

Chesapeake Bay Preservation Area Board Agenda

September 9, 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 **Thursday, September 9, 2021** at 10:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, Virginia Beach, VA.

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

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

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

THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

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

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

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

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

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

Process for the Consent Agenda:

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

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

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

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

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

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

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



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **September 9, 2021**

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

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

| NEW BUSINESS AGENDA ITEMS | |
|--|--|
| <p>1. Susan & Todd Kletz [Applicant & Property Owner]</p> <p>1300 Penguin Circle GPIN 2418-31-0664 Council District – Lynnhaven Accela Record 2021-CBPA-00049</p> <p>Variance Request – Encroachment into the RPA to construct a paver patio.</p> <p>Staff Planner – Cole Fisher Staff Report – page 7</p> | |
| <p>2. Kristina Rae Black Kratovil [Applicant & Property Owner]</p> <p>3032 Little Haven Road GPIN 1498-24-5156 Council District – Lynnhaven Accela Record 2021-CBPA-00050</p> <p>Variance Request – Encroachment into the RPA to construct a swimming pool.</p> <p>Staff Planner – Cole Fisher Staff Report – page 19</p> | |

NEW BUSINESS AGENDA ITEMS

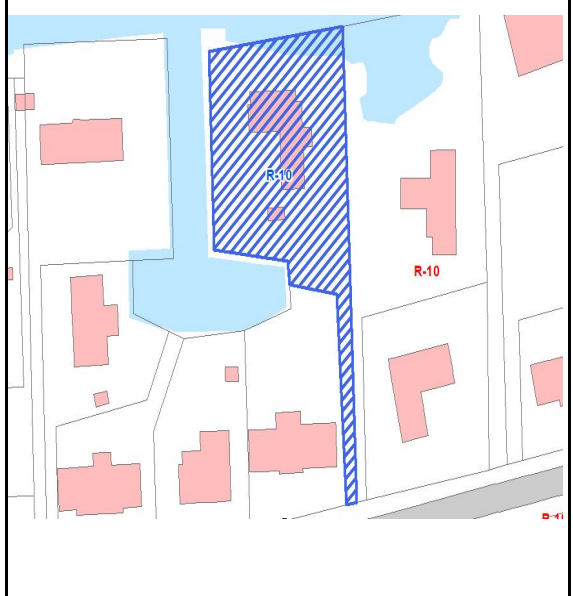
3. Darius & Denise Auman
[Property Owner]

EGO Holdings, LLC
[Applicant]

2768 Broad Bay Road
GPIN 1499-57-0933
Council District – Lynnhaven
Accela Record 2021-CBPA-00051

Variance Request – Encroachment into the RPA to construct a new single-family residence, detached garage and associated accessory structures.

Staff Planner – Cole Fisher
Staff Report – page 31



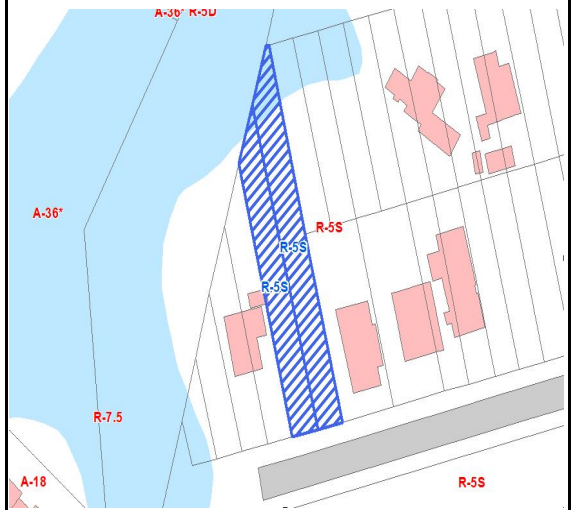
4. Patricia McShan & et al
[Current Property Owner]

ORP Ventures, LLC
[Applicant]

Ridgecrest Lot 15 & 16 Blk 134, 25th Street
GPIN 2417-89-2543 & 2417-89-2428
Council District – Beach
Accela Record 2021-CBPA-00053

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

Staff Planner – Charles Payne
Staff Report – page 49

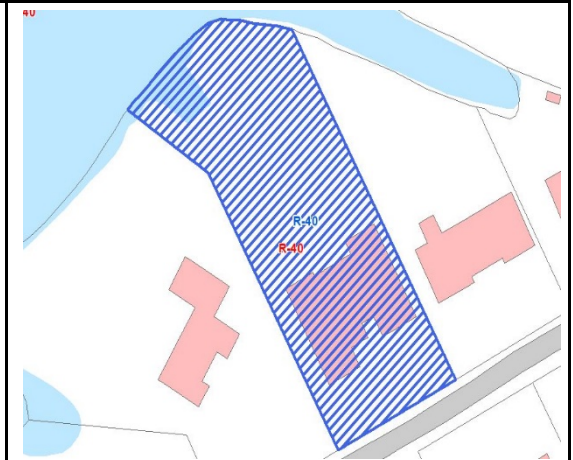


5. Joel & Emily Nied
[Applicant & Property Owner]

1308 Kildeer Court
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 – Charles Payne
Staff Report – page 61



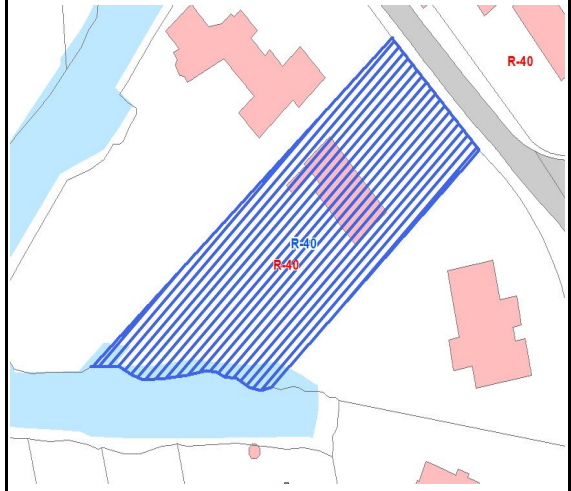
NEW BUSINESS AGENDA ITEMS

6. Michael & Jennifer Newman
[Applicant & Property Owner]

905 Penguin Place
GPIN 2418-21-9658
Council District – Lynnhaven
Accela Record 2021-CBPA-00056

Variance Request – Encroachment into the RPA to construct a single-family residence with associated accessory structures.

Staff Planner – PJ Scully
Staff Report – page 63

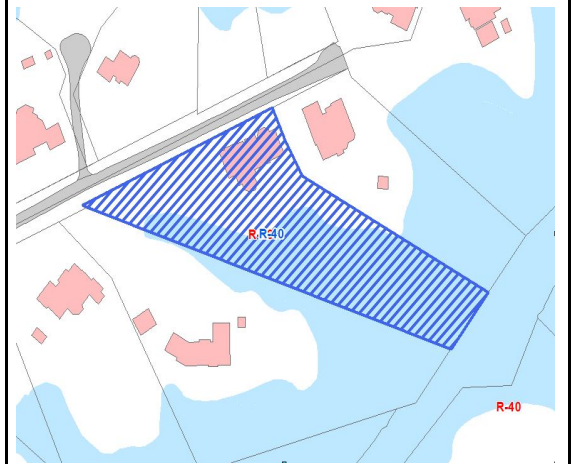


7. John & Diane Domanski
[Applicant & Property Owner]

3089 Yeates Lane
GPIN 1498-14-9651
Council District – Lynnhaven
Accela Record 2021-CBPA-00055

Variance Request – Encroachment into the RPA to construct a swim spa with surround.

Staff Planner – PJ Scully
Staff Report – page 75



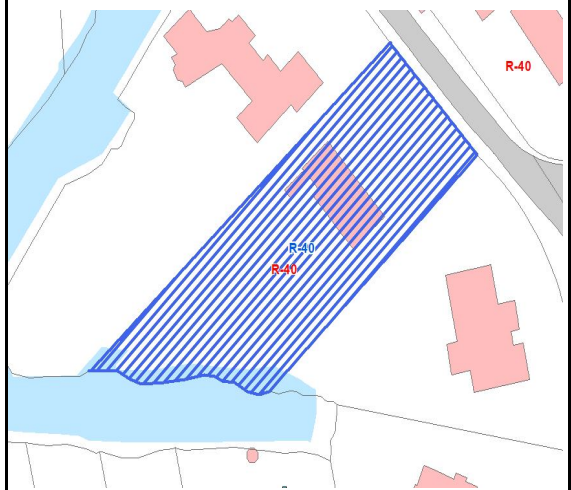
SHOW CAUSE ITEMS

8. Thet M. Kyaw
[Applicant & Property Owner]

621 W. Kingston Circle
GPIN 1488-50-7952
Council District – Lynnhaven
Accela Record 2021-CBPV-00001

Statement of Noncompliance – Deviation from the July 22, 2019 CBPA Board variance conditions with the construction of a wood deck.

Staff Planner – PJ Scully
Staff Report – page 85



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

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Applicant & Property Owner **Susan & Todd Kletz**
Address **1300 Penguin Circle**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a paver patio & retaining wall

Applicant's Agent

Billy Garrington
Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 007, Page 0192
Recorded 06/1926

GPIN

2418-31-0664

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

650 square feet

Location of Proposed Impervious Cover

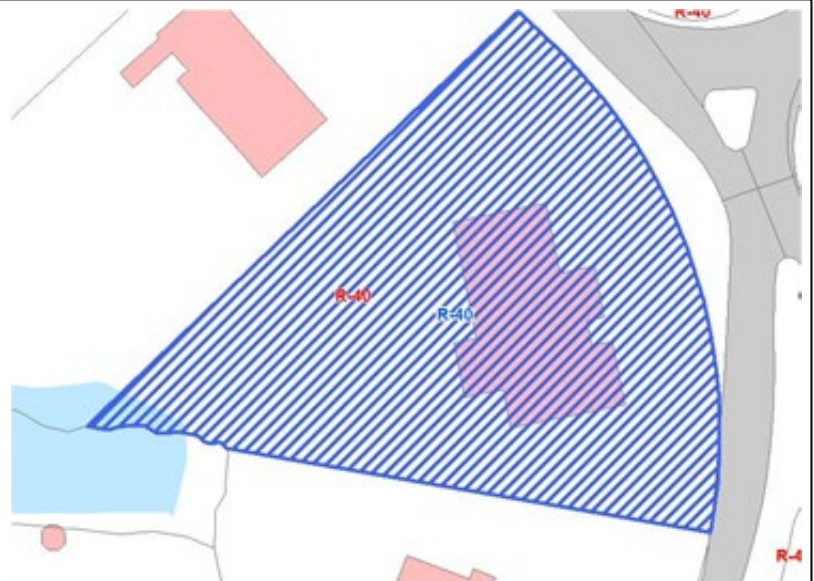
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Paver patio with retaining wall

CBPA Ordinance Variance History

On June 28, 2004, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the demolition of the existing residence, wood deck, and circular concrete driveway and construction of a new two-story residence, detached garage with parking area, screened porch, pool with associated decking, retaining wall and concrete patio with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
3. *Construction limits shall lie a maximum of 15' seaward of improvements.*
4. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
5. *The structures shall be built into the slope and no perimeter fill shall be permitted.*
6. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities.*
7. *If and when the shoreline is hardened, a riprap revetment shall be constructed in lieu of a vertical retaining structure (timber, vinyl or steel bulkhead). The toe of said revetment shall lie no further than 4 foot. seaward of the existing bulkhead. Said condition shall be so noted on the site plan.*
8. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
9. *The pool shall be constructed prior to or concurrent with the residence.*
10. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$1,718.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 1,874 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
11. *Buffer restoration shall be installed equal to 50% of impervious cover (3,748 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy and be so noted on the site plan.*
12. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*

13. *Tree compensation shall be at a 3:1 ratio and shall be comprised of 50% evergreen and 50% deciduous species (21 trees).*
14. *The conditions and approval associated with this variance are based on the site plan dated May 17, 2004, prepared by Gallup Surveyors and Engineers Ltd.*
15. *The pool shall lie a maximum of 8' from the residence. Re-align the pool and pool decking accordingly.*
16. *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.*

Environmental Conditions

Flood Zones

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

Flood Zone – 0.2% Annual Chance of Flooding

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

Shoreline

Shoreline is hardened by a wooden bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Tree being requested for removal is within the delineated landward buffer of the Resource Protection Area and the applicant has included an arborist report recommending the tree be removed.

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

This variance request includes the construction of a new paver patio and retaining wall. This request will add 650 square feet of new impervious cover in the landward portion of the Resource Protection Area (RPA) and would extend the existing patio area to the footprint of the existing garage. The applicant also proposes a small retaining wall to prevent any stormwater runoff down the bank of the property. Staff is of the opinion that the increased impervious cover will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay. The applicant has proposed to create new bioretention planting beds in addition to the required buffer restoration plantings for this request. Given the buffer restoration measures proposed and the minimal land disturbance associated with this request, Staff supports this variance request as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1955 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's Ordinance. The CBPA buffer covers over 100% of the lot."* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's Ordinance; therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements in the area not to extend beyond the existing encroachments into the buffer areas."* Staff is of the opinion that the proposed improvements, as situated in the rear yard, and entirely in the landward buffer, provides merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, and if approved, the proposed redevelopment will be required to increase the stormwater treatment between the improvements and the canal."* Staff concurs.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Additional bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging to the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs

Given the above comments, Staff recommends the following 8 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. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **650 square feet x 200 percent = 1,300 square feet.**

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

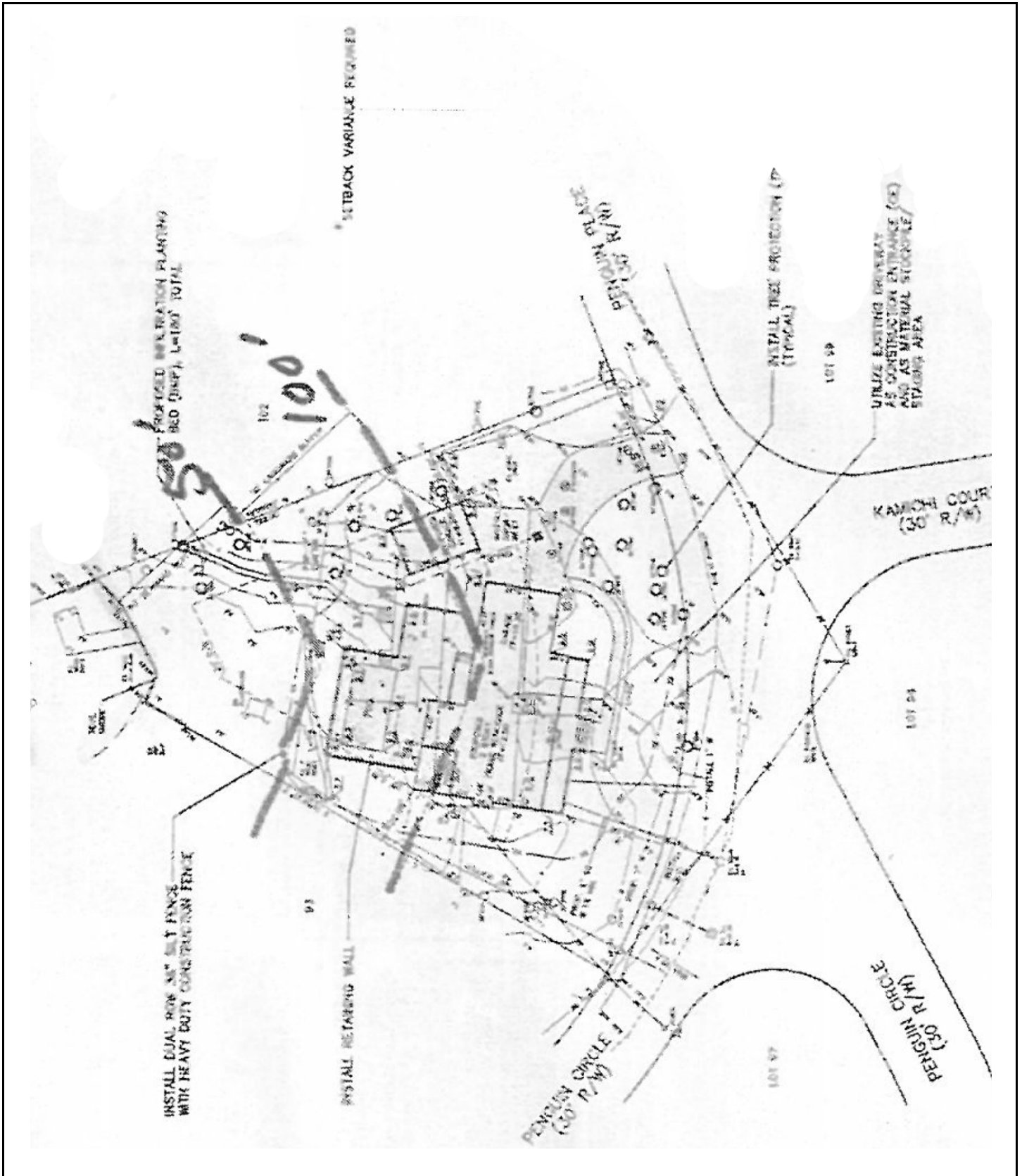
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material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

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted June 28, 2004.

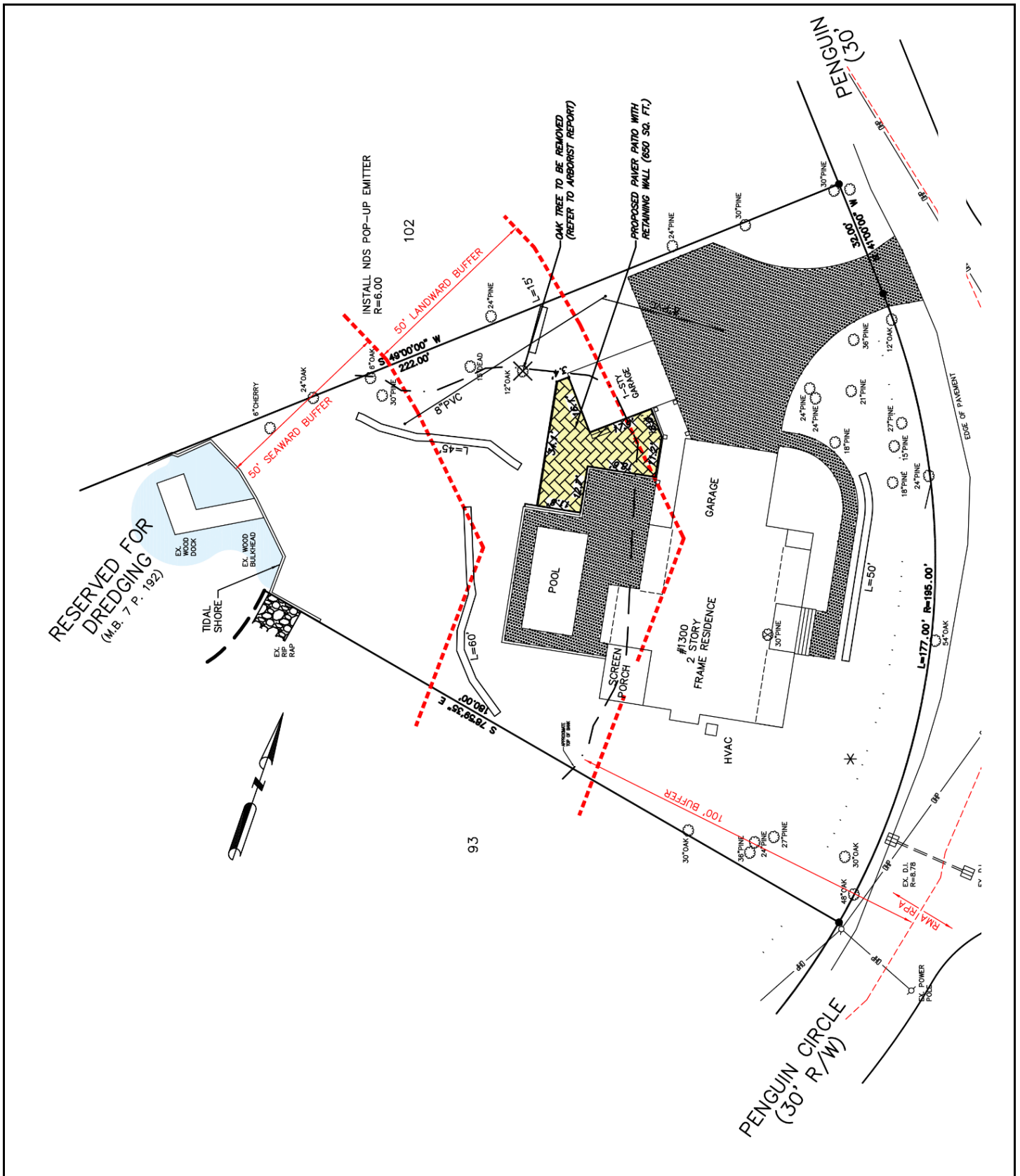
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

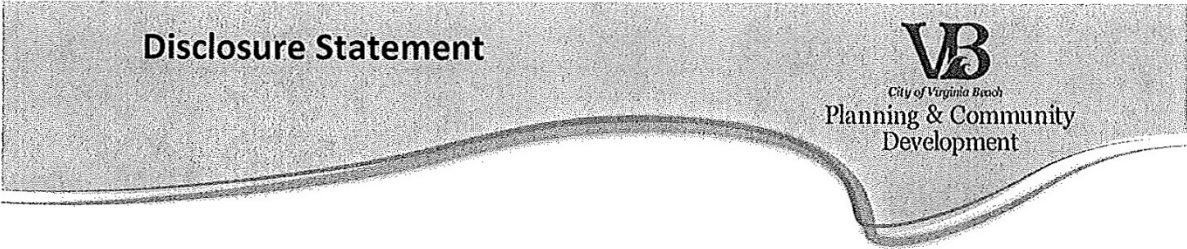




CBPA Exhibit – Proposed Improvements



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 Todd D Kletz and Susan H Kletz Revocable Living 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)

Todd D Kletz and Susan H Kletz

- 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.

~~TowneBank~~ SUN TRUST

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

Yes No

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

Todd D Kletz and Susan H Kletz Revocable Living Trust

Print Name and Title

TODD D. KLETZ AND SUSAN H. KLETZ

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 swimming pool.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 082, Page 0051
 Recorded 02/10/1970

GPIN

1498-24-5156

SITE AREA

86,124 square feet or 1.977 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

63,339 square feet or 1.454 acres

EXISTING IMPERVIOUS COVER OF SITE

12,315 square feet or 19.4 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

13,550 square feet or 21.4 percent of site

Area of Redevelopment in RPA

1,144 square feet

Area of New Development in RPA

1,235 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

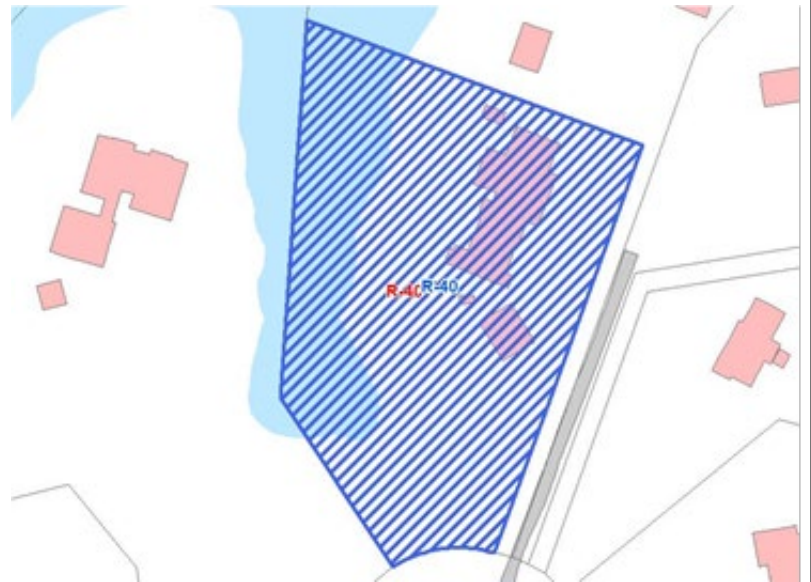
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with existing patio expansion
- Paver walkways around side and rear of the residence leading to the existing dock

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Flood Zone - AE, Base Flood Elevation (BFE): 9

Soil Type(s)

Rumford Series (deep, well drained soils)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as approximately 10 feet outboard the proposed improvements.

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request includes the construction of a new swimming pool with an expanded patio and associated paver walkways. This request will add 1,235 square feet of new impervious cover in the Resource Protection Area (RPA) with the majority within the landward buffer. As submitted, the proposal increases the overall impervious cover of the lot from 12,315 square feet to 13,550 square feet (19.4 percent to 21.4 percent) of the total lot area above water and wetlands. The applicant has taken measures to keep all the major improvements associated with this request within the landward portion of the RPA with only minimal impervious cover is proposed in the seaward buffer with the paver walkways. The applicant has indicated that bioretention planting beds will be constructed as a means to prevent an

increase in nonpoint source pollution load in the Chesapeake Bay Watershed. Given the buffer restoration measures proposed and the measures taken by the applicant to situate the proposed improvements outside of the seaward buffer, Staff supports the encroachment as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1968 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffers cover over 93% of the lot."* Staff concurs with the applicant's agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance; therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the additions and improvements over existing structures to the greatest extent practicable to maximize the redevelopment and the minimize site impacts in the critical buffer areas."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal."* Staff is of the opinion that the location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant's approach to ensure a no net increase in nonpoint source pollution load is acceptable. These management techniques include bioretention stormwater bed plantings within the riparian buffer to slow, capture, and treat the on-site stormwater runoff before entering the river.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,235 square feet x 200 percent = 2,470 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) 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) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 13) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$283.02 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 April 20, 2021, prepared by WPL, signed April 29, 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

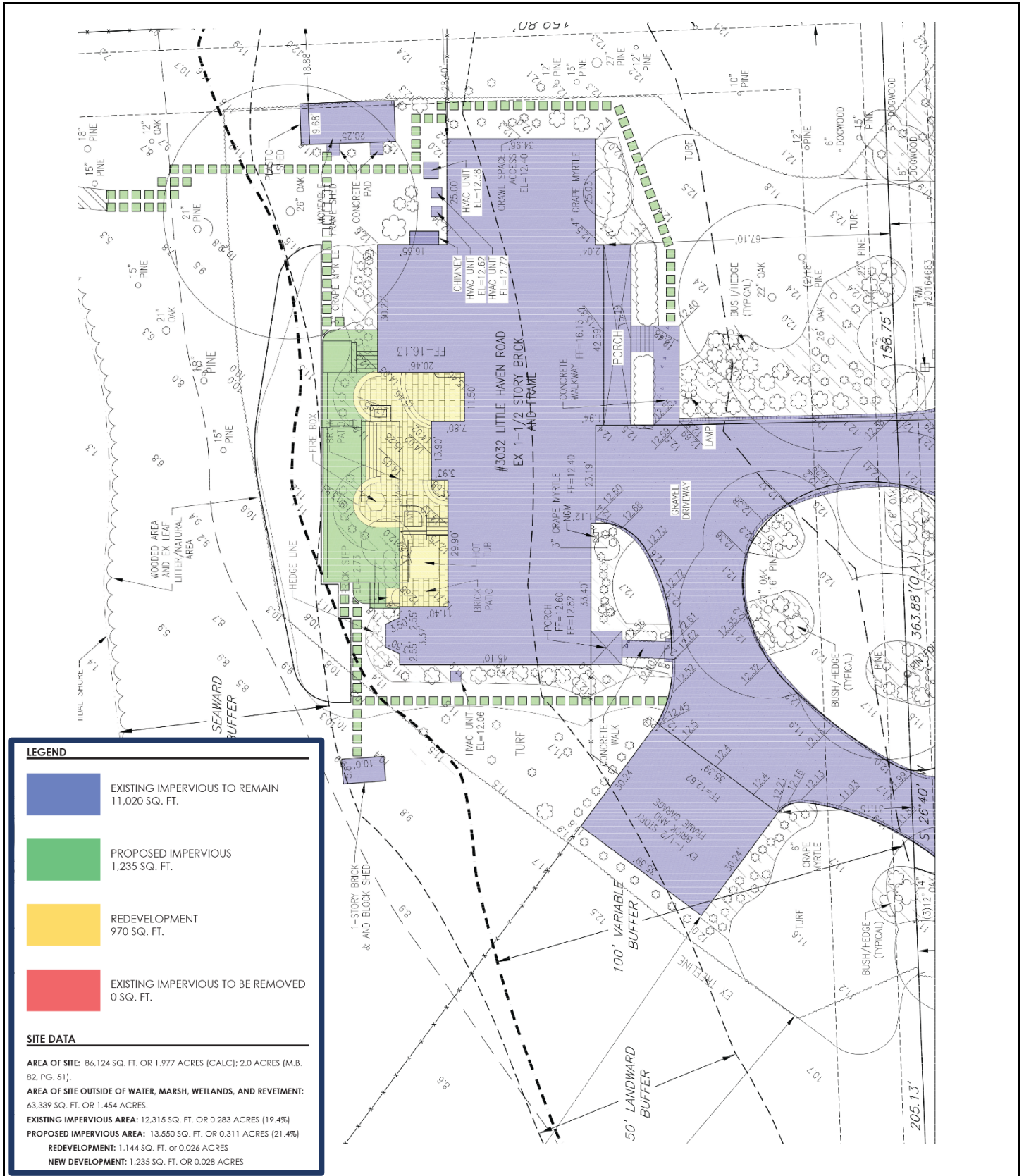
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



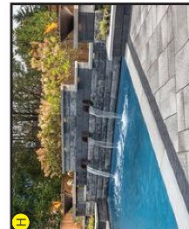
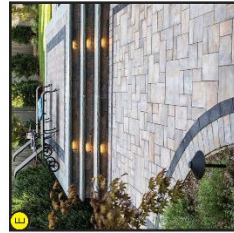
CBPA Exhibit – Proposed Improvements & Color Analysis



CBPA Exhibit – Project Rendering



- LEGEND**
- ⊙ POOL 16' X 38' - SUN SHELF | FOUNTAIN WALL | INFINITY EDGE
 - ⊙ RELOCATED EXISTING HOT TUB
 - ⊙ GAS FIRE PIT
 - ⊙ BAR TOP & GRILL ON LOWER PATIO - EL. 12.50
 - ⊙ UPPER PATIO - EL. 15.00
 - ⊙ POOL PLANT BED
 - ⊙ LAWN
 - ⊙ PILLAR WITH POTS / LIGHTS
 - ⊙ PAVER WALKWAYS
 - ⊙ FENCING

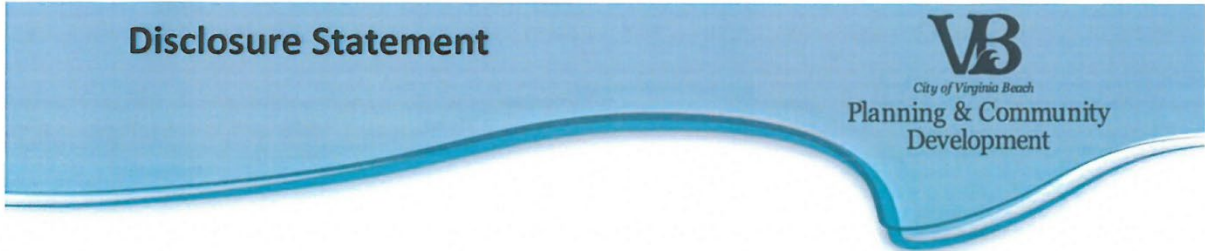


20 5002
JULY 8, 2021

CONCEPTUAL DESIGN
BLACK RESIDENCE
 3032 Little Haven Road, Virginia Beach, Virginia
 WPL | LANDSCAPE ARCHITECTURE - LAND SURVEYORS - CIVIL ENGINEERS



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 Kristina Rea Black Kratovil

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

OVM Financial, Inc

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

Yes No

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

- 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.

Kristina Rea Black Kratovil

Applicant Signature

Kristina Rea Black Kratovil

Print Name and Title

07/30/2021

Date

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

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

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

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

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a new single-family residence, detached garage and associated accessory structures.

Applicant's Agent

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

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 080, Page 0011
 Recorded 03/25/69

GPIN

1499-57-0933

SITE AREA

23,838 square feet or 0.593 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

24,229 square feet or 0.556 acres

EXISTING IMPERVIOUS COVER OF SITE

8,564 square feet or 35 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,620 square feet or 40 percent of site

Area of Redevelopment in RPA

6,369 square feet

Area of New Development in RPA

3,481 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing single-family residence and driveway/parking area

Construction Details

- New two-story dwelling with a detached garage and new driveway/parking area
- Swimming pool with outdoor patios and deck
- Stepping-stone walkways

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened by a vinyl bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing understory trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: No canopy trees are proposed for removal with this request. The 6-inch diameter at breast height (DBH) Holly tree is located within the 50-foot seaward buffer and within the limits of construction for the proposed improvements.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds, buffer restoration along the existing bulkhead, permeable pavement for vehicular traffic areas, and a green roof system proposed on the primary structure and detached garage will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

This variance request includes the demolition of the existing structure and associated driveway and parking area. A new two-story dwelling with a detached garage, outdoor patios, swimming pool, deck, walkways, and driveway/parking area are proposed to be constructed. The redevelopment of this lot will add 3,481 square feet of new impervious cover in

the Resource Protection Area (RPA). As submitted, this proposal will increase the overall impervious cover of the lot from 8,564 square feet to 9,620 square feet (35 percent to 40 percent) of the total lot area above water and wetlands. This lot currently does not provide any stormwater mitigation for the Chesapeake Bay Watershed and if approved, the required buffer restoration and bioretention planting beds would be placed between the proposed improvements and the Bay. The applicant is also proposing to install an 800 square foot green roof on the garage and a 300 square foot green roof on a portion of the main residence to further aid in capturing and reducing rainwater runoff. The proposed driveway will be constructed using a permeable paver system. Staff is of the opinion that the use of a permeable pavement system on this lot provides merit towards a no net increase in nonpoint source pollution load given the existing topographic elevations with minimal slope to slow the time of concentration of stormwater run-off and the underlying soil conditions that provides moderate infiltration due to the sandy subbase conditions.

This lot is entirely encompassed by the RPA. Staff is of the opinion that the proposed redevelopment on this lot and the proposed increase in impervious cover in the RPA challenges the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance as being the minimum necessary to afford relief when introducing new impervious cover in the RPA. However, when evaluating this lot to future risks of sealevel rise and tidal inundation from coastal storm events this lot and the proposed improvements appear to be located as such that minimal impacts to the proposed improvements from such environmental events are projected through current sealevel rise data analysis. In addition, the applicant has proposed a series of best management practices with the use of bioretention planting beds above tidal inundation elevations, buffer restoration in areas currently devoted to turf, retention of existing canopy tree cover on the lot, permeable pavement system for vehicular use areas, and a green roof system proposed for both the single-family residence and detached garage as a means to be in harmony with the performance standards established by the CBPA Ordinance to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration [City Code, Appendix F, Sec 102(A)].

To support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements are in keeping with the neighborhood."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each application. Staff is of the opinion that the CBPA Exhibit provided coupled with the use of materials and stormwater methodology integrating multiple best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood based off the extent of redevelopment proposed to the existing conditions of this lot.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been create or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance."* Staff concurs with the statement provided by the applicant's agent.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been placed towards the front & east side setback line to maximize the redevelopment, to minimize site impacts, and limit development."* Staff acknowledges that the placement of the proposed residence minimizes encroachment

into the 50-foot seaward buffer and utilize the redevelopment of impervious cover on the lot to the greatest extent practicable.

- 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 dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however, if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay.”* Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality and the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of green roofs, bioretention planting beds, and permeable pavement. These best management practices can provide an annual runoff volume reduction up to 45 percent with beneficial reductions of phosphorous and nitrogen mass load removal annual.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and acknowledges that the site currently offers no stormwater management and as stated above, the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed through the use of green roofs, bioretention planting beds, and permeable pavement coupled with the introduction of approximately 7,550 square feet of buffer restoration that restores the lack of tree canopy cover on the lot. Staff is of the opinion that the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed per the layout provided with the CBPA Exhibit – 7,550 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, 11 understory trees, 22 large shrubs, and 33 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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 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. **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 **of the existing canopy trees to be preserved and delineated in the CBPA Exhibit** 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) 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) The proposed driveway and shall be constructed out of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided and submitted to the Development Services Center for review and approval.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,051.41 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2021, prepared by WPL, signed August 2, 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

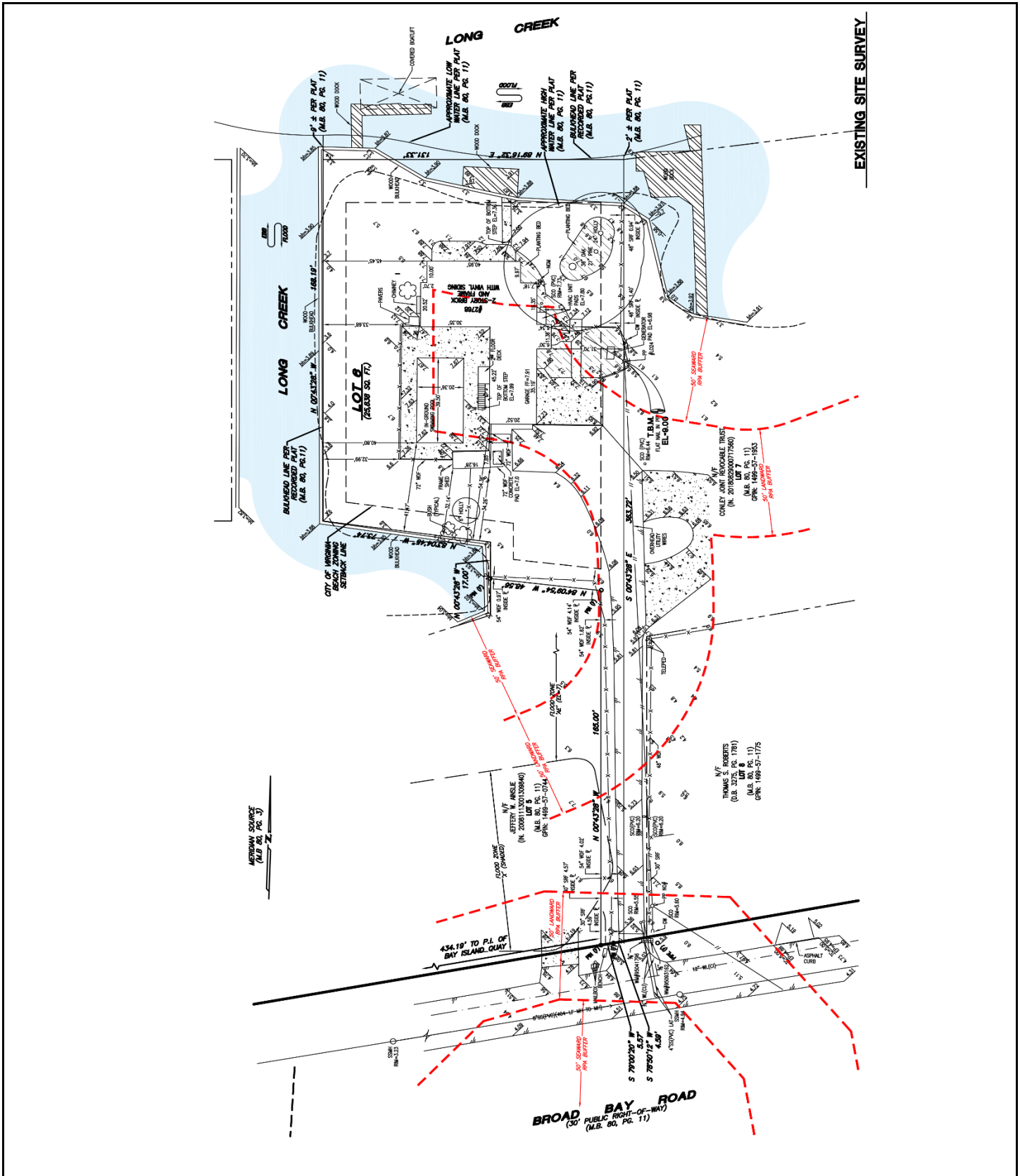
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

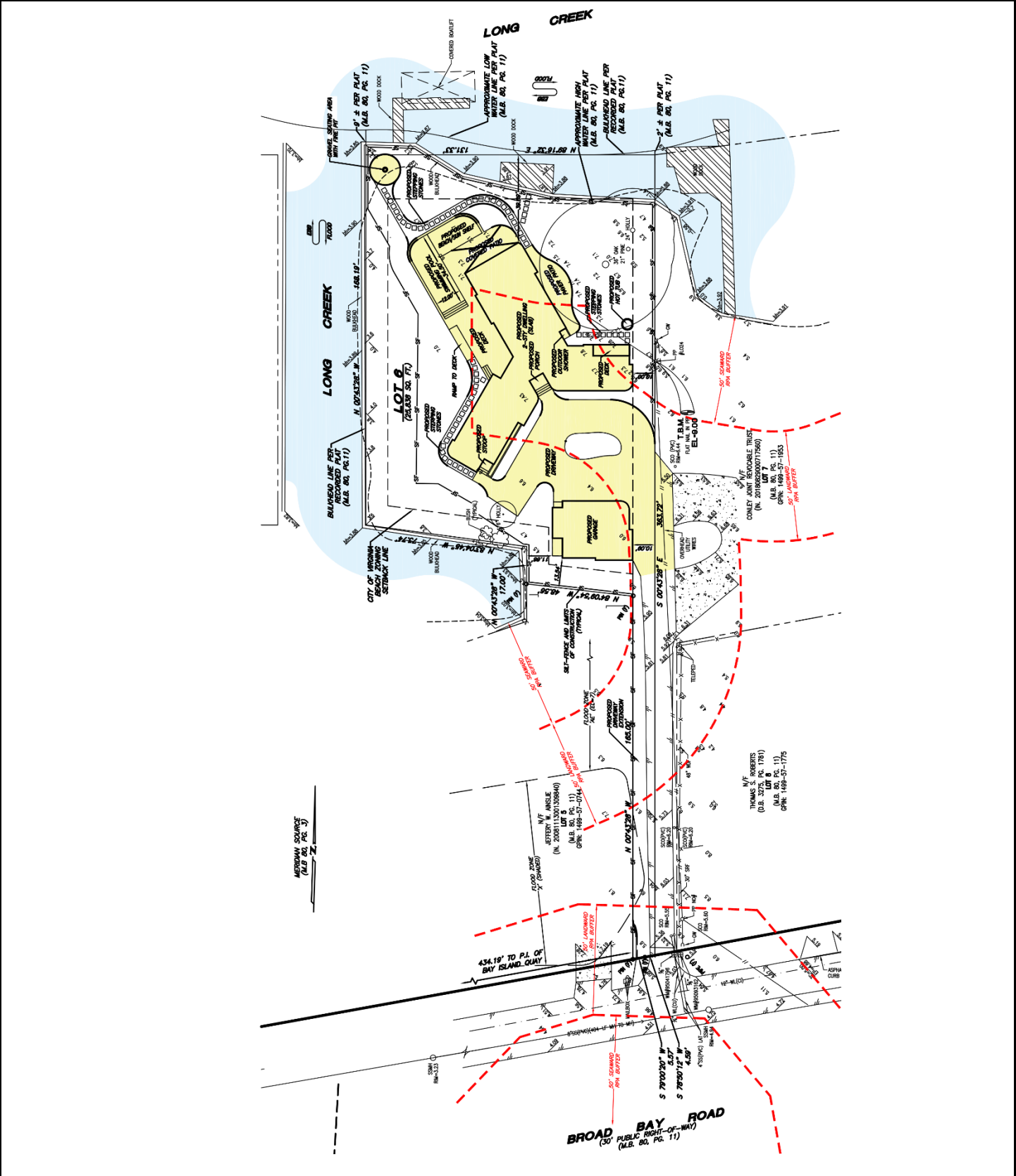
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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Applicant Disclosure

Applicant Name EGO Holdings, LLC

Does the applicant have a representative? Yes No

- If **yes**, list the name of the representative.
Edward Bourdon, 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)
Eric Olson, Managing Member

- If **yes**, list the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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.

Nathan Cox, AIA N\ONE Architecture

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

Eric Olson *Mayor Member*
 Print Name and Title

07-28-2021
 Date

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

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

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

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

Disclosure Statement



Continue to Next Page for Owner Disclosure

Disclosure Statement



Owner Disclosure

Owner Name Darius C Auman, III & Denise M Auman

Applicant Name EGO Holdings, LLC

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-sub subsidiary³ 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-sub 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.

⁴ "Affiliated business entity relationship" means "a relationship, other than parent-sub 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



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.

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.

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.

Owner Signature

Print Name and Title

Date

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Variance Request

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

Applicant's Agent

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

Staff Planner

Chuck Payne

Lot Recordation

Map Book 7, Page 101
 Recorded 8/27/1925

GPIN

2417-89-2428

SITE AREA

12,922 square feet or 0.297 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

10,304 square feet or 0.237 acre

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

2,555 square feet or 24 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

2,555 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

- Single family residence
- Concrete walkways, driveway, patio and generator pad

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zones

Flood Zone – X

Flood Zone – 0.2% Annual Chance of Flooding

Flood Zone – AE, Bas Flood Elevation (BFE): 7

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

Shoreline

The shoreline is in a natural state. Moderate maintenance should 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 50-foot seaward buffer.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 13
- Number of existing understory trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as approximately 10 feet outboard the proposed improvements. Staff is of the opinion that the applicant has shown a sufficient limit of construction, as delineated on the CBPA Exhibit that minimizes the limits of land disturbance within the 100-foot RPA buffer to the greatest extent practicable for the construction of the proposed improvements.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to develop the vacant lots with one single-family residence and associated accessory structures consisting of a patio area, driveway and associated walkways. Approximately 1,839 square feet of the 2,555 square feet of new impervious cover consists of the single-family residence and concrete driveway within the upper reach of the 50-foot landward buffer. The remaining 716 square feet of proposed impervious cover is located landward of the 100-foot RPA buffer.

To support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1925 and consists of 2 platted developable lots, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and will reduce the development from the 2 lots to 1 lot."* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title, *"but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffers cover over 98% of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements to minimize site impacts in the critical buffer areas."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed development will be required to have treatment provided between the improvements and the CBPA feature."* Staff concurs.
- 5) *"Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the CBPA feature"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,555 square feet x 200 percent = 5,110 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 6 understory trees, 26 large shrubs, and 39 small shrubs.**

The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed continuous along the perimeter of the project. The required silt fence shall be staked in the field by the applicant's agent prior to scheduling the preconstruction meeting with Civil Inspections. Said silt fence shall be installed as delineated on the CBPA Exhibit.
- 9) All construction activity inclusive of land disturbance shall be contained within the limits of the required silt fence with all areas outboard of the silt fence left in a natural state.
- 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the porches and stairs.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$585.52 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh with moderate maintenance 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 100-foot RPA buffer.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated July 30, 2021, prepared by WPL, signed July 30, 2021 by Eric Garner, LS. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

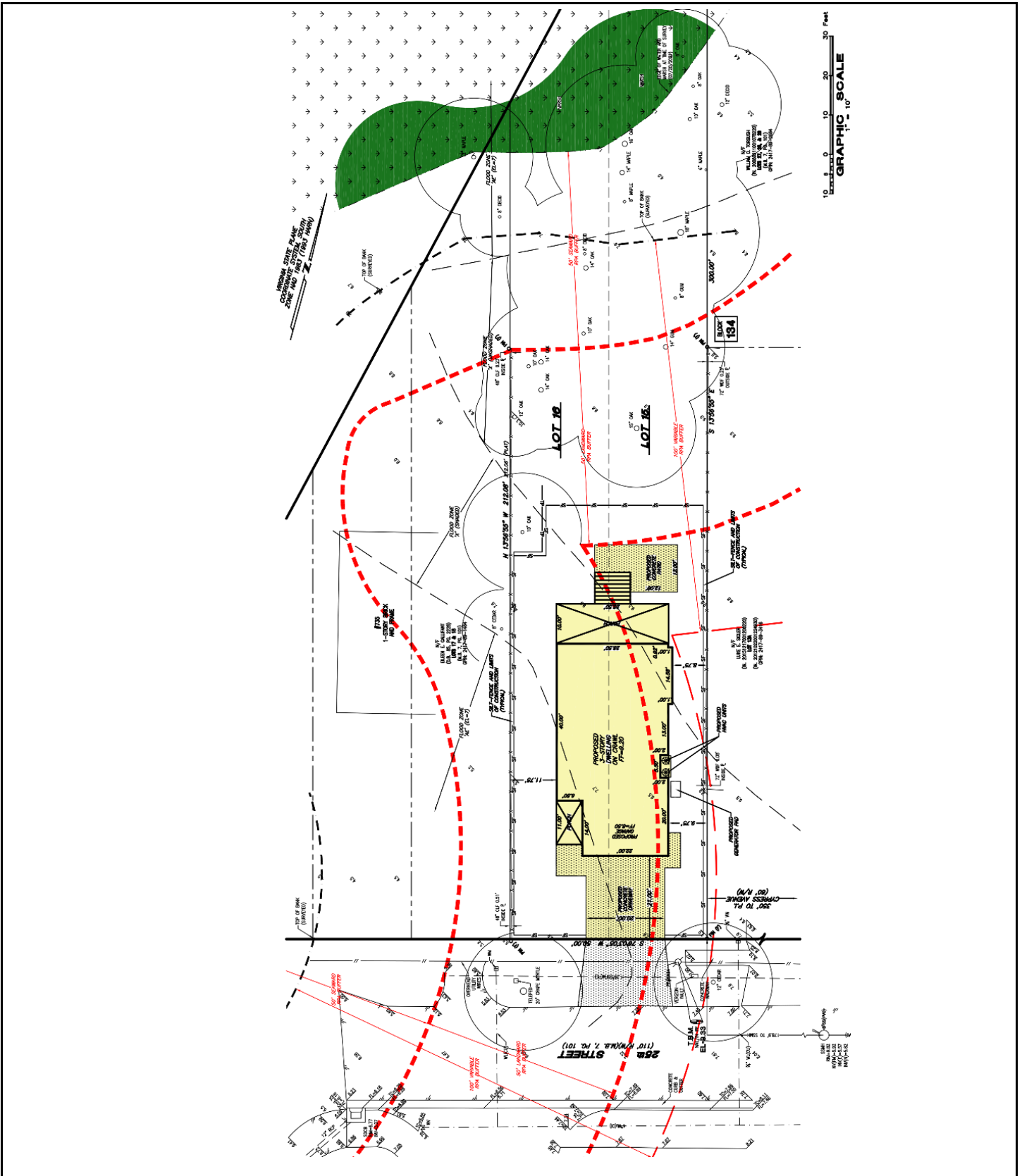
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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 ORP Ventures, LLC

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)

John K. Bishard/Manager, Steven W. Bishard/Manager

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

Bishard Development Corporation

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

Bardoun Design PC, Martin Bardoun

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

Steven W. Bishard, Manager

Print Name and Title

07/29/21

Date

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

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

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

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

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The applicant is requesting a deferral of this application to the Monday, October 4, 2021 CBPA Board Public Hearing to allow additional time to address Staff's comments. Staff supports the request to defer.

Variance Request

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

Applicant's Agent

Robert Simon
 Waterfront Consulting, LLC

Staff Planner

Chuck Payne

Lot Recordation

Map Book 7, Page 192
 Recorded 7/30/1926

GPIN

2418-30-6917

SITE AREA

32,092 square feet or 0.74 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

28,216 square feet or 0.65 acre

EXISTING IMPERVIOUS COVER OF SITE

8,353 square feet or 29.6 percent of site

Variance Request History

None



Site Aerial



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a single-family residence with associated accessory structures.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 192
 Recorded 07/1926

GPIN

2418-21-9658

SITE AREA

27,849 square feet or 0.639 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

25,518 square feet or 0.586 acres

EXISTING IMPERVIOUS COVER OF SITE

4,935 square feet or 19 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,777 square feet or 34 percent of the site

Area of Redevelopment in RPA

2,317 square feet

Area of New Development in RPA

2,262 square feet

Location of Proposed Impervious Cover

- 50-foot Landward 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

- Complete demolition – all existing structure have been removed

Construction Details

- Single family residence with attached garage and covered patio area with 2nd floor deck
- Circular concrete driveway
- Swimming pool with associated pool surround and pool house

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zones

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

Flood Zone – X

Soil Type(s)

State Series (deep, well-drained soils)

Shoreline

Shoreline is hardened with a concrete bulkhead.

Riparian Buffer

Sparsely wooded

- Number of existing canopy trees requested for removal within the RPA: 4
- Number of existing understory trees requested for removal within the RPA: 1
- Evaluation of existing tree removal request: Two of the five trees requested for removal are within the Resource Management Area (RMA) of the Chesapeake Bay watershed. The other three trees are located within the limits of the proposed improvements within the upper reach of the 50-foot landward RPA buffer and 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.

Evaluation and Recommendation

Staff met with the applicant's agent regarding the initial submittal of this variance request and discussed the following.

Michael & Jennifer Newman

Agenda Item 6

Page 64

- Extent of proposed impervious cover – 8,777 square feet or 34 percent of site above water and wetlands. Staff's concern with the proposed impervious cover increase within the 100-foot RPA buffer is based off further encroachment into the 100-foot RPA buffer with the proposed accessory structures – swimming pool and pool house.
- Encroachment into the 50-foot seaward RPA buffer with a portion of the proposed swimming pool surround. Staff is of the opinion given the extent of redevelopment associated with this variance request that the proposed improvements should be situated as such to avoid encroachment into the 50-foot seaward buffer. Staff offers the recommended conditions, specifically condition number 2 below, to address this concern.
- Extent of the proposed driveway with regard to the proposed circular driveway. Staff acknowledges the lack of on-street parking in the neighborhood and the location of the proposed improvements being in the Resource Management Area (RMA) of the Chesapeake Bay watershed; however, the proposed circular driveway accounts for approximately 2,245 square feet or 25 percent of overall impervious cover proposed. Staff offers the recommended conditions, specifically condition number 3 below, to address this concern.

The applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request and is of the opinion that the redevelopment of this parcel will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 1) The applicant's agent provides that *"granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because the proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff is of the opinion that absent the increase in impervious cover, the extent of redevelopment requested with this variance occurring landward of the 50-foot seaward buffer conforms with the location of improvements on adjacent parcels.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance."* Staff concurs.
- 3) The applicant's agent provides that *"the owners have designed the proposed improvements to be minimize the impact to the Chesapeake Bay, the new improvements has been placed close to the house to minimize site impacts and avoid development in the 50' seaward portion of the site"* towards the variance request being the minimum necessary to afford relief. Staff provides the recommended conditions below for the CBPA Board's deliberation towards a means for this variance request to be the minimum necessary to afford relief.
- 4) The applicant's agent provides that *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the Bay"* With the encroachment into the RPA being consistent with the location of improvements on other properties in the vicinity, Staff is of the opinion that the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality due to the recommended conditions provided as a collective attempt to redevelop this lot, specifically conditions 2, 3, and 5 below, as a means to enhance rainwater infiltration through stormwater run-off reduction.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant's agent provides that *"planting buffer restoration and bio-retention stormwater management will be placed*

between the improvements and the canal to capture and treat runoff prior to discharging into the Bay.” Staff is of the opinion that the applicant’s investment in redeveloping those portions of the RPA already developed (2,317 square feet in total), coupled with the integration of non-structural stormwater management practices and buffer restoration, will provide a means to manage towards a no net increase in nonpoint source pollution load.

Staff offers the recommended conditions below, and is of the opinion that the treatment of stormwater as described by the applicant’s agent, if managed properly in perpetuity with the proposed improvements, may not contribute to the degradation of water quality or prove detrimental to the Resource Protection Area. Therefore, the following 16 recommended conditions are offered for the Board’s deliberation relative to the findings of the CBPA Ordinance specific to this variance request.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The proposed improvements shall not encroach into the 50-foot seaward buffer of the Chesapeake Bay Resource Protection Area.
- 3) 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
- 4) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,262 square feet x 200 percent = 4,524 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: **12 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs.**

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

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

- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed/ denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) ****** 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 \$518.37 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 18, 2021, prepared by WPL, signed August 11, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

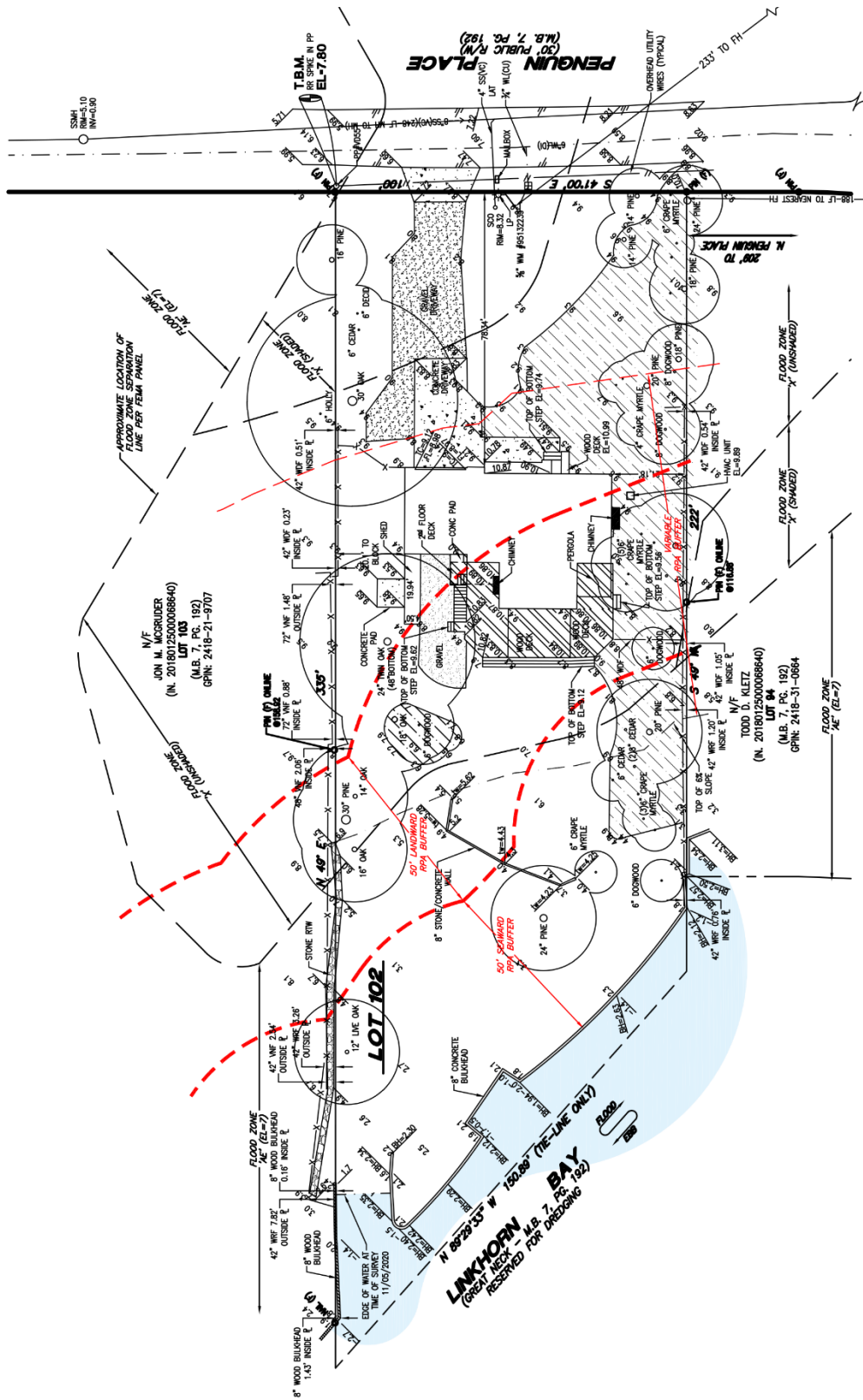
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

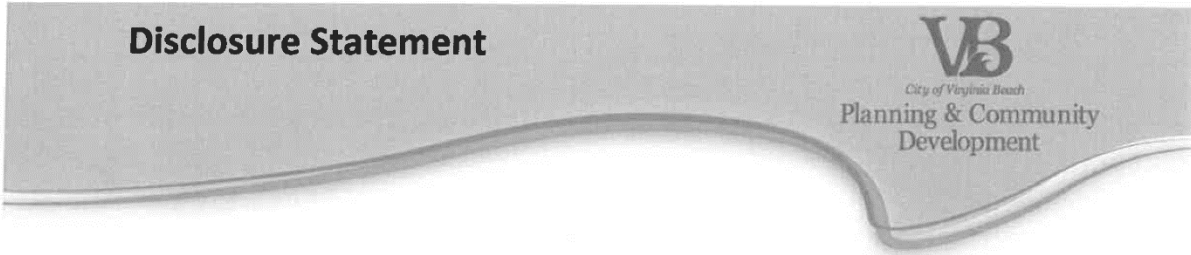
Site Aerial



CBPA Exhibit – Existing Conditions



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 Jennifer & Michael Newman

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

- If **yes**, list the name of the representative.
Billy Garrington, GPC, Inc

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

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

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

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

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.

JPMorgan Chase Bank, N.A.

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.

Altruistic 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.
-

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.

Applicant Signature

Jennifer & Michael Newman

Print Name and Title

01/7/2021

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **John & Diane Domanski**
Address **3089 Yeates Lane**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swim spa with surround.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 295 Page 27

Recorded 04/19/2001

GPIN

1498-14-9651

SITE AREA

77,950 square feet or 1.7 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

29,656 square feet or 0.68 acre

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

420 square feet

Location of Proposed Impervious Cover

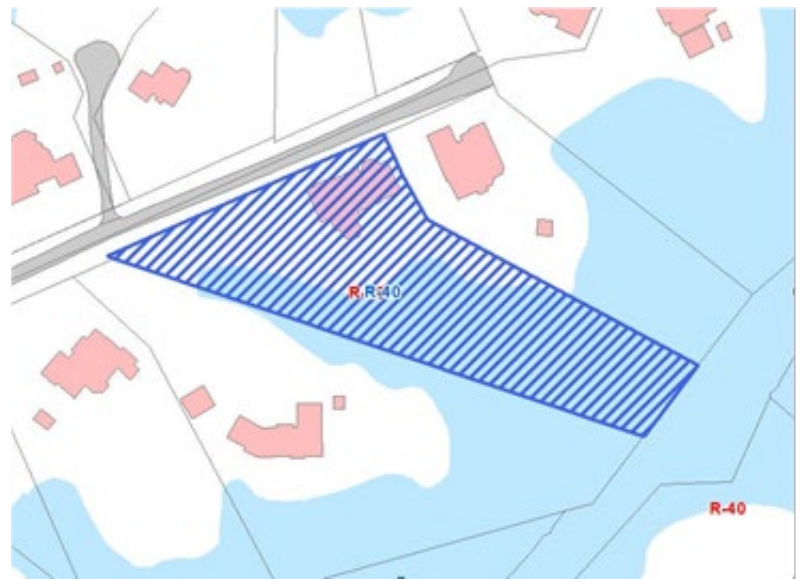
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swim spa with surround

CBPA Ordinance Variance History

January 24, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the demolition of an existing single-family residence to construct two single-family residences with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portions of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *A heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E&S controls and shall be maintained during all phases of construction.*
4. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 15' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities.*
8. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan.*
9. *Pool decking associated with Parcel A shall be a maximum of 4'X4'X4'X8' (diving board end). In addition, pool decking shall lie adjacent to the proposed terrace to the greatest extent practicable.*
10. *The pool for Parcel A shall be constructed prior to or concurrent with the residence.*
11. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$1,312.00 for Parcel A - \$1,394 for Parcel B and is based on 25% of the proposed impervious cover for each lot. Said payment shall provide for the equivalent of an approximate 2,952 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
12. *All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact, except as noted in Condition #13. Said condition shall be so noted on the site plan.*

13. *A maximum of 10% of the remaining pervious area for each lot may be devoted to turf – Parcel A is 2,745 square feet; Parcel B is 2,883 square feet. Clearly note on the revised site plan the location of turf zones for each lot.*
14. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
15. *No less than 28 trees shall be installed on Parcel A – no less than 20 trees shall be installed on Parcel B. Tree compensation represents an approximate 2:1 ratio. Trees shall be comprised of 50% evergreen and 50% deciduous species, per lot.*
16. *The proposed gravel driveway shall be constructed of #57 washed aggregate at a minimum depth of 6 inches. In addition, the gravel driveways for Parcels A and B shall interface the proposed concrete pads directly perpendicular of Yeates Lane. No side load access to the concrete pads is permitted.*
17. *No portion of any structural improvement shall lie within 15' of the top-of-bank.*
18. *The conditions and approval associated with this variance are based on the site plan with a plot date of January 6, 2005 prepared by WPL.*
19. *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.*

February 28, 2000 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of the lot to construct addition to the existing residence and construct a new single-family residence with the following conditions:

1. *No principal structure shall be permitted on the existing Parcel C. A restrictive covenant shall be prepared for recordation reflecting said condition. In addition, a note shall be placed on the final subdivision plat which clearly states said condition. The note on the plat and restrictive covenant shall be reviewed and approved by the City Attorney prior to recordation of the final subdivision plat.*
2. *All portions of the RPA below the top-of-bank, shall remain in a natural state, to include leaf litter left intact. Said condition shall be noted on the site plans and final subdivision plat.*
3. *All stormwater runoff from impervious cover shall be conveyed to a structural treatment facility.*
4. *Dual erosion and sediment controls shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover has been established.*
5. *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.*

Environmental Conditions

Flood Zone

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

Flood Zone – X

Soil Type(s)

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

Shoreline

The shoreline is in a natural state.

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.

Evaluation and Recommendation

The applicant desires to construct a swim spa with a concrete surround for access in an area currently devoted to turf. Given the existing retaining wall and that all area landward of the proposed improvements are in a natural state, Staff is of the opinion that the increased impervious cover will not cause a substantial increase in runoff nor be detrimental to water quality. In addition, the recommended buffer restoration will provide increased rainwater interception and infiltration, thereby aiding towards a reduction of nonpoint source pollution load runoff from the lot.

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

- 1) Staff offers that granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the proposed improvements are in an area currently devoted to turf, do not require the removal of any vegetated riparian buffer, and will not impact the migration of the adjacent vegetated marsh.
- 2) Staff provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance; therefore, portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has provided a layout that is cognate of the existing confined conditions of the lot and RPA feature within the neighborhood and appears to be consistent with the findings of the CBPA Ordinance.
- 4) Staff offers that 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 there will be minimal land disturbance associated with the construction activities.

- 5) Staff provides as a means to manage towards a no net increase in nonpoint source pollution load the improvements are a minimal concrete pad and associated land disturbance.

Given the above comments, Staff recommends the following 5 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 & Community Development, Zoning Administration Division for review and approval prior to the issuance of a building permit. The Zoning Administration Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
- 2) Buffer restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees and 6 small shrubs.**

The required restoration shall be located in the Resource Protection Area in areas devoid of mature riparian buffer ecosystem. 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.

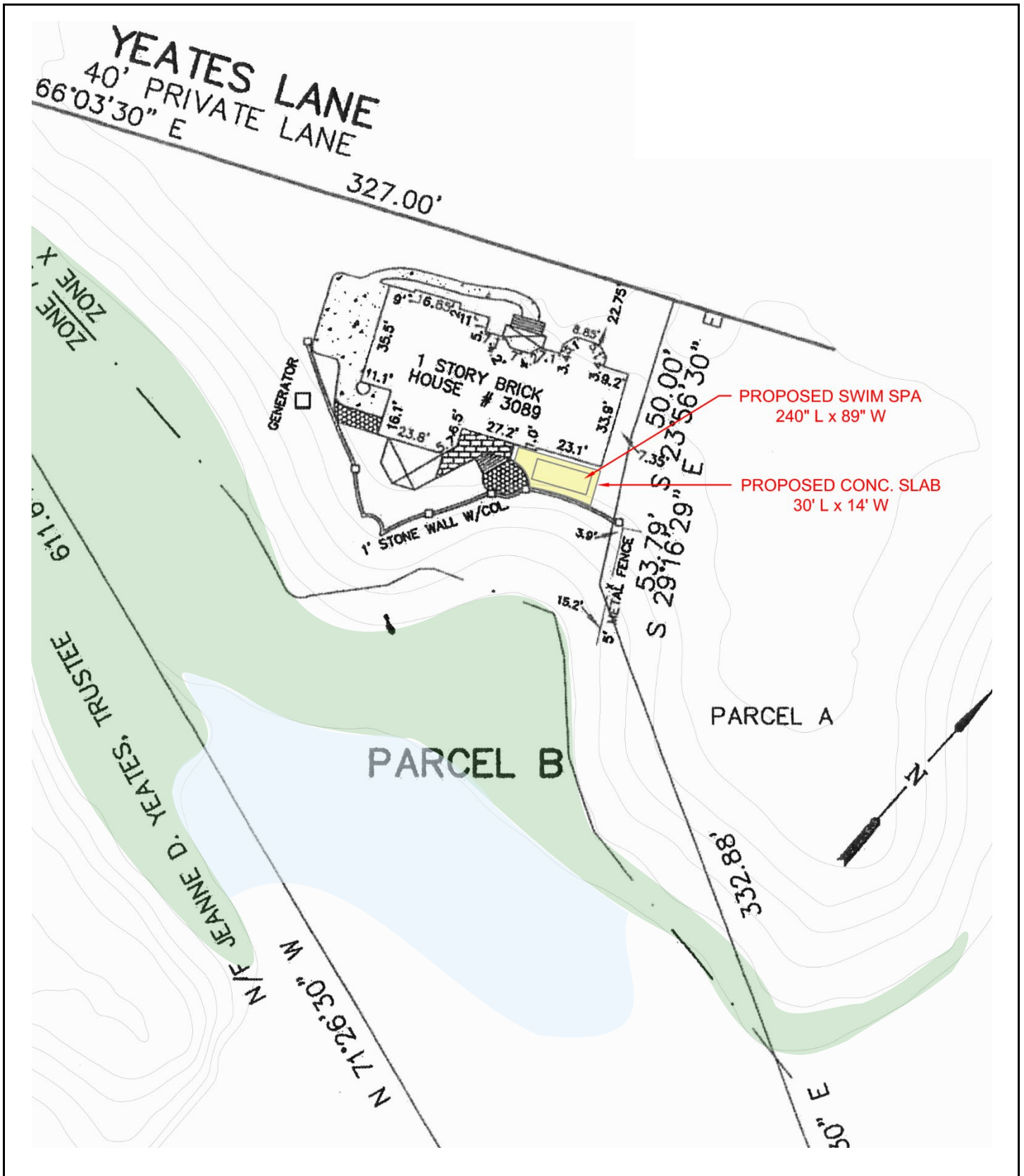
- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 5) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

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

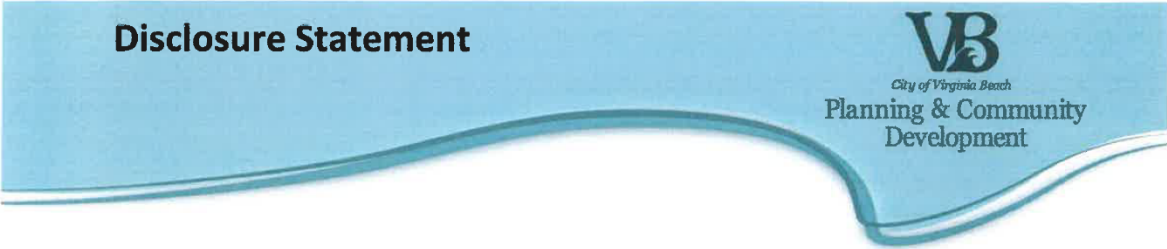
Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name John & Diana Domanski

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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.
Turtle Rock Construction - Tommy Bryant

- 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

John W. Domanski

Print Name and Title

John Domanski

Date: 8/6/2021

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 | |

Property Owner's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 67, Page 54

Recorded 2/23/1966

Lot Description

Kings Grant, Section 5-C, Lot 39 also known as
621 W. Kingston Circle

GPIN

1488-50-7952

Current Property Owner

Thet M. Kyaw & Yin Yin May

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Deviation from the July 22, 2019 CBPA Board variance conditions with the construction of a wood deck.

Location of Unauthorized Improvements

50-foot Landward Buffer

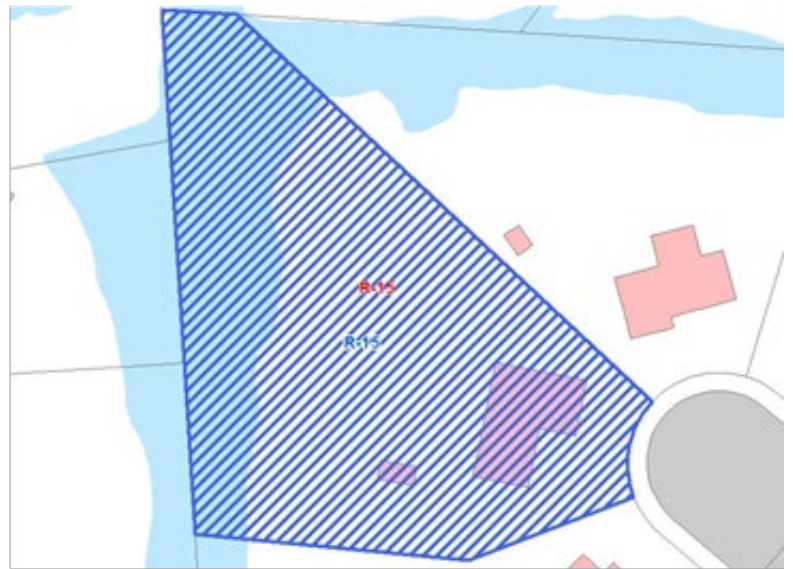
100 foot Variable Width Buffer

CBPA Ordinance

- The unauthorized improvements constitute a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet



CBPA Ordinance Variance History

July 22, 2019 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to expand the existing wood deck footprint with a second story deck and landing area off the rear and side of the residence – 2 in total with the following conditions:

1. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
2. *The proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.*
3. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **313 square feet x 200 percent = 626 square feet.***

*Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 3 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. *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. *Construction limits shall lie a maximum of 15 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.***
7. *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.*

History of Noncompliance

To Staff's knowledge, Thet M. Kyaw has no known history of noncompliance with the provisions of the Chesapeake Bay Preservation Area Ordinance.

Chronology of Events to CBPA Variance

| | |
|-------------------|---|
| March 26, 2012 | CBPA Administrative Variance provided for additions to the primary structure on a parcel recorded prior to the adoption of the CBPA Ordinance, request may be permitted administratively [Appendix F, Sec 106(B)(4)]. |
| May 29, 2012 | Modification approved breezeway location and replacement of existing driveway associated with the 2012 CBPA Administrative Variance. |
| January 16, 2013 | RPA Single Family Site Plan approved by the Development Services Center |
| May 22, 2013 | Field Change Plan approved for additions to the primary structure, 35 x 4 off south side of residence and 10 x 10 off west side of residence. |
| November 12, 2013 | Field Change Plan for the elimination of the proposed water service upgrade in West Kingston. The existing water service will remain and be utilized as long as the new full bathroom is located on the 1 st floor. |
| August 26, 2014 | Preliminary Project Request (PPR) for 2 nd story balcony over natural ground on west and south side of residence. CBPA Board Variance required. |
| August 15, 2016 | Preliminary Project Request (PPR) to construct a fence along property line. No variance to the CBPA Ordinance required. |
| April 10, 2017 | Preliminary Project Request (PPR) to construct balcony approved by CBPA Administrative Variance. Approval letter was issued then a hold place on the record when Staff discovered that the wood decks were not part of the 2012 CBPA Administrative Variance as present. |
| October 16, 2017 | Preliminary Project Request (PPR) to place stone along shoreline. A Joint Permit Application (JPA) required. |
| May 28, 2019 | Preliminary Project Request (PPR) for 2 nd story balcony over natural ground on west and south side of residence. CBPA Board Variance required. |
| May 29, 2019 | CBPA Board Variance application received for construction of wood deck off the rear of the residence and a wood deck off the south side of the residence. |
| July 22, 2019 | CBPA Board granted a variance to the CBPA Ordinance for the encroachment into the RPA buffer to construct two wood deck as conditioned. Conditions of the July 2019 CBPA Variance are listed above under CBPA Ordinance Variance History, specifically condition 2 that states " <i>the proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.</i> " |

| | |
|-----------------|---|
| June 16, 2021 | Building permit issued by Permits & Inspections for the construction of two decks. The plan provided to Permits & Inspections and issued for permitting was the CBPA Exhibit presented to the CBPA Board at the July 2019 CBPA Board public hearing. This exhibit showed a 6-foot by 8-foot deck off the south side of the residence. The CBPA Variance conditioned a maximum size of the proposed wood deck of 4 feet by 4 feet. |
| August 6, 2021 | Staff receives a complaint regarding the construction of the wood deck off the south side of the residence. |
| August 9, 2021 | Building Inspections visits the site, and a Stop Work Order is placed on the property for the activities associated with the construction of the wood deck off the south side of the residence. |
| August 16, 2021 | Staff sent a Notice to Comply letter to the property owner at 621 W. Kingston Circle to appear before the Chesapeake Bay Preservation Area (CBPA) Board at the September 9, 2021 CBPA Board Public Hearing. |

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance deviates from the conditions of the 2019 CBPA Variance with regard to condition 2 of said variance that stated, “*the proposed deck along the south side of the residence shall be a maximum of 4 feet by 4 feet.*” The deviation increases the size of the wood deck from 16 square feet to 48 square feet, a difference of 32 square feet. The 32 square feet of new impervious cover occurs within the upper reach of the 50-foot landward buffer of the RPA and the City’s Variable Width buffer. Land disturbance associated with this deviation is less than 2,500 square feet.

Environmental Impact

The subject area of noncompliance appears to occur within the 50-foot landward and 100-foot variable width buffers of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) adjacent to a contiguous tidal waterway.

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 when Staff visited the site.

Recommendation

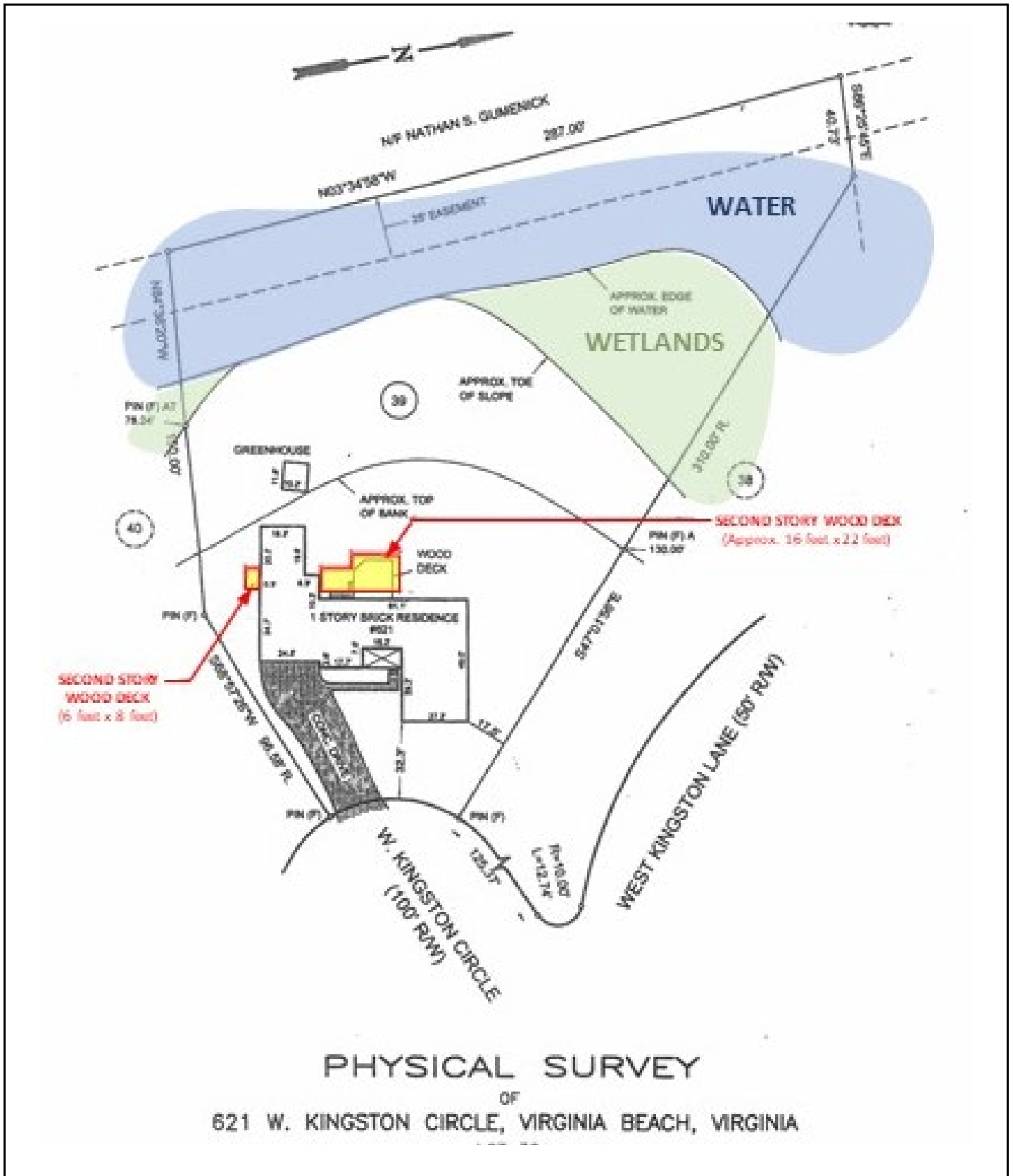
It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been low and the environmental impact has been low.

Site Aerial



Exhibit – Approximate Area of Unauthorized Improvements





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