

A scenic photograph of a waterfront area. In the foreground, a wooden pier with several posts extends into the water. The water is calm and reflects the sky. In the middle ground, there is a grassy bank with several large, mature trees, including a prominent pine tree on the left and a large oak tree on the right. The background shows a clear blue sky and a distant shoreline with more trees and a small structure.

Chesapeake Bay Preservation Area Board Agenda June 6, 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, June 6, 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 **June 6, 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.

OLD BUSINESS AGENDA ITEMS	
<p>1. Lee Shearin [Applicant & Property Owner]</p> <p>913 Holladay Pt GPIN 2418-53-4564 City Council District: District 6, formerly Lynnhaven Accela Record: 2022-CBPA-00017</p> <p>Variance Request – Encroachment into the RPA to construct concrete patio, fire pit, pool house with two gravel-pave parking areas.</p> <p>Staff Planner – PJ Scully Staff Report – page 7</p>	
<p>2. Maryanne & Michael Miller [Applicants & Property Owners]</p> <p>2708 Hood Circle GPIN 1498-53-1417 City Council District: District 8, formerly Lynnhaven Accela Record: 2022-CBPA-00015</p> <p>Variance Request – Encroachment into the RPA to construct tiered wood decks, inground pool, building addition, and driveway with parking area.</p> <p>Staff Planner – PJ Scully Staff Report – page 23</p>	

NEW BUSINESS AGENDA ITEMS

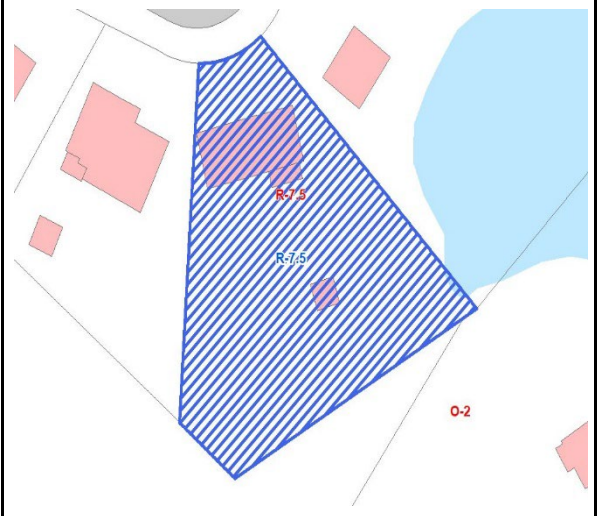
3. Jimmy & Margaret Chapman
[Applicants & Property Owners]

2105 Farmington Ct
GPIN 2407-16-7210

City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00023

Variance Request – Encroachment into the RPA to construct additions to the residence, paver patio, covered boat port, and relocated shed.

Staff Planner – Cole Fisher
Staff Report – page 37



4. Debra M. Smith
[Applicant & Property Owner]

509 Wilder Rd
GPIN 2418-68-5937

City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00024

Variance Request – Encroachment into the RPA to construct a building addition, covered porch, and concrete landing.

Staff Planner – Cole Fisher
Staff Report – page 49



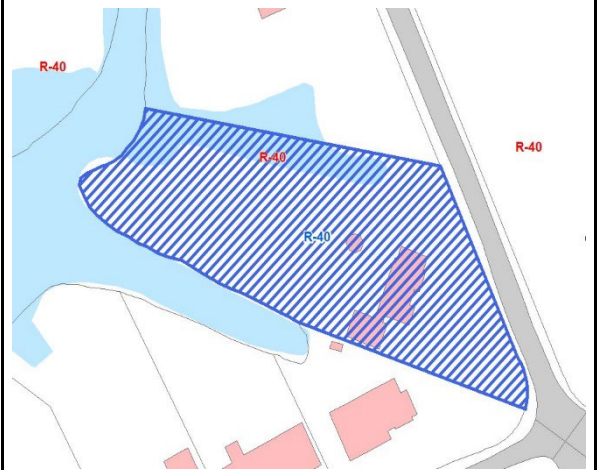
5. Suneel & Meghan Bhat
[Applicants & Property Owners]

801 Bobolink Dr
GPIN 2418-31-8124

City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00019

Variance Request – Encroachment into the RPA to construct shed.

Staff Planner – Cole Fisher
Staff Report – page 63



NEW BUSINESS AGENDA ITEMS (CONTINUED)

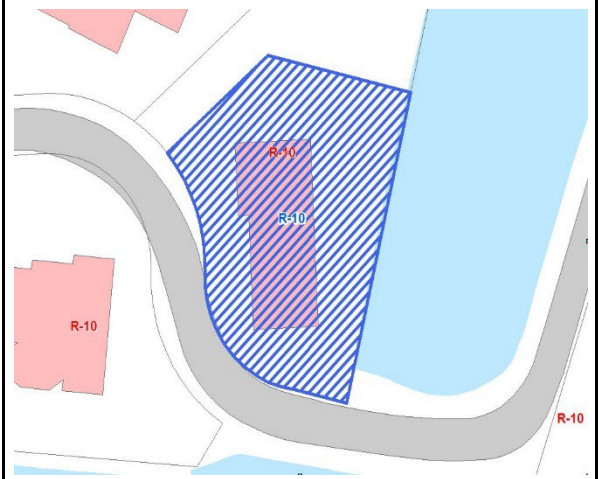
6. Steve Borcharding
[Applicant & Property Owner]

2700 Canal Rd
GPIN 1499-57-8389

City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00020

Variance Request – Encroachment into the RPA to construct a deck.

Staff Planner – Cole Fisher
Staff Report – page 75



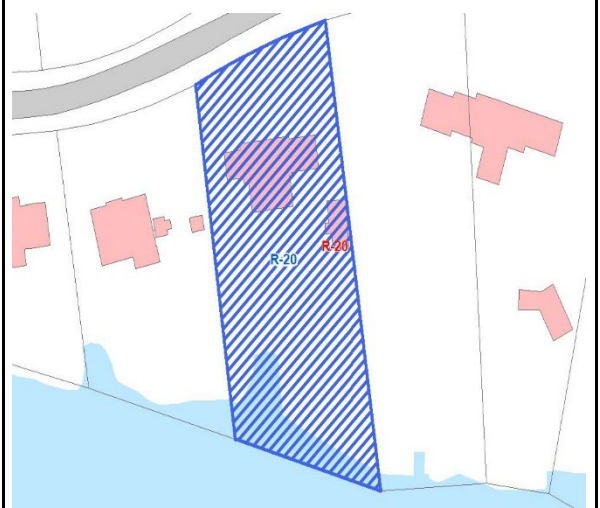
7. Brian & Elizabeth Roberts
[Applicants & Property Owners]

477 Goodspeed Rd
GPIN 2419-41-5154

City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00021

Variance Request – Encroachment into the RPA to construct a swimming pool with spa and associated patio.

Staff Planner – Cole Fisher
Staff Report – page 85



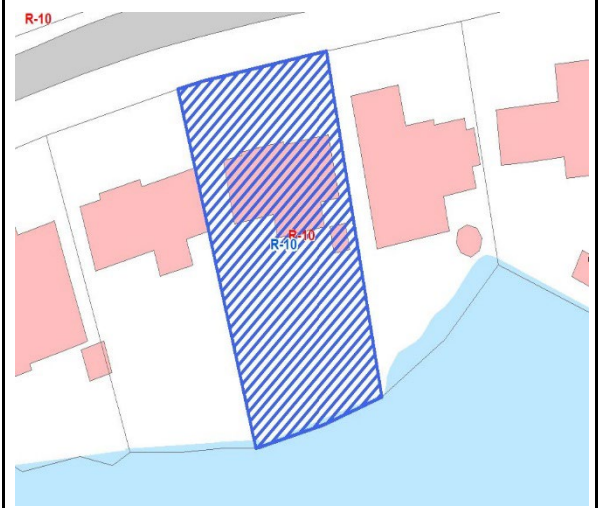
8. Kenneth & Heather Lewis
[Applicants & Property Owners]

3117 Lynnhaven Dr
GPIN 1499-08-5604

City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00022

Variance Request – Encroachment into the RPA to construct a single-family home, swimming pool, and driveway.

Staff Planner – Cole Fisher
Staff Report – page 97



NEW BUSINESS AGENDA ITEMS (CONTINUED)

9. Charles & Mary White

[Applicants & Property Owners]

813 Coverdale Ln

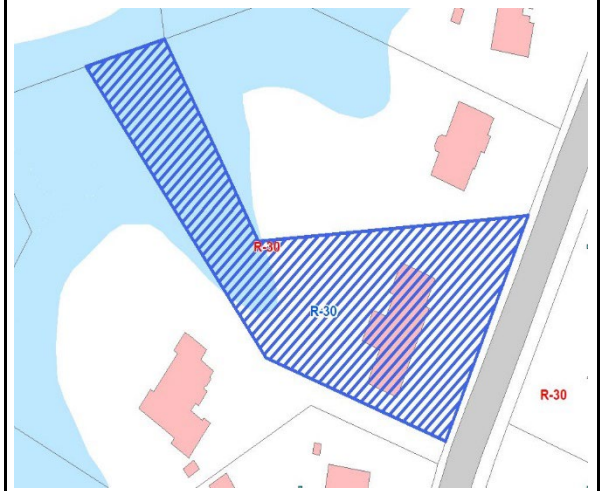
GPIN 1488-12-9936

City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00025

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

Staff Planner – Cole Fisher

Staff Report – page 109



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.



Applicant & Property Owner **Lee Shearin**
Address **913 Holladay Point**
Public Hearing **June 6, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

1

Variance Request

Encroachment into the RPA to construct 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

PROPOSED IMPERVIOUS COVER OF SITE

17,003 square feet or 27.6 percent of site

Area of Redevelopment in RPA

466.7 square feet

Area of New Development in RPA

6,088 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

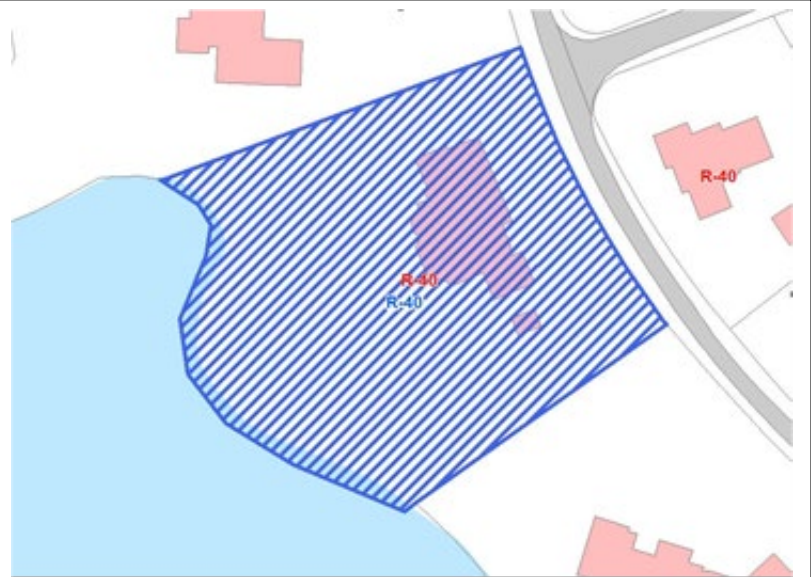
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood shed with associated concrete pad and ramp
- Masonry wall at existing swimming pool

Construction Details

- Two (2) 'GravelPave' parking areas
- Concrete patio areas
- Pool house with associated entry arbor
- Fire pit area with associated retaining wall

CBPA Ordinance Variance History

This variance request was deferred at the following CBPA Public Hearing.

- May 2, 2022 CBPA Board Public Hearing

April 27, 2009, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence and associated accessory structures with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Orange 36" re-enforced silt fence, for erosion and sedimentation control measures, shall be installed along the seaward limits of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements.*
3. *Best management practices for erosion and sediment control measures (silt fences) shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 15' outboard of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
8. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment. Said condition shall be so noted on the site plan.*
9. *The proposed 10' x 15' shed is to be relocated out of the 50' landward buffer and maintain a 20' side yard setback.*
10. *The property line between Lots 20 and a portion of 21 shall be vacated by resubdivision plat prior to the issuance of the building permit.*

11. *The existing garage apartment and frame shed located on the S. 20' of Lot 21 shall be removed.*
12. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
13. *The pool shall be constructed prior to or concurrent with the residence. The pool house shall be relocated landward of the 50 ft. portion of the buffer.*
14. *Any future path to the pier shall be of organic mulch and be a maximum of 4 feet in width.*
15. *The gazebo may remain; however, no expansion of the gazebo is permitted.*
16. *Under deck treatment of sand and gravel shall be installed.*
17. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,695.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,940 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
18. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
19. *Buffer restoration of 11,761 sq. ft. shall be installed which is equal to 100% of the proposed impervious cover and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. A minimum of ninety (90) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the certificate of occupancy or final building inspection.*
20. *The existing mown high marsh along the northwestern portion of the project shall no longer be mown and shall not be a component of the required 11,761 of restoration. Said no mow area shall be identified on the required landscape / buffer restoration plan.*
21. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
22. *The conditions and approval associated with this variance are based on the site plan dated February 17, 2009, prepared by Gallup Surveyors and Engineers Ltd.*
23. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The April 27, 2009 CBPA 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 hardened by a rip rap revetment that transitions into a high marsh community along the northern portion of the lot with an elevation of 1.6 feet above sea level to approximately 2.21 feet above sea level.

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The variance request proposes to construct two permeable "gravel pave" parking areas off the existing circular driveway as well as a concrete patio area adjacent to the existing swimming pool, a fire pit area with associated retaining wall, and pool house located within the rear yard of the existing residence. As situated the proposed improvements, area of new impervious cover within the Resource Protection Area (RPA) falls within the 50-foot landward buffer and the City's variable width buffer of the RPA. Although the redevelopment of the lot increases the overall impervious cover from 11,743 square feet or 19 percent of the lot above water and wetlands to 17,003 square feet or 27.6 percent of the lot above water and wetlands the applicant's consultant team has provided the following details regarding the layout of the proposed improvements as a means towards being in harmony with the performance standards of the Chesapeake Bay Preservation Area (CBPA) Ordinance.

- The layout of the proposed improvements does not encroach into the 50-foot seaward buffer.
- Approximately 62 percent of the area of new development occurs within the City's variable width buffer.
- Approximately 44 percent of the area of new development is allocated to the installation of 'GravelPave'.
- Bioretention best management practices (BMPs) are proposed along the seaward side of the new impervious cover. Approximately 190 linear feet of BMPs are shown on the CBPA Exhibit.

In addition to the specific details mentioned above, to further address Staff's concern regarding the increase to the overall impervious cover of the lot and the conditions of the April 2009 CBPA Variance specific to the required buffer restoration, the applicant's consultant team submitted a buffer restoration plan. The submitted plan separates the required buffer restoration for this variance request from the existing 'no mow zone' conditioned with the 2009 CBPA Variance. Although the buffer restoration is proposed primarily within the 50-foot seaward buffer, Staff has provided recommended conditions, specifically conditions 4 and 5 below to address buffer restoration for the new impervious cover within the RPA buffers in addition to the mitigation required by a tree removal request received by the Department of Planning & Community Development for the associated lot. Staff also provides recommended condition 6 below that conditions a reduction to the overall amount of impervious cover associated with the proposed concrete patio adjacent to the existing swimming pool and proposed pool house. Staff is of the opinion that

Lee Shearin

Agenda Item 1

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reductions can be made to the proposed patio area towards being in harmony with the findings of the CBPA Ordinance as the minimum necessary to afford relief while providing ample space to accommodate for the size of the applicant's family and programming of spaces as shown on the CBPA Exhibit.

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 *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff acknowledges the statement provided by the applicant's agent and provides the recommended conditions below that mitigate for the proposed improvements and conditions of the April 2009 CBPA Variance as a means towards this variance request being in harmony with other granted CBPA Variance within this neighborhood.
- 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 originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and re-platted to vacate an existing lot line and delineate the rear of the lot described by mean low water, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff acknowledges the statement provided by the applicant's agent and provides the recommended conditions below that address a reduction to the overall new impervious cover within the 50-foot landward buffer as a means towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality."* Staff provides the recommended conditions below that collaborates the stormwater requirements of the 2009 CBPA Variance, mitigates for the new impervious cover within the RPA associated with this variance request, and offers a reduction to the new impervious cover within the RPA as a means to manage the redevelopment of lot with respect to water quality.
- 5) *"Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that the applicant's agent has provided specific limits to land disturbance and limits of construction as shown on the CBPA Exhibit.

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

Recommended Conditions

- 1) This variance and associated conditions will supersede the conditions of the Chesapeake Bay Preservation Area (CBPA) Board Variance granted April 27, 2009 with the exception of the following.
 - Stormwater runoff from proposed impervious cover associated with the April 27, 2009 CBPA Variance shall be conveyed to stormwater management facilities. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.
- 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 (no mow zone), 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: **6,088 square feet x 200 percent = 12,176 square feet.**

Buffer restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **15 canopy trees, 15 understory trees, 30 large shrubs, and 90 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf. 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. 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.

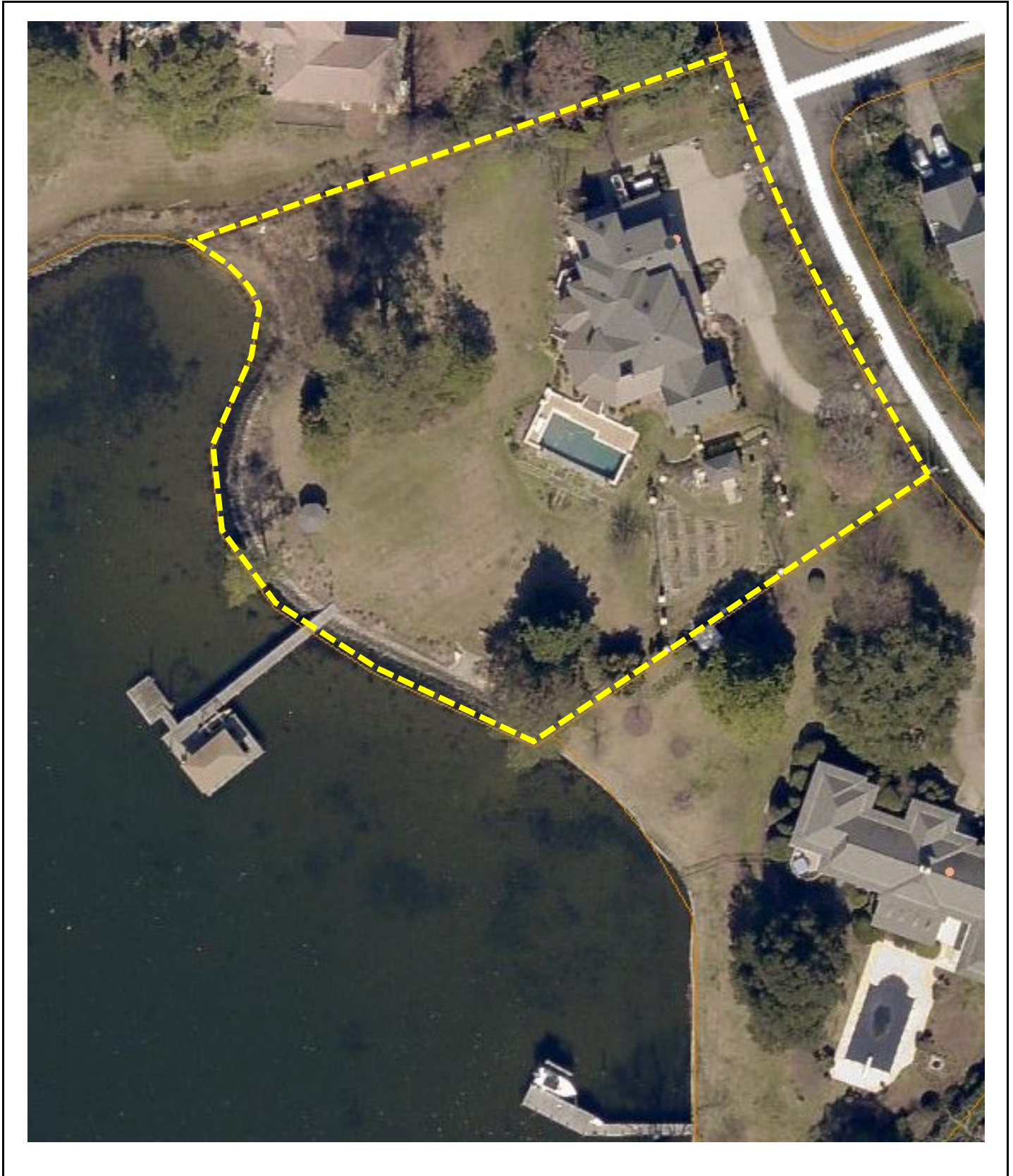
- 5) In addition to the above buffer restoration requirements the following mitigation shall be installed associated with the tree removal request received by the Department of Planning & Community Development dated December 16, 2021.
 - Mitigation for the trees to be removed is required at a 3:1 ratio (6 new canopy trees to be planted). Minimum size at installation for replacement trees shall be as listed – Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper.
- 6) The area of the proposed patio adjacent to the existing swimming pool and associated walkway adjacent to the existing single-family residence shall reduced by 800 square feet.
- 7) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 9) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.
- 11) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. **Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.**
- 12) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.
- 13) 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.
- 14) 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.
- 15) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 16) 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.
- 17) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,395.16 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated January 13, 2022, prepared by Gallup Surveyors & Engineers, signed January 13, 2022, by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

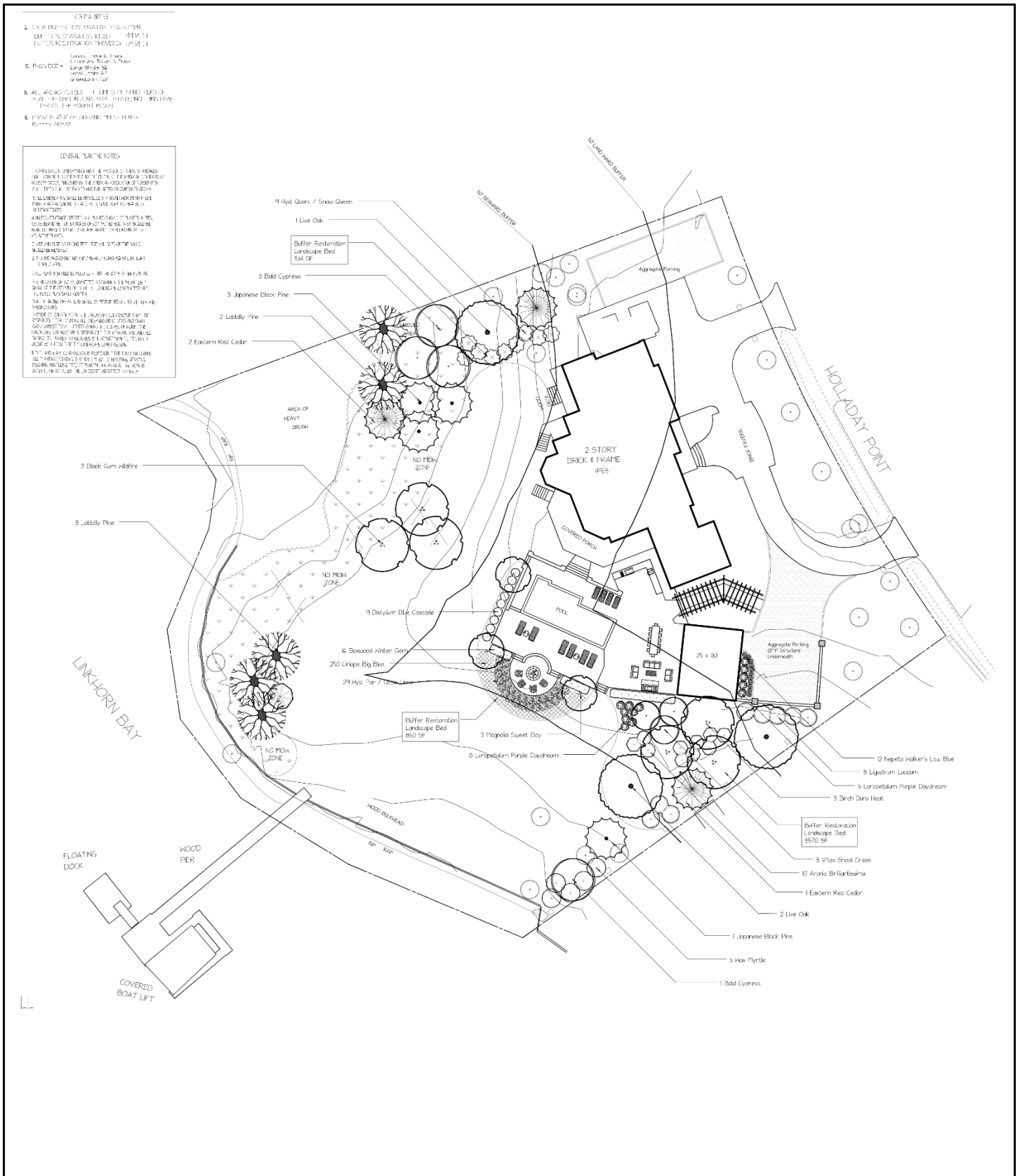
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

******* 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 110(E) of the Chesapeake Bay Preservation Area Ordinance.

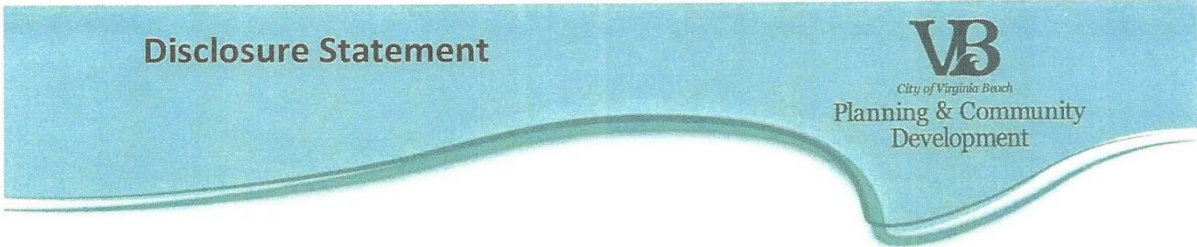
Site Aerial



CBPA Exhibit – Landscape 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 LEE Shearin

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington

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

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

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

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

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

Disclosure Statement



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.

VISION SCAPES - SHAWN ANDERSON

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

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

Disclosure Statement



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

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

JAY STANDING - STANDING 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.

DAVID BUTLER - Gallup Surveyors + Engineers

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

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

Applicant Signature

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

[Handwritten Signature]

Applicant Signature

LEE SHEARIN

Print Name and Title

3/30/22

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

10,665 square feet or 34.3 percent of site

Area of Redevelopment in RPA

6,050 square feet

Area of New Development in RPA

2,022 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

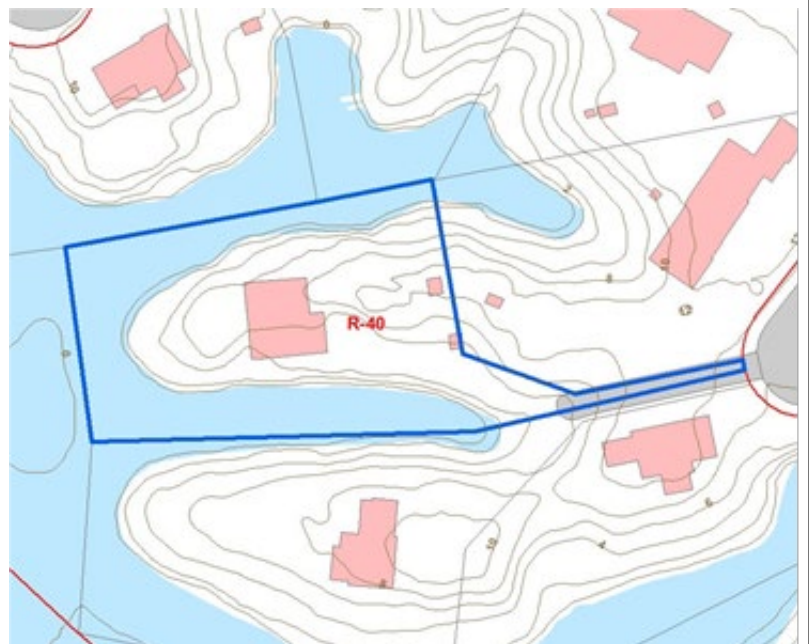
Resource Management Area (RMA)

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

This variance request was deferred at the following CBPA Public Hearing.

- May 2, 2022 CBPA Board Public Hearing

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

Excerpt from the May 2, 2022 CBPA staff report:

"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 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."

Since the deferral at the May 2, 2022 CBPA Public Hearing, the applicant has revised the variance request to reduce the size of the parking area to two spaces off of the main driveway. A portion of the gravel area adjacent to the existing driveway is proposed to be converted to pavers and three feet of the gravel area closest to the RPA feature has been removed. Additionally, the gravel pave pathway section of the walkway from the parking area to the front door has been removed from this application. Staff has included the colored markup of the proposed improvements from the May 2, 2022 hearing as well as the revised CBPA exhibit with the reduced impervious numbers. Overall, the applicant reduced the total impervious area number of the lot from 12,667 square feet as first submitted to 10,665 square feet as shown on the revised CBPA exhibit on page 32 of this staff report.

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.

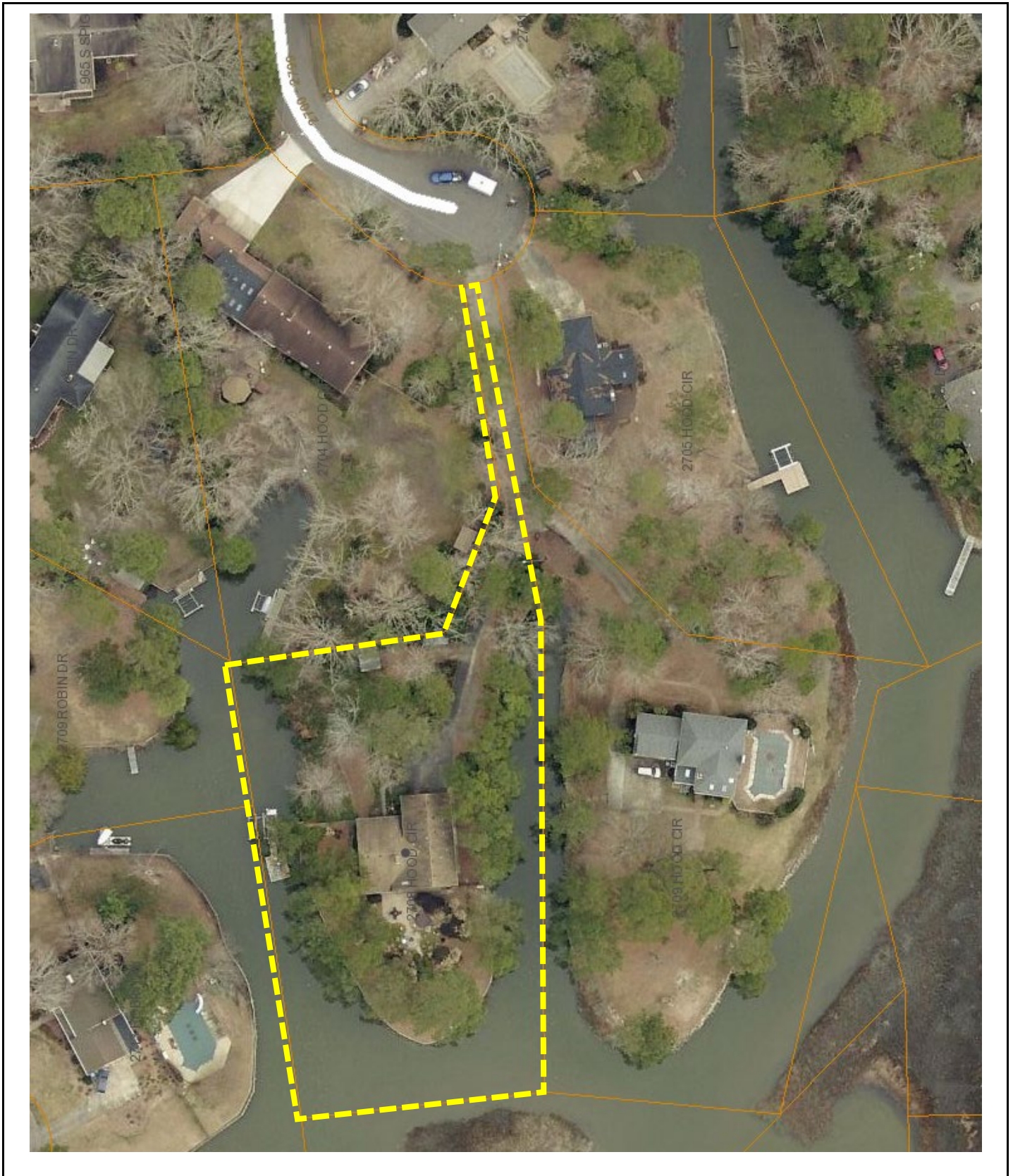
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited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

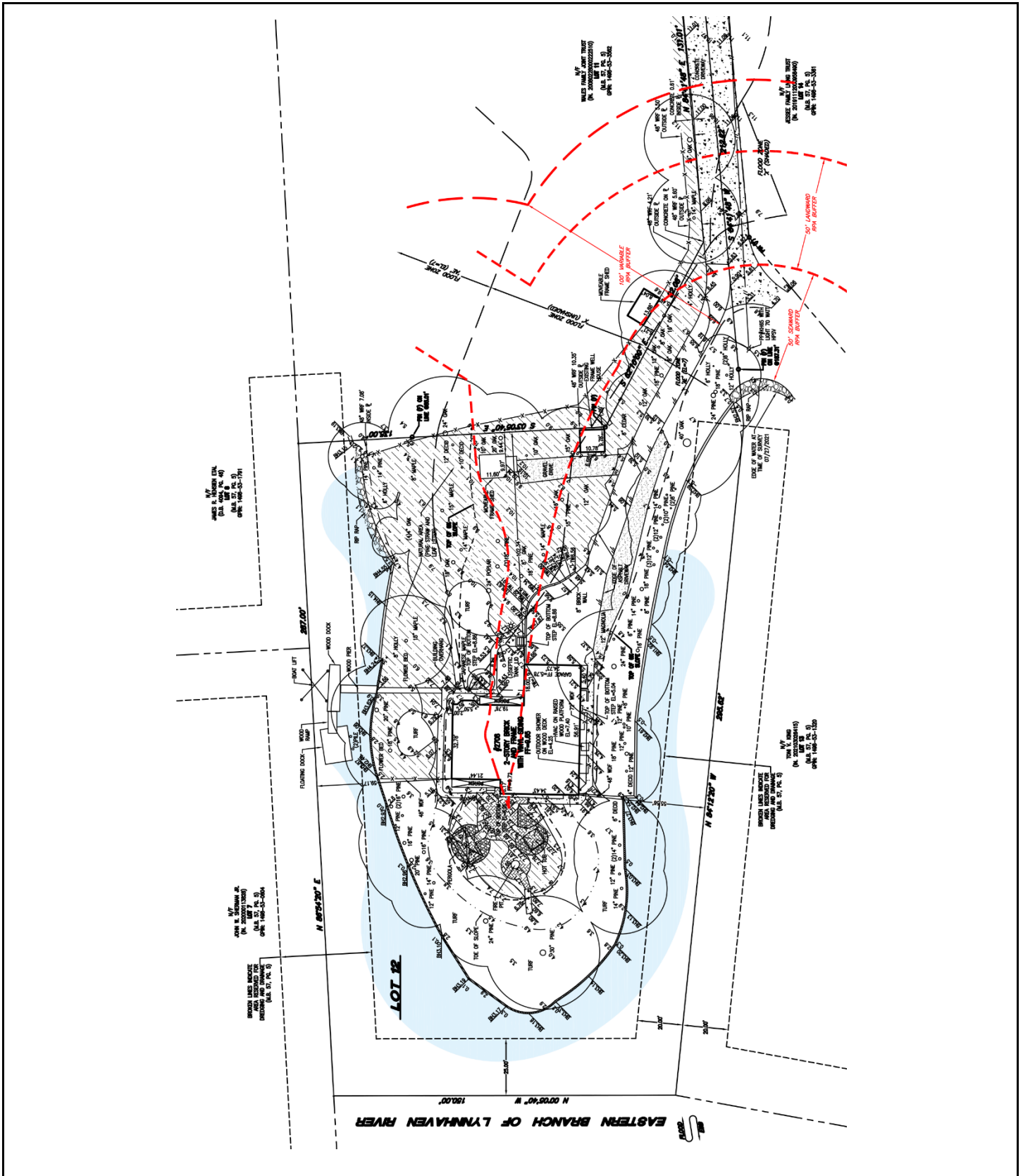
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

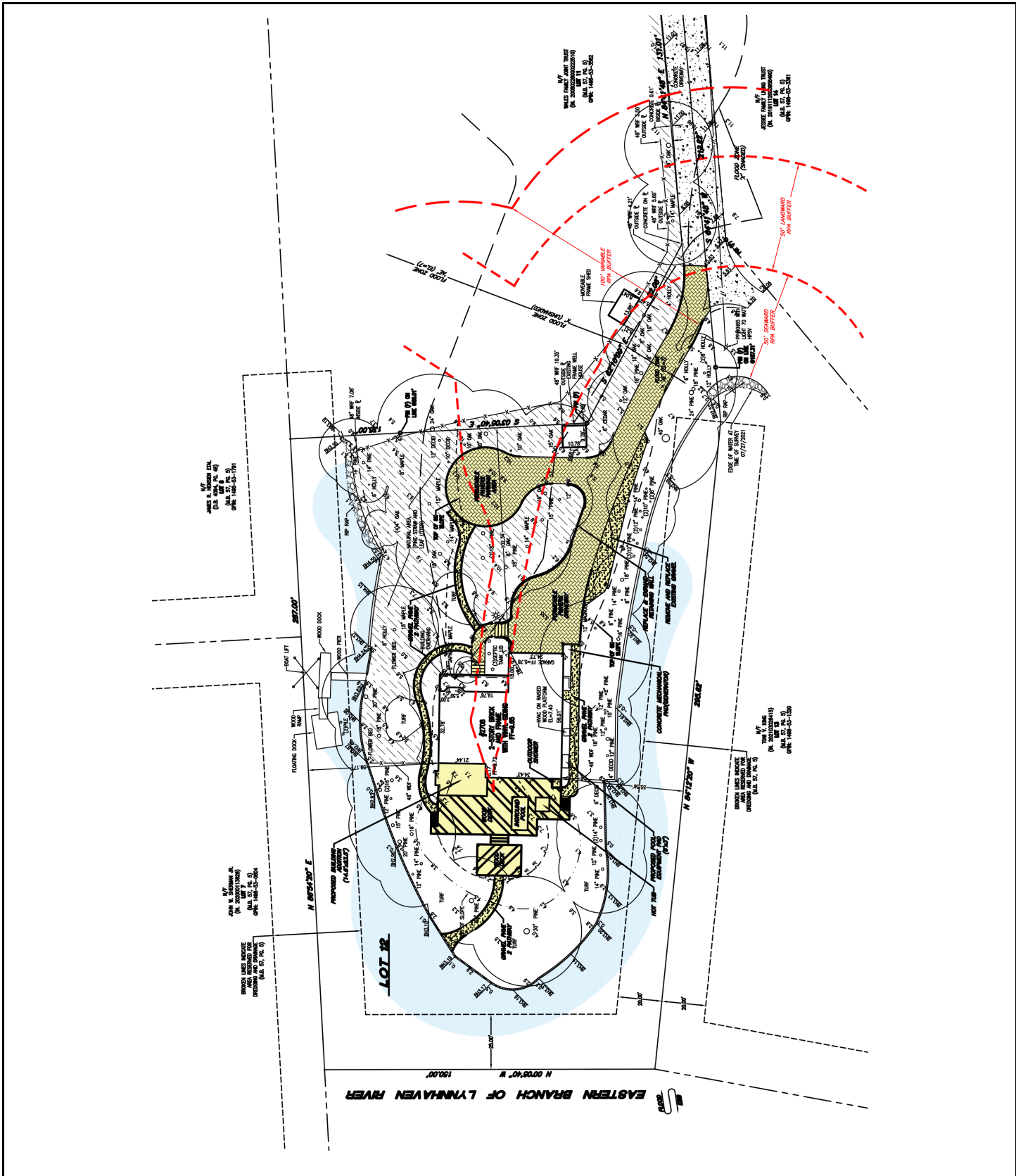
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial



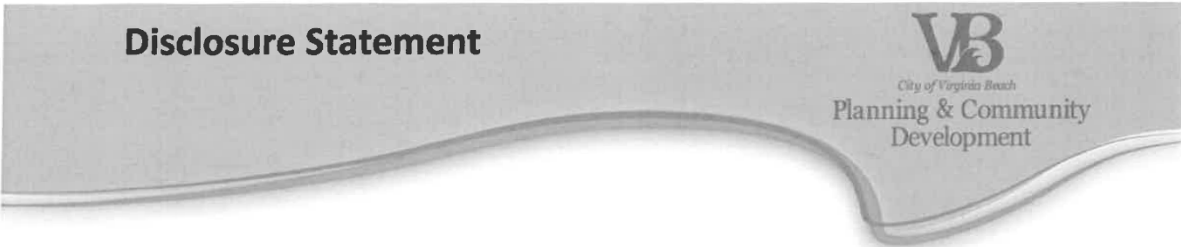
CBPA Exhibit – Existing Conditions







Disclosure Statement



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

Applicant Disclosure

Applicant Name 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	

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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct additions to the residence, paver patio, covered boat port, and relocated shed.

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 49, Page 12

Recorded 01/25/1960

GPIN

2407-16-7210

SITE AREA

19,770 square feet or 0.454 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

15,462 square feet or 0.355 acres

EXISTING IMPERVIOUS COVER OF SITE

3,899 square feet or 25 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,895 square feet or 31.7 percent of site

Area of Redevelopment in RPA

592 square feet

Area of New Development in RPA

1,031 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

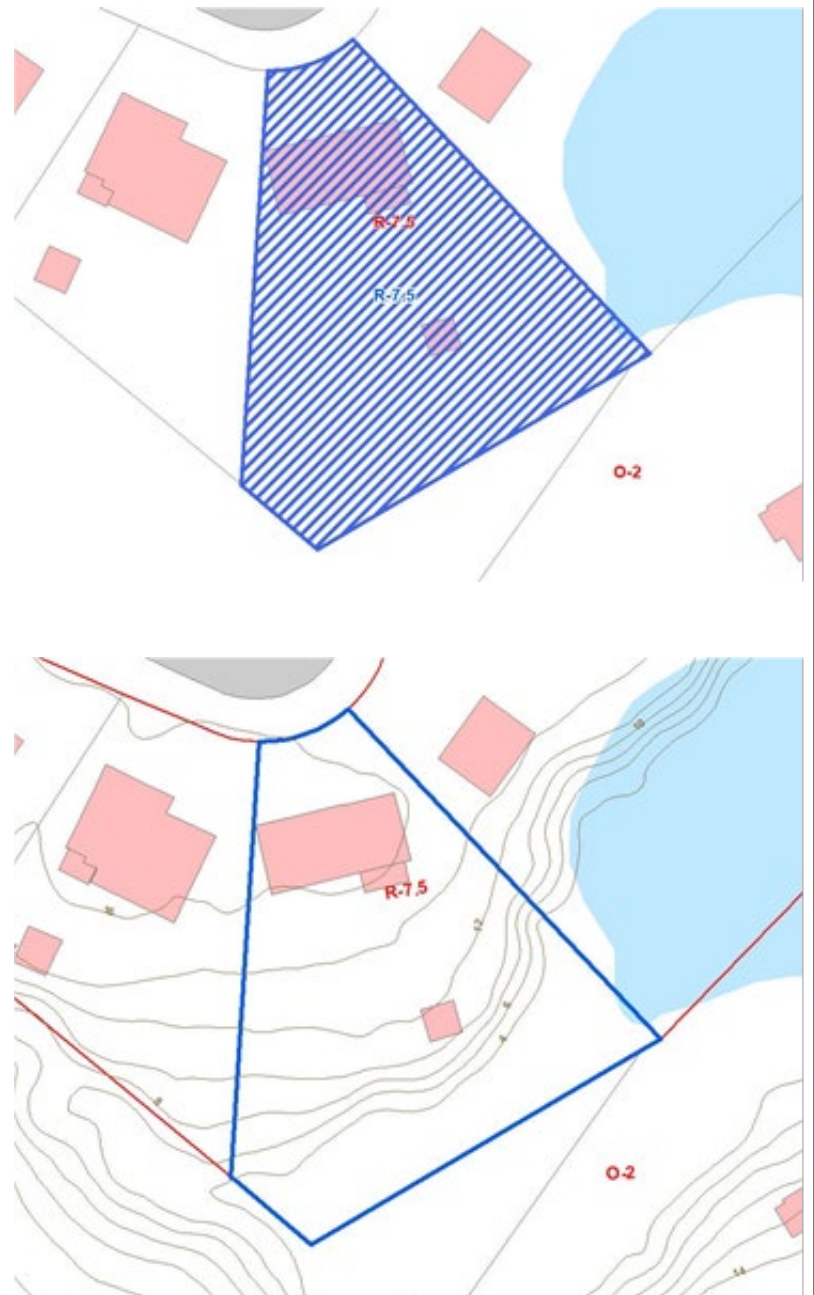
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Paver patio and wood deck

Construction Details

- Addition to the existing single-family residence with an attached screen porch and paver patio
- Relocate existing shed
- Construct metal boatport over existing gravel 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): 8

Soil Type(s)

Tetotum-Urban Series (deep, nearly level, moderately well-drained soils)

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

Dorovan Series (mucky, peat soils) located along the shoreline

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a building addition off the rear of the residence, a screened porch, two concrete paver patio areas, and a covered metal boat port. Overall, this request increases the impervious cover of the lot from 3,899 square feet to 4,895 square feet or from 25 percent to 31.7 percent of the lot above water and wetlands. Furthermore, this request adds approximately 1,031 square feet of new impervious cover within the Resource Protection Area (RPA), situating the proposed improvements primarily within the landward buffer and redevelops

approximately 592 square feet of existing impervious cover. The applicant is also proposing to relocate and expand an existing shed from the seaward buffer on the lot to be primarily within the landward buffer. Staff is of the opinion, given the existing mature forest floor condition of the 50-foot seaward buffer and location of the lot at the headwaters of a contiguous tidal feature that the conditioned stormwater management requirements and buffer restoration provides merit towards this variance request, as submitted not being of substantial detriment to water quality.

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 1960 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) 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 improvements over existing structures to the greatest extent practicable to maximize the redevelopment and minimize the impacts."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding towards the findings of the CBPA Ordinance with the proposed size and layout of the improvements.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and creek in the rear of the site."* Staff is of the opinion that the proposed improvements would not pose a substantial detriment to water quality given the location of the lot within the RPA of the Chesapeake Bay watershed and the presence of a mature forest floor seaward of the proposed improvements. In addition, this variance request has minimal land disturbance to the lot and with the proposed mitigation methods, this project provides additional benefits to the water quality of the Chesapeake Bay.
- 5) *"The existing rear forested area will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the creek in the rear of the site"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant's approach to ensure a no net increase in nonpoint source pollution load is acceptable as stated in the Water Quality Impact Assessment (WQIA).

Given the above comments, Staff recommends the following **12** 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: **1,031 square feet x 200 percent = 2,062 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 10 large shrubs, and 15 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 prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**

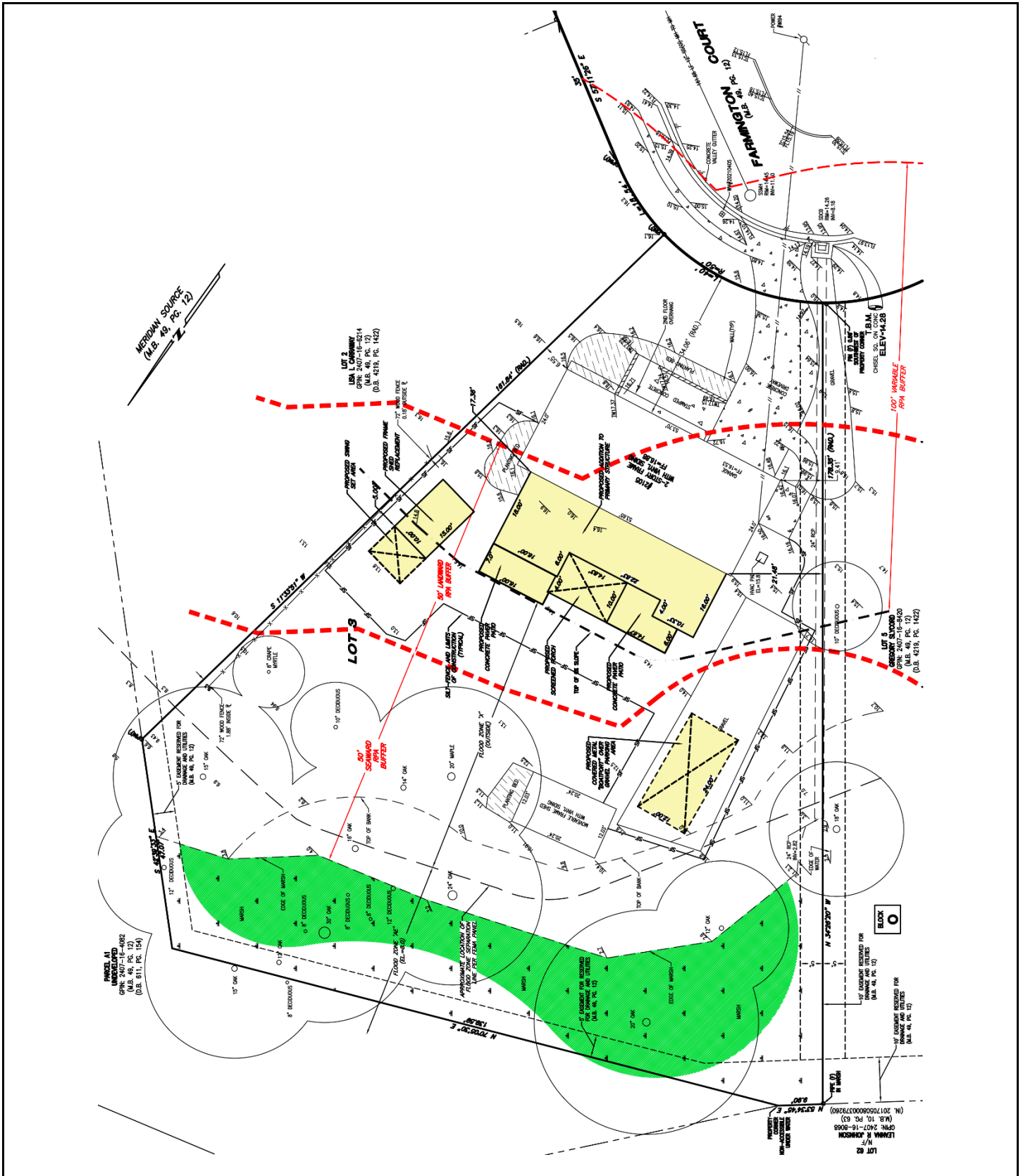
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated April 29, 2022, prepared by WPL Landscape Architecture, signed Eric A. Garner by April 29, 2022. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

***NOTE: The 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 110(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name Jimmy C Chapman & Margaret S Chapman

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-subsidiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

WPL & Brian Fentress

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.

JTM Development

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.

Margaret S. Chapman

Applicant Signature

Jimmy C Chapman and/or Margaret S Chapman

Print Name and Title

MARGARET S. CHAPMAN, Home Owner

Date

5/2/22

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, covered porch, and concrete landing.

Applicant’s Agent

Billy Garrington
Governmental Permitting Consultant

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 74, Page 20
Recorded 12/18/1967

GPIN

2418-68-5937

SITE AREA

13,463 square feet or 0.309 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

13,154 square feet or 0.302 acres

EXISTING IMPERVIOUS COVER OF SITE

4,825 square feet or 36.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

5,059 square feet or 38.5 percent of site

Area of Redevelopment in RPA

980 square feet

Area of New Development in RPA

252 square feet

Location of Proposed Impervious Cover

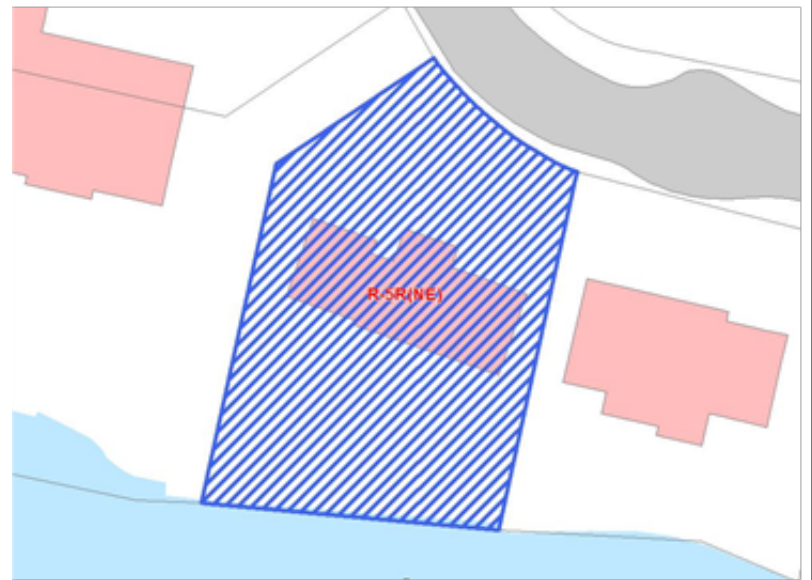
50-foot Seaward Buffer
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Remove existing enclosed porch with pool
- Remove raised concrete patio

Construction Details

- Building addition to existing single-family residence with associated concrete landing
- Covered porch
- Covered front porch

CBPA Ordinance Variance History

September 22, 2014, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a swim spa and enclosed sunroom with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. **Said areas of land disturbance shall be quantified on revised site plan submittals.***
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
4. *Wire reinforced 36" silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 feet from proposed improvements.*
5. *Construction limits shall lie a maximum of 10' 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.***
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *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.*
8. *If and when the shoreline is hardened, a rip-rap revetment or living shoreline, if applicable shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said rip-rap revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment. Said condition shall be so noted on the site plan.*
9. *A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*

10. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
12. *Buffer restoration shall be installed equal to 250% of the proposed new impervious cover within the RPA (398 sq. ft. x 250% = 995 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
13. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (430 sq. ft. x 100% = 430 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located within the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
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 \$90.74 and is based on 25% of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 99 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
15. *No perimeter fill is authorized outboard or seaward of the proposed improvements.*
16. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*
17. *The conditions and approval associated with this variance are based on the exhibit plan dated August 4, 2014, prepared by WP Large, signed August 5, 2014, by Eric Garner. Deviation from said exhibit plan may require re-submittal for Board consideration.*
18. *The total amount of required buffer restoration, per condition 12 and 13 shall be located within the rear yard and adjacent to the existing bulkhead to the greatest extent practicable.*

The September 22, 2014, Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone Shaded X (0.2% Annual Chance of Flooding) and AE, Base Flood Elevation (BFE): 7

Soil Type(s)

State Series (deep, well-drained soils) located above 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: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to remove the existing porch, concrete patio, and swim spa to construct a building addition to the existing single-family residence with a concrete landing and covered porch – both front and rear of the residence. This request constitutes approximately 980 square feet of redevelopment over existing impervious cover from the existing accessory structures and an additional 252 square feet of new impervious cover within the Resource Protection Area (RPA). The new impervious cover in the RPA originates from the proposed front porch (138 square feet), concrete landing (30 square feet), and slight expansions of the proposed covered porch and building addition over the existing impervious cover. Given the buffer restoration measures proposed and the minimal land disturbance associated with this variance request, Staff supports the encroachment as conditioned below.

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 1967 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake*

Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffers cover over 98% of the lot." Staff concurs with the applicant's agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.

- 3) The variance is the minimum necessary to afford relief because *"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 is of the opinion that the layout of the improvements utilizes redevelopment in the RPA to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The site offers minimum stormwater mitigation for the bay and if approved, the proposed stormwater mitigation will be increased, and additional treatment provided between the improvements and the rear of the site."* Staff is of the opinion that the proposed improvements with this variance request are not of substantial detriment to water quality. This variance request has minimal land disturbance to the property and is adding a small amount of new impervious cover.
- 5) *"Bioretention & buffer restoration will be installed between the improvements and the waterway to meet the 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 concurs.

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

Recommended Conditions

1. This variance and associated conditions will supersede the conditions of the Chesapeake Bay Preservation Area (CBPA) Board Variance granted September 22, 2014 with the exception of the following.
 - 995 square feet of buffer restoration associated with the September 22, 2014 CBPA Variance shall be verified on the revised site plan associated with this variance request when submitted to the Development Services Center (DSC) for review and approval. Should the required buffer restoration associated with the 2014 CBPA Variance not be present, it shall be calculated in addition to the buffer restoration conditioned with this variance request.
2. 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: **252 square feet x 200 percent = 504 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,

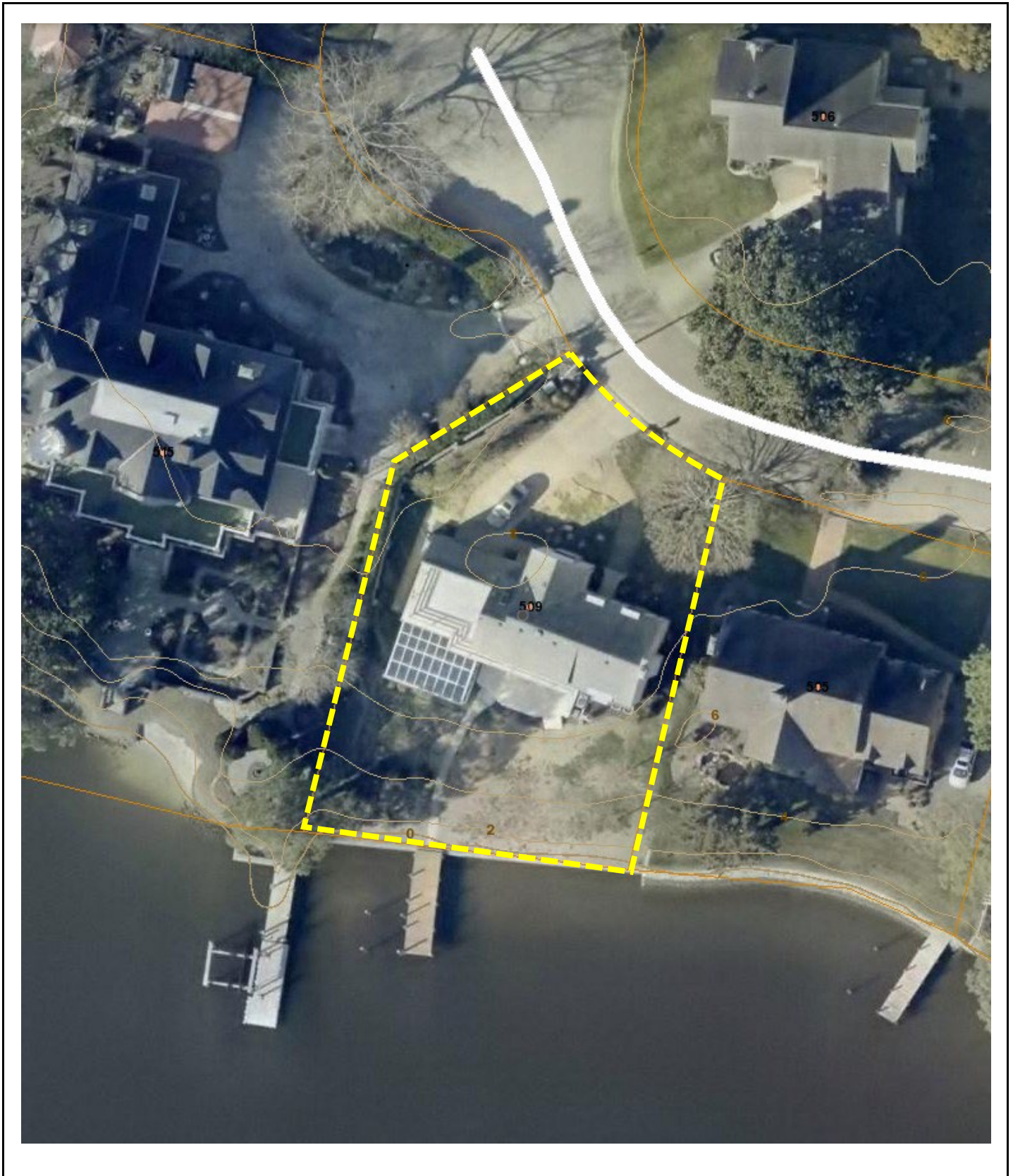
prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

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

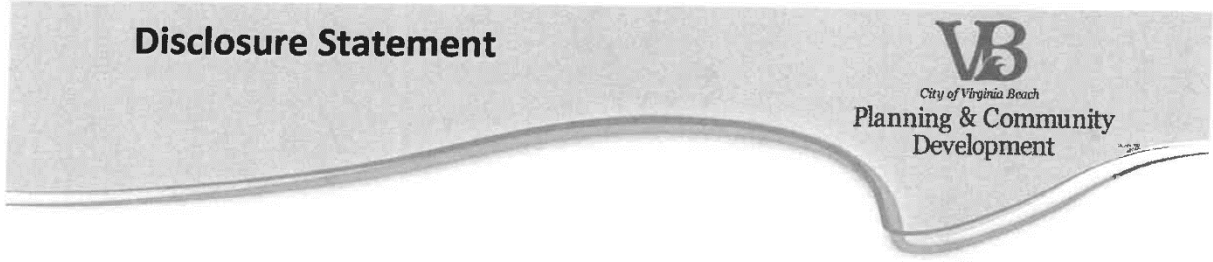
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
7. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
8. 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.
9. 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.
10. No perimeter fill is authorized outboard or seaward of the proposed improvements.
11. The conditions and approval associated with this variance are based on the exhibit plan dated April 11, 2022, prepared by WPL, signed April 27, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

***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 110(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 Debra M Smith

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 & D.L. Richards

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

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

Disclosure Statement



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

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

WPL

8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? Yes No
- If **yes**, identify the firm and individual providing the service.

Applicant Signature

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

Debra M Smith

Applicant Signature

Debra M Smith

Print Name and Title

5/01/22

Date

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

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

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

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

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Applicant & Property Owner **Suneel & Meghan Bhat**
Address **801 Bobolink Drive**
Public Hearing **June 6, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

5

Variance Request

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

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 7, Page 192
Recorded 1926

GPIN

2418-31-8124

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

192 square feet

Location of Proposed Impervious Cover

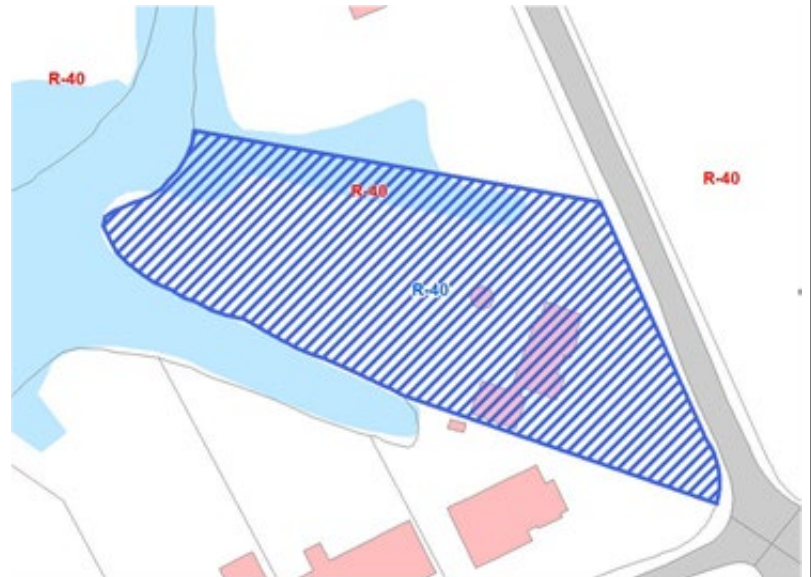
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Framed wood shed

CBPA Ordinance Variance History

January 26, 2009, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted with the following conditions:

1. *This variance approval and conditions will supercede the variance and conditions granted 2-26-07*
2. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
3. *36" orange re-enforced silt fence, for erosion and sedimentation control measures, shall be installed along the seaward limits of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements.*
4. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 10' outboard of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *Stormwater from proposed impervious cover shall be conveyed to stormwater management facilities. All stormwater treatment facilities shall be installed prior to the release of the building permit.*
8. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of the existing revetment. Said condition shall be so noted on the site plan.*
9. ***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 \$36.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 39 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
10. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
11. *Buffer restoration totaling 620 sq. ft. shall be installed which is equal to 400% of the proposed impervious cover and shall achieve three trophic layers of vegetation (canopy trees, understory trees, shrubs and groundcovers). The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of twelve (12) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The*

required trees shall be incorporated into the restoration areas to create three trophic layers of vegetation. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.

12. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
13. *The conditions and approval associated with this variance are based on the site plan dated September 12, 2007, with a sealed date of November 13, 2008, prepared by Gallup Surveyors and Engineers Ltd.*
14. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The January 26, 2009 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)

Yeopim Series (deep and moderately well-drained soils)

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

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a 12 foot by 16 foot shed in the rear yard of their property. This request will add approximately 192 square feet of new impervious cover within the seaward buffer of the Resource Protection Area (RPA). Staff is of the opinion that the increased impervious cover will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay given the applicant's statement the "*construction of the shed*

with this variance should improve the quality of the local water by reducing oils, residues, and chemicals entering the water from the flooding basement.”

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 currently has no dry storage space or garage (only flooding basements) – most other similar situated property owners have some dry space as proposed.”* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“the house/property was built in 1928 without a garage/storage area, and with basements, prior to the existence of the ordinance.”* Staff concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s Ordinance, therefore, this lot falls within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the variance request for a small shed is the smallest size necessary to shift storage/workshop activities out of the flooding basements.”* Staff adds that the seaward buffer falls on the majority of the lot and the proposed improvements, as situated in the rear yard, provides merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“construction of the shed with this variance should improve the quality of the local water by reducing oils, residues, and chemicals entering the water from the flooding basements, and so is consistent with the intent of the ordinance.”* Staff concurs and adds that the majority of the lot falls within the AE flood zone with a base flood elevation of seven (7).
- 5) *“A decrease in non-point source pollution load should occur, as storage and activity will shift from an area that floods periodically to the dry structure in an area which will distribute rainwater from the small roof to the adjacent tree roots requested in this variance”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that coupled with the required buffer restoration that this variance request will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay.

Given the above comments, Staff recommends the following 5 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

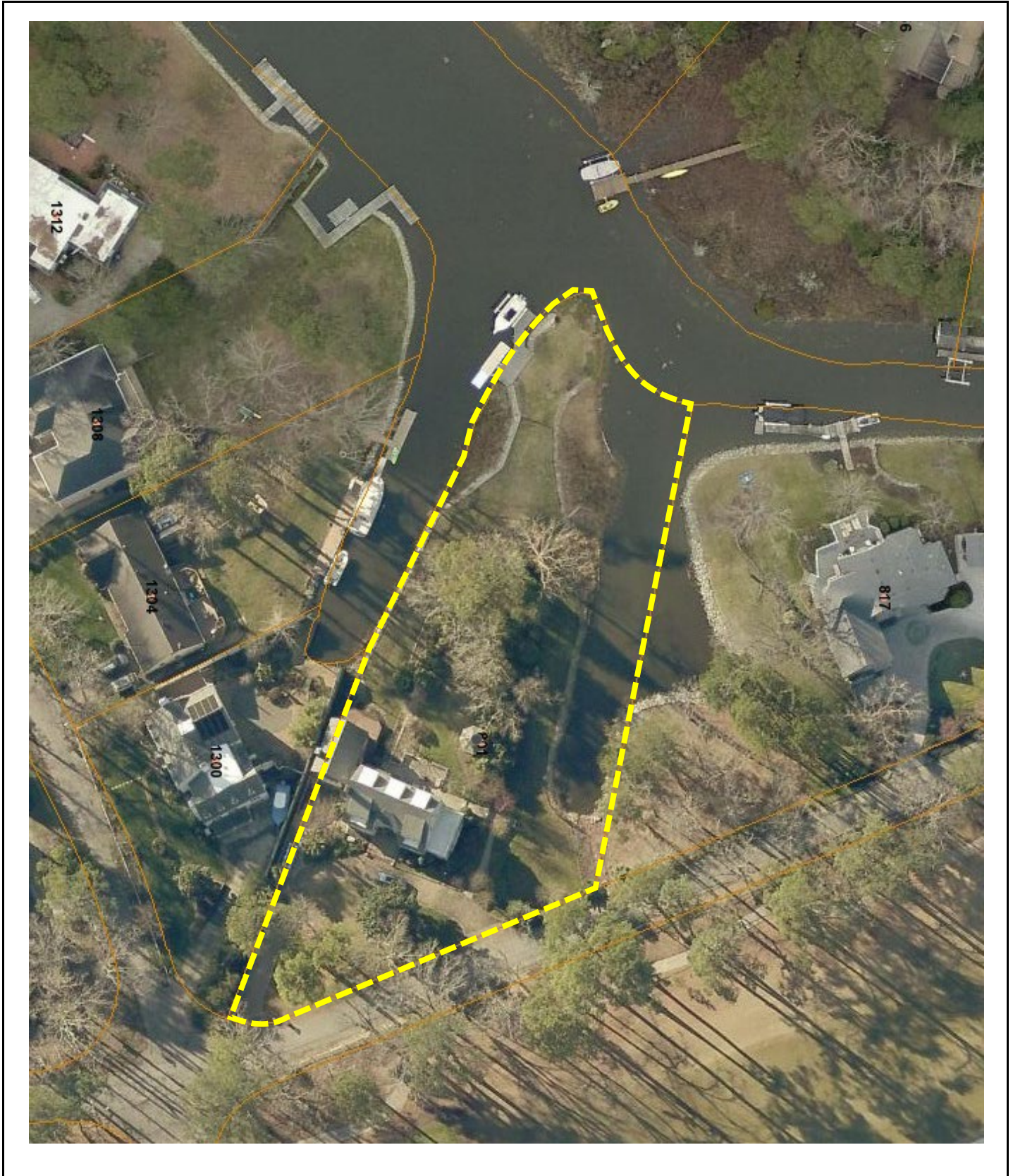
2. 400 square feet of new buffer restoration/planting bed area shall be installed in the Resource Protection Area, in areas currently devoted to turf. Said buffer restoration area shall be planted with **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

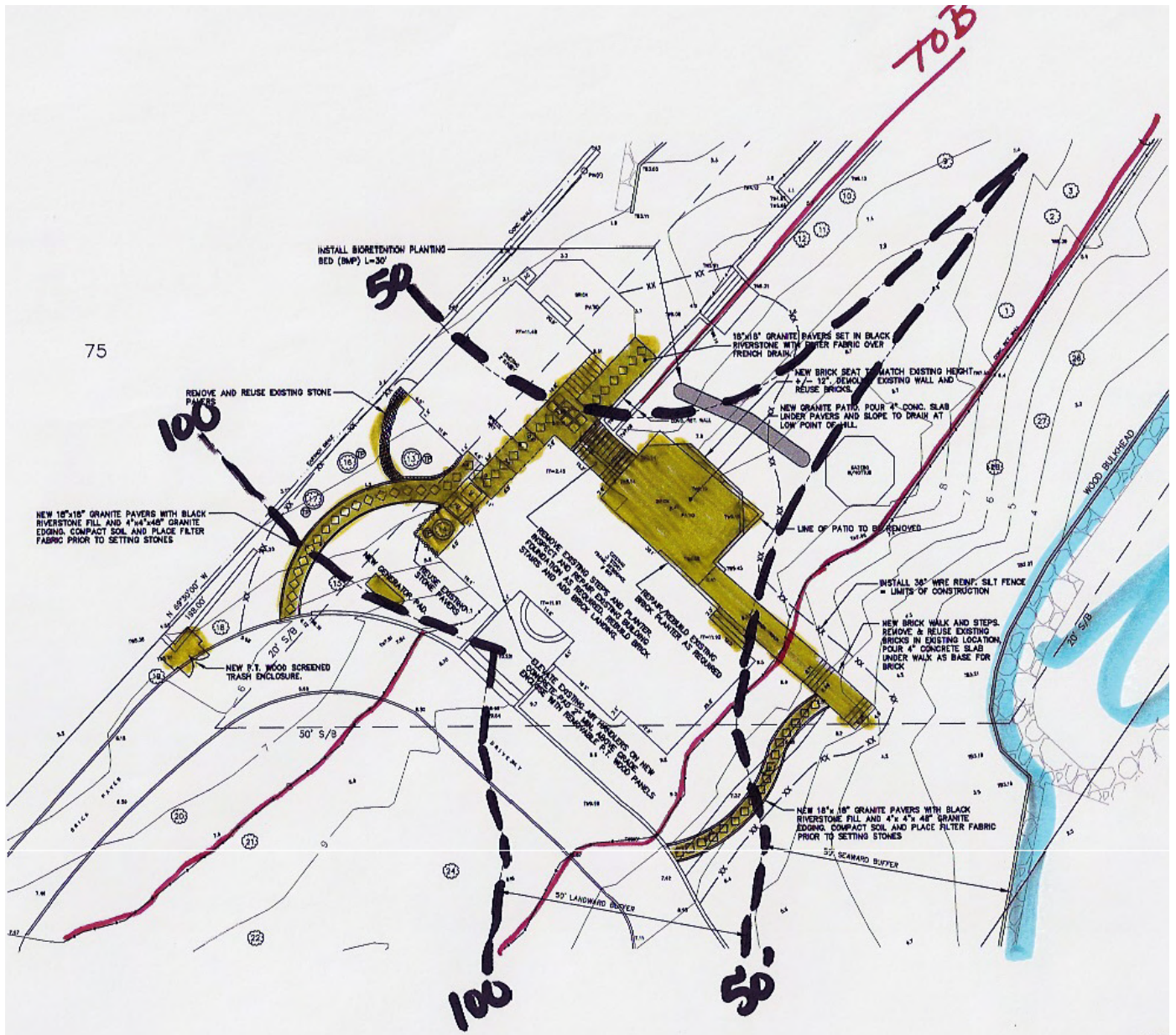
The restoration shall have a layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species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

3. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
4. 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.
5. This variance and associated conditions **are in addition to** the conditions of the Board variance granted January 26, 2009.

***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 110(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 Suneel Bhat

Does the applicant have a representative? Yes No

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

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



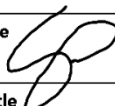
- 6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the company and individual providing the service.
Shawn's Sheds (possibly utilizing this contractor)

- 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 firm and individual providing the service.

- 8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the firm and individual providing the service.

Applicant Signature

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

Applicant Signature 
Print Name and Title
Suneel Bhat

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

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

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

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Applicant & Property Owner **Steve Borcharding**
Address **2700 Canal Road**
Public Hearing **June 6, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

6

Variance Request

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

Applicant's Agent

Robert Simon
Waterfront Consulting

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 46, Page 24
Recorded 12/31/1958

GPIN

1499-57-8389

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

96 square feet

Area of New Development in RPA

256 square feet

Location of Proposed Impervious Cover

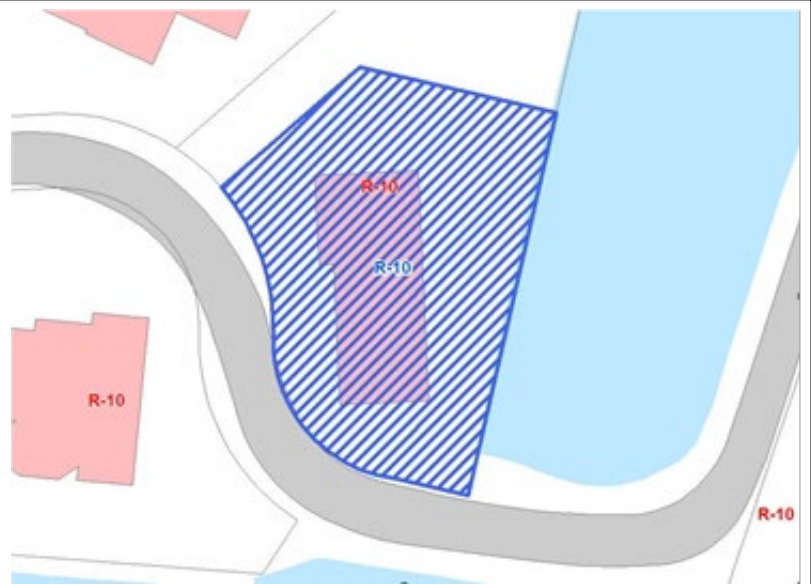
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Timber deck

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): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a timber bulkhead.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

The land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required. The applicant is proposing bioretention planning beds to ensure a no net increase in nonpoint source pollution load in the watershed.

Evaluation and Recommendation

The applicant desires construct a new timber deck off the rear of the residence with approximately 96 square feet of redevelopment over the existing concrete patio and 256 square feet of new impervious cover. The proposed wood deck will be above the existing grade elevation with access to and from the single-family residence by an existing wood land with steps as shown on the CBPA Exhibit. The area where the proposed improvements will be constructed has a minimal slope of approximately 1 percent with and underlying soil condition that is moderately well-drained. Staff is of the opinion that these existing site conditions coupled with the recommended conditions below, specifically the underdeck treatment will aid towards preventing future erosion and migration of sediment into the adjacent waterways.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff concurs and is of the opinion that should the Board grant the variance to encroach into the RPA feature with the proposed timber deck, that a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded with the improvement of their lots.
- 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 entire lot is located in the RPA.”* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the proposed development is attached to the rear of the existing residence and is the same depth as the existing concrete patio.”* Staff offers that the applicant is not requesting additional impervious cover for a walkway around the residence or proposed timber deck and intends to utilize the existing walkway for access.
- 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.”* Given the method of construction provided by the applicant’ agent and minimal land disturbance, Staff is of the opinion that the variance request will not be of substantial detriment to water quality given the recommended conditions provided in this Staff report.
- 5) *“Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that this is a sparsely wooded lot and would benefit from buffer restoration coupled with the flat topography of the lot providing pervious cover for run-off produced from the proposed improvements to sheet-flow across before draining into tidal waters.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 512 square feet of new buffer restoration/planting bed area shall be installed in the Resource Protection Area, in areas currently devoted to turf. Said buffer restoration area shall be planted with **1 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

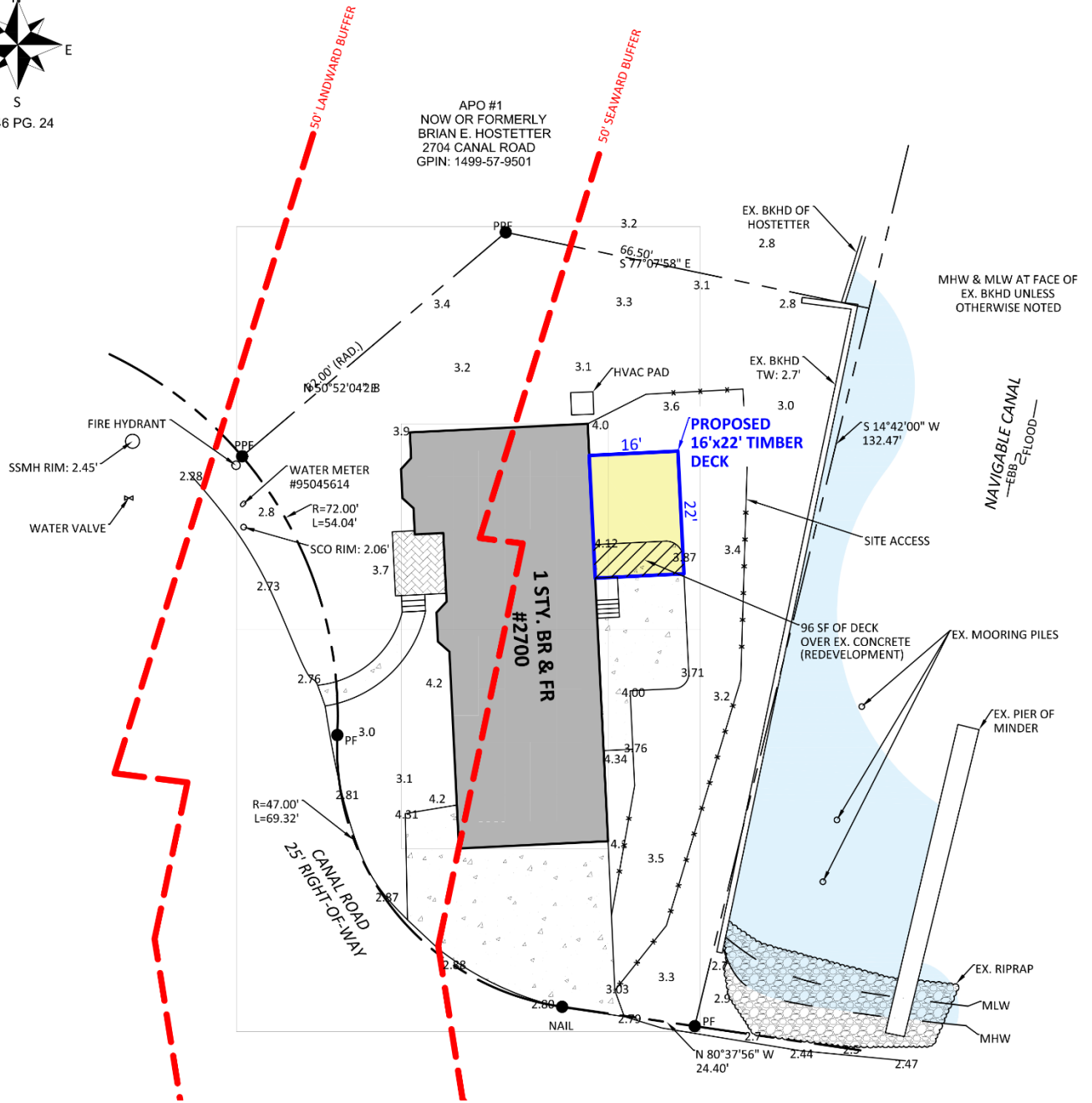
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. Under deck treatment of sand and gravel shall be installed under the timber deck for the area over existing pervious lawn area.

***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 110(E) of the Chesapeake Bay Preservation Area Ordinance.

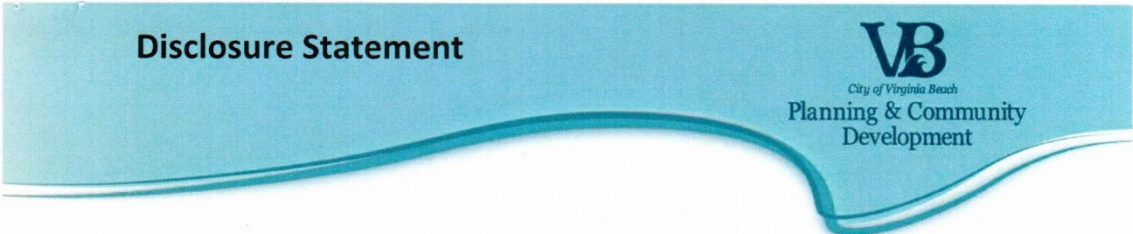
Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name Steve Borcharding

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.
-

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. and Chesapeake Bay Site Solutions, Inc

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

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

Applicant Signature

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

Applicant Signature

Steve Borcharding, Owner

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	

Variance Request

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

Applicant's Agent

Robert Simon
 Waterfront Consulting

Staff Planner

PJ Scully

Lot Recordation

Map Book 41, Page 2

GPIN

2419-41-5154

SITE AREA

41,262 square feet or 0.95 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,038 square feet or 0.83 acres

EXISTING IMPERVIOUS COVER OF SITE

7,242 square feet or 20 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,358 square feet or 28.7 percent of site

Area of Redevelopment in RPA

0 square feet
 *925 square feet in the RMA

Area of New Development in RPA

1,611 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer
 Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing paver patio, deck, and concrete pad

Construction Details

- New paver patio
- Swimming pool and spa

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Multiple Zones – Zone AE, Base Flood Elevation (BFE): 6

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a rip rap revetment and timber bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 7
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Four of the seven trees proposed for removal fall within the limits of construction for the proposed project. Staff is of the opinion that the remaining three trees outboard of the limits of construction should be preserved, unless the applicant is able to provide an arborist report indicating that the trees are declining or present a hazard to the existing improvements on the lot.

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 remove the existing paver patio and composite wood deck to construct a swimming pool and spa with associated paver patio. Overall, this variance request increases the impervious cover of the lot from 7,242 square feet to 10,358 square feet or 20 percent to 28.7 percent of the lot above water or wetlands. However, of the overall proposed improvements totaling 3,592 square feet of new impervious cover, only 1,611 square feet fall within

the Resource Protection Area (RPA). Staff is of the opinion that the applicant has brought forth a reasonable request and the lot will benefit from the buffer restoration requirements and stormwater management methodology given that a large portion of the rear yard is currently devoted to turf.

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 proposed development is encroaching minimally into the 50' landward buffer and all other proposed improvements are outside of the RPA."* Staff concurs and agrees that the layout of the proposed improvements are situated to minimize impacts to the riparian buffer by solely falling within the landward buffer of the RPA.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality."* Staff concurs.
- 5) *"Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

- 1) The three trees (18-inch Pine, 24-inch Pine and 24-inch Pine) within the 50-foot seaward buffer shown on the CBPA Exhibit to be removed shall be preserved.
- 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: **1,611 square feet x 200 percent = 3,222 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 8 understory trees, 16 large shrubs, and 24 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed/ denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) ****** 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 \$369.18 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 April 27, 2022, prepared by Waterfront Consulting, Inc. 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.

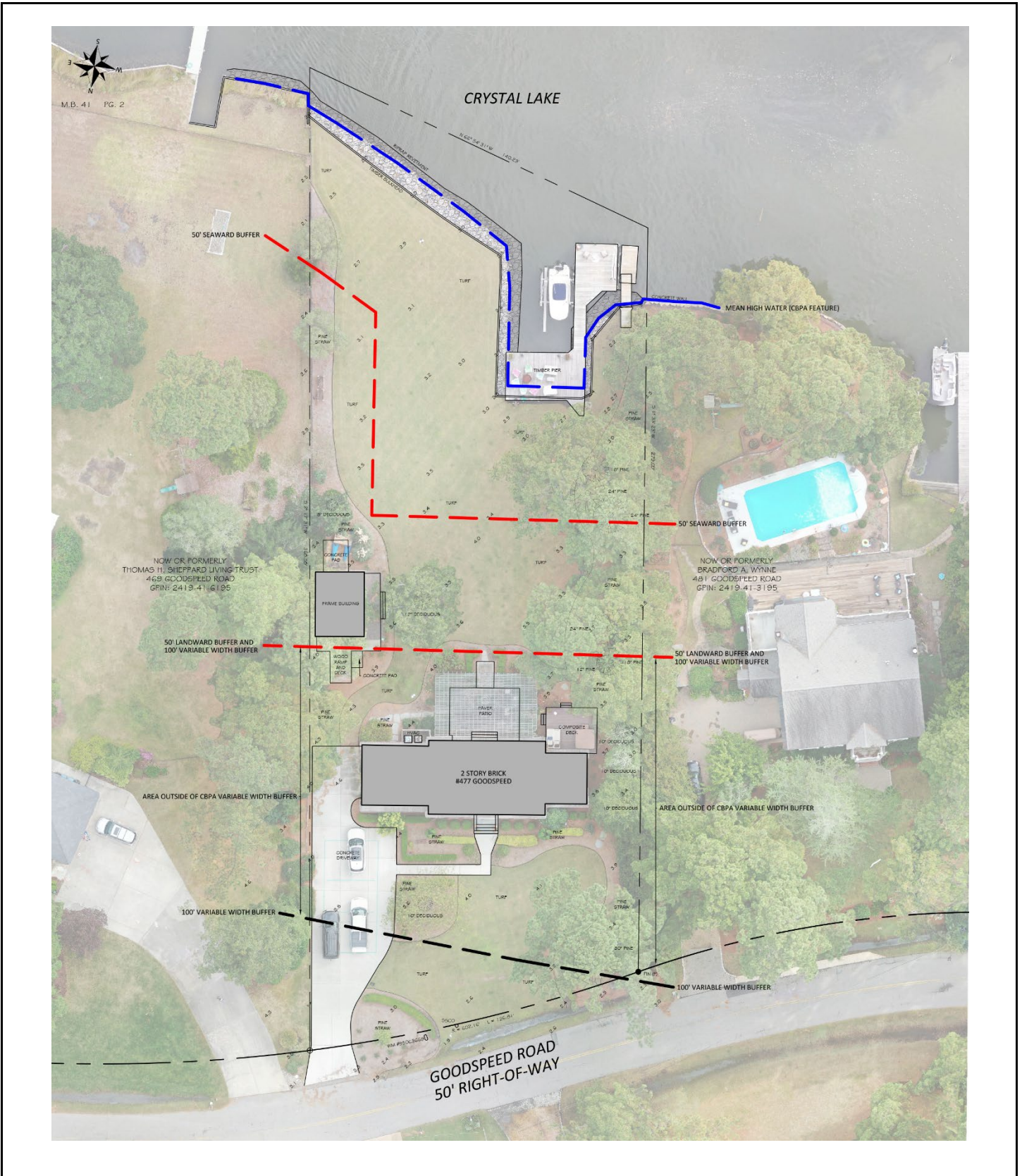
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 110(E) of the Chesapeake Bay Preservation Area Ordinance.

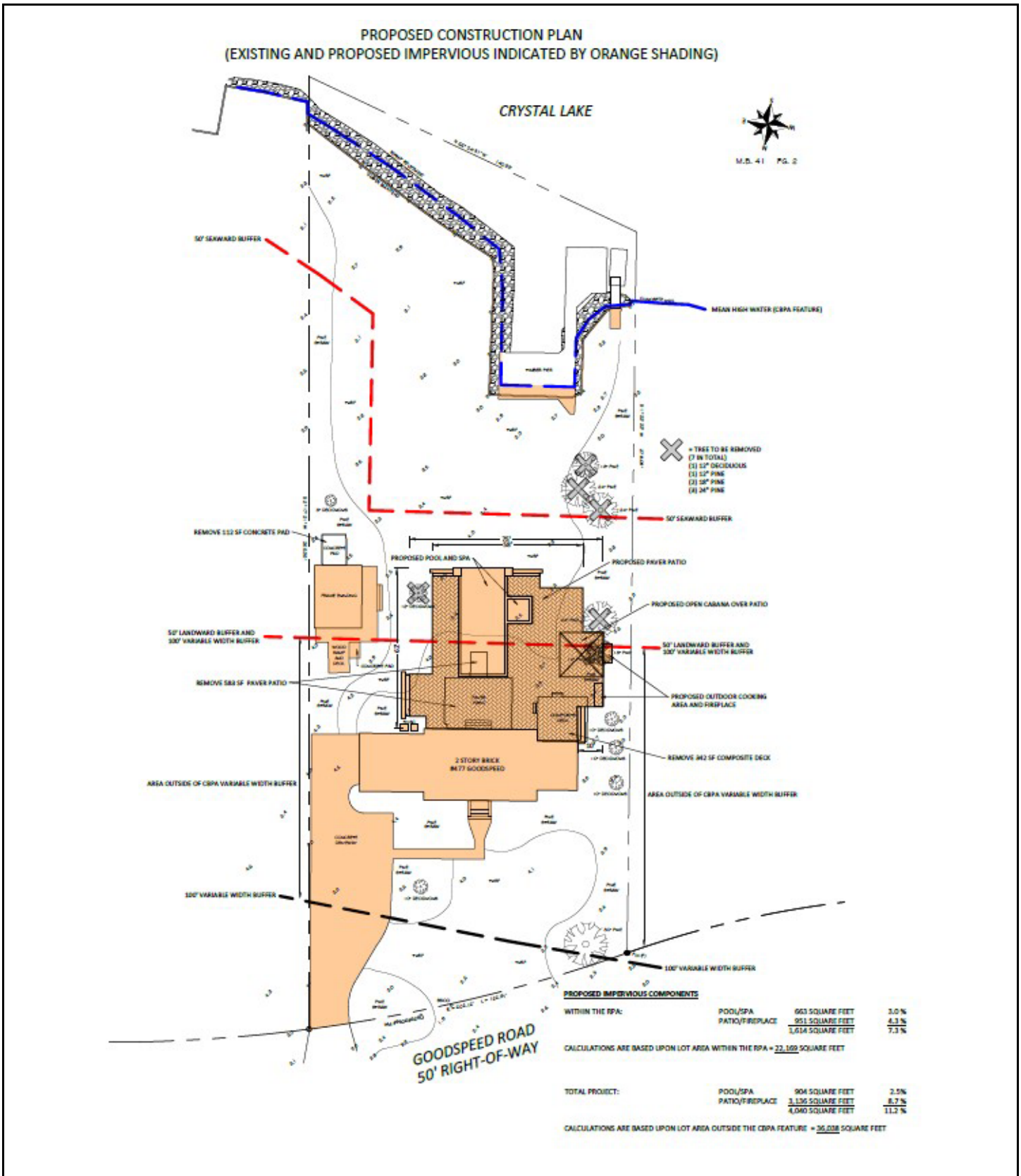
Site Aerial



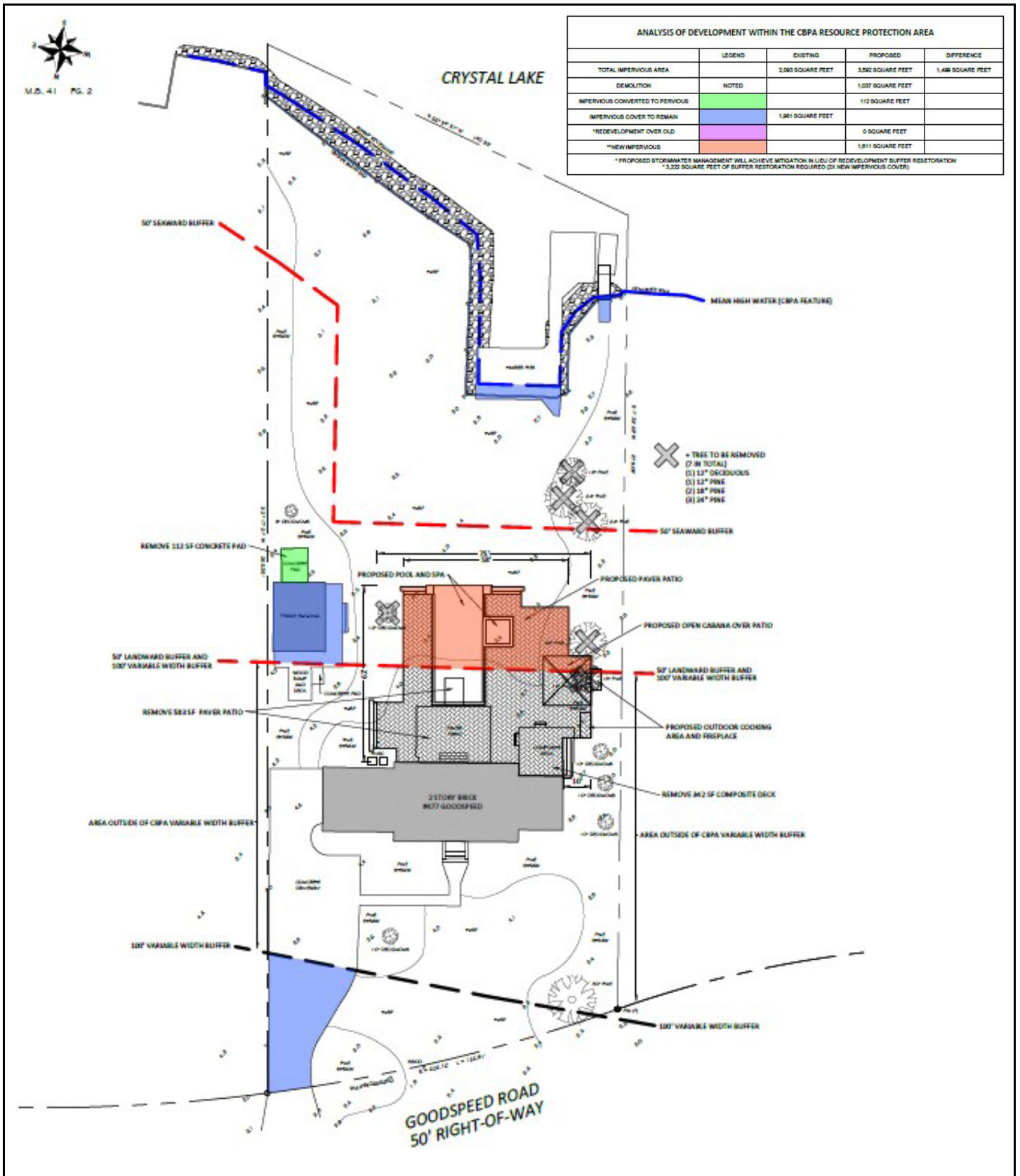
CBPA Exhibit – Existing Conditions



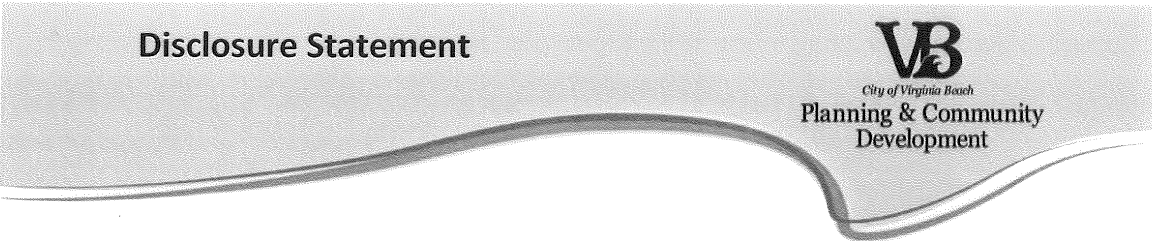
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Color Analysis



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 Brian A. Roberts

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-subsidiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

BANK OF AMERICA

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



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

Applicant Signature

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

Applicant Signature

Brian A. Roberts

Print Name and Title

5/2/2022

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 Resource Protection Area (RPA) buffer to construct a new single-family home, swimming pool, and driveway.

Applicant's Agent

Eddie Bourdon
 Sykes, Bourdon, Ahern & Levy, PC

Staff Planner

PJ Scully

Lot Recordation

Map Book 37, Page 8
 Recorded 09/09/1954

GPIN

1499-08-5604

SITE AREA

12,935 square feet or 0.297 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

12,935 square feet or 0.297 acres

EXISTING IMPERVIOUS COVER OF SITE

3,038 square feet or 23.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,872 square feet or 37.4 percent of site

Area of Redevelopment in RPA

539 square feet

Area of New Development in RPA

973 square feet

Location of Proposed Impervious Cover

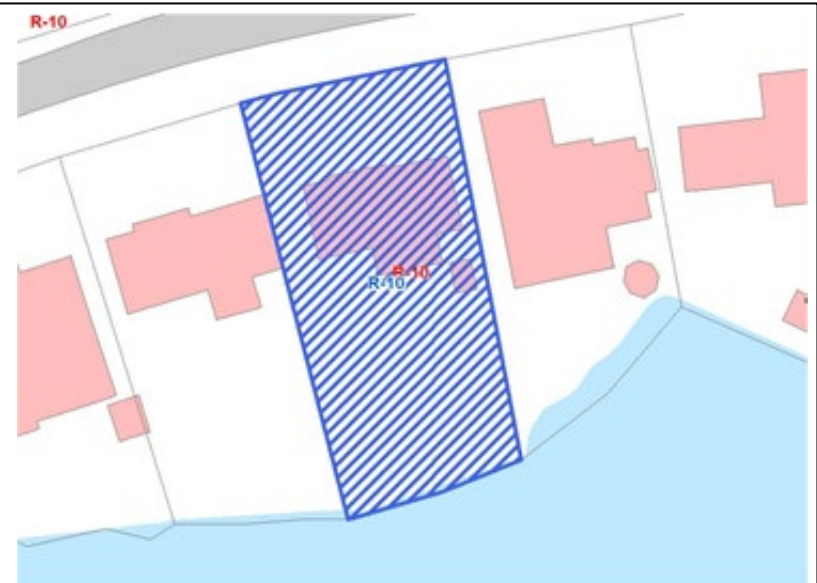
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Single-family residence with associated accessory structures and driveway

Construction Details

- Single family residence with attached garage
- Permeable paver driveway
- Swimming pool with paver pool patio area
- Concrete terrace area and stepping stone walkway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Corolla Series (fine, sandy soils)

Shoreline

Shoreline is hardened by a wooden bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are outboard of the limits of construction. Staff is of the opinion that the removal of these trees is acceptable given the buffer restoration that will be required with the construction of the new home.

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 proposes to demolish the existing single-family residence and accessory structures to construct a new single-family residence with a swimming pool and circular driveway. As shown on the CBPA Exhibit, the majority of the proposed residence is situated in the Resource Management Area (RMA) and at the front yard setback requirement for

the lot. The remaining portions of the proposed improvements are within the landward buffer of the RPA and constitute approximately 973 square feet of new impervious cover. A steppingstone walkway leading from the swimming pool to the existing wood dock will be installed within the seaward portion of the buffer. With this request, approximately 3,330 square feet of the impervious cover (68 percent of the overall impervious cover on the lot) will be located within the RMA. The applicant has limited the impervious cover in the RPA to the 50-foot landward buffer on a predeveloped lot that was platted prior to the adoption of the CBPA Ordinance, by proposing the following practices:

- Specified limits of construction as shown on the CBPA Exhibit,
- The use of permeable pavers for the proposed driveway as shown on the CBPA Exhibit, and
- Dry swales along the side yards of the lot as best management practices for mitigating stormwater

Staff is of the opinion that coupled with the above practices, the redevelopment of this lot with this request offers merit towards the redevelopment of this lot being in harmony with the performance standards set forth in the CBPA Ordinance [City Code, Appendix F, Sec. 106(3)].

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this Subdivision was recorded and this Lot developed decades prior to the adoption of the Bay Act and as a result every waterfront property is significantly impacted by the Ordinance. Since the enactment in 1991, numerous developed lots have made similar variance requests to redevelop and elevate in order to meet or exceed current finished floor elevations and enhance resiliency. The approval of this request will be consistent with existing precedent and will in no way confer any special privilege to the current owners."* Staff concurs with the statement provided by applicant's agent and offers that the redevelopment of lot along this portion of Lynnhaven Drive range between 35 to 42 percent of impervious cover on the lot. The majority of redevelopment utilizes a circular driveway, typically within the RMA to accommodate residents' safe access from Lynnhaven Drive given the width and travel geometry of the roadway.
- 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 RPA Buffer created with the 1991 adoption of the Bay Act covers 65% of this existing, developed lot which significantly restricts the developable area of this relatively small (12,900 sf) pre-existing developed residential building lot. Obviously neither the applicants, nor their predecessors in title had anything to do with this legislative imposition."* Staff concurs and is of the opinion that the layout of the improvements minimizes encroachment in the RPA to the greatest extent practicable.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very subjective concept, however, given the existing grade elevations on site of between 3½ to 4 feet above sea level in the area outside the seaward 50 foot buffer, and the flooding risks present with sea level rise, subsidence and increases in rain volumes it is a necessity to create a resilient redevelopment of this site that a part of the Lot is filled. The size of this proposed house and inground pool is consistent with the size and character of homes which have been constructed in Lynnhaven Colony in the last 15/20 years. The home will be sited at the 30-foot front yard setback minimizing the size of the improvements located in the 50-foot landward portion of the Buffer. The pool is reasonably sized with the standard recommended pool deck dimensions. Even though 1,146 SF of the driveway is entirely in the RMA (outside the RPA Buffer), the Applicants are proposing use of permeable pavers to increase infiltration and reduce the effective percentage of impervious surface on the entire site by 458 SF to a net impervious surface of 4,383.6 SF or 33.9%."* Staff is

of the opinion that this variance request has a design and layout situated so the majority of the development impacts the Resource Management Area (RMA) of the Chesapeake Bay watershed.

- 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 purpose and intent of the Ordinance is to protect/enhance water quality to prevent pollution of the Bay as a result of non-point source pollution. This site currently has no stormwater treatment on site. As a result of this variance request, the owner will install bioretention beds, plant buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program, all to benefit water quality.”* Staff concurs.
- 5) *“Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded area, along with treating all stormwater generated and creating a riparian buffer within a large portion of the RPA (as described in 4 above), all help to limit pollution from entering the adjacent waters.”* 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 12 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: **973 square feet x 200 percent = 1,946 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 10 large shrubs, and 15 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 prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) 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.
- 11) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated April 20, 2022, prepared by Gallup Surveyors & Engineers, signed April 20, 2022 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

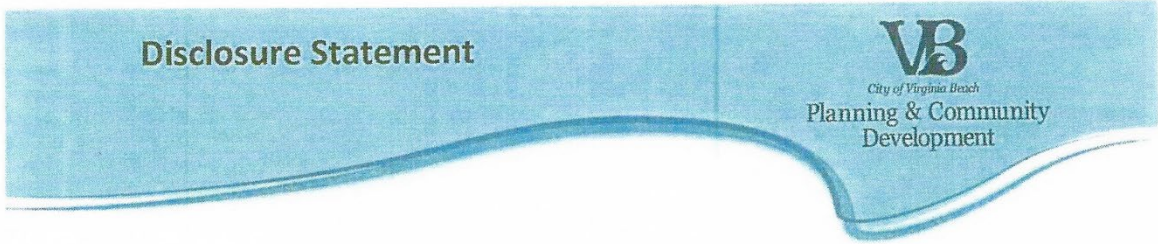
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 110(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial



Disclosure Statement



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Applicant Disclosure

Applicant Name Kenneth and Heather Lewis

Does the applicant have a representative? Yes No

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

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

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

- 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?

Heather Lewis (V.B. School system)

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



6. Does the applicant have a construction contractor in connection with the subject of the application or any business operating or to be operated on the property? Yes No
- If yes, identify the company and individual providing the service.
Bryan Heitpas Va. Coastal Homes (757) 288-1653
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.
David Butler Gallup Surveyors & Engineers (757) 428-8132
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.

[Signature] [Signature]
 Applicant Signature Kenneth Lewis Heather Lewis
 Print Name and Title
04/26/2022 4-26-22
 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 **Charles & Mary White**
Address **813 Coverdale Lane**
Public Hearing **June 6, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

9

Variance Request

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

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 122, Page 8
Recorded 09/06/1977

GPIN

1488-12-9936

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

325 square feet

Area of New Development in RPA

1,200 square feet

Location of Proposed Impervious Cover

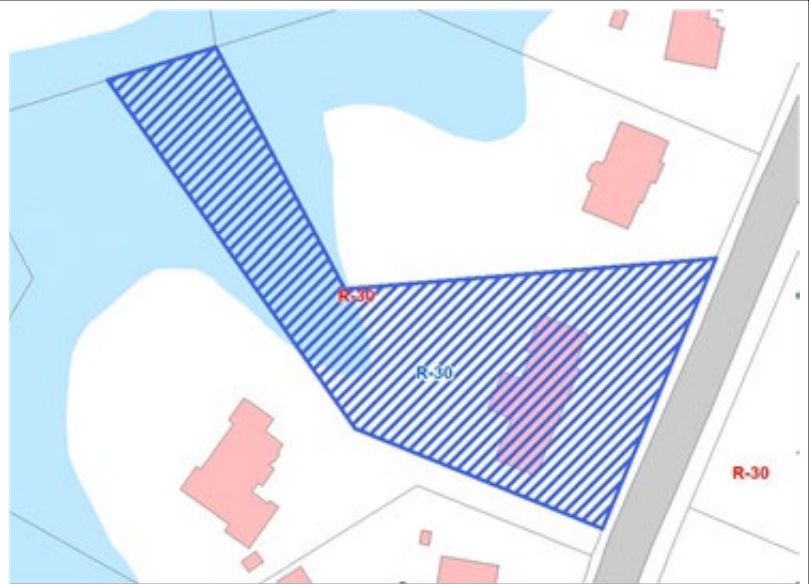
50-foot Seaward Buffer
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool (partially above ground) with associated wood deck

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a partially above ground swimming pool with an associated wood deck surround. The proposed improvements will add approximately 1,200 square feet of new impervious cover within the 100-foot buffer of the Resource Protection Area (RPA). The dimensions of the proposed swimming pool (14 feet by 30 feet) are slightly smaller than the average residential swimming pool (16 feet by 32 feet). The applicant has provided that the land disturbance, as calculated from the area within the proposed limits of construction, to be approximately 1,605 square feet coupled with access provided from the existing driveway totaling less than 2,500 square feet. Staff is of the opinion that the size of the pool and the surrounding wood deck are acceptable, and the scope of the improvements should not be detrimental to water quality. Staff believes the materials of the pool surround provide a means to minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural urban best management practices via gravel underdeck treatment.

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 *"other lots in the neighborhood have developed in a similar fashion with encroachment."* Staff is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions for this variance request.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the lot was platted in 1977 and the house was built in 1979."* Staff concurs 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.
- 3) The variance is the minimum necessary to afford relief because *"similar projects can be found throughout the neighborhood."* Staff is of the opinion that the applicant has situated the proposed improvements within the lot that does not encroach upon the most sensitive portions of the lot. In addition, the applicant has provided a smaller sized pool and surrounding wood decking.
- 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 *"there will be minimal runoff from the proposed improvements."* Staff is of the opinion that the riparian buffer mitigation on this lot will offer merit towards providing water quality benefits and the minimal land disturbance associated with this request will not be a substantial detriment to water quality.
- 5) *"Retention of the existing riparian buffer"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the access to the proposed improvements, minimal land disturbance, and location of the project on the lot provides merit towards not be an increase in nonpoint source pollution.

Given the above comments, Staff recommends the following 7 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **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: **6 canopy trees, 6 understory trees, 12 large shrubs, and 24 small shrubs** to the greatest extent practicable.

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. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

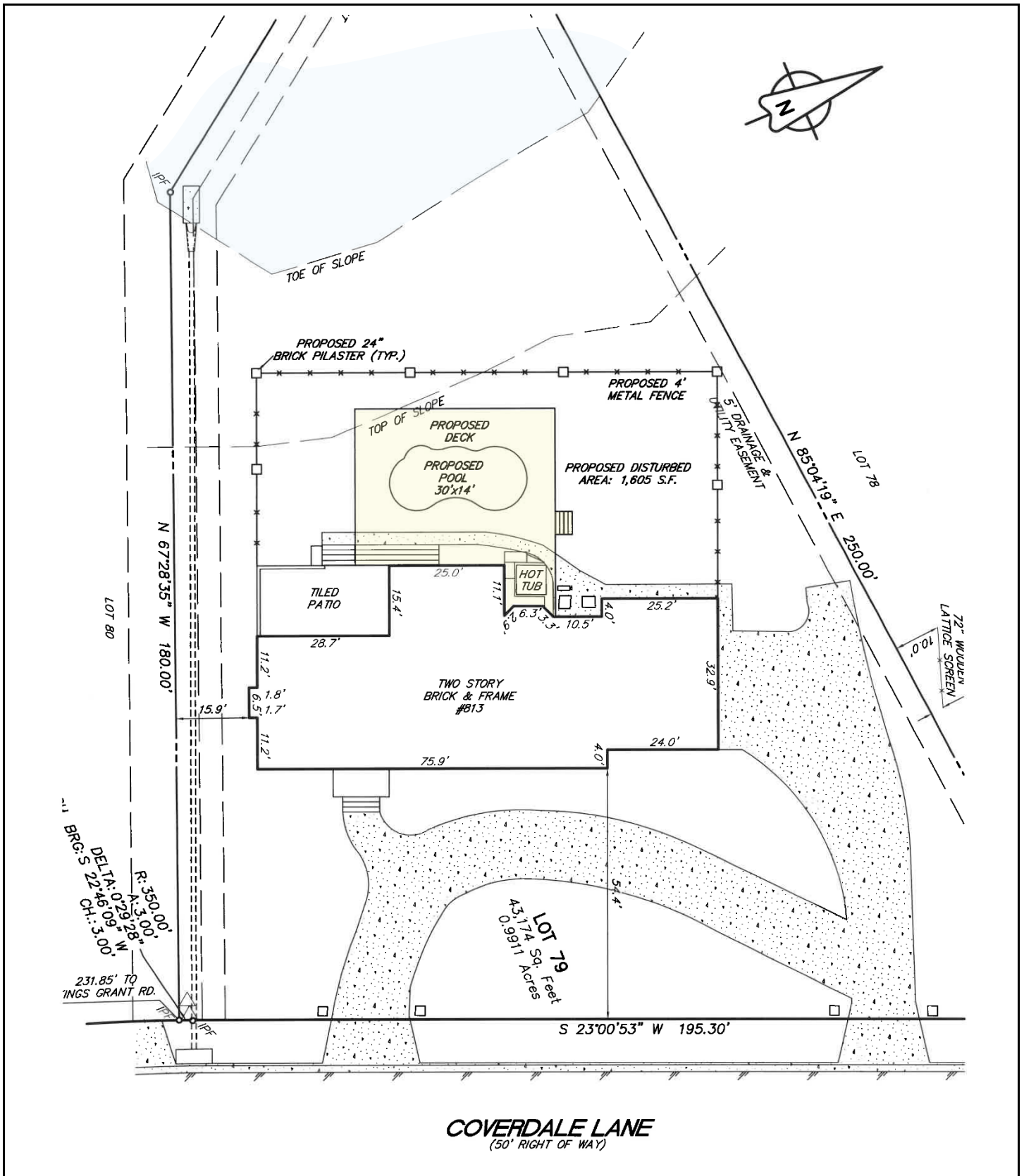
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
6. Under deck treatment of sand and gravel shall be installed.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.

***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

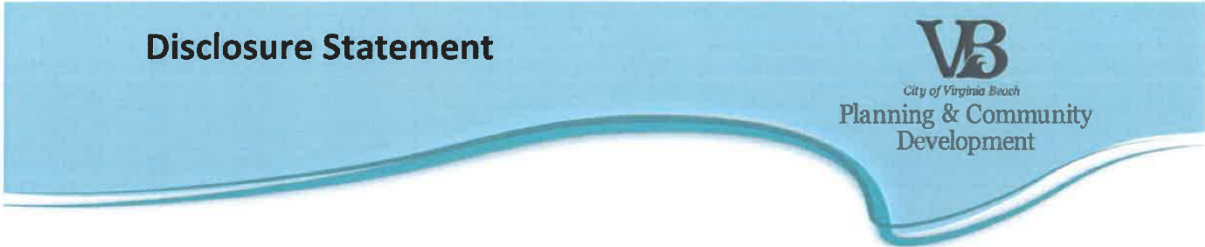
Site Aerial



CBPA Exhibit – Existing Conditions



Disclosure Statement



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

Applicant Disclosure

Applicant Name CHARLES & MARY WHITE

Does the applicant have a representative? Yes No

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

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

C. ASHLE WHITE

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.

GREEN LAND SURVEYOR

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

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

Disclosure Statement



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

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

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

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

GORDON LAND SURVEYING, PLLC.

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.

Charles C. White, Jr. *Mary J. White*
 Applicant Signature

CHARLES WHITE JR. & MARY WHITE
 Print Name and Title

13 MAY 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