

**Chesapeake Bay Preservation Area
Board Agenda
May 2, 2022**



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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, May 2, 2022** at 10:00 a.m. in the Council Chamber - 2403 Courthouse Drive, Building 3 (former City Hall), Second Floor, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - 2403 Courthouse Drive, Building 3 (former City Hall), Second Floor, 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.

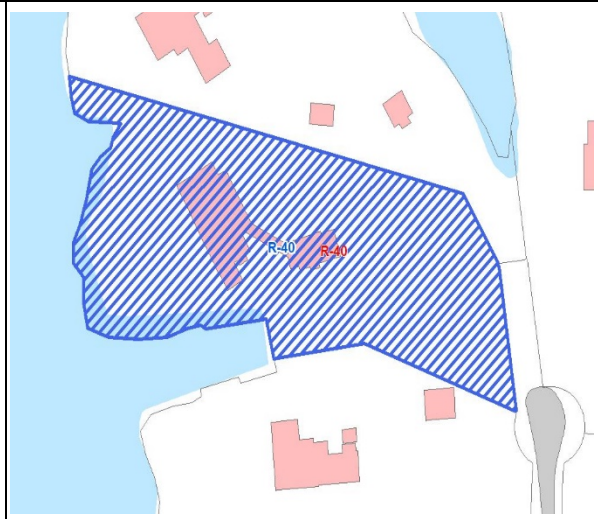
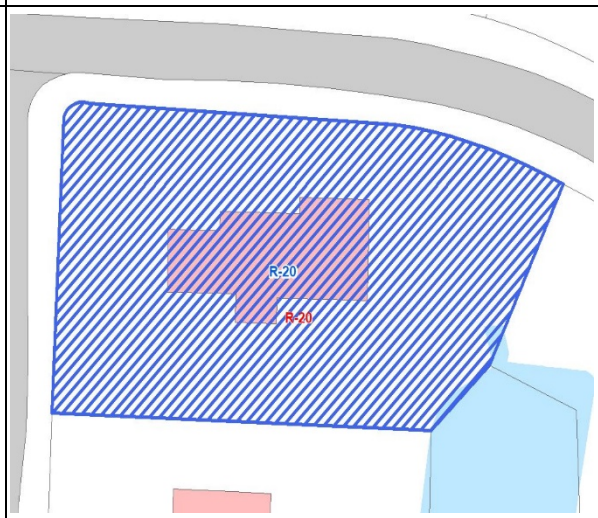


CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **May 2, 2022**

- 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. Michael & Mariah Standing [Applicants & Property Owners]</p> <p>925 Holladay Point GPIN 2418-54-3009 City Council District: District 6, formerly Beach Accela Record: 2022-CBPA-00018</p> <p>Variance Request – Encroachment into the RPA to construct building additions, covered outdoor kitchen area with retaining wall, and relocated walkway.</p> <p>Staff Planner – PJ Scully Staff Report – page 7</p>	
<p>2. Jo B. & John B. Nowell, Jr. [Applicants & Property Owners]</p> <p>2241 Leeward Shore Court GPIN 2409-19-3878 City Council District: District 8, formerly Lynnhaven Accela Record: 2022-CBPA-00014</p> <p>Variance Request – Encroachment into the RPA to construct a building addition with wood deck & concrete patio.</p> <p>Staff Planner – PJ Scully Staff Report – page 19</p>	

NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Maryanne & Michael Miller
[Applicants & Property Owners]

2708 Hood Circle

GPIN 498-53-1417

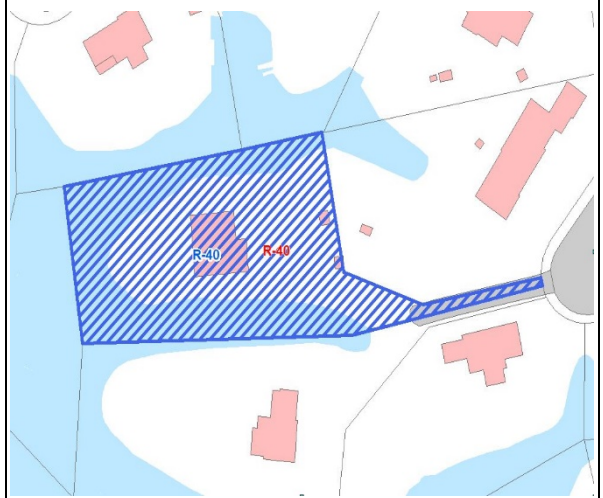
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00015

Variance Request – Encroachment into the RPA to construct tiered wood decks, inground pool, building addition, and driveway with parking area.

Staff Planner – PJ Scully

Staff Report – page 31



4. Kirk & Tara Heath
[Applicants & Property Owners]

1048 Bobolink Drive

GPIN 2418-15-8464

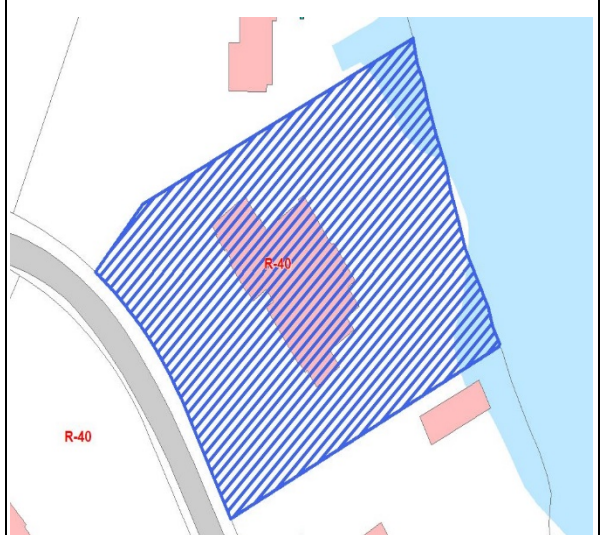
City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00013

Variance Request – Encroachment into the RPA to construct swimming pool with associated patio area and retaining walls, covered patio with arbor, building additions, and developed driveway.

Staff Planner – PJ Scully

Staff Report – page 45



5. Valerie & Kenneth Register
[Applicants & Property Owners]

3157 Lynnhaven Drive

GPIN 1489-98-7424

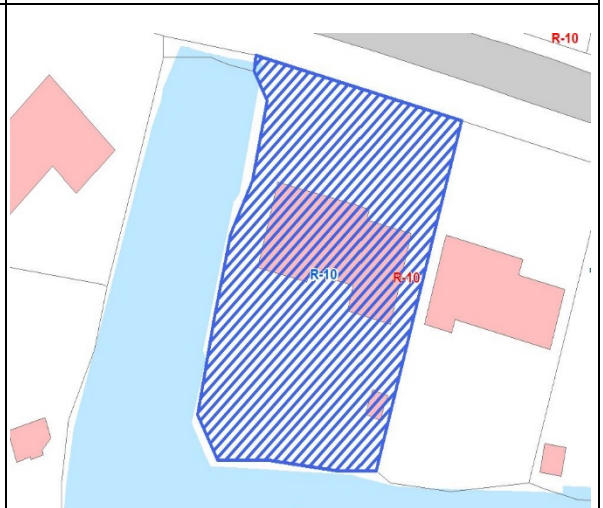
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00016

Variance Request – Encroachment into the RPA to construct swimming pool with fire pit and outdoor kitchen area.

Staff Planner – PJ Scully

Staff Report – page 59



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Lee Shearin

[Applicant & Property Owner]

913 Holladay Point

GPIN 2418-53-4564

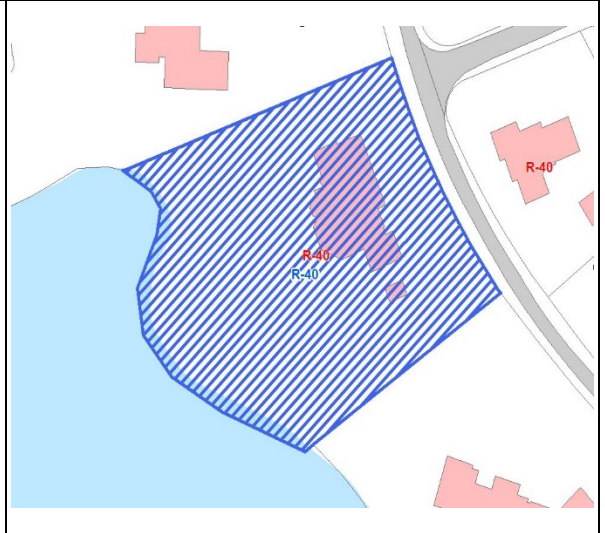
City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00017

Variance Request – Encroachment into the RPA to construct concrete patio, fire pit, pool house with two gravel-pave parking areas.

Staff Planner – PJ Scully

Staff Report – page 71



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 **Michael & Mariah Standing**
 Address **925 Holladay Point**
 Public Hearing **May 2, 2022**
 City Council District **District 6**, formerly Beach

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct building additions, covered outdoor kitchen area with retaining wall, and relocated walkway.

Applicant's Agent

Eddie Bourdon
 Sykes, Bourdon, Ahern, Levy PC

Staff Planner

PJ Scully

Lot Recordation

Map Book 27, Page 15
 Recorded 3/20/1951

GPIN

2418-54-3009

SITE AREA

66,026 square feet or 1.516 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

53,666 square feet or 1.232 acres

EXISTING IMPERVIOUS COVER OF SITE

14,208 square feet or 26.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

15,222 square feet or 28.4 percent of site

Area of Redevelopment in RPA

332 square feet

Area of New Development in RPA

1,200 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

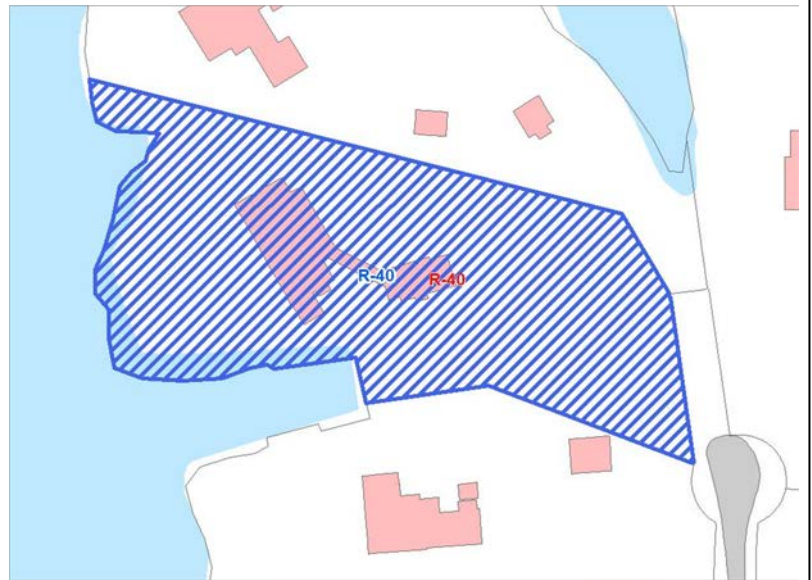
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portion of brick paver walkway
- Outdoor shower and attached bathroom
- Block walls

Construction Details

- Building addition to the existing single-family residence – 2 in total
- Covered outdoor kitchen area with associated retaining walls
- Replace and relocate brick paver walkway

CBPA Ordinance Variance History

On August 22, 1994, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a two-story single-family residence with brick pool decking patio area, and concrete walks and driveway with the following conditions:

- 1. A total of 26 trees should be planted. These include the eleven which were to be planted according to the previous variance. A tree planting schedule must be submitted for review.*
- 2. Stormwater calculations are subject to further review by the City Engineers Office.*
- 3. A revised site plan meeting the above conditions shall be submitted to the Planning Department for full plan of development review and approval prior to the issuance of a building permit.*
- 4. The applicant shall install all erosion control and tree protection devices and must contact Waterfront Inspections at 427-8246 for an inspection prior to any further work including clearing, grading, footing, excavation, etc.*

The August 22, 1994 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the conditioned limits of construction of the proposed outdoor kitchen area and one of the proposed building additions. Staff is of the opinion that these trees cannot be avoided during construction.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct two building additions to the existing single-family residence, an outdoor kitchen area with an associated retaining wall, and relocate a portion of the existing brick paver walkway. The two building additions in total make up 869 square feet on new impervious cover consisting of a combination of redevelopment over existing impervious cover and new impervious cover within the Resource Protection Area (RPA). Encroachment into the landward buffer of the RPA consists of the addition to the northern portion of the residence as well as the entirety of the outdoor kitchen area, with the southern building addition and walkway relocation falling in the seaward buffer. Staff is of the opinion that this lot has minimal tree canopy cover and would benefit from the required buffer restoration conditioned for the new impervious cover in the RPA. Additionally, the applicant is addressing stormwater management by planting bioretention planting beds which will further benefit the lot and the watershed.

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 1951 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that the encroachment into the 100-foot RPA with the accessory structure is similar to those in the neighborhood and the additions to the primary structure are minimal.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant because *"the lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffer covers over 97% of the lot."* Staff offers that the encroachment is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the improvements in the area deemed to be the best area to minimize site impacts in the critical buffer area."* Staff is of the opinion that the applicant is proposing to construct the larger of the two building additions in the landward buffer as to minimize impacts to the more environmentally sensitive seaward buffer.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment between the improvements and the Linkhorn Bay.”* Staff acknowledges the requirement to treat stormwater with the new impervious cover and land disturbance on this lot as a viable means towards providing water quality.
- 5) *“Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into Linkhorn Bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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: **1,200 square feet x 200 percent = 2,400 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 12 understory trees, 18 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.

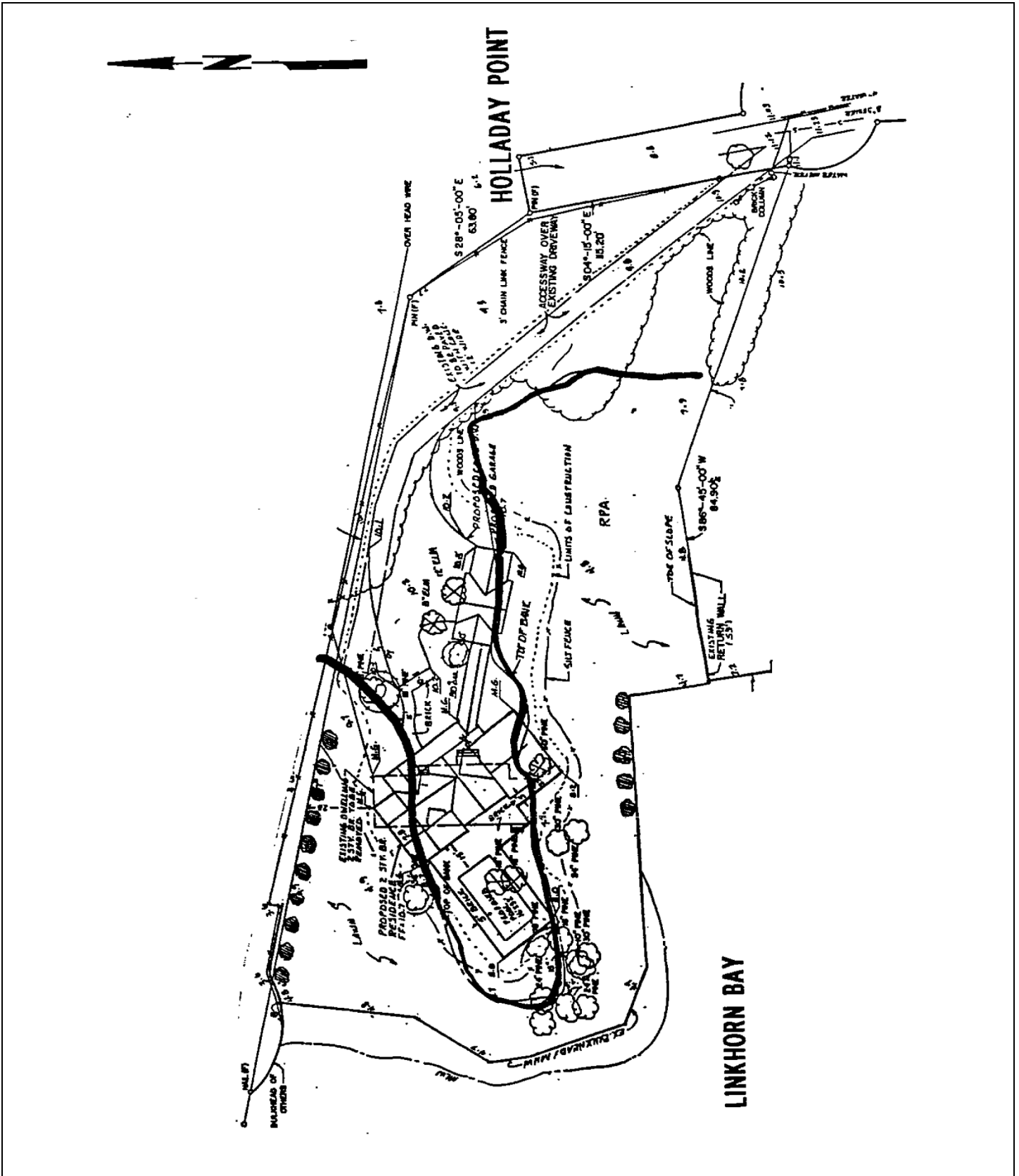
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$275.00 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) This variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted August 22, 1994.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated January 8, 2022, prepared by WPL, signed March 31, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

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

Site Aerial





Disclosure Statement



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 Michael Standing & Mariah Standing

Does the applicant have a representative? Yes No

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

R. Edward Bourdon, Jr. Esquire

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

OneSpace (Jinal Kothari) & 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.

To be Determined

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

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

Brad Martin, WPL

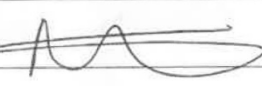
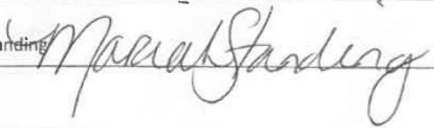
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No

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

R. Edward Bourdon, Jr., Esq., Sykes, Bourdon, Ahern & Levy, P.C.

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
 Michael J. Standing, Jr.  **Applicant Signature**
 Mariah W. Standing 
Print Name and Title

Date

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

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

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

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



Applicant & Property Owner **Jo B. & John B. Nowell, Jr.**
Address **2241 Leeward Shore Court**
Public Hearing **May 2, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition with wood deck & concrete patio

Applicant's Agent

Billy Garrington
Governmental Permitting Consultant

Staff Planner

PJ Scully

Lot Recordation

Map Book 48, Page 15
Recorded 10/06/1959

GPIN

2409-19-3878

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

130 square feet

Area of New Development in RPA

1,330 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- New building addition with associated porch, wood deck, and concrete patio

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 8

Soil Type(s)

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

Shoreline

Shoreline is developed by a concrete bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the limits of construction and area of land disturbance associated with the proposed improvements.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a one-story building addition on the southern side of the existing single-family residence with a screened porch, wood deck, and concrete pad for an outdoor kitchen area within the landward portion of the Resource Protection Area (RPA). This request consists of approximately 130 square feet of redevelopment over an existing concrete walkway and approximately 1,330 square feet of new impervious cover. The majority on the new impervious cover will be within the landward buffer of the RPA with a small amount of new impervious cover located in the Resource Management Area (RMA) of the Chesapeake Bay watershed. Although no stormwater management facility is required given that the project limits the land disturbance to less than 2,500 square feet, the applicant has indicated in the Water Quality Impact Assessment (WQIA) that sand and gravel underdeck treatment will be used as a means to prevent any increase in nonpoint source pollution load specific to the proposed wood deck.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1958 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that the primary purpose of this variance request is to construct and addition to the existing principal structure that is located within the upper reach of the 100-foot RPA feature.
- 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 60% of the lot."* Staff offers that the encroachment is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvements in the area deemed to be the best area to minimize site impacts in the critical buffer areas."* Staff is of the opinion that the owners have designed the layout of the proposed improvements to minimize impacts to the buffer by situating the improvements in the landward buffer and Resource Management Area with no encroachment into the seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently has minimum buffer restoration and if approved, the proposed redevelopment will be required to install 2,660 sq. ft. of addition buffer restoration provided between the improvements and the canal."* Staff concurs and adds that the applicant is also installing sand/gravel underdeck treatment as addition measures to address rainwater infiltration and nonpoint source pollution load with this request.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. If approved, 2,660 sq. ft. of addition buffer restoration will be placed between the improvements and the waterway prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and the applicant's statement to the installation of buffer restoration within the RPA and sand/gravel underdeck treatment in association with the proposed wood deck, as provided in the WQIA as methods to ensure a no net increase in nonpoint source pollution load.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated March 28, 2022, prepared by WPL, signed March 30, 2022 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application

submitted and the sworn presentation to the Board. A Single-Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. 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: **1,330 square feet x 200 percent = 2,660 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, 12 understory trees, 18 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.

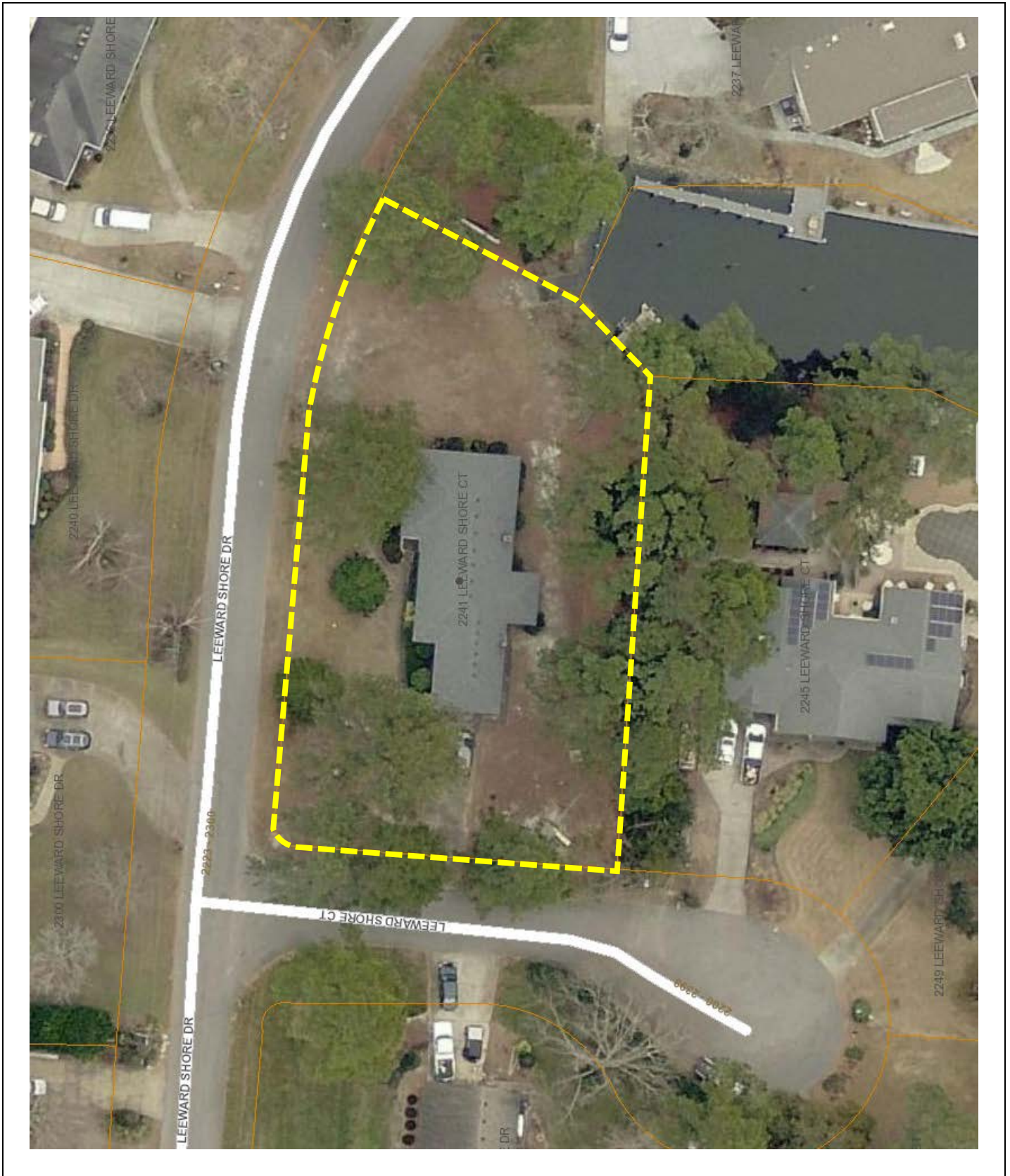
4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and 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.
6. 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.**
7. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. Under deck treatment of sand and gravel shall be installed.
10. ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$304.79 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

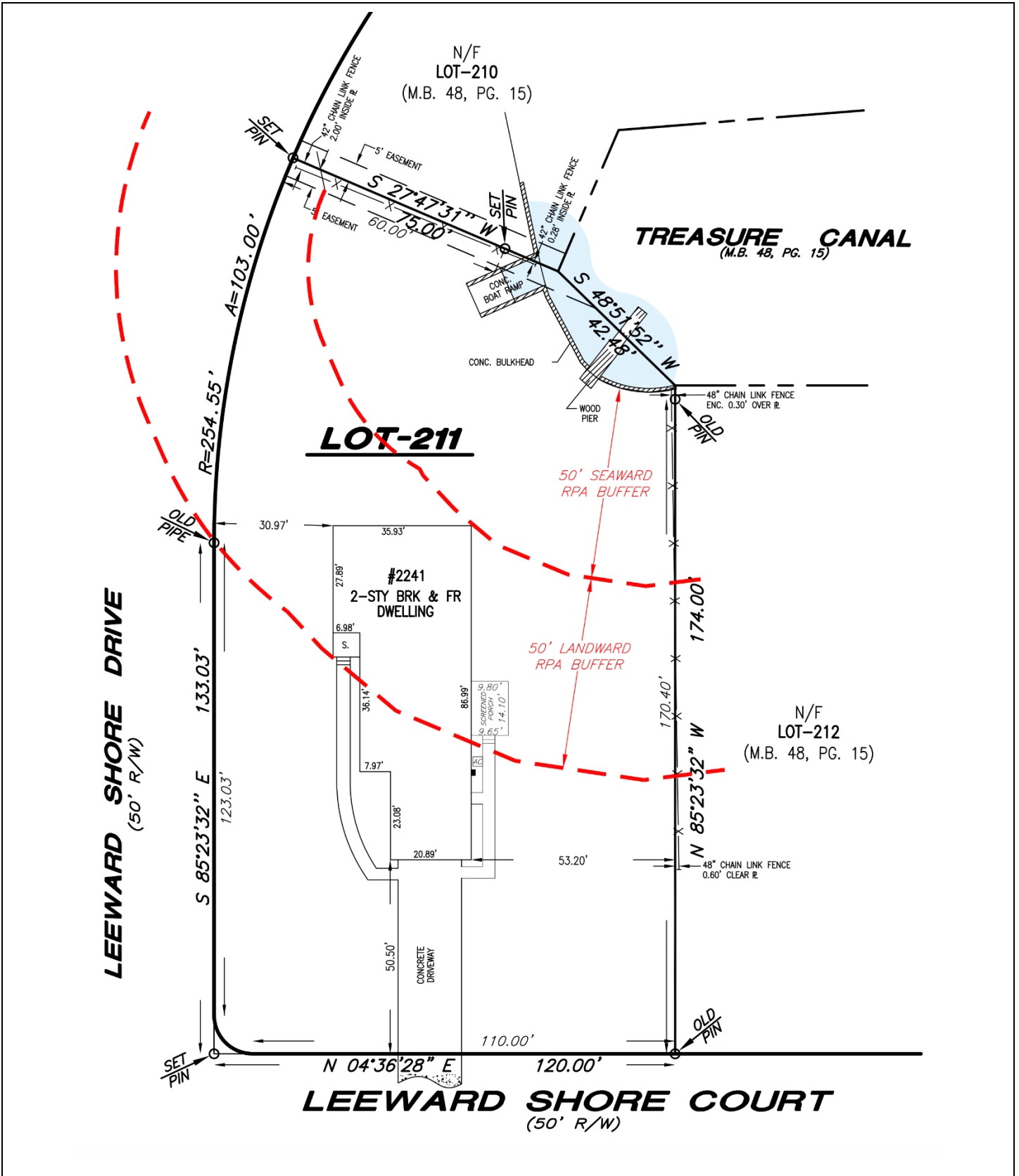
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

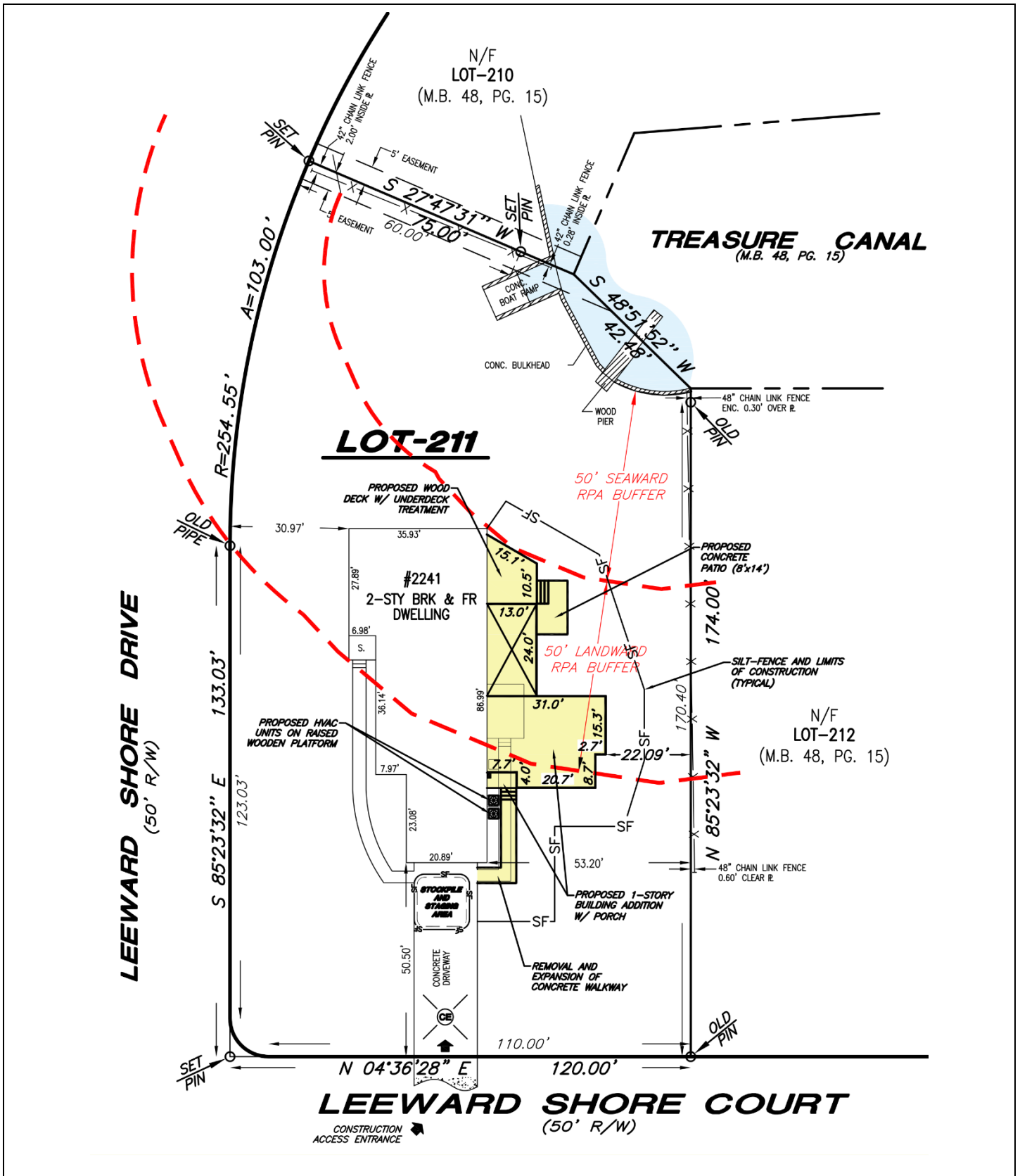
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Jo B. Nowell & John B Nowell, Jr

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 providing the service.

Wells Fargo

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.

Design Counts, Ray Counts 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.

Oceanside Structures, Inc

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

Jo B. Nowell & John B Nowell, Jr

Print Name and Title

John B Nowell Jr Jo B. Nowell 2/23/2022

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct tiered wood decks, inground pool, building addition, and driveway with parking area.

Applicant’s Agent

Billy Garrington
Governmental Permitting Consultant

Staff Planner

PJ Scully

Lot Recordation

Map Book 57, Page 5
Recorded 10/19/1962

GPIN

1498-53-1417

SITE AREA

54,467 square feet or 1.250 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

31,134 square feet or 0.715 acres

EXISTING IMPERVIOUS COVER OF SITE

9,546 square feet or 30.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,667 square feet or 40.6 percent of site

Area of Redevelopment in RPA

6,423 square feet

Area of New Development in RPA

3,111 square feet

Location of Proposed Impervious Cover

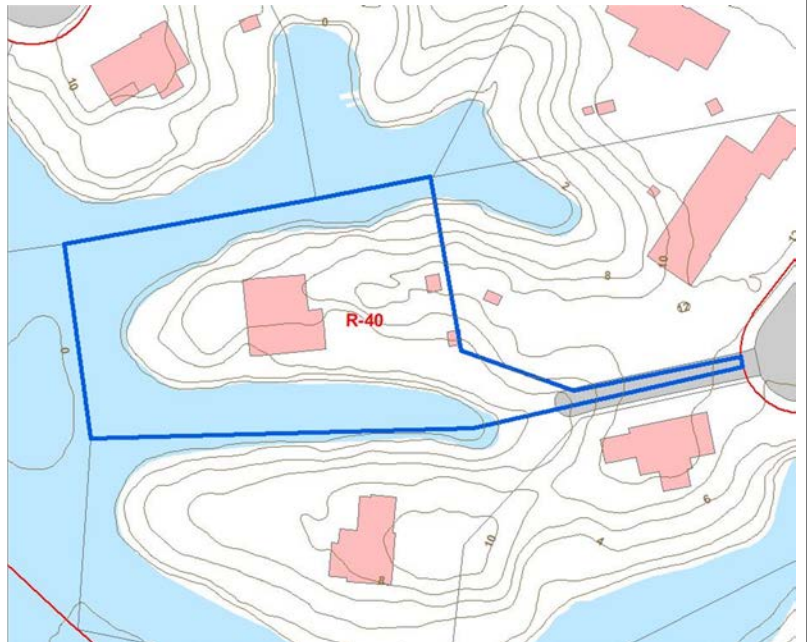
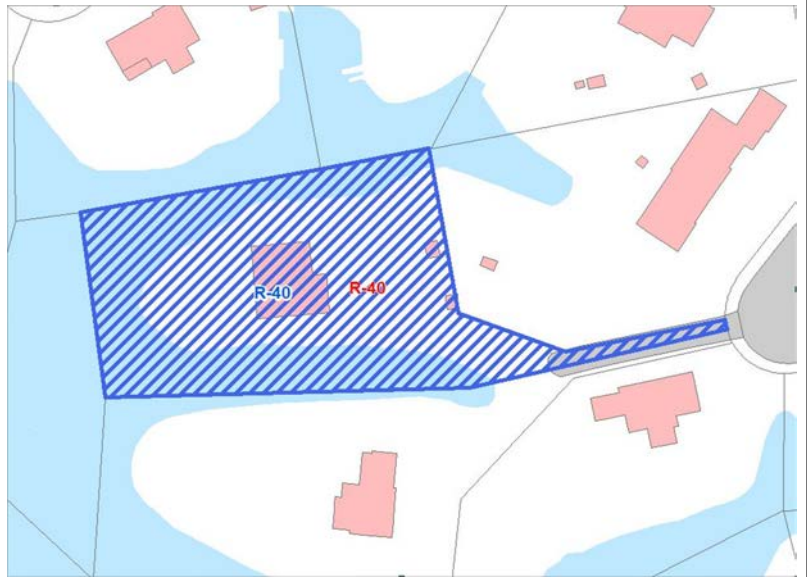
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Redevelop existing gravel driveway
- Paver patio/hot tub area, pergola, walkways, retaining walls, and porches

Construction Details

- Tiered wood deck
- Inground swimming pool with wood deck
- Building addition to the existing single-family residence
- Permeable paver driveway with parking area

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is hardened by a bulkhead and rip rap revetment

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: 3
- Evaluation of existing canopy tree removal request: The applicant submitted an Arborist report in conjunction with the CBPA Exhibit for this variance request. The report provided the following.
 - **Tree #1** Loblolly Pine, *Pinus taeda*, 25"DSH, Ht. 60-65': This tree is located 13' feet from the house and 10' feet from the waterway. Overall the tree is healthy with a fully developed crown which is slightly weighted toward the structure because of trees growing adjacent to the waterway. If the tree fails in a wind event toward the house it could cause significant damage. The master bedroom is located on the second floor, thirteen feet from the tree.
 - **Tree #2** Tulip Poplar, *Liriodendron tulipifera*, 22"DSH, Ht. 65-70': This tree is located 31' feet from the house. It has a significant lean toward the structure and the crown is weighted in the same direction. At one time there was another stem, but it has been removed and there is decay where it was cut (refer to photos). Additionally, there is a slight rise in the soil on the opposite side of the tree away from the lean. If this tree fails it can only fall toward the house because of the lean and crown displacement.

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request proposes to remove an existing paver patio area with associated accessory structures to construct an addition to the existing single-family residence with tiered wood decks and an in-ground swimming pool. In addition, several gravel pathways are proposed to be constructed with this variance request and the existing gravel driveway will be redeveloped and expanded using a permeable paver system – GravelPave grid system. As submitted the proposed improvements increase the overall impervious cover of the lot from 9,546 square feet to 12,667 square feet or from 30.6 percent to 40.6 percent of the lot area above water and wetlands. Approximately 6,423 square feet of the proposed improvements with this variance request is considered redevelopment over existing impervious cover with a remaining 3,111 square feet consisting of new impervious cover in the Resource Protection Area (RPA). Of the 3,111 square feet of new impervious cover within the RPA, approximately 1,845 square feet is allocated to permeable pavers and the GravelPave system associated with the redevelopment and expansion of the existing driveway and new gravel walkways. An additional 890 square feet of new impervious cover is associated with the construction of the wood deck. The proposed wood deck will redevelop the existing concrete paver patio area in the rear yard of the lot. Provided on page 39 of this Staff report, the applicant's agent has submitted a color analysis showing the breakdown of the impervious cover and redevelopment areas on the lot.

To further 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 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 within the Lynnhaven River watershed.

- 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 1962 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff is of the opinion that the peninsula shape and overall width of the property challenges the redevelopment of this lot. As such, the applicant and their design team have provided a means to redevelop the lot that minimizes impacts to the existing riparian buffer ecosystem by preserving the existing canopy cover to the greatest extent practicable and utilizing more existing impervious cover than proposed new impervious cover towards the proposed improvements associated with this variance request.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* 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 and the site 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 river.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the redevelopment of the lot is in harmony with the purpose and intent of the CBPA Ordinance providing a means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration with the preservation of vegetation on the lot and use of materials associated with the redevelopment of existing impervious cover.
- 5) *“Bioretention and permeable surfaces will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed 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 acknowledges the statement provided by the applicant’s agent and concurs.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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 in substantial compliance with the Design Plan provided with the CBPA Exhibit that delineated areas of lawn and planting areas. Buffer restoration in designated “planting areas” shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 understory trees, 14 large shrubs, and 21 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$712.93 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 March 11, 2022, prepared by WPL, signed March 25, 2022 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.

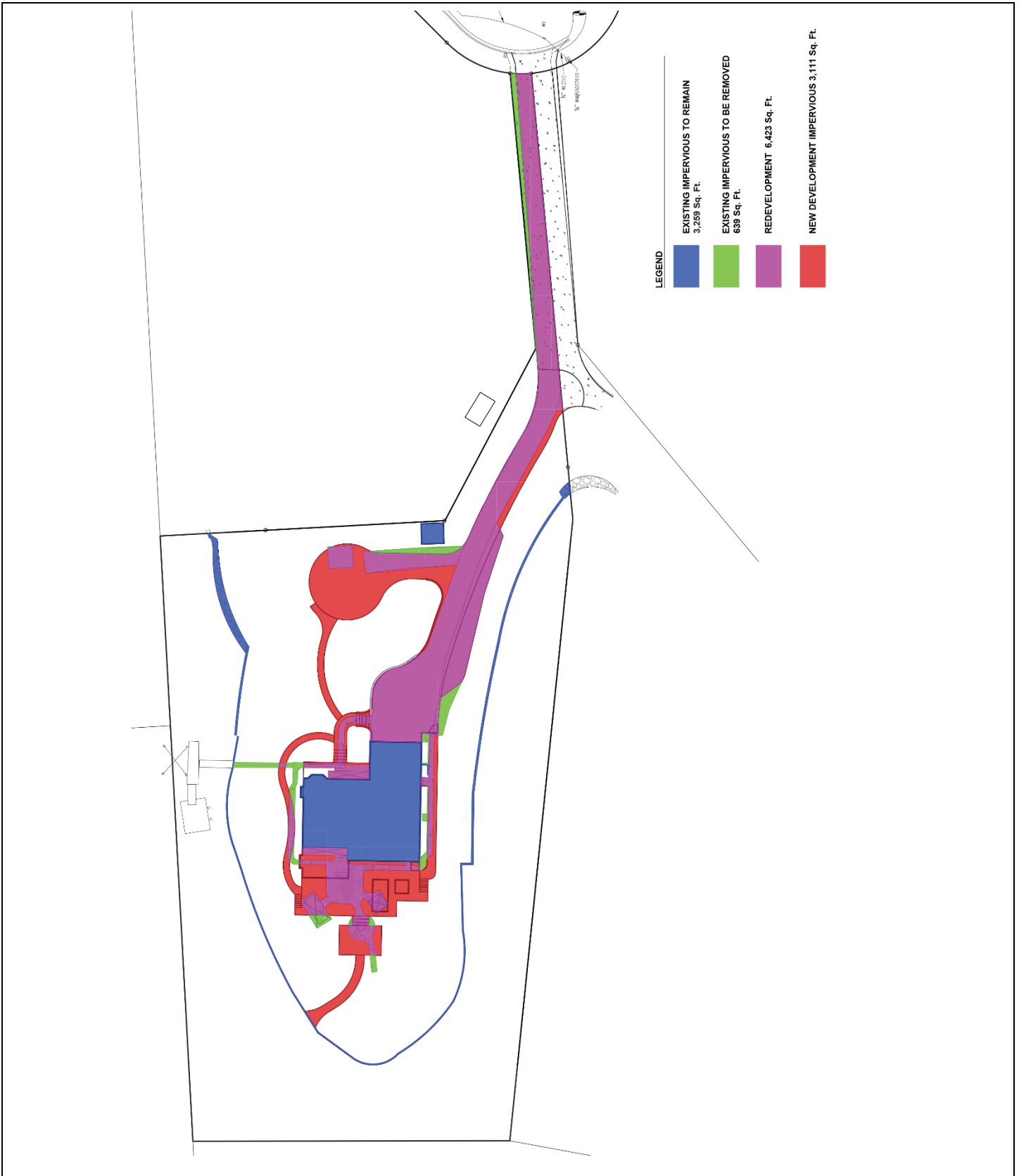
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*****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 – Color Analysis



CBPA Exhibit – Design Plan



Disclosure Statement



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Applicant Disclosure

Applicant Name Maryann E Miller & Michael J Miller

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 providing the service.

TowneBank

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.

Meg French, VSLD, WPL & Aaron J Cooper, Inc (AJCINC)

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.

MG Matthews Construction

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

Maryann E Miller &/or Michael J Miller

Print Name and Title

03/28/2022

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 **Kirk & Tara Heath**
 Address **1048 Bobolink Drive**
 Public Hearing **May 2, 2022**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Variance Request

Encroachment into the RPA to construct swimming pool with associated patio area and retaining walls, covered patio with arbor, building additions, and redeveloped driveway.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultant

Staff Planner

PJ Scully

Lot Recordation

Map Book 18, Page 84
 Recorded 12/7/1946

GPIN

2418-15-8464

SITE AREA

46,215 square feet or 1.061 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

43,374 square feet or 0.996 acres

EXISTING IMPERVIOUS COVER OF SITE

15,680 square feet or 36.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

16,705 square feet or 38.5 percent of site

Area of Redevelopment in RPA

8,017 square feet

Area of New Development in RPA

3,310 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Swimming pool with associated paver patio and planter walls
- Concrete driveway with carport
- Walkways with associated steps

Construction Details

- Swimming pool with associated paver patio and planter walls
- Pool house with arbor and covered patio area
- Building additions to the primary structure – 2 in total
- Permeable paver driveway
- River stone flume with timber check dams

CBPA Ordinance Variance History

January 23, 1995 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence, swimming pool, deck, retaining walls and circular driveway with the following conditions:

1. *A sequence of events schedule shall be included with the submittal of the final site plan. The sequence schedule shall include the demolition of the existing residence, limits of construction for the entire project, defined staging areas, on-site access routes, tree protection and the installation of the swimming pool which is to be constructed prior to the new residence being constructed. Retaining wall installation must also be identified in the required sequence of construction.*
2. *No filling of the property shall occur as a result of the proposed improvements exclusive of the retaining wall area.*
3. *The applicant shall install all erosion control and tree protection devices and must contact Waterfront Inspections at 427-8246 for an inspection prior to any further work including clearing, grading, footing excavation, etc.*

The January 23, 1995 CBPA Board granted variance has been acted upon and the associated improvements constructed.

December 20, 2007 a CBPA Board variance application was withdrawn from the public hearing for the construction of a building addition, tiki bar, portico and driveway replacement.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Kirk & Tara Heath

Agenda Item 4

Page 46

Shoreline

Shoreline is partially hardened by a rip rap revetment that transitions into a sandy beach along the northern portion of the lot. The applicant proposes to plant the upland portion of the shoreline to create a transitional landscape to allow for shoreline habitat migration.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of existing understory trees requested for removal within the RPA: 13
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 8
- Evaluation of existing canopy tree removal request: The trees being requested for removal are understory trees and primarily adjacent to the existing single-family residence. The majority of the trees being removed are declining in health and the applicants Landscape Architect has evaluated those trees as either declining or diseased.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to redevelop the existing residential lot with a new swimming pool with a paver patio area, additions to the primary structure, and a new permeable paver driveway. As shown on the CBPA Exhibit, the redevelopment of the driveway and portions of the additions to the single-family residence are within the variable width buffer of the Resource Protection Area (RPA). The rear yard is currently developed with a paver patio area with a swimming pool and associated accessory structures. As submitted, this new patio and pool layout shifts the improvements landward to reduce redevelopment within the seaward buffer. Although this request increases the overall impervious cover of the lot from 15,680 square feet to 16,705 square feet or 36.2 percent to 38.5 percent of the lot above water and wetlands, the applicant's agent has significantly utilized existing impervious cover with over 8,017 square feet of redevelopment to minimize impacts to the RPA. With the RPA encompassing over 90 percent of the lot, Staff is of the opinion that the applicant's agent has brought forth a plan that is harmonious with the intent of the CBPA Ordinance given the extent of redevelopment and the significant lot area proposed for buffer restoration with this variance request.

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 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 within the Lynnhaven River watershed.

- 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 1946 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* 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 offers that the applicant's agent and their design team has utilized the areas of redevelopment within the 50-foot seaward buffer to the greatest extent practicable while reducing the amount of impervious cover with the 50-foot seaward buffer by approximately 160 square feet. Staff is of the opinion that the redevelopment within this area provides 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. In addition, the applicant proposed to redevelop the existing concrete driveway, approximately 4,340 square feet with permeable pavers.

- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff concurs and offers that the proposed improvements redevelop impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural or nonstructural urban best management practices.
- 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 offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be increased with the replacement of the asphalt driveway with a permeable driveway along with the install a river rock flume & Check dams on the south side to reduce the erosion incurred from uncontrolled runoff from the city streets and R/W improvements."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the redevelopment of the lot as proposed, and the recommended conditions provided by Staff provides merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance. In addition to the bioretention planting beds and permeable pavers best management practices, the CBPA Exhibits provides a dry swale along the south side of the residence to abate stormwater runoff from the residence and public right-of-way. Staff is of the opinion that these practices coupled with the required buffer restoration on this lot provides merit towards a no net increase in nonpoint source pollution load in the watershed.
- 5) *"Bioretention & Permeable surfaces will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed 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 acknowledges the statement provided by the applicant's agent and provides the recommended conditions below for the CBPA Board's deliberation.

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 in substantial compliance with the Master Plan provided with the CBPA Exhibit that delineated areas of lawn and planting areas. Buffer restoration in designated “planting areas” shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **10 canopy trees, 10 understory trees, 20 large shrubs, and 50 small shrubs.**

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

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

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 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 \$758.54 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 March 11, 2022, prepared by WPL, signed March 18, 2022, by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

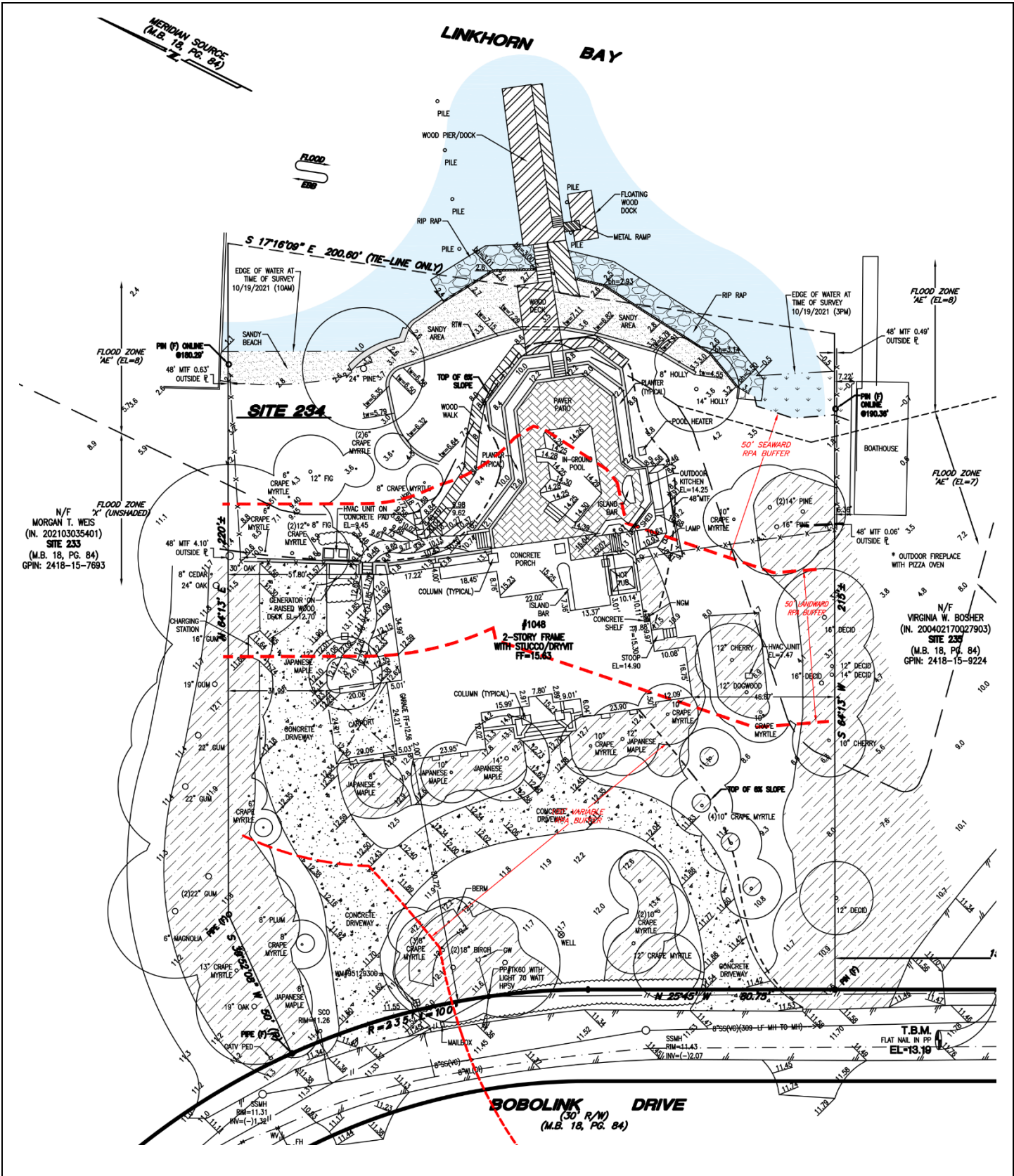
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

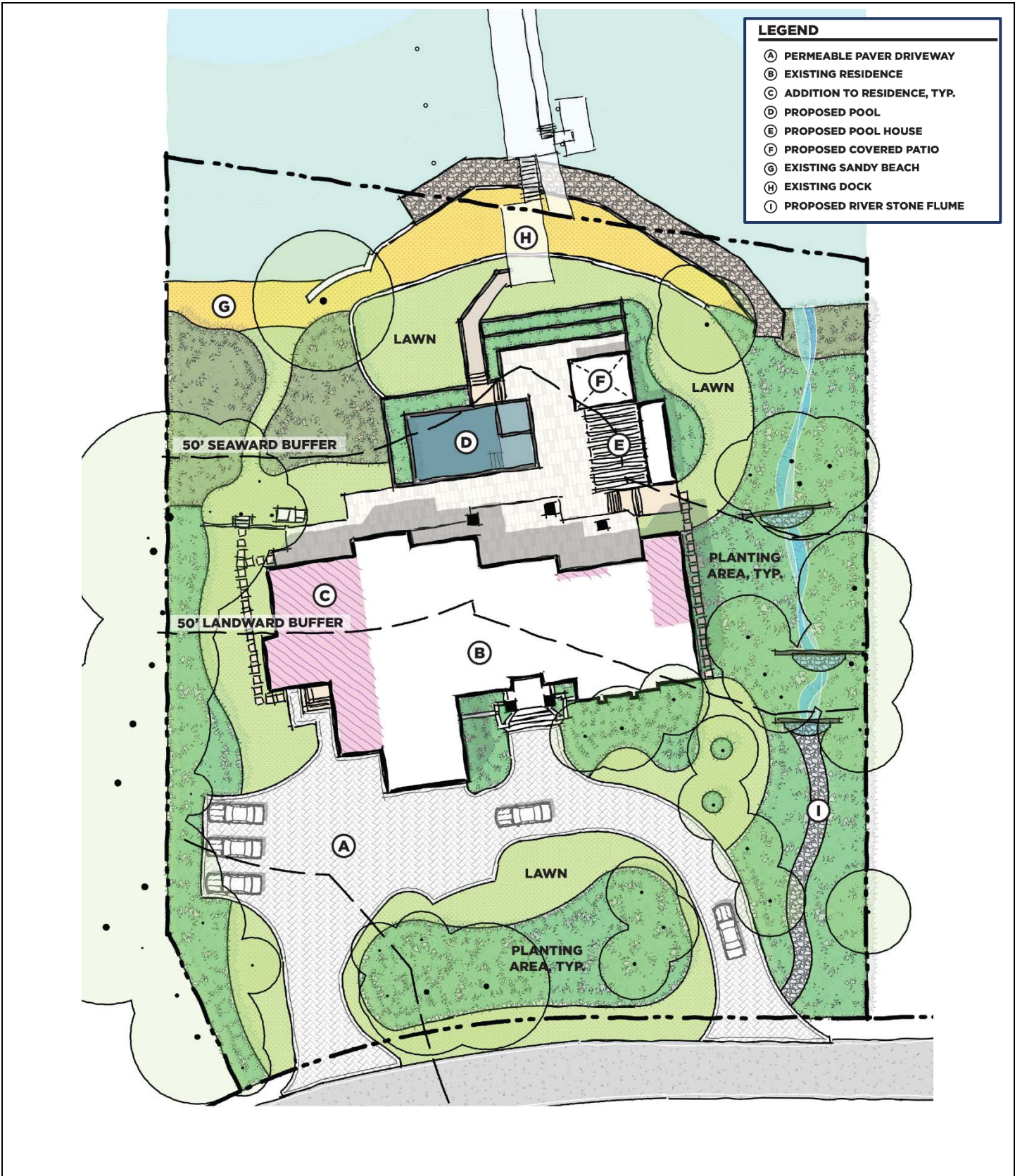
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Master Plan



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 Kirk W Heath & Tara T Heath

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 providing the service.
-

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

Yes **No**

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

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

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

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

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

WPL & Joelle Redfearn

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.
Seaside Builders
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
Kirk W Heath

Print Name and Title
03/25/2022

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 RPA to construct swimming pool with fire pit and outdoor kitchen area.

Applicant’s Agent

Robert Simon
Waterfront Consulting

Staff Planner

PJ Scully

Lot Recordation

Map Book 41, Page 44
Recorded 6/27/1956

GPIN

1489-98-7424

SITE AREA

19,626 square feet or 0.45 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,626 square feet or 0.45 acres

EXISTING IMPERVIOUS COVER OF SITE

4,693 square feet or 23.9 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,353 square feet or 32.37 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,660 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

- Redevelop concrete patio at rear of residence

Construction Details

- Pool and Spa with associated pool surround
- Fire pit with associated patio area
- Outdoor kitchen space

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Psammments Series (moderately well-drained soils, disturbed from excavation)

Shoreline

Shoreline is hardened by a bulkhead. The applicant is also proposing to construct a new bulkhead with a proposed pier, float, PWC lift, and gangway and has filed a Joint Permit Application (JPA) with the Virginia Marine Resources Commission (VMRC), which shall be reviewed by our Wetlands Board staff members.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The 50-foot seaward buffer of the Resource Protection Area (RPA) encompasses most of the subject lot with minimal existing canopy cover present and much of the rear yard devoted to turf. The applicant desires to construct a swimming pool with a firepit and outdoor kitchen area along the rear of the existing single-family residence. As submitted the request adds approximately 1,660 square feet of new impervious cover within the Resource Protection Area (RPA) encroaching into both the seaward and landward portions of the RPA. Approximately 928 square feet of the overall new impervious cover for the proposed improvements encroach into the 50-foot seaward buffer. Staff discussed the layout

of the proposed improvements with the applicant's agent in an effort to minimize the impacts of new impervious cover in the seaward buffer. Staff is of the opinion that shifting the proposed improvements landward, specifically the outdoor kitchen area creates an equal area within the 50-foot landward buffer. Staff has provided recommended condition one (1) below to address this concern.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the entire lot is in the RPA and all of the proposed structures are in concurrence with other lots in the area and are attached to the existing improvements on the lot to minimize any further encroachment."* Staff acknowledges that the entirety of the lot is encompassed by the Resource Protection Area and challenges the redevelopment for any proposed structures within the RPA. Staff is of the opinion that modifications can be made to the proposed improvements towards minimizing encroachment into the 50-foot seaward buffer and has provided the recommended conditions below.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality."* Staff concurs.
- 5) *"Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the bulkhead to capture and treat runoff prior to entering the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

- 1) The encroachment within the 50-foot seaward buffer shall be limited to 600 square feet and shall consist of the portion of the proposed swimming pool as shown on the CBPA Exhibit and a maximum 4-foot-wide pool surround.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,360 square feet of buffer restoration.**

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: **9 canopy trees, 18 understory trees, 27 large shrubs, and 36 small shrubs.**

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

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 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) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 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 \$380.41 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 March 08, 2022, prepared by Align Surveying & Design, P.C. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

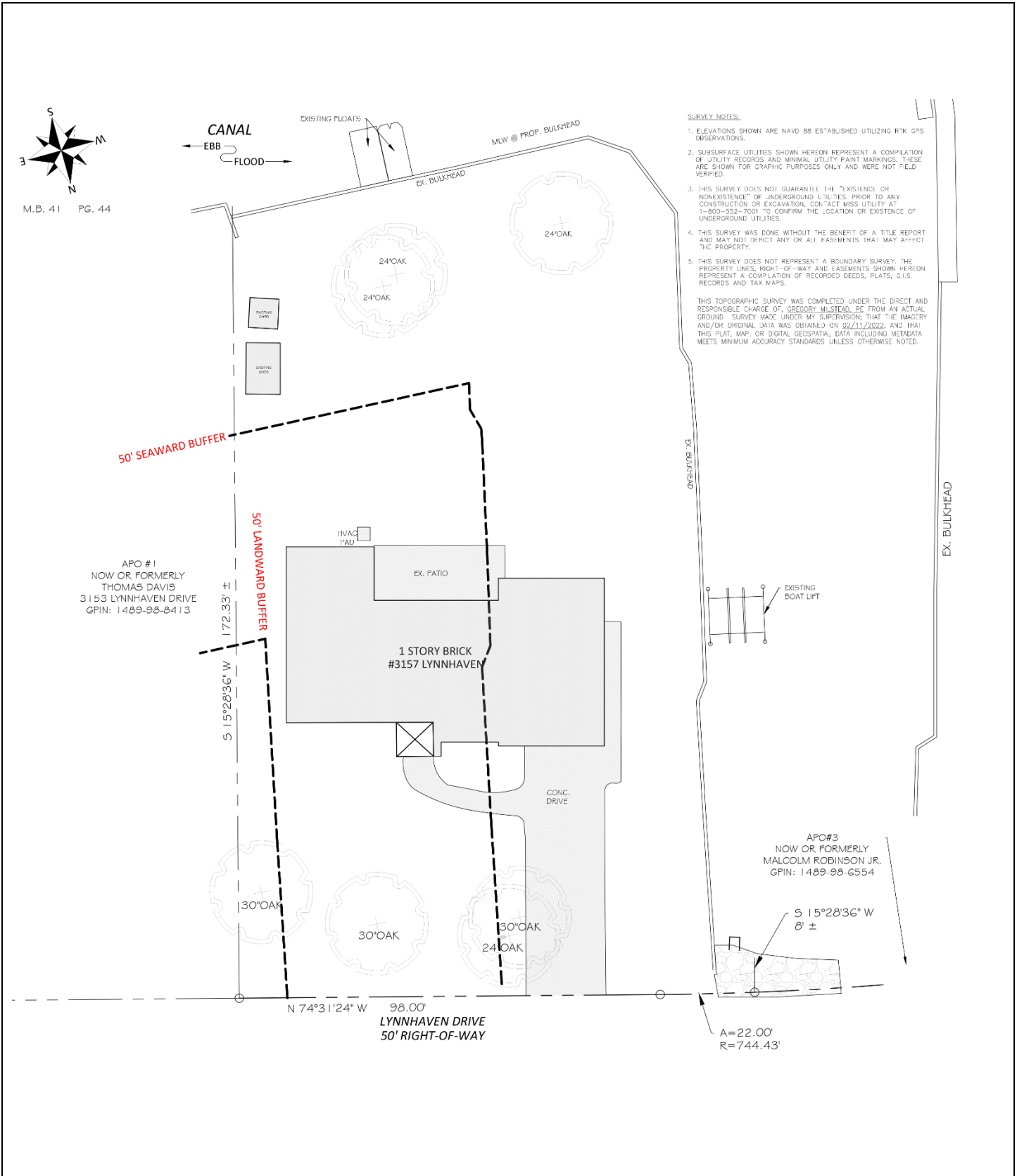
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

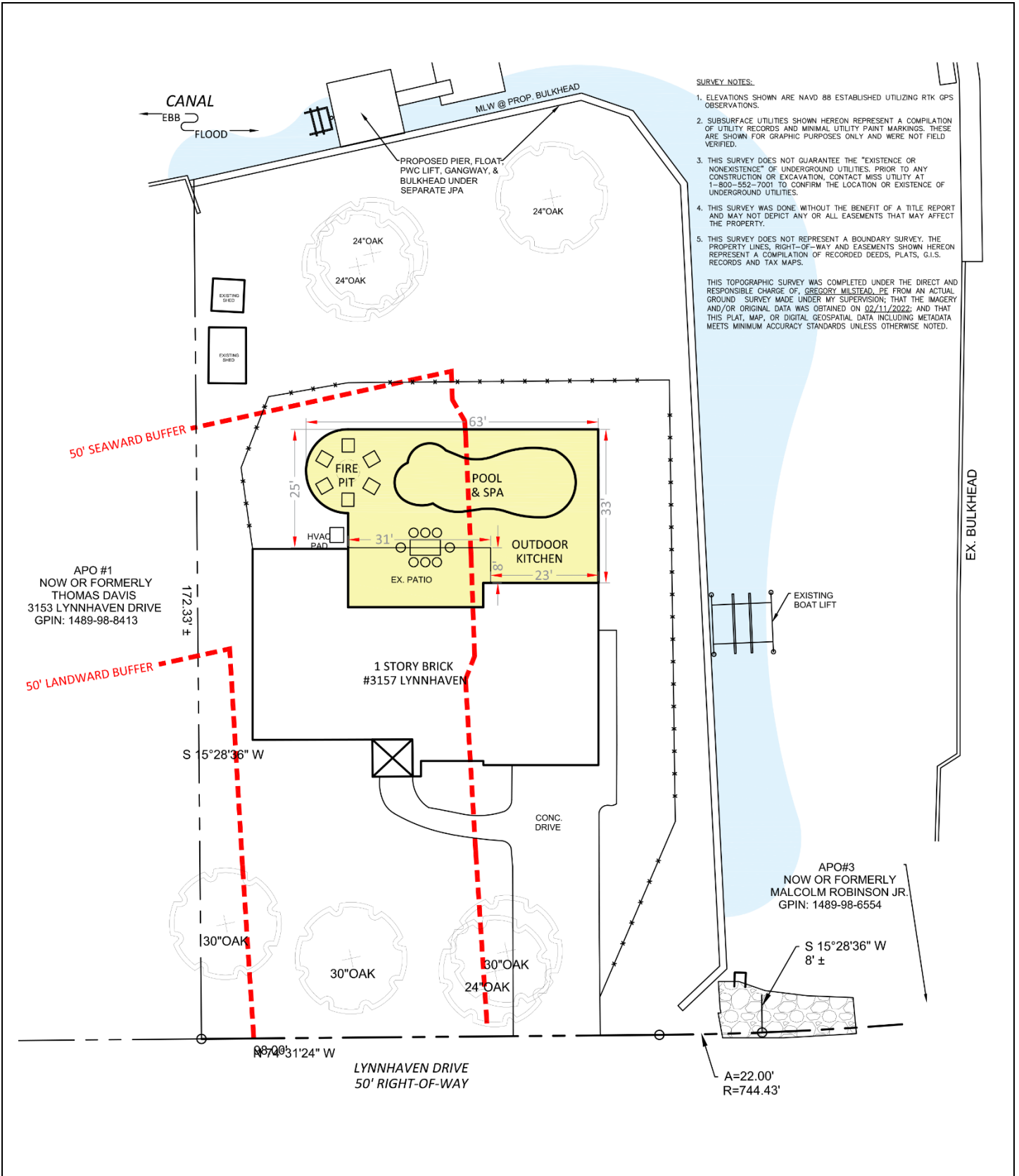
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



SURVEY NOTES:

1. ELEVATIONS SHOWN ARE NAVD 88 ESTABLISHED UTILIZING RTK GPS OBSERVATIONS.
2. SUBSURFACE UTILITIES SHOWN HEREON REPRESENT A COMPILATION OF UTILITY RECORDS AND MINIMAL UTILITY PAINT MARKINGS. THESE ARE SHOWN FOR GRAPHIC PURPOSES ONLY AND WERE NOT FIELD VERIFIED.
3. THIS SURVEY DOES NOT GUARANTEE THE "EXISTENCE OR NONEXISTENCE" OF UNDERGROUND UTILITIES. PRIOR TO ANY CONSTRUCTION OR EXCAVATION, CONTACT MISS UTILITY AT 1-800-552-7001 TO CONFIRM THE LOCATION OR EXISTENCE OF UNDERGROUND UTILITIES.
4. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT DEPICT ANY OR ALL EASEMENTS THAT MAY AFFECT THE PROPERTY.
5. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY. THE PROPERTY LINES, RIGHT-OF-WAY AND EASEMENTS SHOWN HEREON REPRESENT A COMPILATION OF RECORDED DEEDS, PLATS, G.I.S. RECORDS AND TAX MAPS.

THIS TOPOGRAPHIC SURVEY WAS COMPLETED UNDER THE DIRECT AND RESPONSIBLE CHARGE OF GREGORY MILSTEAD, PE FROM AN ACTUAL GROUND SURVEY MADE UNDER MY SUPERVISION; THAT THE IMAGERY AND/OR ORIGINAL DATA WAS OBTAINED ON 02/11/2022; AND THAT THIS PLAT, MAP, OR DIGITAL GEOSPATIAL DATA INCLUDING METADATA MEETS MINIMUM ACCURACY STANDARDS UNLESS OTHERWISE NOTED.

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 Kenneth & Valerie Register

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

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

Waterfront Consulting, Inc.

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Navy Federal Credit Union/Langley Federal Credit Union

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



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

- If yes, identify the construction contractor.

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

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

Waterfront Consulting, Inc., Stone Green Consulting LLC

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.

Kenneth G. Register

Applicant Signature
Kenneth & Valerie Register

Print Name and Title
Kenneth G. Register *Valerie Register*

Date *3/29/2022*

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 **Lee Shearin**
Address **913 Holladay Point**
Public Hearing **May 2, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

6

The applicant is requesting a deferral of this application to the Friday, July 8, 2022 CBPA Board Public Hearing to allow additional time to address Staff's concerns. Staff supports the request to defer.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a concrete patio, fire pit, pool house with two gravel-pave parking areas

Applicant's Agent

Billy Garrington
Governmental Permitting Consultant

Staff Planner

PJ Scully

Lot Recordation

Instr. No. 201000524000493380
Recorded 3/10/2010

GPIN

2418-53-4564

SITE AREA

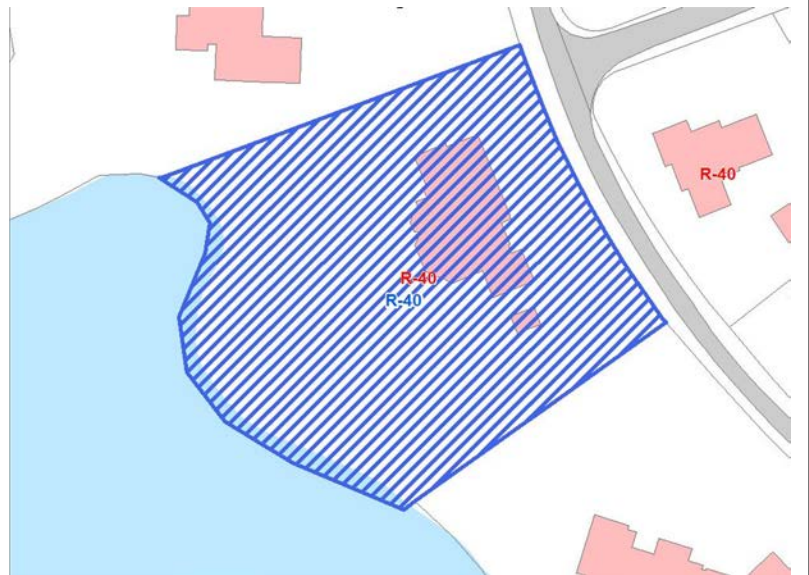
65,515 square feet or 1.504 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

61,552 square feet or 1.413 acres

EXISTING IMPERVIOUS COVER OF SITE

11,743 square feet or 19 percent of site



Site Aerial

