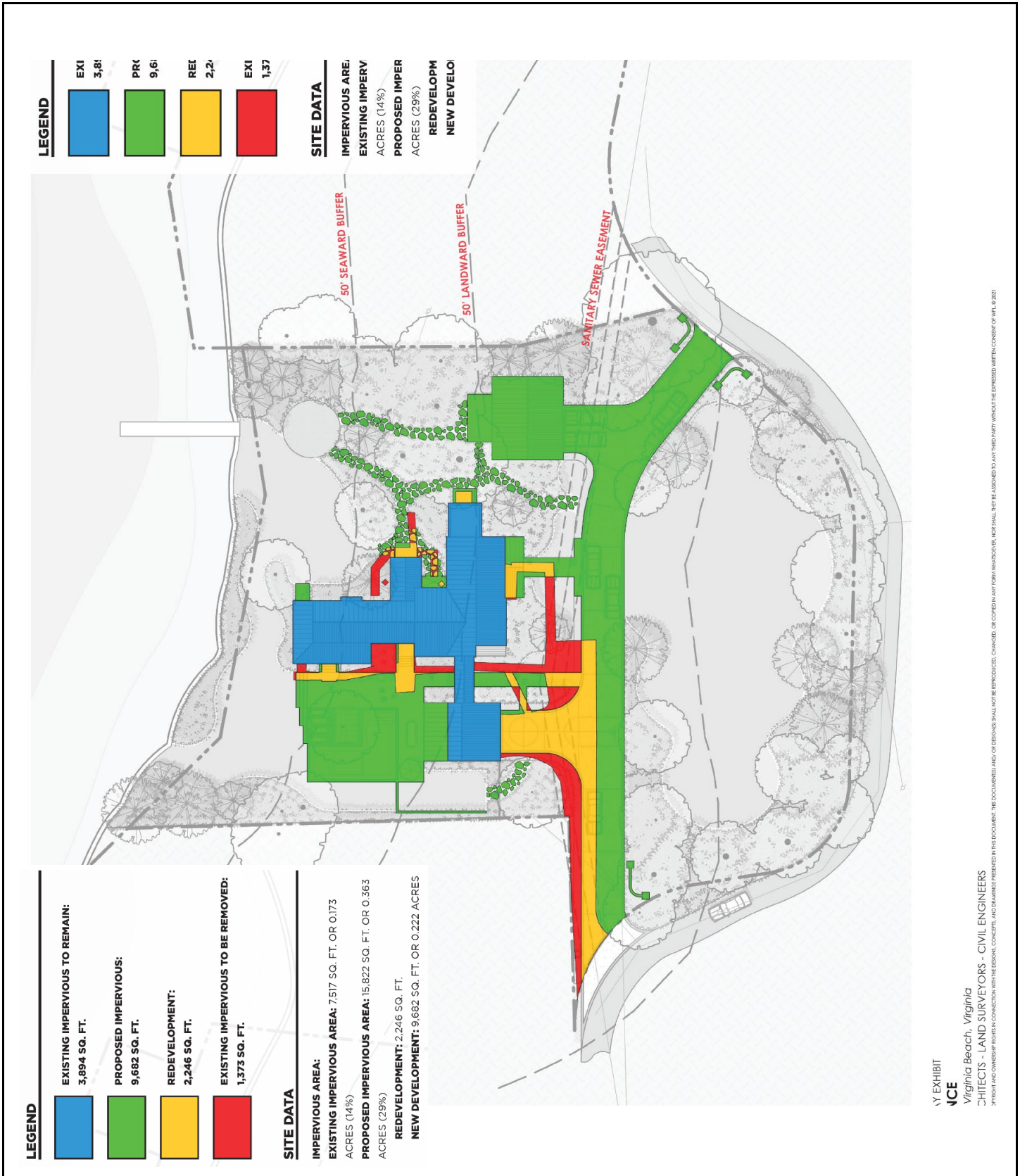
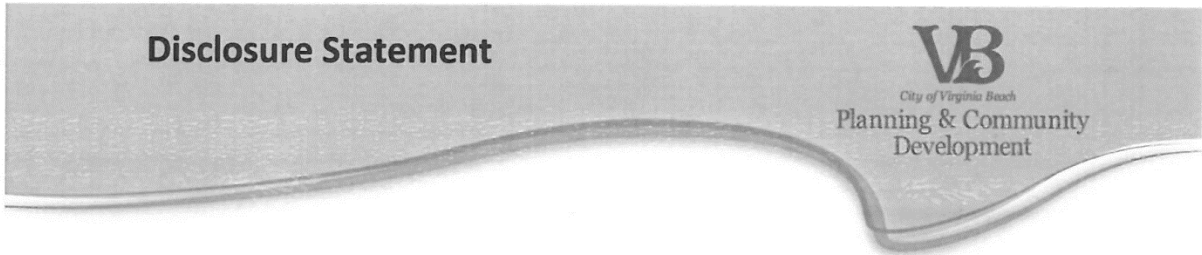


EXHIBIT
JCE
 Virginia Beach, Virginia
 ARCHITECTS - LAND SURVEYORS - CIVIL ENGINEERS

THIS PLAN AND CONSTRUCTION NOTES SHALL BE ASSIGNED TO ANY THIRD PARTY WITHOUT THE EXPRESSED WRITTEN CONSENT OF JCE, INC. ANY CHANGES, CORRECTIONS, AND/OR REVISIONS SHALL NOT BE REPRODUCED, CHANGED, OR COPIED IN ANY FORM WITHOUT THE EXPRESSED WRITTEN CONSENT OF JCE, INC. DATE: APRIL 18, 2021

Disclosure Statement



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

Applicant Disclosure

Applicant Name Lauren Graham

Does the applicant have a representative? Yes No

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

R. Edward Bourdon, Jr. Esquire

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

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

- 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.

Caliber Home Loans, LLC

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

- If **yes**, identify the 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.

WPL & Covington Hendrix Anderson Architects

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

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

Disclosure Statement



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

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

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 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.**

A handwritten signature in black ink, appearing to read 'Lauren Graham', written over a horizontal line.

Applicant Signature

Lauren Graham

Print Name and Title

11/01/2021

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	

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Applicant & Property Owner **Carol F. Voorhees RT**
 Address **685 Thalia Point Road**
 Public Hearing **December 6, 2021**
 City Council District **Lynnhaven**

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a concrete patio with associated walk and driveway expansion.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 45, Page 2

GPIN

1488-01-6268

SITE AREA

15,475 square feet or 0.355 acres (tie-lines)

SITE AREA OUTSIDE OF WATER/WETLANDS

15,475 square feet or 0.355 acres

EXISTING IMPERVIOUS COVER OF SITE

3,807 square feet or 25 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,456 square feet or 29 percent of site

Area of Redevelopment in RPA

123 square feet

Area of New Development in RPA

1,090 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

- Brick walkways
- Patio area with associated brick grill

Construction Details

- Expansion and replacement of driveway
- Concrete walkway to residence
- Brick walkway with associated retaining wall
- Concrete patio at rear of residence

CBPA Ordinance Variance History

On February 27, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a three-story single-family dwelling, concrete driveway, concrete walkway, retaining wall, rip rap at driveway, ground level patio with deck above, enclosed (screened) swimming pool, four foot wide mulch path with stepping stones, approximately three feet of fill in the front yard 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.*
3. *Wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *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.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*
6. *Construction limits shall lie a maximum of 10' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*

8. *If and when the shoreline is rehardened a vertical retaining structure (vinyl bulkhead) shall be constructed in-line with the existing bulkhead, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
9. *The pool shall be constructed prior to or concurrent with the residence.*
10. *Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
11. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized (trees, landscaping and mulched organic surfaces) areas, planting beds, and turf zones.*
12. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
13. *The conditions and approval associated with this variance are based on the site plan prepared by Gallup Surveyors and Engineers dated December 9, 2011 sealed December 21, 2011 by Bruce Gallup.*
14. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
15. *All improvements shall be built into the existing slope with no perimeter fill authorized.*
16. *The proposed walkway, specific to the rear yard, shall be constructed of organic material (mulch), a maximum of 4 feet in width, with steppingstones not to exceed 50% of the path area.*
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 \$622.00 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 679 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
18. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (2,716 sq. ft. x 200% = 5,432 sq. ft.) and 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. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.*
19. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (2,237 sq. ft. x 100% = 2,237 sq. ft.) and 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. The required restoration shall be located within the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required*

trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.

20. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

The February 17, 2012 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Bojac Series (deep, well-drained soils)

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

Shoreline

Shoreline is hardened by a wooden bulkhead reinforced by a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Evaluation of existing canopy tree removal request: Two (2) of the 4 trees requested for removal are within the limits of construction as delineated on the CBPA Exhibit. Staff is of the opinion that the tree outboard of the limits of construction should be preserved. Should the 2 trees requested for removal outboard the limits of construction be removed, Staff is of the opinion that mitigation should be provided at a 3:1 ratio and be in addition to the required buffer restoration associated with the new impervious cover proposed within the RPA.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is currently remodeling the existing single-family residence and desires to redevelop and expand the accessory structures on the lot. Associated with this variance request, the applicant is proposing to redevelop and expand the existing driveway and brick walk along the western side of the residence. These proposed improvements occur in areas currently devoted to turf and located within the 50-foot landward buffer and City's variable width buffer of the Resource Protection Area (RPA). The proposed concrete patio is located within the 50-foot landward and 50-foot seaward portions of the RPA. With the redevelopment of the lot, the applicant is proposing to remove existing impervious cover from the 50-foot seaward buffer. As such, this variance request will provide a reduction of impervious cover within the 50-foot seaward buffer by approximately 100 square feet. Staff is of the opinion that the location of these proposed improvements is appropriate given the existing conditions of this area. The area is currently devoted to turf and more appropriate for development given the flat topography.

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 Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff offers that the proposed redevelopment of this lot will provide an approximate 100 square foot reduction of impervious cover within the 50-foot seaward buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant *"because the lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffer covers over 90 percent of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts in the critical buffer area."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the Lynnhaven River."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"the existing shoreline will be enhanced and expanded upon to compliment the site with bioretention stormwater management placed between the improvements and the waterway to capture and treat runoff prior to discharging into the Lynnhaven River."* Staff is of the opinion that the introduction of buffer restoration and stormwater management facilities seaward of the proposed improvements offers merit towards managing nonpoint source pollution load associated with runoff given that the lot slopes from the street to the Lynnhaven River. Placing these treatment initiatives within the 50-foot seaward buffer maximized capture of runoff potential from all impervious cover on the lot.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting /

buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,090 square feet x 200 percent = 2,180 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.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$249.79 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) This variance and associated conditions **will supersede** the conditions of the Board variance granted February 27, 2012.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 23, 2021, prepared by WPL, signed October 14, 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.

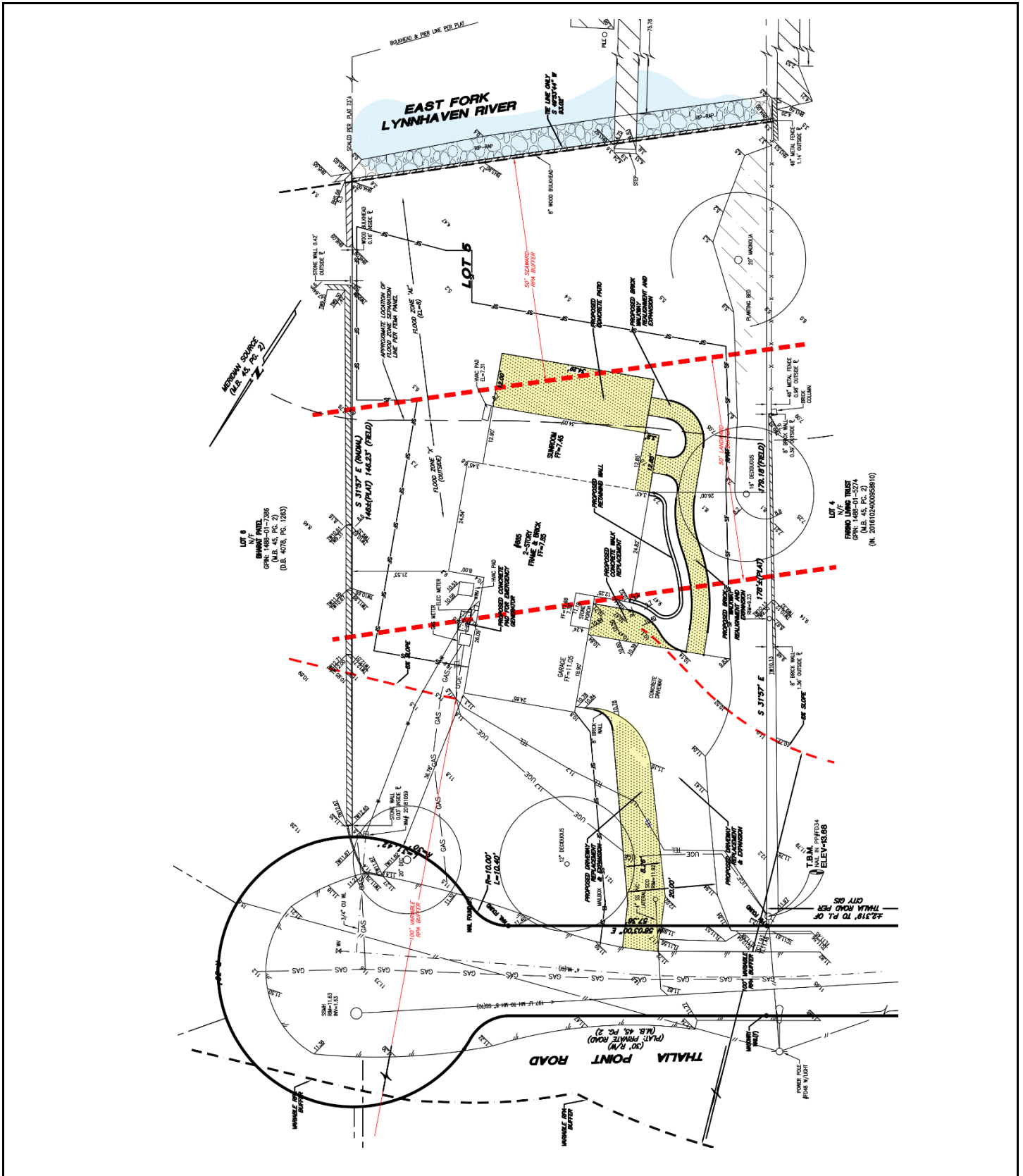
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 – 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 Carol F Voorhees Revocable Trust

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)

Carol F Voorhees, Trustee

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

Prodan Management Group

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.

Carol F. Voorhees, Trustee

Applicant Signature

Carol F Voorhees, Trustee of the Carol F Voorhees Revocable Trust

Print Name and Title

11/01/2021

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



Property Owner & Applicant **South Linkhorn Bay Trust, et al.**
 Address **Lot 196, N. Linkhorn Park Extended, York Lane**
 Public Hearing **December 6, 2021**
 City Council District **Lynnhaven**

Agenda Item
7

Variance Request

Encroachment into the RPA to construct a single-family residence and associated accessory structures, consideration to modify Condition 1 of the November 25, 2002 CBPA Variance for the construction of a single-family residence.

Applicant’s Agent

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

Staff Planner

Cole Fisher

Lot Recordation

Map Book 8, Page 50
 Recorded 2/18/1927

GPIN

2418-47-4423

SITE AREA

37,850 square feet or 0.87 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

27,361 square feet or 0.63 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

3,462 square feet or 12.7 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,462 square feet

Location of Proposed Impervious Cover

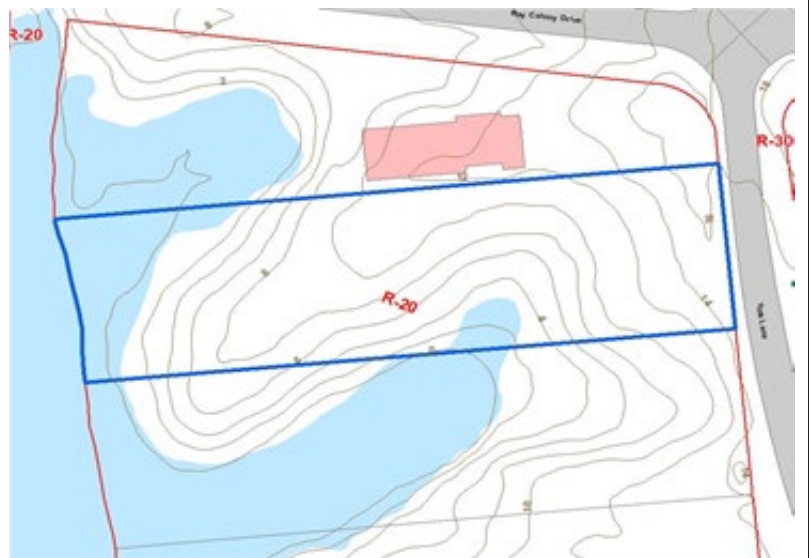
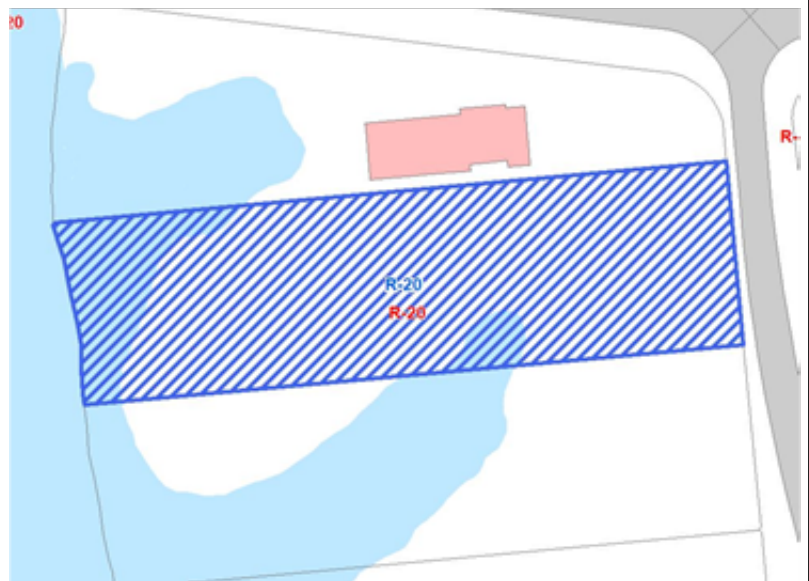
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with attached garage and associated permeable driveway and walk
 - A Board of Zoning Appeals (BZA) variance required for height and encroachment into the front yard setback
- Covered porch, deck at rear of residence and gazebo

CBPA Ordinance Variance History

- This variance request was deferred at the July 23, 2018 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the August 27, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a second time at the August 27, 2018 CBPA Board Public Hearing to the October 22, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a third time at the October 22, 2018 CBPA Board Public Hearing to the November 21, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a fourth time at the November 21, 2018 CBPA Board Public Hearing to the December 17, 2018 CBPA Board Public Hearing.
- This variance request as withdrawn at the December 17, 2018 CBPA Board Public Hearing.

The property owners are the same individuals associated with the above CBPA Ordinance Variance history.

On November 25, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for this parcel to construction a single-family residence with the following conditions:

1. *** No portion of any site improvement shall lie within 75 feet of the designated toe-of-slope / edge of water.*
2. *No portion of the residence or the stormwater management facility shall lie below the existing 5 foot contour elevation.*
3. *All stormwater from impervious cover shall be conveyed to structural stormwater management facilities.*
4. *As offered by the applicant, payment into the Lynnhaven River Oyster Heritage Program based on 25% of proposed impervious cover (789 sq. ft.) Said payment shall be made prior to, or concurrent with site plan approval and shall be in the amount of \$723.00. Said payment shall provide for the equivalent of an approximate 789 square foot, 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
5. *Construction limits, 36" silt fence, shall lie a maximum of 15 feet outboard of improvements. Temporary construction fencing, acceptable to Civil Inspections shall be installed along and adjacent to said construction limits and shall remain in places during all phases of construction.*
6. *A preconstruction meeting is required with Civil Inspections prior to any land disturbance.*
7. *The residence shall be built into the slope with no perimeter fill.*

8. *Tree compensation shall be at a 1:1 ratio.*
9. *All area outboard of construction limits shall be left in a natural state, inclusive of forest floor / leaf litter left intact, and shall be so noted on the site plan.*
10. *If and when the shoreline is hardened, a riprap revetment shall be installed in lieu of a vertical retaining structure (bulkhead). Said condition shall be so noted on the site plan.*
11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
12. *If a deck is constructed on the seaward side of the residence, it shall have under deck treatment installed and shall not be enclosed.*

****NOTE: It is understood that a retreat from wetland resources does not infer justification to permit setback variances. Said condition may warrant a reduction in the size of the residence or redesign.**

The November 25, 2002 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily wooded, undeveloped parcel

- Number of existing canopy trees requested for removal within the RPA: 33
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: Trees being requested for removal are associated with the area of land disturbance for the construction of the proposed improvements. All trees outboard of the limits of construction are shown as being preserved.

Evaluation and Recommendation

Given that the property owners are associated with the 2018 CBPA variance request history for this lot, Staff has provided a portion of that Staff report write-up for the Board's review.

"This variance request has been submitted for a reconsideration to Condition 1 of the November 25, 2002 Chesapeake Bay Preservation Area (CBPA) variance – "No portion of any site improvement shall lie within 75' of the designated toe of slope/edge of water." As stated at the end of the 2002 CBPA variance conditions, "It is understood that a retreat from wetland resources does not infer justification to permit setback variances. Said condition may warrant a reduction in the size of the residence or redesign." Staff is unaware of any reduction in the

size of the residence or redesign of the proposed improvements from that which was presented to the CBPA Board at the time of the November 2002 CBPA Public Hearing.

Staff met with the applicant and applicant’s agent several times regarding the request to eliminate Condition 1 and indicated during those meetings that Staff is not supportive of an increase in impervious cover nor supportive of further encroachment seaward than what was presented to the Board in 2002. To accommodate Staff’s position of no further encroachment seaward, the applicant has shifted the proposed improvements landward, which will require approval by the Board of Zoning Appeals (BZA) for a front yard setback variance for both the proposed front porch and a portion of the proposed garage (an approximate 3 ½ feet encroachment). It should be noted that the initial application submitted in June indicated that a BZA variance for the proposed height of the dwelling would be pursued, and the initial variance request noted the need for the variance on the exhibit. The applicant has also reduced the size of the rear patio. The increase in impervious cover is deemed necessary by the applicant due to a defined architectural footprint for the proposed primary structure with associated porches, as well as an increase in the width of the driveway to provide for adequate access and off-street parking. While the applicant has reduced the amount of impervious cover within the 50-foot seaward buffer by approximately 318 square feet, the overall impervious cover of the variance request has increased by 852 square feet from the 2002 CBPA Board exhibit. As for Condition 1, the strict application of “No portion of any site improvement shall lie within 75’ of the designated toe of slope/edge of water” reduces the amount of overall buildable area from 3,928 square feet to 2,812 square feet, of which the dimensions of said buildable area measured from the 50 foot front yard setback is approximately 15 feet along the southern portion of the parcel and 54 feet along the northern portion of the parcel, resulting in an awkward “building envelop.”

Specific to this variance request, the overall impervious cover has been reduced by 467 square feet from 3,928 square feet as proposed with the 2002 variance request to 3,461 square feet with the current variance request submittal. This reduction in impervious cover was achieved by the reduction in the footprint of the proposed residence and by relocating and reconfiguring the proposed driveway to the north to reduce impacts in the landward buffer. A comparative analysis of the approximate impervious cover associated with the 2002 CBPA Exhibit to the current proposal is provided below.

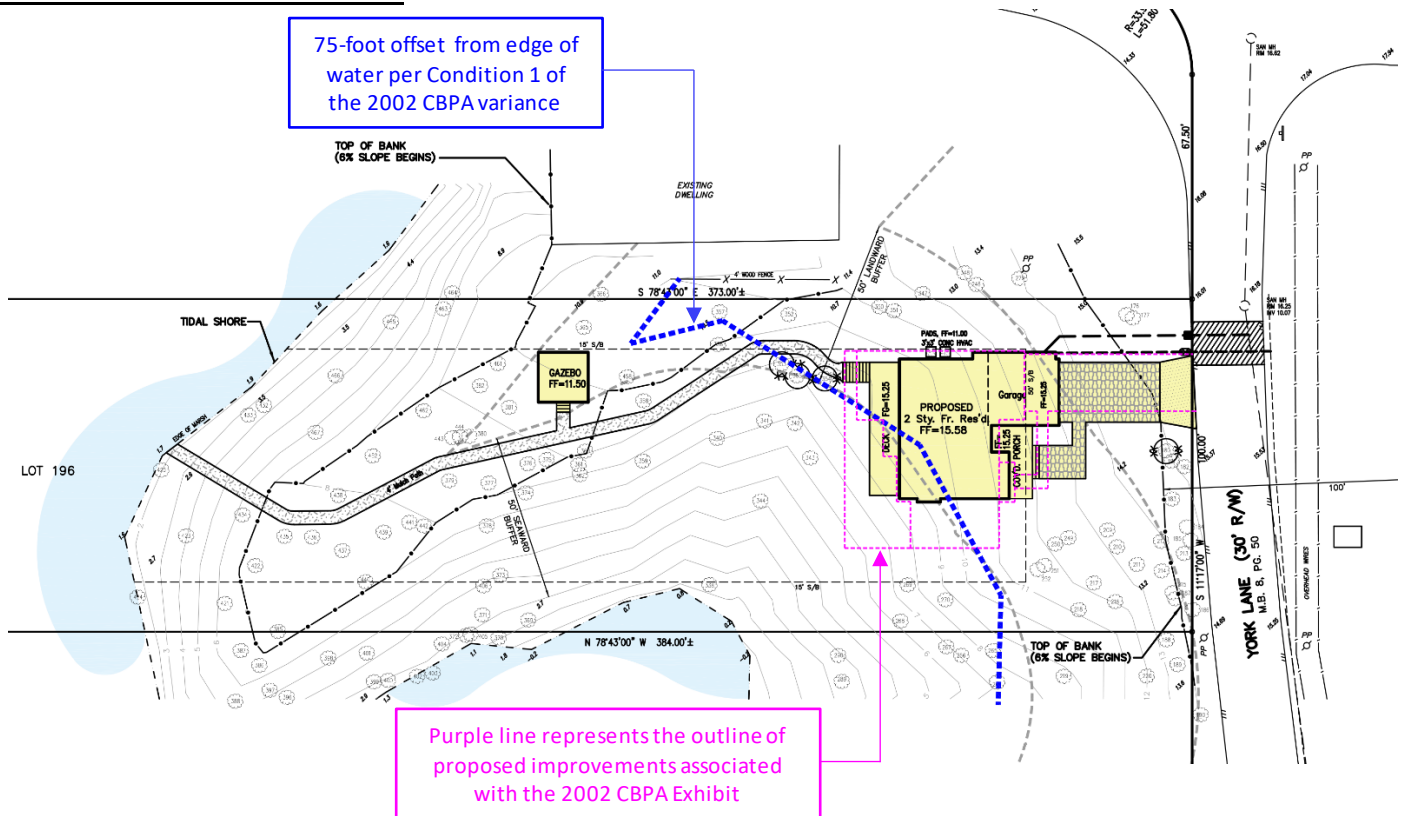
	2021 Exhibit	2002 Exhibit	Difference
Overall Impervious Cover	3,461 square feet	3,928 square feet	467 square feet (<i>reduction</i>)
Primary Structure Footprint	1,700 square feet	2,218 square feet	518 square feet (<i>reduction</i>)
Decks & Porches	850 square feet	746 square feet	104 square feet (<i>increase</i>)
Encroachment	620 square feet	1,118 square feet	498 square feet (<i>reduction</i>)

- *Encroachment calculation provides the amount of square foot encroachment of the proposed improvements into the 75-foot offset from edge of water per condition 1 of the 2002 CBPA Board Variance.*

In addition, with this variance request the applicant is proposing to use a permeable pavement system for the driveway and front walkway. These improvements will be located within the 50-foot landward and City’s variable width buffer of the RPA. Staff is of the opinion that the use of a permeable pavement system offers merit towards promoting infiltration of stormwater into the ground through the incorporation of structural urban best management practices [Appendix F, Sec. 106 (A)(3)]. This area accounts for approximately 712 square feet or 20 percent of the overall impervious cover of the lot.

A comparative analysis of the 2002 CBPA Exhibit to the current variance request is provided below. The blue line on the graphic depicts the 75-foot offset from the edge of water, as required per Condition 1 of the 2002 CBPA variance. The purple line represents the proposed improvements associated with the 2002 CBPA Exhibit and the areas highlighted in yellow represent the proposed improvements associated with this variance request.

COMPARATIVE ANALYSIS EXHIBIT



The applicant’s agent has provided the following comments with respect to the findings 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 existing Lot 196 was legally created decades prior to adoption of the CBPA Ordinance; the Lot was zoned for development and use as a residential building lot for decades prior to adoption of the CBPA Ordinance and the Lot was owned by the current owners (i.e. same family) for decades prior to the 1991 adoption of the CBPA Ordinance and for the entire time the CBPA Ordinance has been in place. The provisions imposed upon this lot and its owners by the 1991 enactment of the CBPA Ordinance, if not mitigated by the Board granting the reasonable relief requested would deprive the owners of the use of their property. The granting of reasonable relief under these circumstances is precisely one of the foundational reasons for the legislative creation and existence of the Chesapeake Bay Preservation Area Board. For these reasons, approval of the requested relief will not confer a “special privilege or convenience” not accorded to other similarly impacted property owners.”* Staff concurs and provides that this exception is intended to ensure that the variance request would not result in an approval that has been denied to others with similar situations. CBPA Variance records indicate that variances have been granted in the Bay Colony Waterfront subdivision with similar improvements.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather; *“As described in Finding #1 above, the variance request is solely the result of conditions and circumstances created by government action in adopting legislation impacting the property owner's right to develop their property in a reasonable manner. The necessity for this variance has in no way been created by the property's owner (i.e., the applicants). The variance request has taken into account the most critical goals and objectives of the Ordinance to the*

greatest degree reasonably practicable while balancing the maintenance of the high quality and character of the community.” Staff adds that this parcel was platted in 1927, prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore placing this property within the 100-foot RPA and the entire parcel within the RPA, as delineated by the City’s variable width buffer.

- 3) The applicant’s agent provides that *“The entire waterfront lot has been defined to be in the RPA buffer under the City’s Ordinance, along with the entirety of York Lane and approximately 60 feet of depth of the property on the opposite side (east side) of York Lane. With the exception of the southwestern corner of the very modestly sized 2-story residence and the minimal encroachment of an access walkway to the water (i.e. water dependent facility) the overwhelming majority of the proposed development is within the 50 foot landward and 100 foot variable width RPA Buffers. Minimization of the necessary encroachment into the RPA Buffer is accomplished by an accompanying request for a variance from the BZA for a front yard setback of 41 feet instead of 50 feet. Without the setback variance a larger percentage of the development would necessarily be located in the more critical 50 foot seaward portion of the RPA.”* Staff concurs and notes that the overall impervious cover of the lot as shown on the CBPA Exhibit is less than 15 percent of the lot area above water and wetlands. In addition, the variance request proposes the use of structural best management practices (permeable pavement) as a means towards promoting infiltration of stormwater into the ground [Appendix F, Sec. 106 (A)(3)]. This area accounts for approximately 712 square feet or 20 percent of the overall impervious cover of the lot.
- 4) The applicant’s agent provides that *“See the responses to findings 1 through 3 above. In addition, similar relief has been granted by the Board on lots in this neighborhood under comparable historical circumstances, including on York Lane, with resulting residential developments which have not been injurious to the neighborhood (which has continued to see skyrocketing property values and demand for homes) nor have these lots which have been developed with similar relief resulted in substantial detriment to either water quality or public welfare.”* Given the small size of the parcel, the proximity of the proposed improvements to tidal features to proposed improvements, Staff is of the opinion that the future property owner’s maintenance of the site and the applicant’s adherence to construction practices designed to protect the site’s sensitive natural resources are essential to providing that this request will not be injurious to the neighborhood or harmful to water quality, nor otherwise detrimental to the public welfare.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load: *“These means are set forth in the submitted plans (permeable pavers, buffer restoration, BMP’s, limits of disturbance, tree protection, erosion control measures, etc.) and these will likely be supplemented by additional conditions recommended by City staff.”* Staff concurs.

Should the Board desire to consider granting this variance request, Staff offers the following 21 recommended conditions relative to the performance standards of the CBPA Ordinance specific to this variance request, as a means towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. A double row of wire reinforced 36” silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and staked in the field for review by City Staff prior to land disturbance.

2. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.
3. All trees shall be preserved outboard of the limits of construction unless they have been specifically approved for removal by the CBPA Variance. All unauthorized vegetation impacts (damage or removal) shall provide a 3:1 replacement ratio.
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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
5. The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
6. A certified arborist report shall be provided for review and approval 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, and the methodology for the removal of the fallen tree within the tidal cove. 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.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed outboard the limits of construction as shown on the CBPA Exhibit.
8. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. The location of the best management practices and construction of said facilities shall be situated so that the critical root zones of existing canopy trees to be preserved are not compromised.
9. 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.
10. The proposed 4-foot-wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
11. The construction of the proposed gazebo shall be performed by hand and materials delivered to the area construction manually to limit the encroachment into the RPA buffer.
12. Under deck treatment of sand and gravel shall be installed underneath the proposed wood deck.
13. A separate planting/buffer restoration plan shall be submitted with the required site plan. The planting/buffer restoration plan shall specify the location, number, and species of plant material to be installed as per the required buffer restoration units. 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.

14. Outboard of the delineated areas of turf as shown on the CBPA Exhibit, all remaining impervious 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 consisting of 16 understory trees, 16 large shrubs and 24 small shrubs.

The required restoration 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. 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.

15. Moderate maintenance shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the RPA buffer.
16. Where mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management thereby permitting sunlight to interface with tidal fringe marsh.
17. A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
18. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
19. The conditions and approval associated with this variance are based on the exhibit plan dated October 22, 2021, prepared by Gallup Surveyors and Engineers, signed October 22, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
20. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$793.37 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
21. This variance and associated conditions will supersede the conditions of the Board variance granted November 25, 2002.

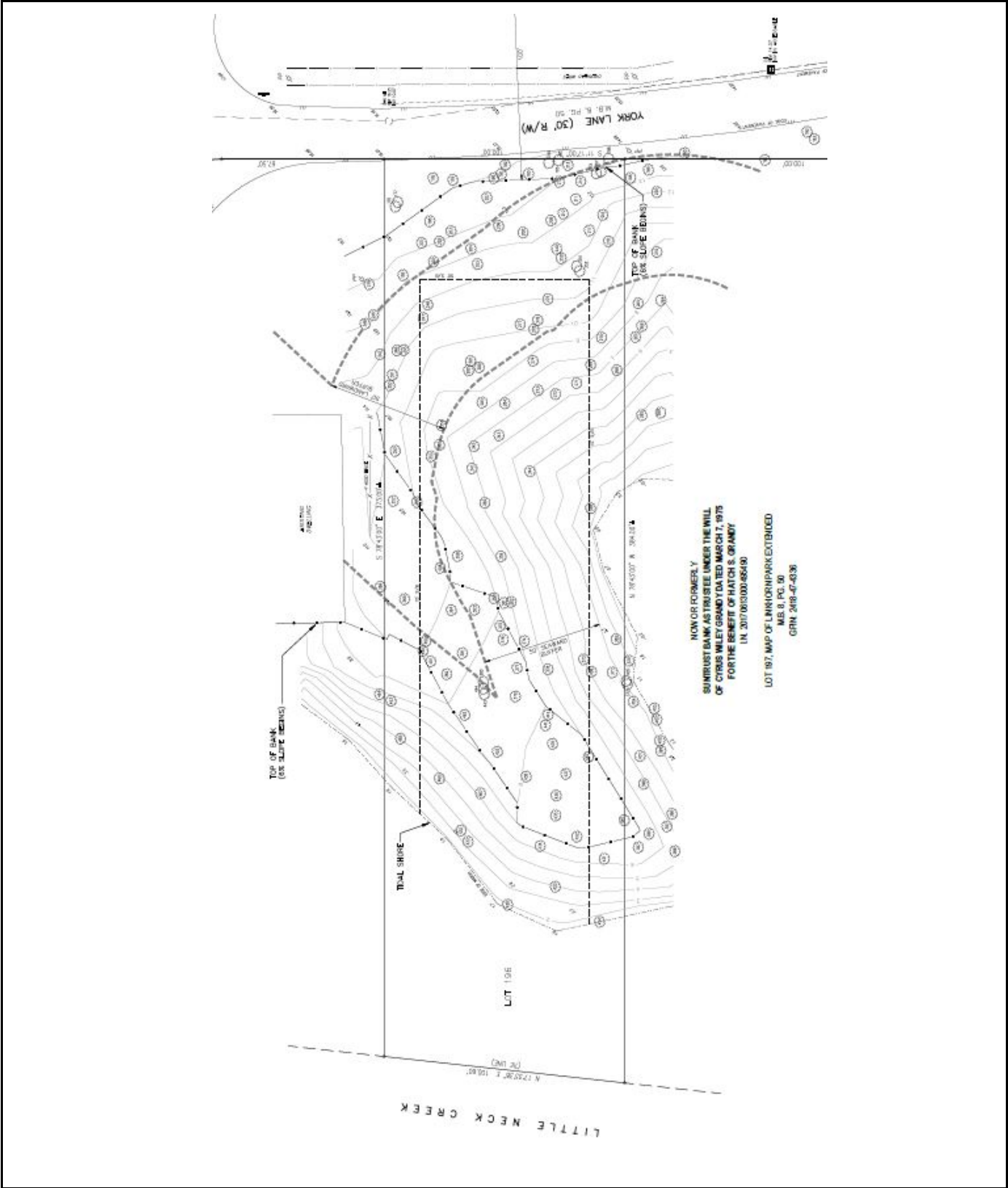
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

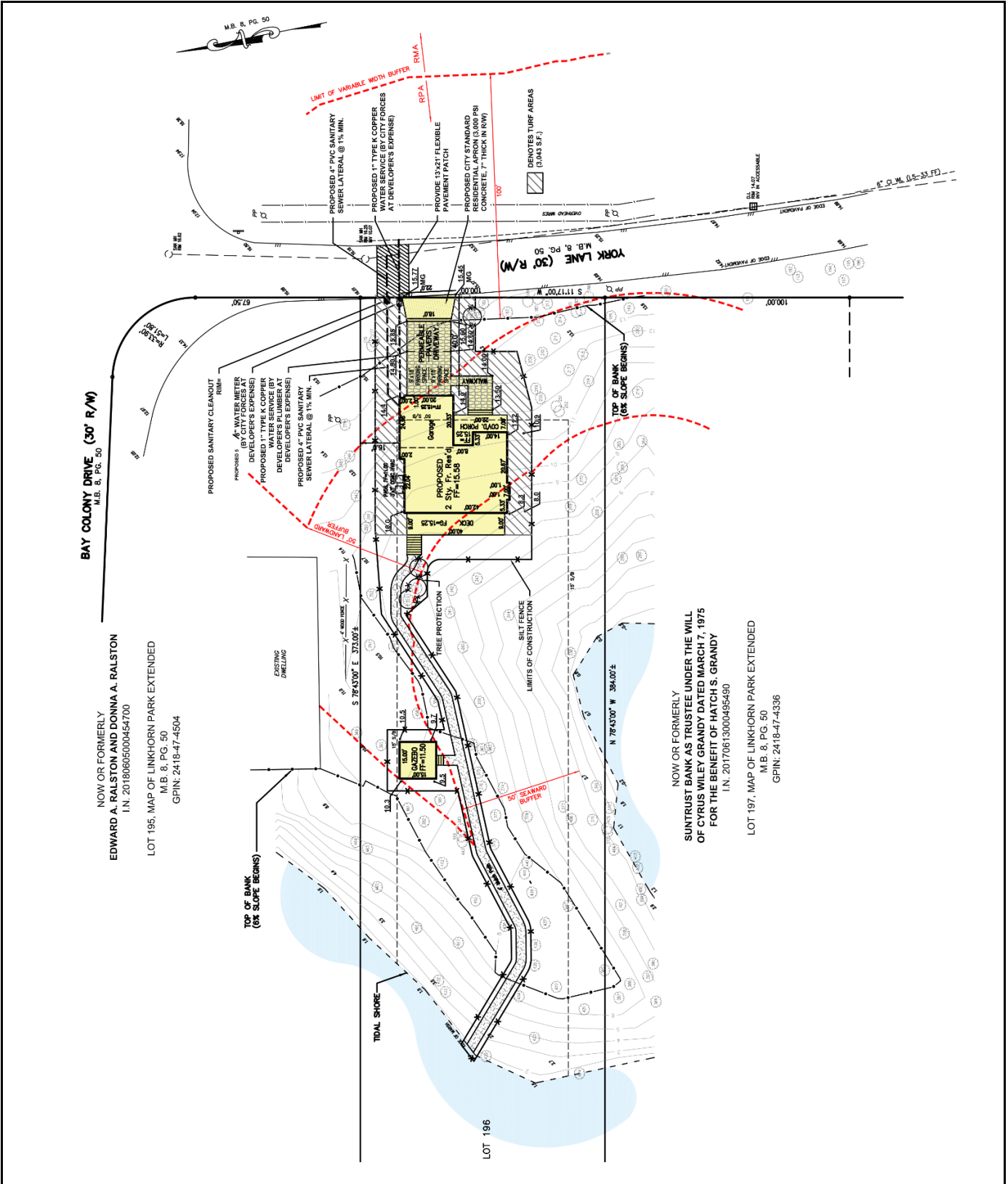
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – December 6, 2021 Proposed Improvements



Disclosure Statement

dotloop signature verification: <http://dotloop.us/1xCu2ipq6XEu>

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 South Linkhorn Bay Trust

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Eddie Bourdon

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)

Hartwell Gary III, Trustee Sallie Carter Tyler, Caroline Tyler Watson, Nellie Tyler McCahey,
Cyrus W. Grandy V, Grandy Trust FBO Carter Beckett, Trust Bank, F/k/a Suntrust,
Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

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

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

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

Disclosure Statement

dotloop signature verification: d1p.us/1xCu-2ipq-6XEu

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.

Susan Pender, BHHS Towne, Laurin Watson, BHHS Towne and Jon Decker, BHHS Towne

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.

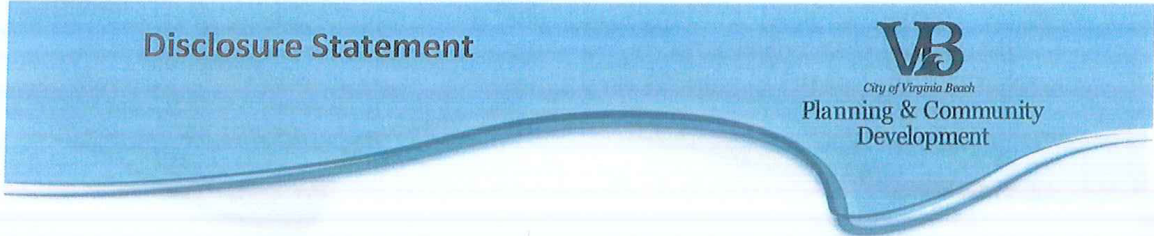
5. Is there any other pending or proposed purchaser of the subject property? Yes No

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

Stephen Alexander Homes LLC

Disclosure Statement

dotloop signature verification: dtp.us/1xCu2ipq-6XEu



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.

Stephen Alexander Homes LLC Steve B Quick III, Stephen B Quick IV, *Keith Alexander Quick*

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.

Gallup Surveys & Engineers - David Butler

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, Ahearn, Levy PC - Eddie

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.

Sallie Carter Tyler
02/02/2020 11:45 AM
 T0504RLJ8TJNES

Caroline Tyler Watson
02/02/2020 1:46 PM EST
 W021-04X-WCF-32001

Hartwell Gary III
02/02/2020 1:47 PM EST
 W021-04X-WCF-32001

Nelle Tyler McCabe
02/02/2020 1:47 PM EST
 W021-04X-WCF-32001

Cyrus W Grandy V
02/02/2020 1:47 PM EST
 W021-04X-WCF-32001

David Fenton, VP, Trust Bank, f/k/a Suntrust
02/02/2020 1:47 PM EST
 01W-04X-WCF-32001

Applicant Signature

Trust FBO Carter Bernert, Trust Bank, f/k/a Suntrust, Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

Print Name and Title South Linkhorn Bay Trust, Hartwell Gary III, Trustee Sallie Carter Tyler, Caroline Tyler Watson, Nelle Tyler McCabe, Cyrus W. Grandy V Grandy Trust FBO Carter Bernert, Trust Bank, f/k/a Suntrust, Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

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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Property Owner **South Linkhorn Bay Trust, et al.**
 Address **Lot 197, N. Linkhorn Park Extended, York Lane**
 Public Hearing **December 6, 2021**
 City Council District **Lynnhaven**

Agenda Item

8

Variance Request

Encroachment into the RPA to construct a single-family residence and associated accessory structures, consideration to modify Condition 7 of the December 23, 2002 Chesapeake Bay Preservation Area (CBPA) variance to construct a single-family residence.

Applicant’s Agent

Eddie Bourdon
 Sykes, Bourdon, Ahern, Levy PC

Staff Planner

Cole Fisher

Lot Recordation

Map Book 8, Page 50
 Recorded 2/18/1927

GPIN

2418-47-4336 (2418-47-4336)

SITE AREA

38,950 square feet or 0.89 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

15,954 square feet or 0.37 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,119 square feet or 25.8 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

4,119 square feet

Location of Proposed Impervious Cover

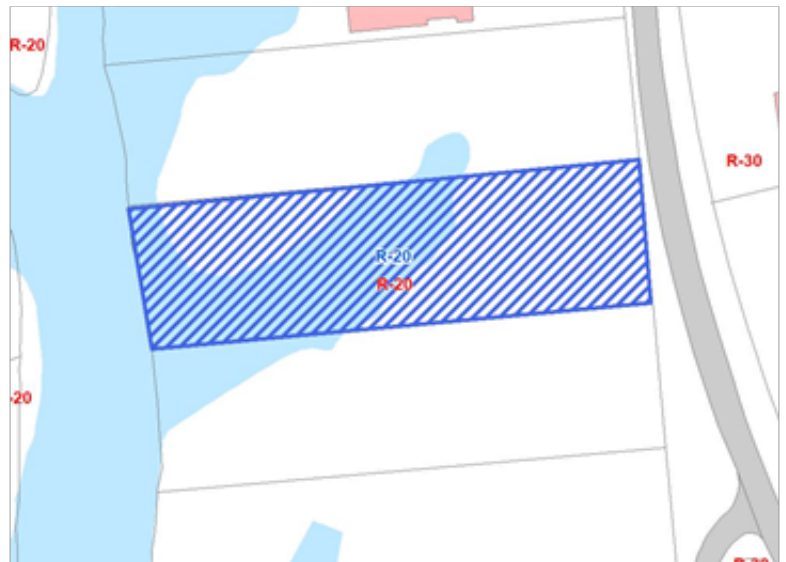
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated driveway and walks
 - A Board of Zoning Appeals (BZA) variance required for height and encroachment into the front yard setback
- Covered 2-story wood deck
- Retaining wall – multiple locations

CBPA Ordinance Variance History

- This variance request was deferred at the July 23, 2018 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the August 27, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a second time at the August 27, 2018 CBPA Board Public Hearing to the October 22, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a third time at the October 22, 2018 CBPA Board Public Hearing to the November 21, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a fourth time at the November 21, 2018 CBPA Board Public Hearing to the December 19, 2018 CBPA Board Public Hearing.
- This variance request was withdrawn at the December 19, 2018 CBPA Board Public Hearing.

The property owners are the same individuals associated with the above CBPA Variance history.

On December 23, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for this parcel to construction a single-family residence with the following conditions:

1. *Dual erosion and sedimentation control devices shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover is established. In addition, a temporary heavy-duty construction fence, acceptable to Civil Inspections, shall be installed adjacent to said E&S Controls and shall remain in place during all phases of construction.*
2. *The project shall be built into the slope. No perimeter fill will be permitted.*
3. *If and when the shoreline is hardened, a rip-rap revetment shall be installed in lieu of a vertical retaining structure (bulkhead). Said condition shall be so noted on the site plan.*
4. *Under deck treatment of sand and gravel shall be installed.*
5. *Stormwater from all impervious cover shall be conveyed to structural stormwater management facilities.*
6. *Construction limits shall lie a maximum of 15 feet outboard of improvements.*
7. *Structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water.*

8. *Payment into the Lynnhaven Oyster Heritage Program shall be made prior to or concurrent with site plan approval. Said payment shall be based on 25% of the proposed impervious cover (638 square feet) and shall be in the amount of \$585.59. Payment will provide for an approximate 638 square foot, 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
9. *All areas outside construction limits shall be left in a natural state, inclusive of the forest floor (leaf litter) left intact. Said conditions shall be so noted on the site plan.*
10. *Tree compensation shall be at a 1:1 ratio. A minimum of 15 trees shall be installed.*
11. *A pre-construction meeting is required with Civil Inspections prior to any land disturbance.*
12. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The December 23, 2002 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily wooded, undeveloped parcel

- Number of existing canopy trees requested for removal within the RPA: 22
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: Trees being requested for removal are associated with the area of land disturbance for the construction of the proposed improvements. All trees' outboard of the limits of construction are shown as being preserved.

Evaluation and Recommendation

Given that the property owners are associated with the 2018 CBPA variance request history for this lot, Staff has provided a portion of that Staff report for the Board's review.

"This variance request has been submitted for a reconsideration to Condition 7 of the December 23, 2002 Chesapeake Bay Preservation Area (CBPA) variance – "Structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water." Initially, the current CBPA variance for this parcel was heard in November of 2002 with the adjoining parcel, Lot 196. At that time, the variance request for this parcel, Lot 197, was deferred and a modified CBPA exhibit presented to the CBPA Board. The revised CBPA exhibit was approved in

December of 2002 however, Staff has evaluated both the November and December CBPA exhibits presented against condition 7 of the December 2002 variance and neither exhibits comply with the condition 7.

Staff met with the applicant and applicant’s agent several times regarding the request to eliminate Condition 7 and indicated during those meetings that Staff is not supportive of an increase in impervious cover nor supportive of further encroachment seaward than what was presented to the Board in November of 2002. To accommodate Staff’s position of no further encroachment seaward, the applicant has shifted the proposed improvements landward, which will require approval by the Board of Zoning Appeals (BZA) for a front yard setback variance for both the proposed front porch and a portion of the proposed single-family residence – approximately a 4-foot further encroachment from the initial submittal. It should be noted that the initial application submitted in June indicated that a BZA variance for the proposed height of the dwelling and front yard setback would be pursued, and the initial variance request noted the need for the variance on the exhibit. As stated with the previous agenda item, the increase in impervious cover, associated with this variance request is deemed necessary by the applicant due to a defined architectural footprint for the proposed primary structure with associated porches, as well as an increase in the width of the driveway to provide for adequate access and off-street parking. While the applicant has reduced the amount of impervious cover within the 50-foot seaward buffer by approximately 458 square feet, the overall impervious cover of the variance request has increased by 1,384 square feet from the December 2002 CBPA Board exhibit. As for Condition 7, the strict application of no “structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water” reduces the amount of overall buildable area from 3,433 square feet to 2,848 square feet.

Although the conditions of the December 2002 CBPA variance impose strict development criteria on this parcel, Staff is of the opinion that just because this parcel was platted prior to the adoption of the City’s CBPA Ordinance and Subdivision Ordinance that the development of the parcel should not solely be debated over the adoption date of these Ordinances but rather the fact that there is approximately 14,200 square feet of upland present from the delineated seaward limits of the 50 foot seaward buffer to the front property line on the R20 parcel.”

Specific to this variance request the overall impervious cover has been increased by 141 square feet from 3,978 square feet as provided with the 2002 variance request to 4,119 square feet with the current variance request submittal. Staff provides that condition 7 of the 2002 CBPA Variance, “structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water” reduced the buildable area of the lot, those areas of the lot not withing a side or front yard setback to approximately 1,945 square feet. A comparative analysis of the approximate impervious cover associated with the 2002 CBPA Exhibit to the current proposal is provided for the Board’s deliberation.

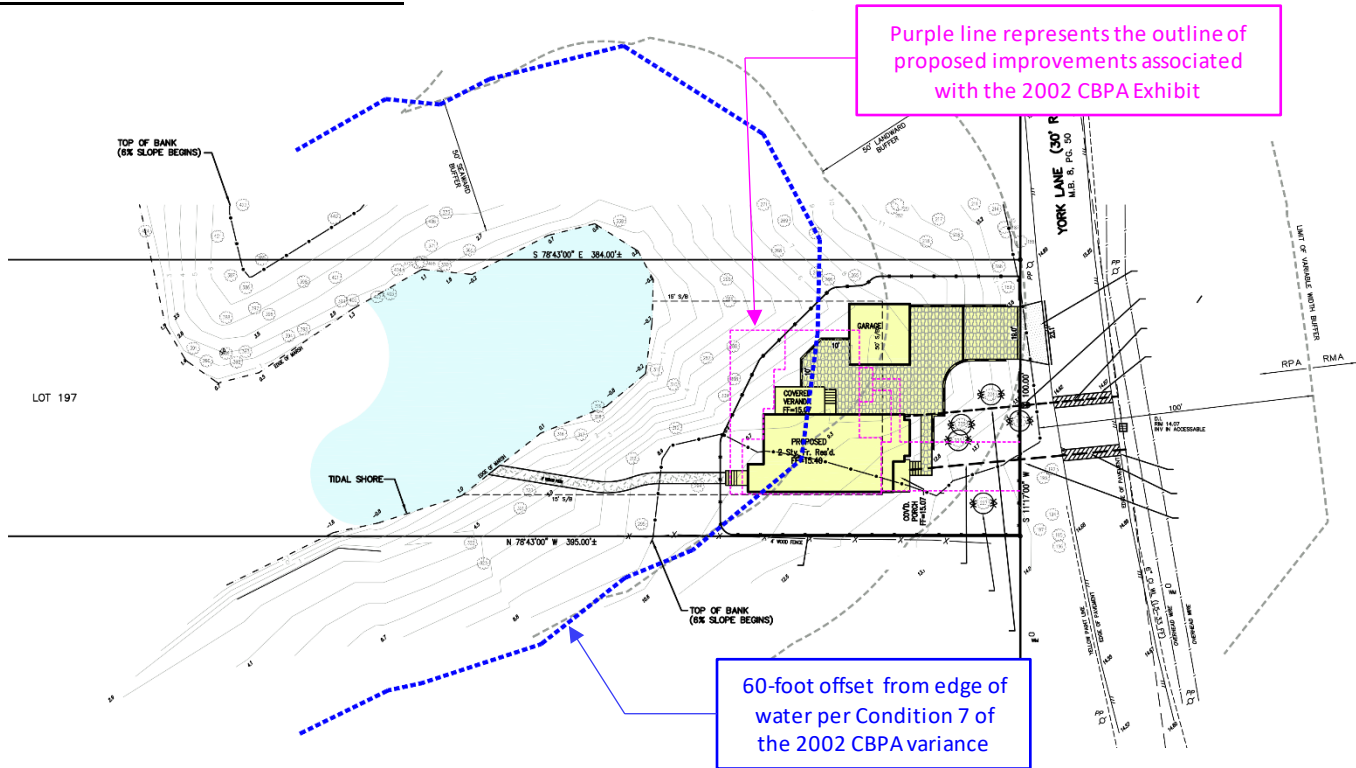
	2021 Exhibit	2002 Exhibit	Difference
Overall Impervious Cover	4,119 square feet	3,978 square feet	141 square feet (increase)
Primary Structure Footprint	1,950 square feet	2,208square feet	258 square feet (reduction)
Patios, Porches, Etc.	1,017 square feet	780 square feet	237 square feet (increase)
Encroachment	600 square feet	1,570 square feet	970 square feet (reduction)

- Encroachment calculation provides the amount of square foot encroachment of the proposed improvements into the 60-foot offset from edge of water per condition 7 of the 2002 CBPA Board Variance.

With this variance request, the applicant is proposing to use a permeable pavement system for the proposed driveway front walkway, and patio area. These proposed improvements occur within the 50-foot seaward and 50-foot landward buffers of the RPA. Staff is of the opinion that the use of a permeable pavement system offers merit towards promoting infiltration of stormwater into the ground through the incorporation of structural urban best management practices [Appendix F, Sec. 106 (A)(3)]. This area accounts for approximately 1,822 square feet or 44 percent of the overall impervious cover of the lot.

A comparative analysis of the 2002 CBPA Exhibit to the current variance request is provided below. The blue line on the graphic depicts the 60-foot offset from the edge of water, as required per Condition 7 of the 2002 CBPA variance. The purple line represents the proposed improvements associated with the 2002 CBPA Exhibit and the areas highlighted in yellow represent the proposed improvements associated with this variance request.

COMPARATIVE ANALYSIS EXHIBIT



Specific to this parcel, it is important to note that there is approximately 15,954 square feet of upland from the delineated edge of water to the front property line on the R-20 parcel to locate a new home, decks, driveway, etc. As such, the applicant’s agent has provided the comments below relative to the findings of the CBPA Ordinance specific to this variance request and believes that the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance 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 *“the existing Lot 197 was legally created decades prior to adoption of the CBPA Ordinance; the Lot was zoned for development and use as a residential building lot for decades prior to adoption of the CBPA Ordinance and the Lot was owned by the current owners (i.e. same family) for decades prior to the 1991 adoption of the CBPA Ordinance and for the entire time the CBPA Ordinance has been in place. The provisions imposed upon this lot and its owners by the 1991 enactment of the CBPA Ordinance, if not mitigated by the Board granting the reasonable relief requested would deprive the owners of the use of their property. The granting of reasonable relief under these circumstances is precisely one of the foundational reasons for the legislative creation and existence of the Chesapeake Bay Preservation Area Board. For these reasons, approval of the requested relief will not confer a “special privilege or convenience” not accorded to other similarly impacted property owners.”* Staff concurs.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather; *“As described in Finding #1 above, the variance request is solely the result of conditions and circumstances created by government action in adopting legislation impacting the property owner's right to develop their property in a reasonable manner. The necessity for this variance has in no way been created by the property's owner (i.e., the applicants). The variance request has taken into account the most critical goals and objectives of the Ordinance to the greatest degree reasonably practicable while balancing the maintenance of the high quality and character of the community.”* Staff concurs.

- 3) The applicant’s agent provides that *“The entire buildable area of this waterfront lot has been defined to be in the 100-foot RPA buffer under the City's Ordinance. The majority of the proposed development is within the 50-foot landward RPA Buffers. Minimization of the necessary encroachment into the 50-foot seaward portion of the RPA Buffer is accomplished by an accompanying request for a variance from the BZA for a front yard setback of 40 feet instead of 50 feet. Without the setback variance a larger percentage of the development would necessarily be located in the more critical 50-foot seaward portion of the RPA.”* Staff acknowledges the statement provided by the applicant’s agent and notes that the overall impervious cover of the lot as shown on the CBPA Exhibit is 25.8 percent of the lot area above water and wetlands. In addition, the variance request proposes the use of structural best management practices (permeable pavement) as a means towards promoting infiltration of stormwater into the ground [Appendix F, Sec. 106 (A)(3)]. This area accounts for approximately 1,822 square feet or 44 percent of the overall impervious cover of the lot.

- 4) The applicant’s agent provides that *“See the responses to findings 1 through 3 above. In addition, similar relief has been granted by the Board on lots in this neighborhood under comparable historical circumstances, including on York Lane, with resulting residential developments which have not been injurious to the neighborhood (which has continued to see skyrocketing property values and demand for homes) nor have these lots which have been developed with similar relief resulted in substantial detriment to either water quality or public welfare.”* Staff concurs that similar variances have been granted by the Board in this neighborhood. Staff is of the opinion the variance request provides merit towards being in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood, nor of substantial detriment to water quality subject to the recommended conditions provided in this report.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load: *“these means are set forth in the submitted plans (permeable pavers, buffer restoration, BMPS’s limits of disturbance, tree protection, erosion control measures, etc.) and these will likely be supplemented by additional conditions recommended by City staff.”* Staff concurs.

Should the Board desire to consider granting this variance request, Staff offers the following 19 recommended conditions relative to the performance standards of the CBPA Ordinance specific to this variance request, as a means towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. A double row of wire reinforced 36” silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and staked in the field for review by City Staff prior to land disturbance.

2. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.
3. All trees shall be preserved outboard of the limits of construction unless they have been specifically approved for removal by the CBPA Variance. All unauthorized vegetation impacts (damage or removal) shall provide a 3:1 replacement ratio.
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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
5. The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
6. A certified arborist report shall be provided for review and approval 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, and the methodology for the removal of the fallen tree within the tidal cove. 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.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed outboard the limits of construction as shown on the CBPA Exhibit.
8. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. The location of the best management practices and construction of said facilities shall be situated so that the critical root zones of existing canopy trees to be preserved are not compromised.
9. 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.
10. The proposed 4-foot-wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
11. A separate planting/buffer restoration plan shall be submitted with the required site plan. The planting/buffer restoration plan shall specify the location, number, and species of plant material to be installed as per the required buffer restoration units. 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.
12. Outboard of the delineated areas of turf as shown on the CBPA Exhibit, all remaining impervious 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 consisting of 20 understory trees, 20 large shrubs and 30 small shrubs.

The required restoration 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. 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.

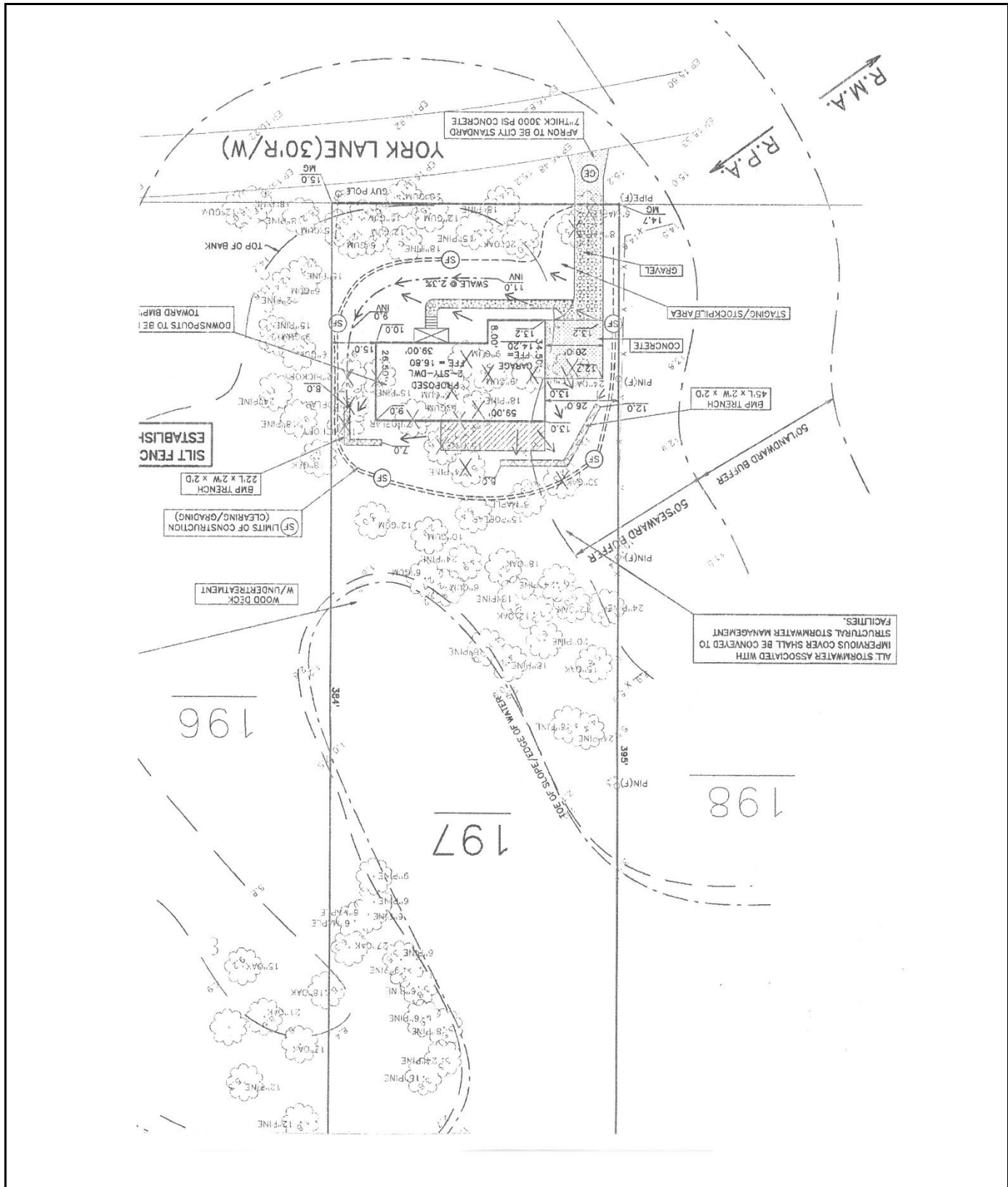
13. Moderate maintenance shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the RPA buffer.
14. Where mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management thereby permitting sunlight to interface with tidal fringe marsh.
15. A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
16. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
17. The conditions and approval associated with this variance are based on the exhibit plan dated October 22, 2021, prepared by Gallup Surveyors and Engineers, signed October 22, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
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 \$943.93 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
19. This variance and associated conditions will supersede the conditions of the Board variance granted December 23, 2002.

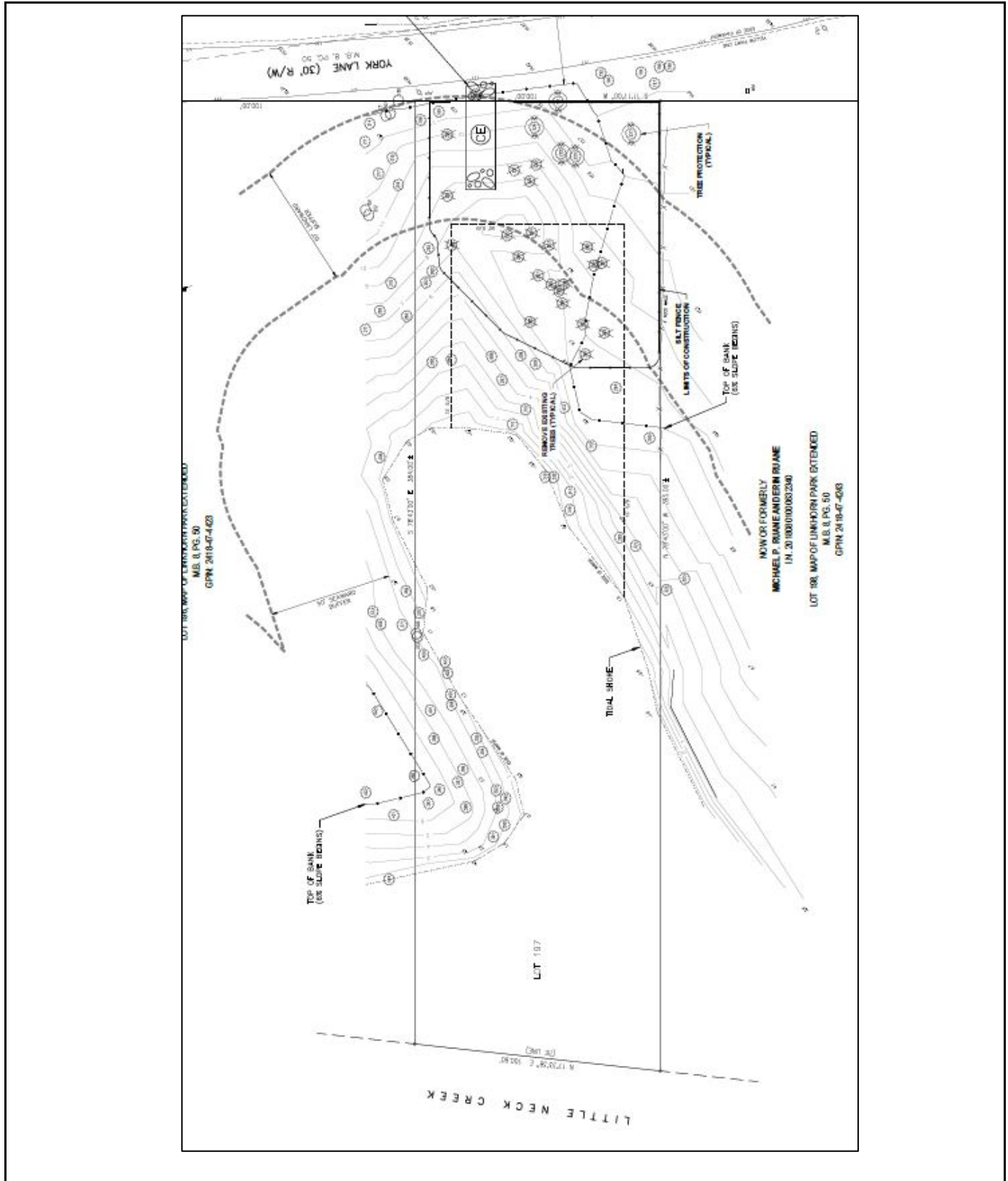
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

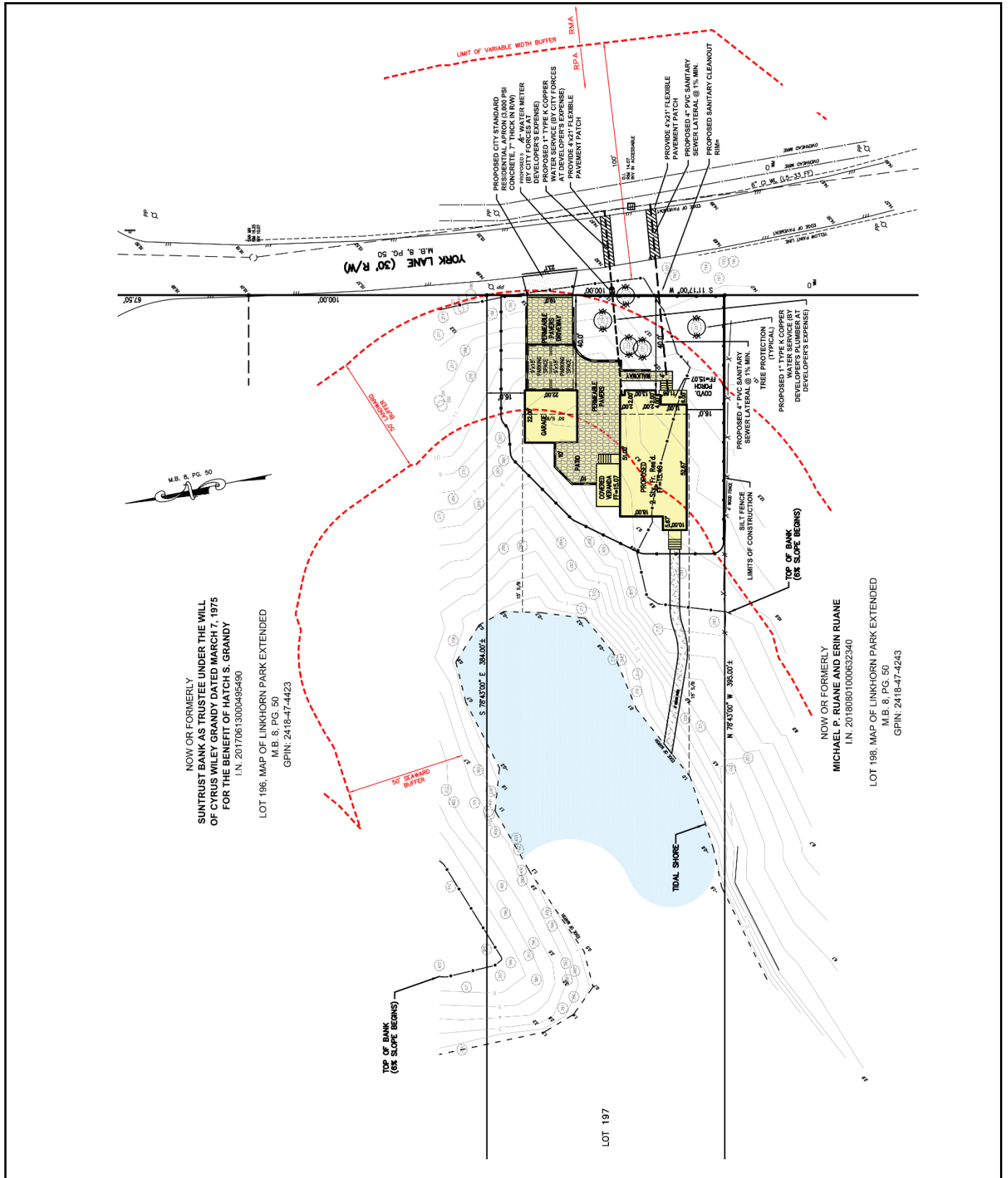
Site Aerial







CBPA Exhibit – Proposed Improvements



Disclosure Statement

dotloop signature verification: dtp.us/1xCu-2ipq-6XEu



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 South Linkhorn Bay Trust

Does the applicant have a representative? Yes No

• If yes, list the name of the representative.
Edelie Bourdon

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)
Hartwell Gary III, Trustee Sallie Carter Tyler, Caroline Tyler Watson, Nellie Tyler McGhee,
Cyrus W. Grandy V., Grandy Trust FBO Carter Bennett, Trust Bank, F/k/a Suntrust,
Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

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

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

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

Revised 11.09.2020

Disclosure Statement

dotloop signature verification: d1p.us/1xCu-Zipq-6XEu

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.

Susan Pender, BHHS Towne, Laurin Watson, BHHS Towne and Jon Decker, BHHS Towne

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.

Stephen Alexander Homes LLC

Disclosure Statement

dotloop signature verification: dhp.us/1xCu-2ipq-6XEu



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.

Stephen Alexander Homes LLC Steve B Quick III, Stephen B Quick IV, *Keith Alexander Quick*

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.

Gallap Surveyors & Engineers - David Butler

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, Alcorn, Levy PC - Eddie

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.

Sallie Carter Tyler
dotloop verified
 10/20/21 11:46 AM
 10504RLR1AS7IME

Caroline Tyler Watson
dotloop verified
 10/20/21 2:44 PM EDT
 W816-0908-0004

Hartwell H. Gary III
dotloop verified
 10/20/21 2:44 PM EDT
 W216-7322-9092-4008

Nelle Tyler McCabe
dotloop verified
 11/02/21 1:00 PM EDT
 R0722UR-0303-0812

Cyrus W. Grandy V
dotloop verified
 10/20/21 5:22 PM EDT
 ETN0-02234006-0198

Grandy Trust Bank, f/k/a Suntrust
dotloop verified
 11/01/21 3:02 PM EDT
 0916-9462-0020-0772

Applicant Signature

Trust FBO Carter Bernert, Trust Bank, f/k/a Suntrust, Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

Print Name and Title

South Linkhorn Bay Trust, Hartwell Gary III, Trustee Sallie Carter Tyler, Caroline Tyler Watson, Nelle Tyler McCabe, Cyrus W. Grandy V Grandy Trust FBO Carter Bernert, Trust Bank, f/k/a Suntrust, Trustee Grandy Trust FBO Hatch Grandy, Trust Bank, f/k/a Suntrust, Trustee

Date

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

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

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

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

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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a paver patio and walk.

Applicant's Agent

Joel MacDonald
 Ashton Landscaping

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 180, Page 5
 Recorded 10/11/1981

GPIN

2409-05-6860

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

145 square feet

Area of New Development in RPA

500 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Paver patio with associated retaining wall walkway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Flood Zones X and VE: Base Flood Elevation (BFE): 9

Soil Type(s)

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

Shoreline

Shoreline is hardened by a bulkhead along a sandy beach on Broad Bay.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

The land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required. Furthermore, the applicant proposes to install bioretention planting beds to further prevent any increase in nonpoint source pollution load in Broad Bay.

Evaluation and Recommendation

The applicant is proposing to construct a new paver patio with a walkway, fire pit area, and retaining wall in the rear yard adjacent to an existing wood deck. This request will add approximately 500 square feet of new impervious cover in the landward and seaward portions of the RPA with approximately 145 square feet of redevelopment. The proposed walkway will extend from the northwestern portion of the existing residence and wrap around to the rear yard to connect with the proposed paver patio area. The applicant also proposes a small retaining wall seaward of the patio to stabilize the bank along this portion of the property and to assist with capture of stormwater runoff. Staff is of the opinion that the additional impervious cover will not cause a substantial increase in runoff nor be detrimental to the water quality of the Chesapeake Bay, due to the installation of new bioretention planting beds on site. Given the minimal land disturbance associated with this request, Staff supports this variance as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this request is consistent with other homes in this neighborhood."* Staff acknowledges the statement provided by the applicant's agent and offers that several lots along Haversham Close have accessory structure encroachments into the 100-foot RPA buffer.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the lot was platted before the CBPA was adopted."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"it's a modest request for a paver patio, small retaining wall to retain patio and paver walkway."* Staff is of the opinion that the proposed improvements, as situated in the rear yard provides merit towards being the minimum necessary to afford relief given the small size of the patio area and walkway, and the layout and location of all improvements in close proximity to the existing single-family residence.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the back yard is designed to achieve stormwater management of the existing runoff to improve water quality."* Staff offers the recommended conditions below as a means towards this variance request being not of substantial detriment to water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"bioretention bed will treat stormwater runoff before it enters Broad Bay."* Staff concurs, subject to the recommended conditions below.

Given the above comments, Staff recommends the following 6 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **500 square feet x 200 percent = 1,000 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 6 understory trees, and 9 small shrubs.**

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

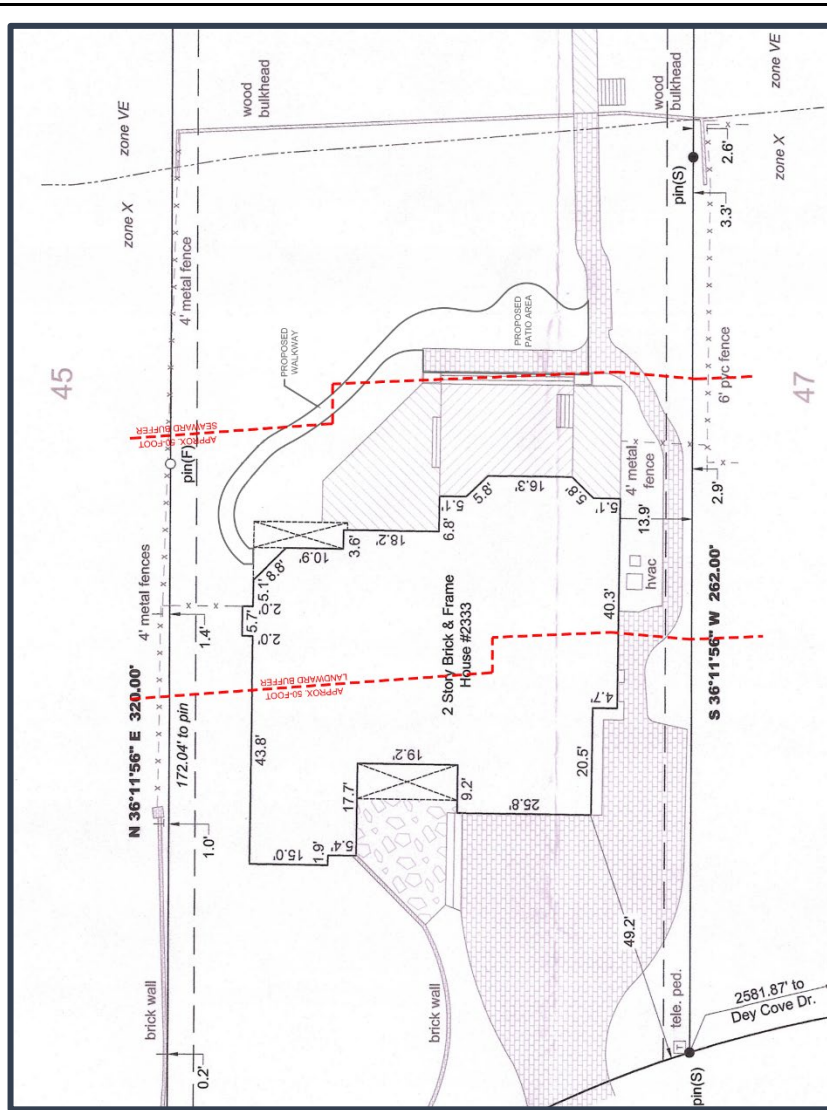
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and 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.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
6. No perimeter fill 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.

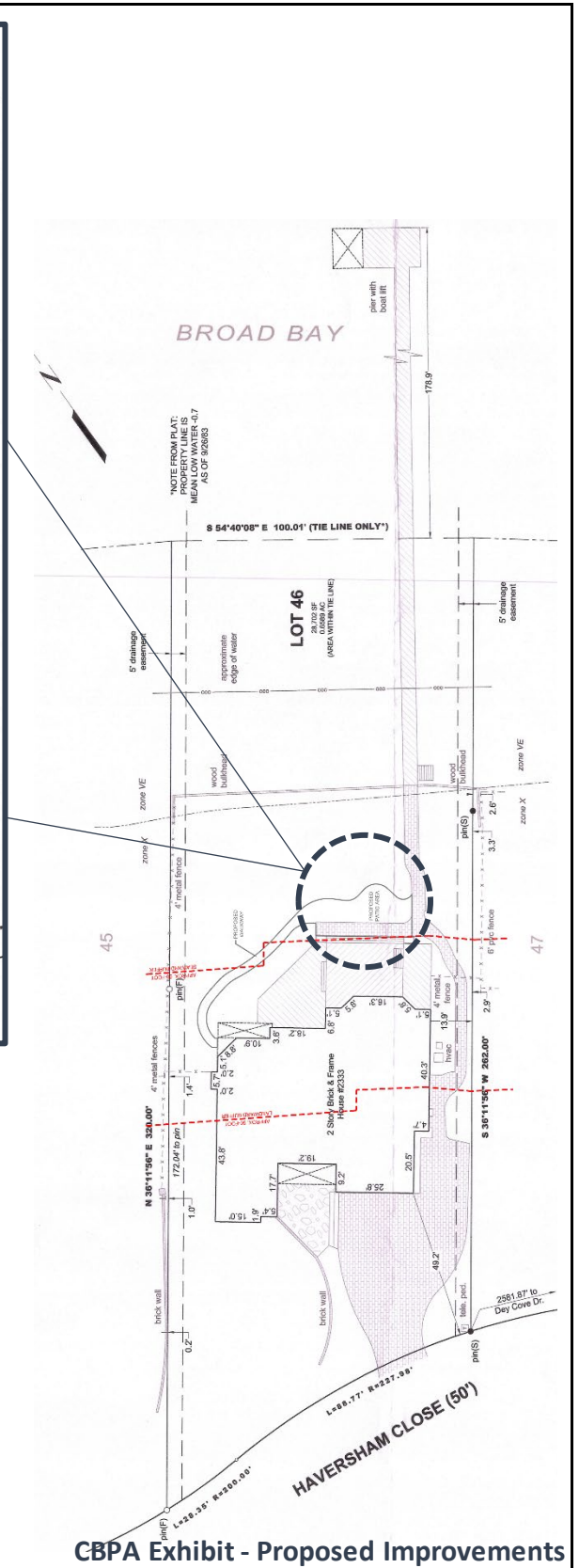
Site Aerial



Proposed Improvements



Proposed Improvements – Enlarged View



CBPA Exhibit - Proposed Improvements

Disclosure Statement

Disclosure Statement



Owner Disclosure

Owner Name Kenneth & Karen Bagwell

Applicant Name _____

Is the Owner 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-subsiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

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?

³ "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.

⁴ "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



Owner Services Disclosure

1. Does the Owner 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 Owner 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 Owner 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 Owner 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.

Ashton Landscaping - created the design

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.

6. Does the Owner 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.

Ashton Landscaping - will do the install

7. Does the Owner 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.

Disclosure Statement



8. Is the Owner 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 legal the service.

Owner 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.

Kenneth B Bagwell
Owner Signature

Kenneth B Bagwell - owner
Print Name and Title

9/21/2021
Date

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Property Owner's Agent

Robert Simon
 Waterfront Consultants, Inc.

Staff Planner

PJ Scully

Lot Recordation

Map Book 46, Page 36
 Recorded 2/13/1959

Lot Description

Broad Bay 3.72 Acres, Godfrey Lane

GPIN

2409-23-0703

Current Property Owner

Anthony & Cynthia Disilvestro

STATEMENT OF NONCOMPLIANCE

- Deviation from the August 2, 2021 CBPA Board variance conditions.

Location of Unauthorized Improvements

100-foot Variable Width Buffer

CBPA Ordinance

- The deviation from the conditions of the Chesapeake Bay Preservation Area Board variance constitutes a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.



CBPA Ordinance Variance History

August 2, 2021 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a paver parking area and expansion of the vehicular entry court with the following conditions:

1. *This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted December 20, 2017.*
2. *All additional materials excavated for the installation of the proposed improvements associated with this variance request and the removal of both berms along the adjacent properties' driveways shall be removed from the site and disposed of in a lawful manner.*
3. *The proposed paver parking area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.*
4. *Upon granting of this variance, a revised stormwater management plan shall be submitted to the Department of Planning and Community Development, Development Services Center for review and approval within 90 days from the date of this hearing. Once the plans have been approved, a **CBPA / CIVIL permit** must be obtained within 90 days. All required stormwater management facilities and buffer restoration must be installed or in the process of installation within 90 days after issuance of the building permit.*
5. *The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance granted December 20, 2017, specifically the required buffer restoration shall be documented on the revised stormwater management plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.*
6. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
8. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
9. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance associated with this variance.*
10. *The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, signed April 5, 2021 by Gregory O. Milstead. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*
11. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 2,913 square feet x 200 percent = 5,826 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.

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

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.*
5. *Exclusive of the limits of grading for the Flexamat installation, the construction limits along the seaward portion of the proposed primary structure and associated accessory structures shall lie a maximum of 15 feet seaward of said improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.***
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
8. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
9. *A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
10. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*

12. *Exclusive of the proposed Italian Cypress presented on the CBPA Board exhibit, buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **22,412 square feet x 200 percent = 44,842 square feet.***

*Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **28 canopy trees, 28 understory, 56 large shrubs and 84 small shrubs.***

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

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

Summary of Noncompliance

On or about November 8, 2021, Staff visited the property located at 1680 Godfrey Lane to investigate a citizen's complaint. At that time, it was observed that a matter of noncompliance to the conditions of the August 2021 Chesapeake Bay Preservation Area (CBPA) Board Variance had occurred. Specifically, the deviation is related to condition 2 that states "*all additional materials excavated for the installation of the proposed improvements associated with this variance request and the removal of both berms along the adjacent properties' driveways shall be removed from the site and disposed of in a lawful manner.*" The existing berm material was not removed from the lot. The property owner spread the material on the lot in the area of the proposed tennis court yet to be constructed. Staff estimates that the depth of the berm material spread on the lot to be approximately 4 to 6 inches.

Staff notified the property owner with a written notice to appear before the Chesapeake Bay Preservation Area Board at the Monday, December 6, 2021 Chesapeake Bay Preservation Area Board public hearing to determine what action, if any, will be taken with regard to the item of noncompliance at 1680 Godfrey Lane.

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance deviates from the conditions of the 2021 CBPA Variance with regard to condition 2 of said variance that stated, "*all additional materials excavated for the installation of the proposed improvements associated with this variance request and the removal of both berms along the adjacent properties' driveways shall be removed from the site and disposed of in a lawful manner.*" The deviation does not increase the amount of impervious cover on the lot and has occurred in the area of the proposed tennis court as shown on the approved August 2021 CBPA Board Exhibit. The proposed tennis court has not been built. Land disturbance associated with this deviation is greater than 2,500 square feet.

Environmental Impact

The subject area of noncompliance appears to occur within the 100-foot variable width buffer of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) adjacent to a contiguous tidal waterway. After a field investigation to the property on November 8, 2021, Staff notified the property owner that the area of disturbance be stabilized, and erosion and sediment control measures installed in order to manage the disturbed area.

The subject activity of noncompliance does not appear to have disturbed any existing forest floor and there are no signs of sediment migration into the adjacent waterways as of the date of Staff's site visit.

Recommendation

It is the opinion of the Department of Planning and Community Development Staff that the degree of deviation or noncompliance has been high and the environmental impact from this activity has been low.

Site Aerial



