

# Chesapeake Bay Preservation Area Board Agenda July 8, 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 **Friday, July 8, 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](http://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](mailto: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](http://www.vbgov.com/cbpa) for the most updated meeting information.



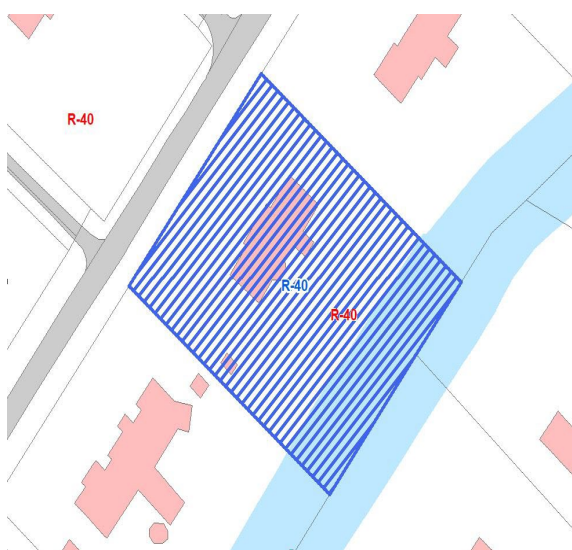
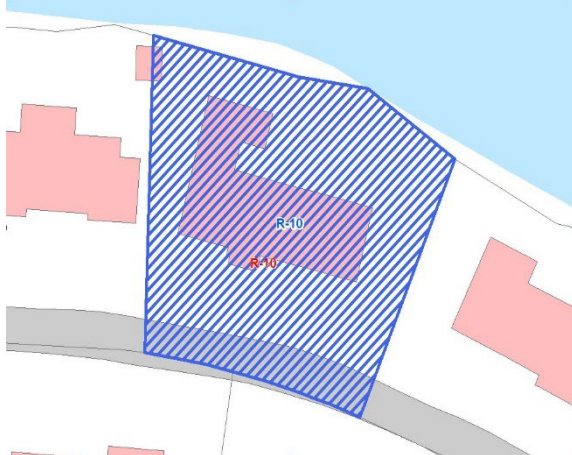


# CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **July 8, 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](http://www.vbgov.com/cbpa). For information call (757) 385-4621.

<b>NEW BUSINESS AGENDA ITEMS</b>	
<p><b>1. William F Swinford &amp; Dawn M Freeman</b> [Applicants &amp; Property Owners]</p> <p><b>4043 N Witchduck Rd</b> GPIN 1488-08-0893 City Council District: District 8, formerly Bayside Accela Record: 2022-CBPA-00026</p> <p><b>Variance Request</b> – Encroachment into the RPA to construct additions to the residence, attached screen porch replacement &amp; expansion, concrete patio with associated walkway, and detached garage.</p> <p><b>Staff Planner</b> – Cole Fisher <b>Staff Report</b> – page 7</p>	
<p><b>2. Debra S Warfield</b> [Applicant &amp; Property Owner]</p> <p><b>3108 Basin Ct</b> GPIN 1499-08-8306 City Council District: District 8, formerly Lynnhaven Accela Record: 2022-CBPA-00027</p> <p><b>Variance Request</b> – Encroachment into the RPA to construct a swimming pool.</p> <p><b>Staff Planner</b> – Cole Fisher <b>Staff Report</b> – page 19</p>	

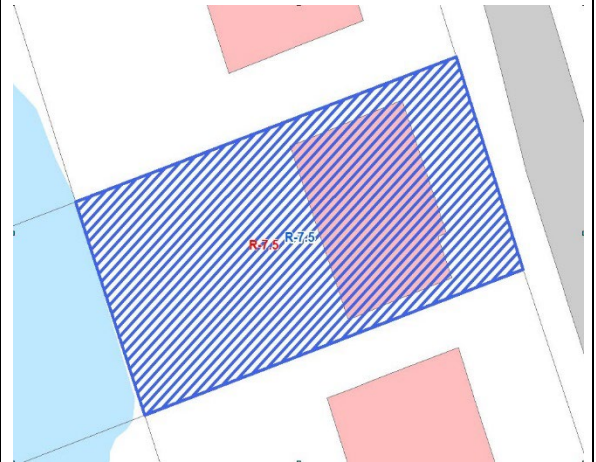
## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**3. Jesse & Laura Kasper**  
[Applicants & Property Owners]

**2109 Wake Forest St**  
GPIN 1499-69-4249  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00028

**Variance Request** – Encroachment into the RPA to expand existing wood deck.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 31

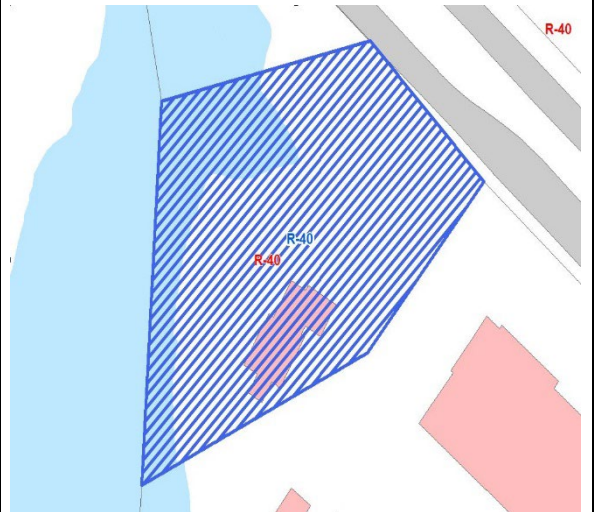


**4. Amir Islam & Ariel Whitmire**  
[Applicants & Property Owners]

**1879 N Great Neck Rd**  
GPIN 1499-55-3168  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00029

**Variance Request** – Encroachment into the RPA to a series of retaining wall with associated fill material along the existing pool and residence, paver patio area and shed.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 43



**5. Deanne & Kenneth Lindauer**  
[Applicants & Property Owners]

**1641 Cutty Sark Rd**  
GPIN 2409-43-2898  
City Council District: District 6, formerly Lynnhaven  
Accela Record: 2022-CBPA-00030

**Variance Request** – Encroachment into the RPA to construct an outdoor kitchen area.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 45



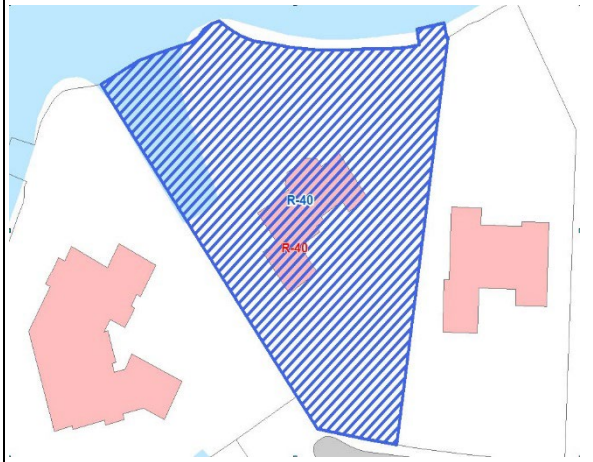
## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**6. William & Kendall Mager**  
[Applicants & Property Owners]

**1324 Chewink Ct**  
GPIN 2418-22-2342  
City Council District: District 6, formerly Lynnhaven  
Accela Record: 2022-CBPA-00031

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 55



**7. Walter & Amy Vest**  
[Applicants & Property Owners]

**3946 & 3948 Richardson Rd**  
GPIN 1488-16-6587 & 1488-16-6732  
City Council District: District 8, formerly Bayside  
Accela Record: 2022-CBPA-00032

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 65



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

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Applicant & Property Owner **William F. Swinford & Dawn M. Freeman**  
 Address **4043 N. Witchduck Road**  
 Public Hearing **July 8, 2022**  
 City Council District **District 8**, formerly Bayside

Agenda Item

**1**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct additions to the residence, attached screen porch replacement & expansion, concrete patio with associated walkway, and detached garage.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 65, Page 3  
 Recorded 07/27/1965

**GPIN**

1488-08-8193

**SITE AREA**

48,000 square feet or 1.102 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

38,541 square feet or 0.885 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,881 square feet or 15.2 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,011 square feet or 18.2 percent of site

**Area of Redevelopment in RPA**

469 square feet

**Area of New Development in RPA**

885 square feet

**Location of Proposed Impervious Cover**

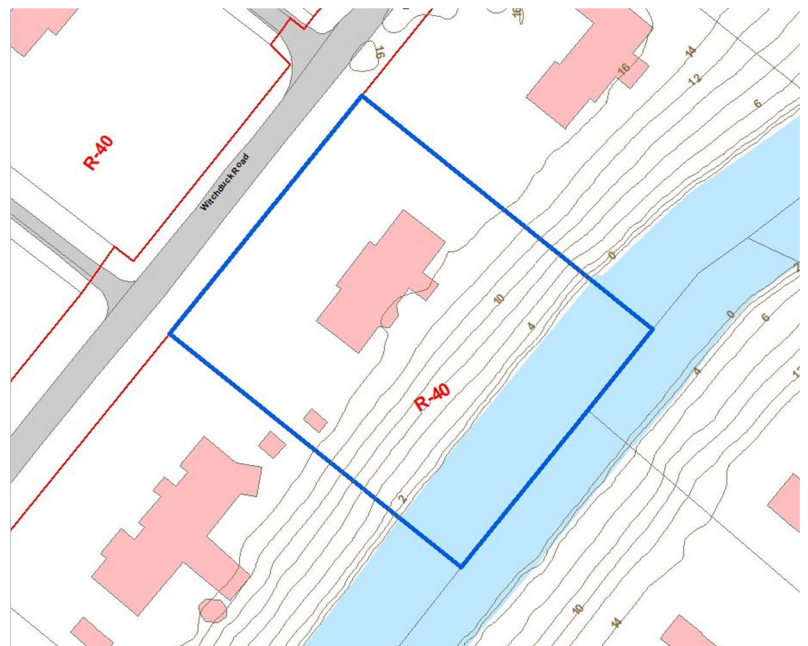
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned





## Summary of Proposal

### Demolition Details

- Remove existing sunroom, concrete patio, and walkway

### Construction Details

- One-story building addition with expansion of screened porch
- Concrete patio, mechanical pad, and walkway
- Detached garage

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 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 timber bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of existing understory trees requested for removal within the RPA: 5
- Evaluation of existing canopy tree removal request: Three canopy trees and five understory trees are requested for removal with this request with four of the trees located in the rear yard of the property within the landward buffer and the remaining four located in the front yard within the variable width buffer. Three of the trees requested for removal are within the limits of construction.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The variance request includes removing the existing sunroom, concrete patio, and associated walkway to construct a one-story building addition with screened porch, concrete patio area with associated mechanical pad and walkway, and

a detached garage. A second building addition is proposed off the northeast side of the single-family residence, which qualifies for consideration of an administrative variance. Due to the applicant's living situation, Staff reviewed this portion of the project in an effort for the applicant to begin construction at an earlier date. The majority of the proposed improvements are situated within the landward portion of the Resource Protection Area (RPA) with no encroachment into the seaward buffer. Overall, this proposal increases the impervious cover of the lot from 5,881 square feet or 15.2 percent of the lot above water or wetlands to 7,011 square feet or 18.2 percent of the lot above water or wetlands. Given the buffer restoration measures proposed and the proposed layout of the improvements minimizing encroachment into the RPA buffer to the greatest extent practicable, Staff is of the opinion this variance request is in harmony with the purpose and intent of the Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1965 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and offers that the proposed improvements primarily consist of additions to the existing single-family residence with all improvements being landward of the 50-foot seaward buffer.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing improvements to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff is of the opinion that the location of the proposed improvements offer merit towards the variance request being the minimum necessary to afford relief given the overall increase of impervious cover on the lot being under 20 percent of the lot above water or wetlands.
- 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 canal in the rear of the site."* The lot is sparsely wooded and largely devoted to turf. Staff is of the opinion that the proposed changes with this variance request will not be of substantial detriment to water quality. As stated in the WQIA, the applicant will take means to minimize impacts in the RPA and will mitigate stormwater runoff with the use of bioretention planting beds and buffer restoration.
- 5) *"The existing rear lawn 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 canal in the rear of the site"* 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 **13** 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: **885 square feet x 200 percent = 1,770 square feet.**

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

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

- 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) \*\* 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 \$202.81 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.
- 13) The conditions and approval associated with this variance are based on the exhibit plan dated April 15, 2022, prepared by WPL Landscape Architecture, signed May 26, 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. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

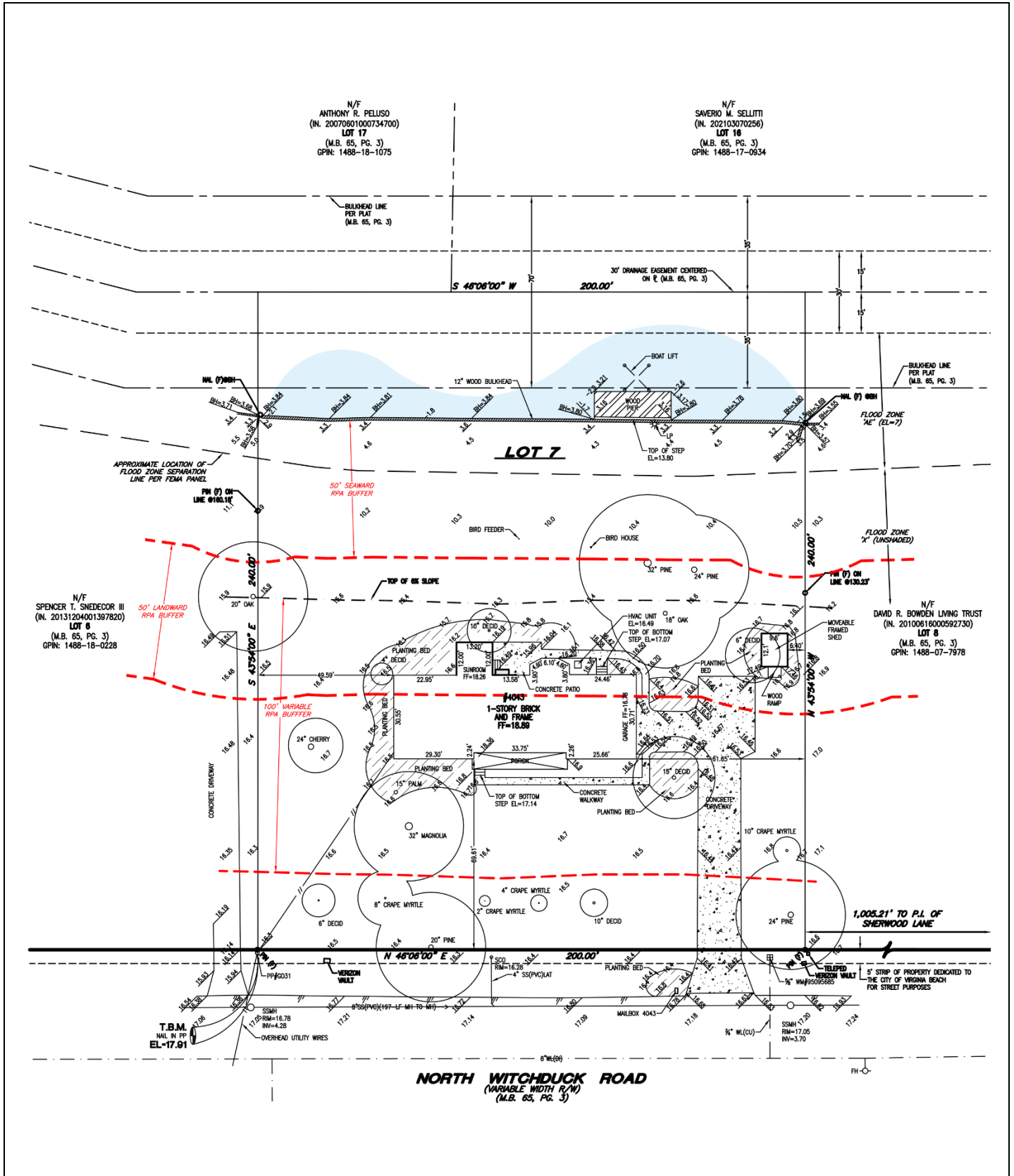
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

# Site Aerial

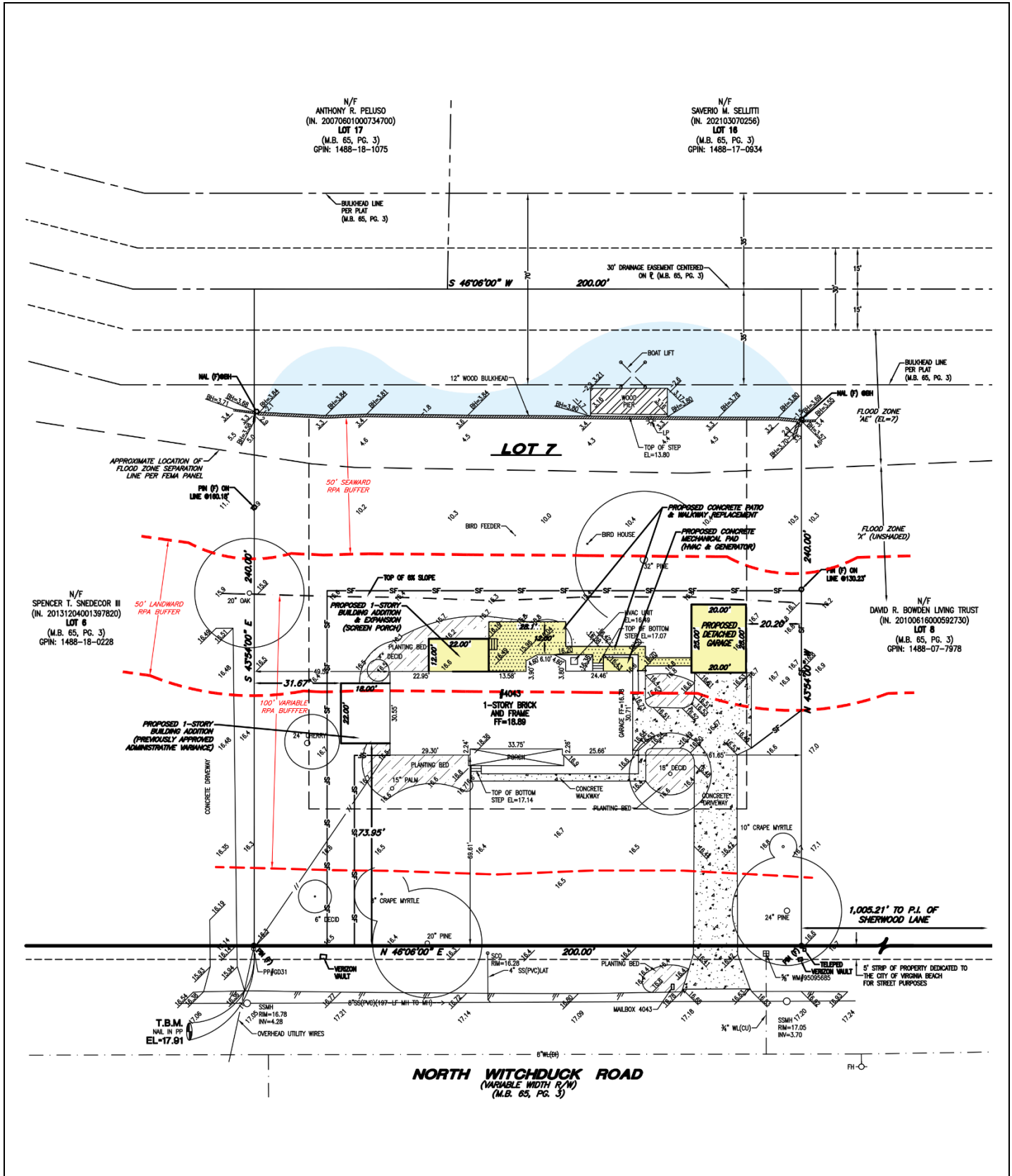




# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



# Disclosure Statement

## Disclosure Statement



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

### **Applicant Disclosure**

**Applicant Name** Dawn M Freeman & William F Swinford

**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)

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- If **yes**, list the businesses that have a parent-subsidary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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

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

# Disclosure Statement



## **Known Interest by Public Official or Employee**

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

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

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## **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.

Atlantic Bay Mortgage Group, LLC

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

**Yes**  **No**

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

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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.

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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 & RBA Architects

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

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

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# Disclosure Statement



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

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

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

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

WPL

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

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

**Applicant Signature**

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

**Applicant Signature**

Dawn M Freeman and/or William F Swinford

**Print Name and Title**

24 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	



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Applicant & Property Owner **Debra S. Warfield**  
 Address **3108 Basin Court**  
 Public Hearing **July 8, 2022**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**2**

**Variance Request**

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

**Applicant’s Agent**

Robert Simon  
 Waterfront Consulting, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 43, Page 3  
 Record 01/15/1957

**GPIN**

1499-08-8306

**SITE AREA**

13,046 square feet or 0.30 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

13,046 square feet or 0.30 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,573 square feet or 43 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,249 square feet or 48 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

675 square feet

**Location of Proposed Impervious Cover**

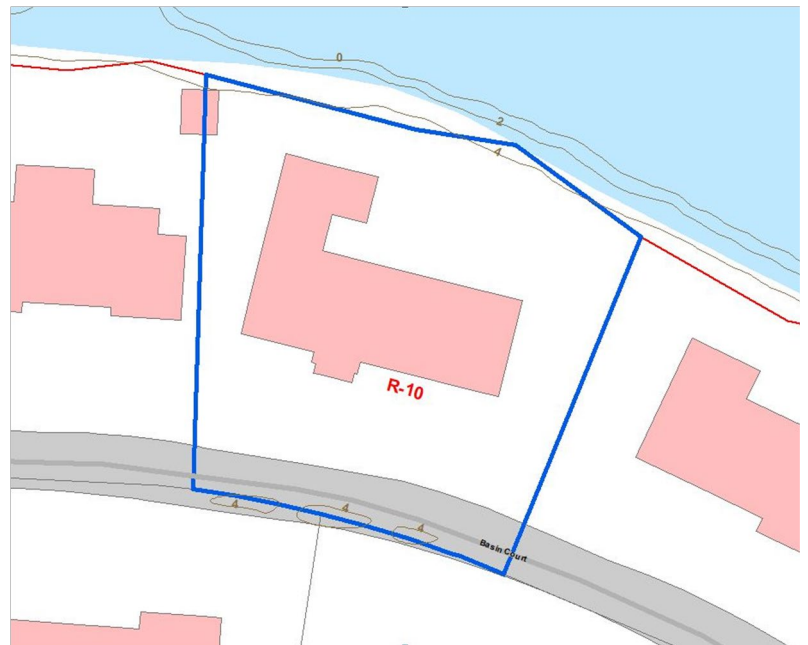
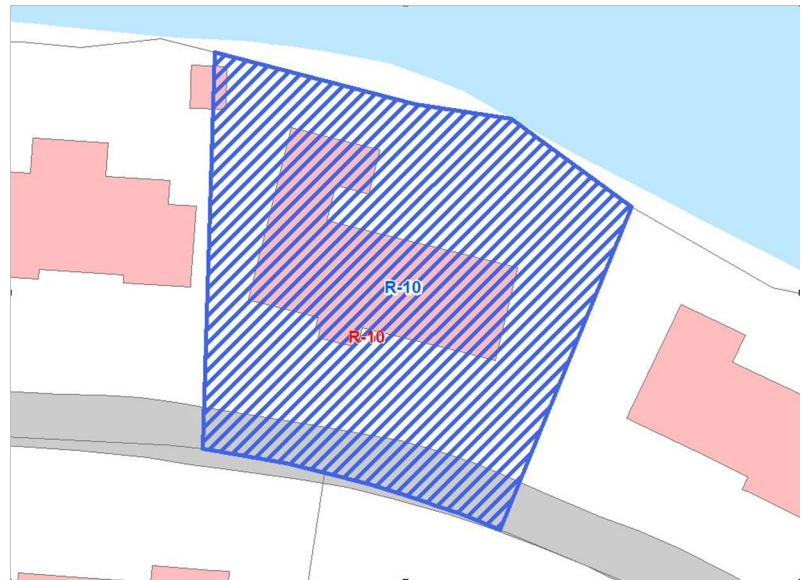
50-foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with paver patio

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

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

### Shoreline

Shoreline is hardened by a timber bulkhead.

### Riparian Buffer

Heavily Wooded Lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct a swimming pool with a paver patio within the 50-foot seaward buffer of the Resource Protection Area (RPA). The dimensions of the proposed swimming pool (11 feet by 25 feet) are smaller than the average residential swimming pool (16 feet by 32 feet) with the square footage of the pool and associated patio totaling at approximately 643 square feet of new impervious cover. Most of the existing residential lot is encumbered by the 100-foot RPA buffer and was platted more than 7 decades prior to the adoption of the City's Chesapeake Bay Preservation Area (CBPA) Ordinance. Staff is of the opinion that these circumstances pose challenges to redevelop this lot given the parcel's size and the 50-foot seaward buffer encumbering the entirety of the rear yard and portions of the existing residence.

Staff is of the opinion that the layout of the proposed improvements reflects the minimum necessary to afford relief subject to the recommended conditions below and due to the location of the RPA buffer feature on this lot that predates the City's adoption of the CBPA Ordinance. In addition, the lot currently has little to no tree canopy and Staff is of the opinion that the buffer restoration required with the proposed increase in impervious cover will enhance the

remaining areas in the rear yard that are currently devoted to turf and are providing limited benefit to the water quality.

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 this neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually based on the merits provided with each request. Given the typical imperviousness associated with the development of the residential lots in the early 1960's along Basin Court and Basin Road at a density equal to or greater than 4 dwelling units per acre, Staff is of the opinion that the proposed improvements will not convey any special privileges to the applicant should they agree to the recommended conditions recommended below by Staff due to the fact that all of the adjacent properties have rear yards encumbered by the 50-foot seaward buffer.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed improvements are modestly sized to minimize encroachment into the RPA."* Staff acknowledges the statement of the applicant's agent with regard to *"the minimum necessary to afford relief"* and provides the recommended condition 2 that will limit the amount of proposed overall impervious cover of the lot in relationship to the redevelopment pattern throughout the neighborhood and is more harmonious with the findings of the CBPA Ordinance than that was provided with the applicant's CBPA Exhibit.
- 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 is of the opinion that the introduction of stormwater management with a request that disturbs greater than 2,500 square feet of uplands, coupled with riparian buffer mitigation in an area with underlying soils that are moderately well drained, offers merit towards improving water quality. Staff offers that the selection of plant material associated with the stormwater management facilities and riparian buffer mitigation should include indigenous plants specific to the USDA Plant Hardiness Zone for this area, Zone 8a and selected based on valuable water uptake specific to the selected plant species.
- 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 the provided BMPs provide merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following 13 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The area described as “proposed kitchen counter over pavers” shall be removed and a pool surround no wider than 4 feet may be installed along the eastern edge of the proposed swimming pool. All other dimensions shall remain as shown on the CBPA Exhibit.
- 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: **675 square feet x 200 percent = 1,350 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: **2 canopy trees, 4 understory trees, 6 large shrubs, and 12 small shrubs.**

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

- 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.**

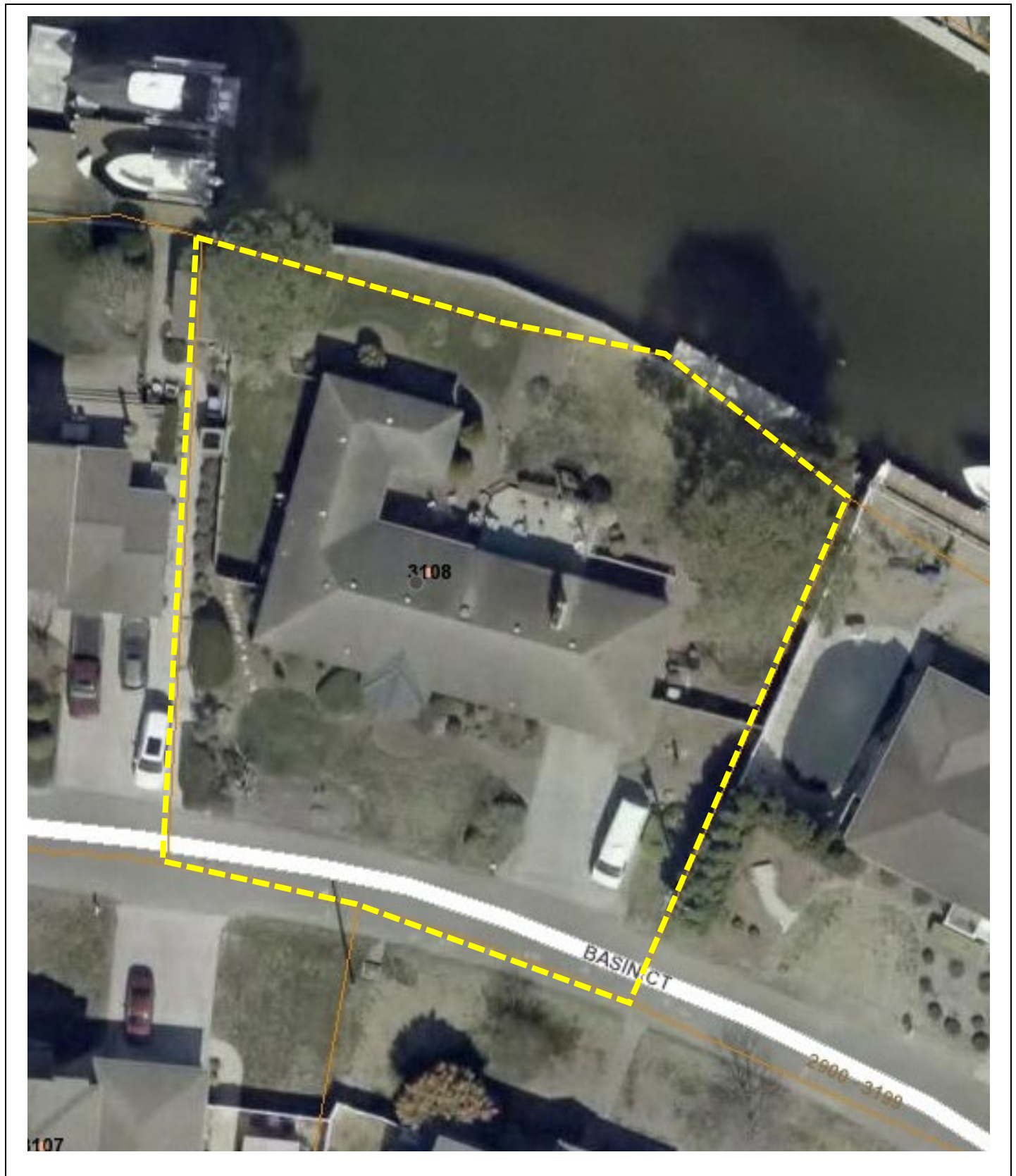


- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the 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) 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) \*\* 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 \$154.68 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.
- 13) The conditions and approval associated with this variance are based on the exhibit plan dated May 31, 2022, prepared by Chesapeake Bay Site Solutions, Inc. 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.

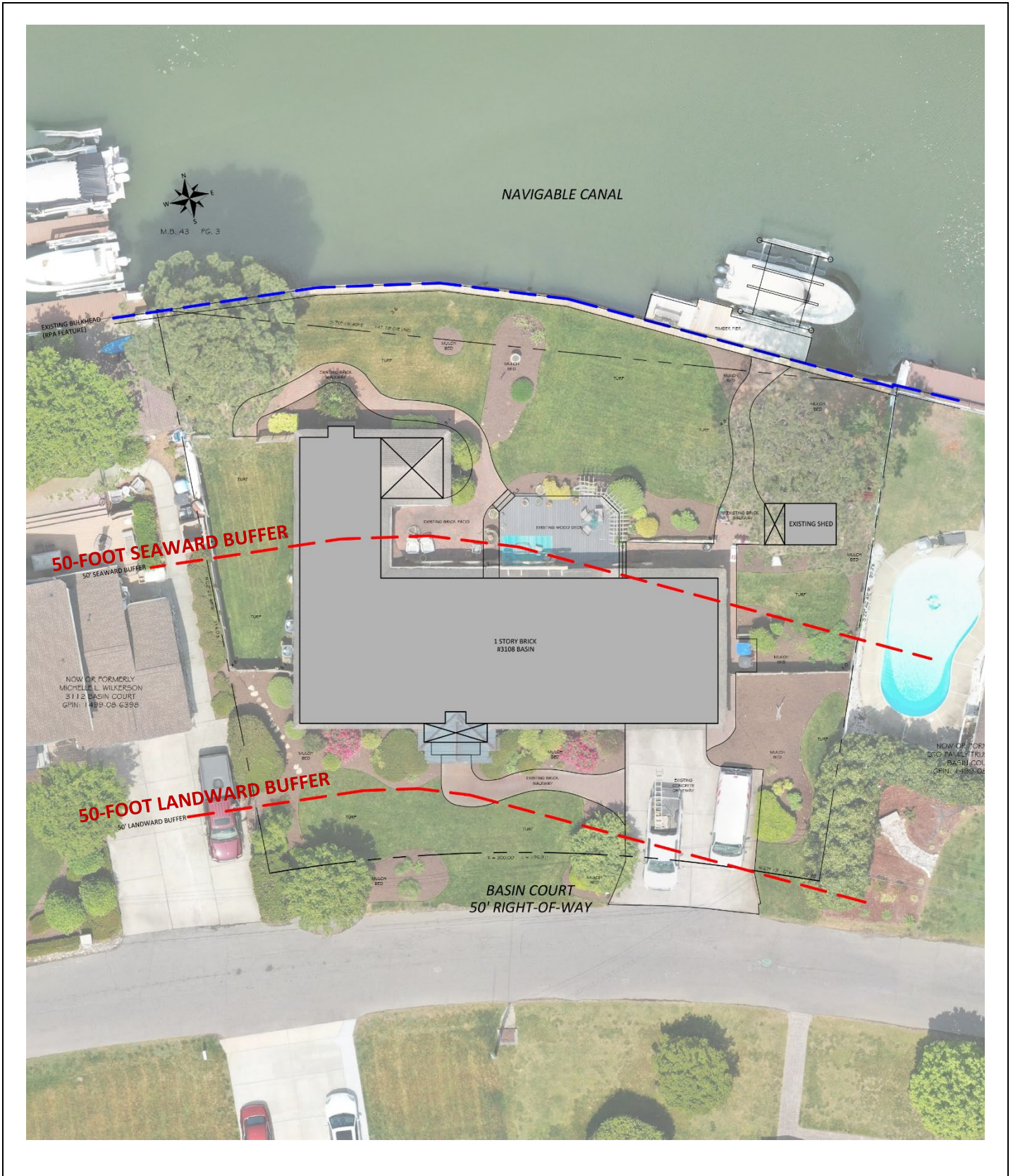
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

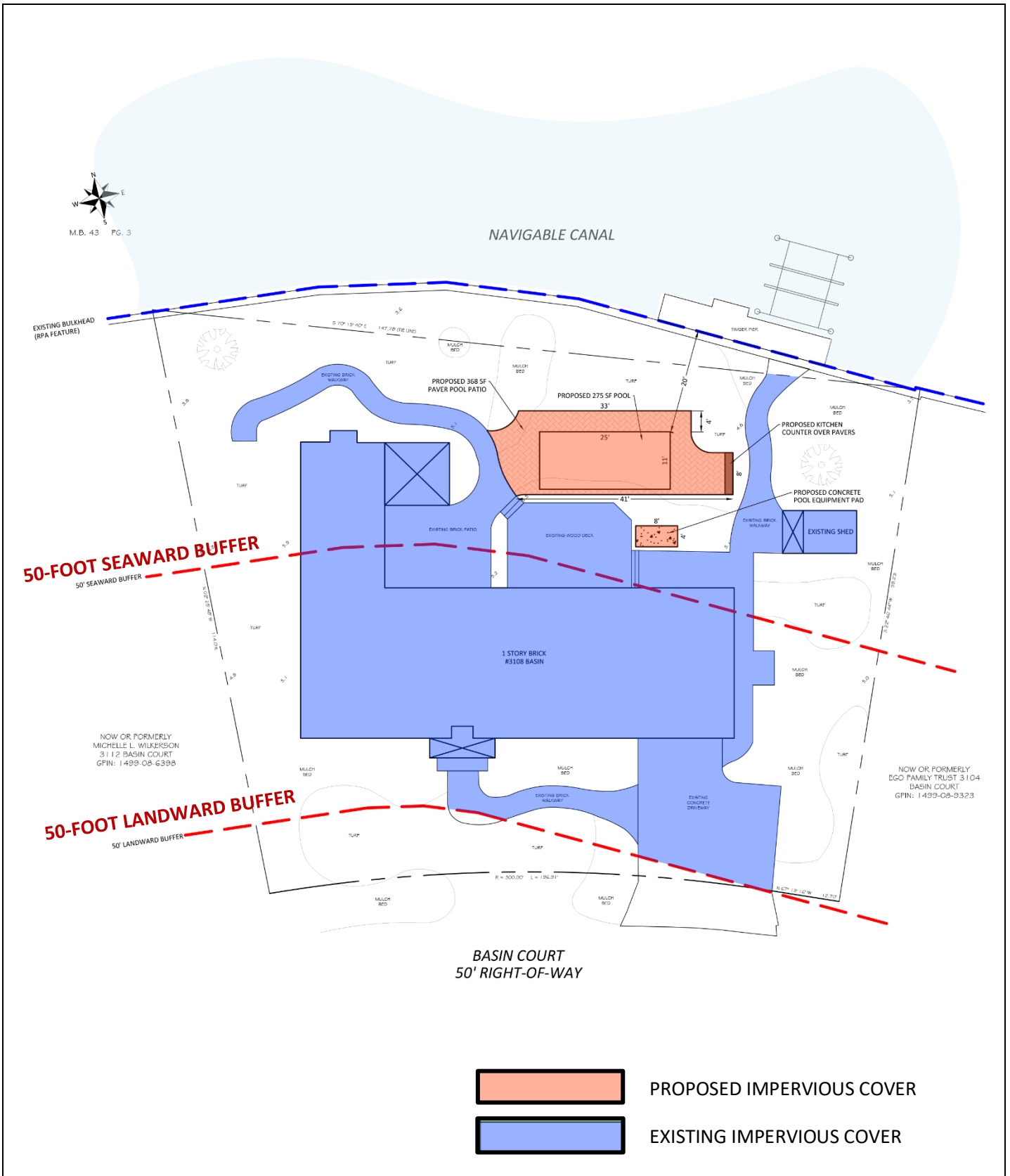




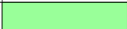



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements

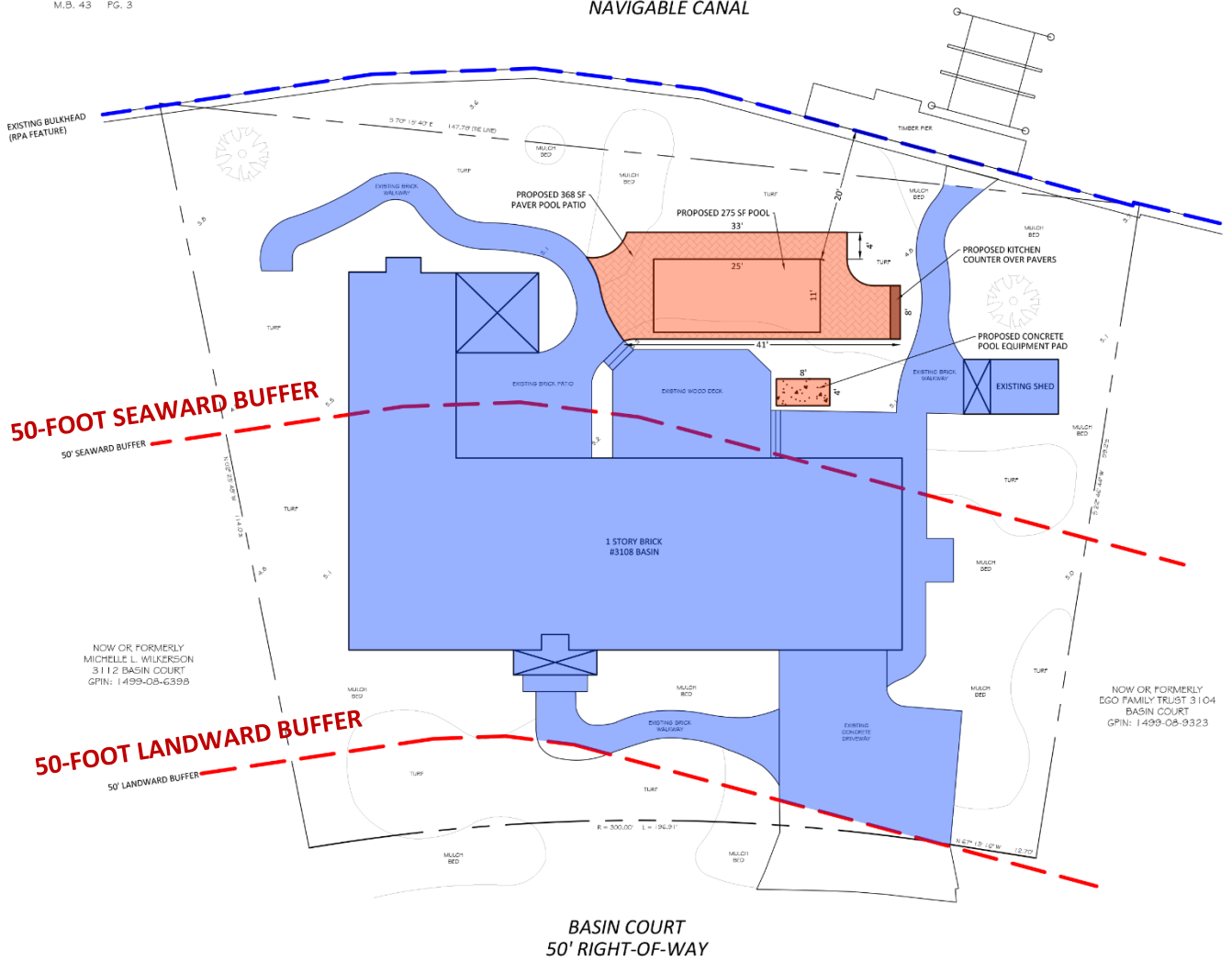


# CBPA Exhibit – Color Analysis

ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA				
	LEGEND	EXISTING	PROPOSED	DIFFERENCE
TOTAL IMPERVIOUS AREA		5,515 SQUARE FEET	6,190 SQUARE FEET	675 SQUARE FEET
DEMOLITION	NOTED		0 SQUARE FEET	
IMPERVIOUS CONVERTED TO PERVIOUS			0 SQUARE FEET	
IMPERVIOUS COVER TO REMAIN		5,515 SQUARE FEET		
*REDEVELOPMENT OVER OLD			0 SQUARE FEET	
**NEW IMPERVIOUS			675 SQUARE FEET	
* PROPOSED STORMWATER MANAGEMENT WILL ACHIEVE MITIGATION IN LIEU OF REDEVELOPMENT BUFFER RESETORATION 1,150 SQUARE FEET OF BUFFER RESTORATION REQUIRED (2X NEW IMPERVIOUS COVER)				



NAVIGABLE CANAL





# Disclosure Statement

## Disclosure Statement



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

### **Applicant Disclosure**

**Applicant Name** Debra S. Warfield

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

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

Robert E. Simon, 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-subsidary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

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

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

# Disclosure Statement



## **Known Interest by Public Official or Employee**

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

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

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## **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.

United Northern Mortgage Bankers, LTD

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.

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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.

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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.

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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.

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# 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.

Chesapeake Bay Site Solutions, Waterfront Consulting

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.

*Debra S. Warfield*  
 Applicant Signature  
 Debra S. Warfield

Print Name and Title  
 Debra S. Warfield OWNER 6/1/22  
 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	



**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to expand an existing wood deck

**Applicant’s Agent**

Self-Represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 27, Page 13  
Recorded 04/09/1951

**GPIN**

1499-69-4249

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

93 square feet

**Location of Proposed Impervious Cover**

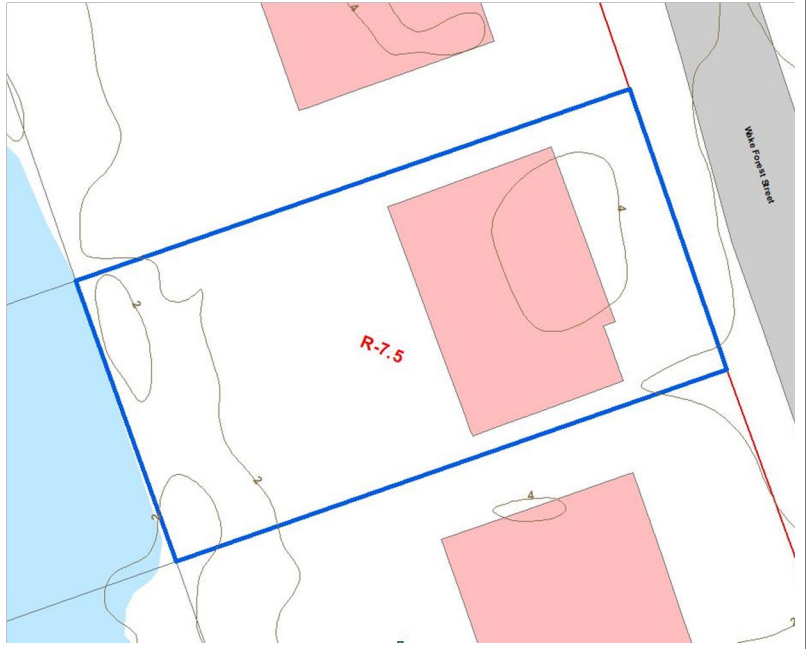
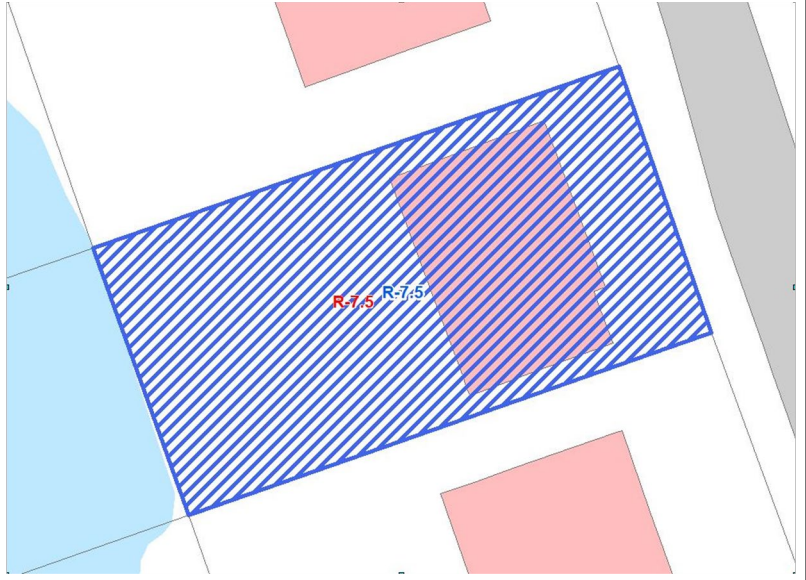
50-foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as submitted



## Summary of Proposal

### Construction Details

- Expansion of existing wood deck

## CBPA Ordinance Variance History

January 26, 2015, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a new residence with wood deck, driveway, and walk with associated retaining wall with fill 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' 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. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
7. *A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
8. *Submitted concurrent with the site plan shall be a separate 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.*
9. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
10. *A permeable paver system shall be utilized for the proposed driveway.*
11. *Under deck treatment of sand and gravel shall be installed.*
12. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (872 sq. ft. x 200% = 1744 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 to the greatest extent practicable. 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 (1,530 sq. ft. x 100% = 1,530 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 to the greatest extent practicable. 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. In lieu of 100% restoration for redeveloped areas, a 10% reduction in pollutant removal load is acceptable via a structural best management practices (BMP).*
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 \$400.00. Said payment shall provide for the equivalent of an approximate 437 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
15. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*
16. *The conditions and approval associated with this variance are based on the exhibit plan dated November 10, 2014, prepared by Gallup Surveyors and Engineers, signed November 18, 2014 by Bruce Gallup.*

The January 26, 2015 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Newhan – Corolla (moderately to well-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: 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

A Chesapeake Bay Preservation Area (CBPA) Variance was granted in 2015 for encroachment into the Resource Protection Area (RPA) for the construction of a single-family residence. At that time, the variance was conditioned that *"it is the opinion of the Board the approval granted is the maximum impervious cover the site can support."* The current applicant was not the applicant associated with the 2015 CBPA Variance.

The current property owner desires to expand the existing wood deck on the north sides of the dwelling by 93 square feet. The proposed deck expansion will be at the same elevation of the existing deck, approximately 10 feet above existing grade of the lot, with the steps remaining in the same location. Over half of the residential lot falls within the seaward 50-foot buffer of the RPA and the rear yard of the lot abuts a large marsh area leading out to a channel to Broad Bay. During the site visit Staff did not observe any detrimental signs of erosion and is of the opinion that the deck expansion as submitted will not be harmful 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 *"this is a specific request for a deck expansion for this specific property. Individual assessment is required for each property and the impervious structures build upon it."* 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 application is for a deck expansion and is not a result of a condition or circumstance from the applicant or any predecessors. Current impervious cover is 33 square feet less than previously authorized from the previous variance. The net increase in impervious cover will increase by 60 square feet to 261 square feet."* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's Ordinance; therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"I am expanding the deck at the minimum amount to account for the transfer of a grill up to the deck and the implementation of four potters for a garden above a water level. I am not expanding the deck into the marsh, nor do I desire to restrict the flow of water that would impact the marsh and associated ecosystem."* Staff is of the opinion that the expansion of the deck, given that there will be no expansion seaward, provides merit towards the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this variance request will involve the deck expansion and the addition of a single post to support the deck expansion while still ensuring rainwater runoff into the marsh and erosion protection measures under the deck."* Staff concurs.

- 5) *“Construction materials will be cleaned up and maintained away from the RPA and post installation, grass will be added below the deck area to avoid water erosion and silt transfer into the RPA”* 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 **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 buffer restoration shall be installed. 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: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

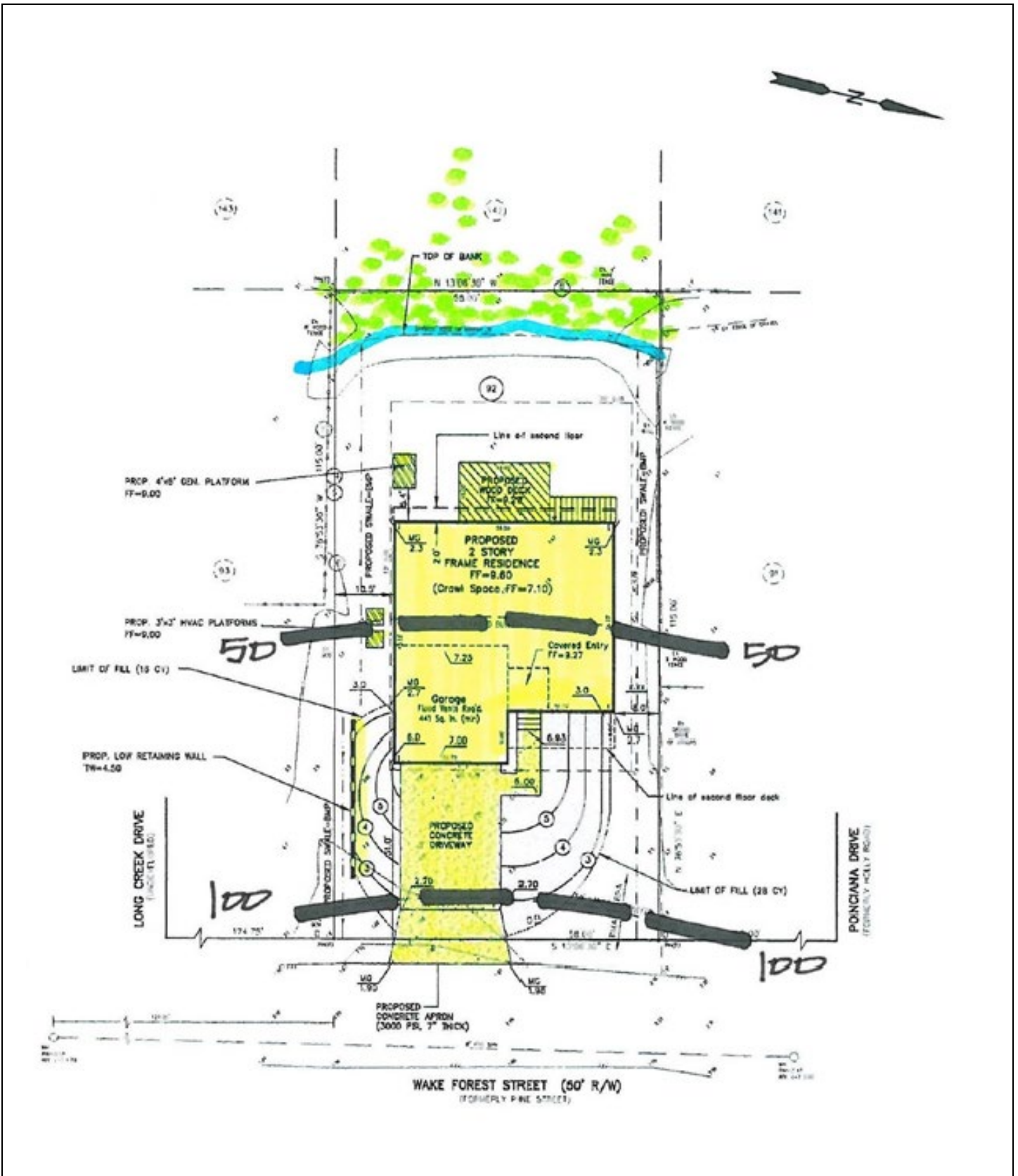
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. No perimeter fill is authorized outboard or seaward of the proposed improvements.
5. This variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted January 26, 2015.

\*\*\*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.



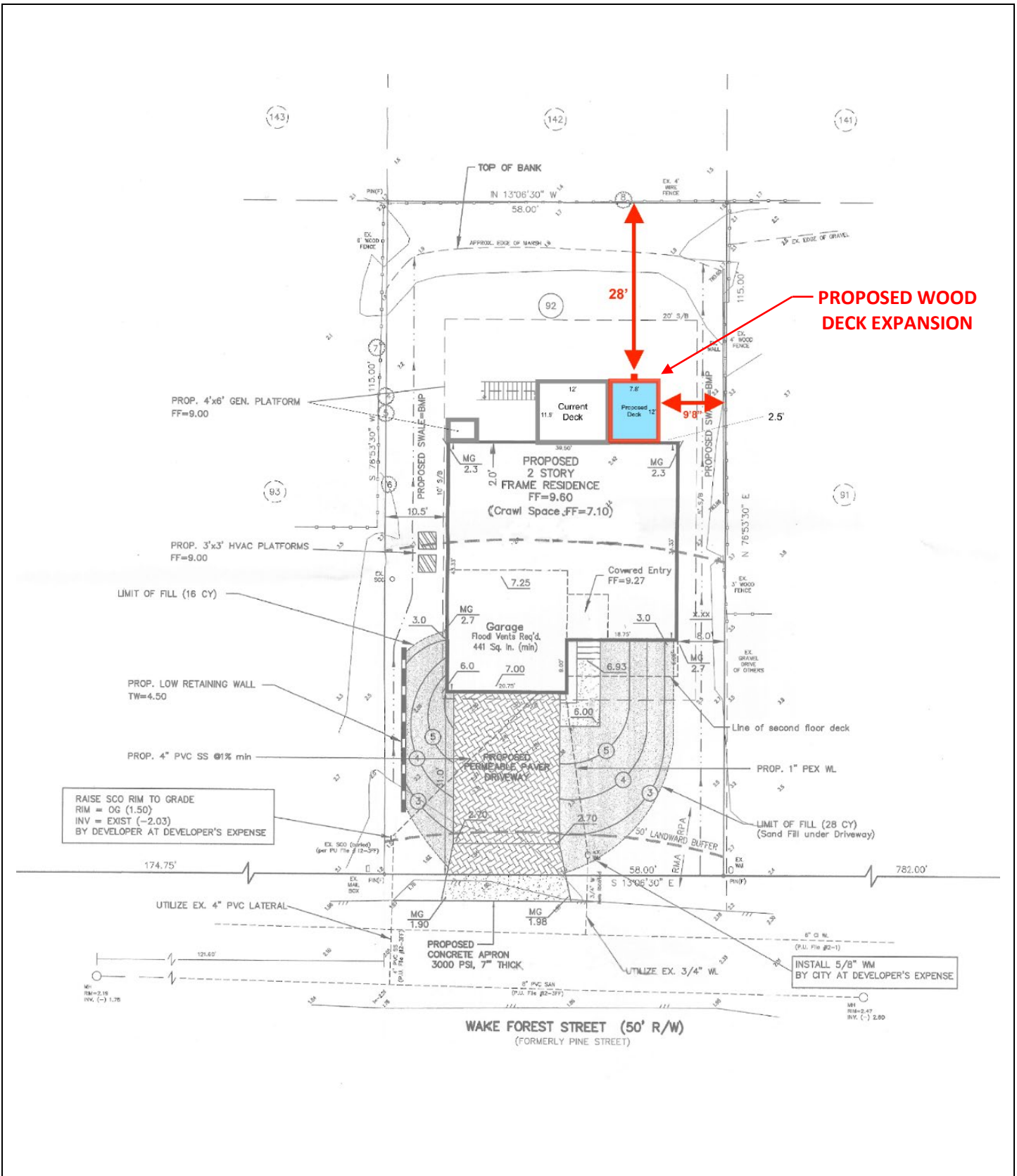
Site Aerial



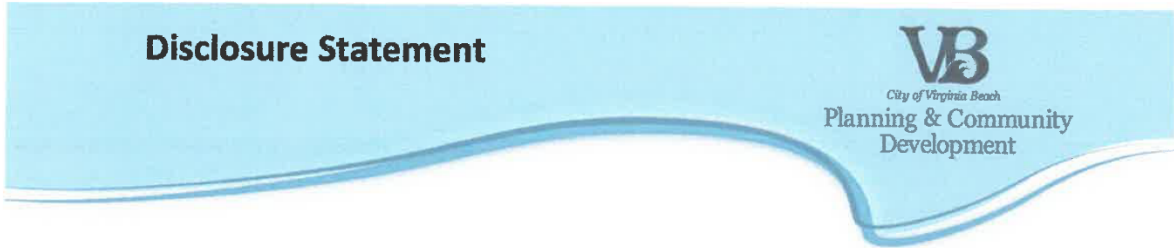




# CBPA Exhibit – Proposed Improvements



# 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** JESSE and LAURA KASPER

**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-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

<sup>2</sup> "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.

**Known Interest by Public Official or Employee**

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

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

**Applicant Services Disclosure**

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

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

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

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

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

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

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

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

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

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

## Disclosure Statement



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

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

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

JESSE and LAURA KASPER / OWNERS

### Print Name and Title

30 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	

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Applicant & Property Owner **Amir Islam & Ariel Whitmire**  
Address **1879 N. Great Neck Road**  
Public Hearing **July 8, 2022**  
City Council District **District 8**, formerly Lynnhaven

Agenda Item

**4**

**The applicant is requesting a deferral of this application to the Monday, August 1, 2022 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing. Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a series of retaining walls with associated fill material along the existing pool and residence, paver patio area, and shed.

**Applicant's Agent**

David Chewey, PLA  
DCLA

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 181, Page 25  
Recorded 07/19/1984

**GPIN**

1499-55-3168

**SITE AREA**

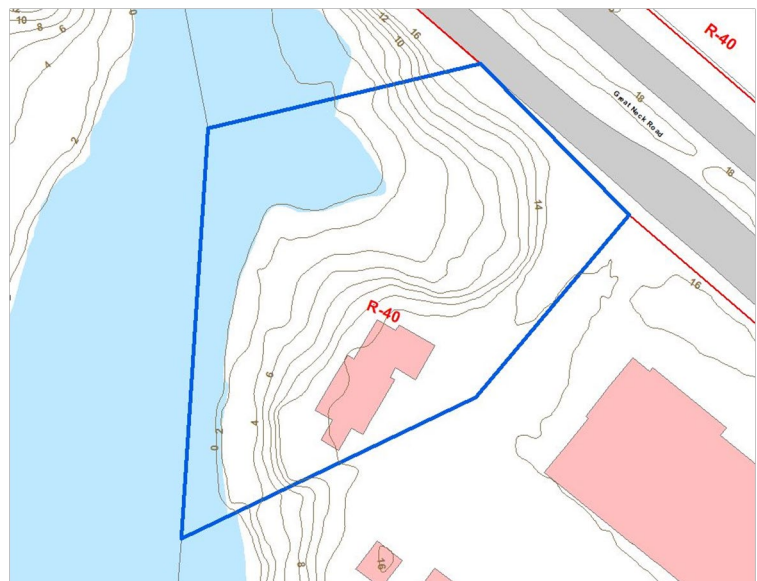
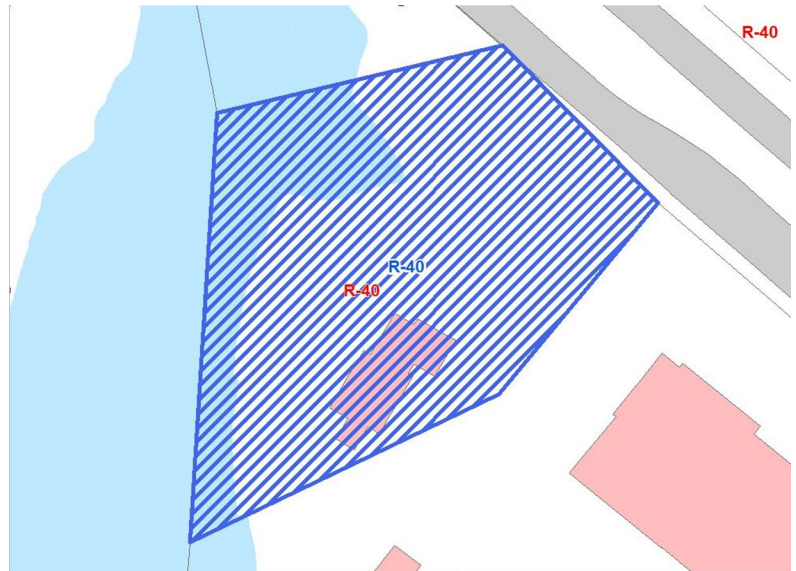
66,769 square feet or 1.53 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

49,064 square feet or 1.13 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,607 square feet or 15.5 percent of site



# Site Aerial







Applicant & Property Owner **Kenneth & Deanne Lindauer**  
 Address **1641 Cutty Sark Road**  
 Public Hearing **July 8, 2022**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**5**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct an outdoor kitchen area

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 306, Page 18  
 Recorded 06/09/1967

**GPIN**

2409-43-2898

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

341 square feet

**Area of New Development in RPA**

159 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

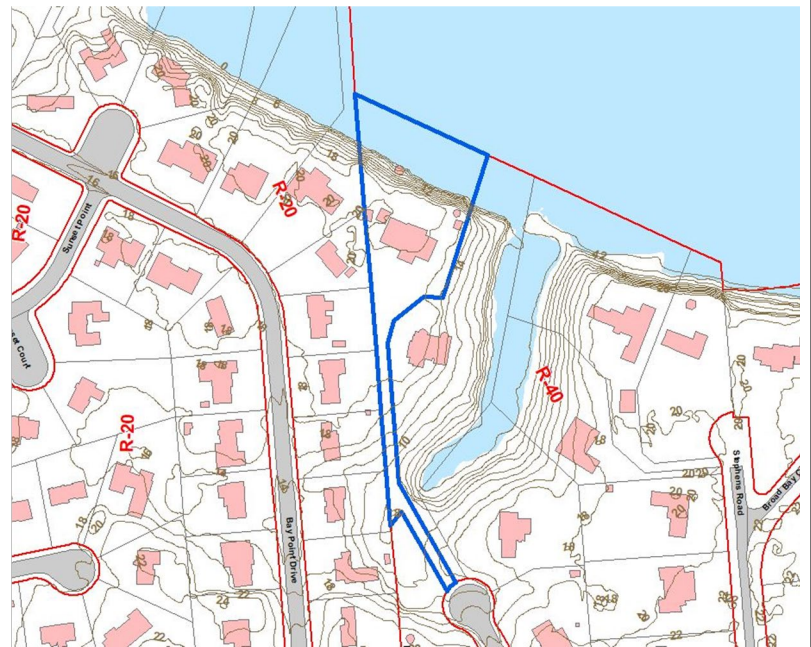
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Outdoor kitchen, gazebo, and portion of walkway

### Construction Details

- Outdoor kitchen area with fireplace and gazebo

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Multiple Zones – Zone X, AE, and VE, Base Flood Elevation (BFE): 9

### 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  
Sandy Beach located at the edge of tidal water

### Shoreline

Shoreline is hardened by a timber bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing understory trees requested for removal within the RPA: 1

## 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 and replace the existing outdoor kitchen area and enclosed gazebo with a new outdoor kitchen area with a fireplace and gazebo. A concept drawing of the proposed improvements is provided on page 50 of this Staff report. The proposed improvements will redevelop approximately 341 square feet of existing impervious cover and add approximately 284 square feet of new impervious cover within the 50-foot landward and 50-foot seaward buffers of the Resource Protection Area (RPA).

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 that have not been given to other owners of property in this neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the property was platted in 1966 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff acknowledges the statement provided by the applicant’s agent and offers those other properties along this reach of the Lynnhaven River have redeveloped improvements above the top of bank in a similar approach as proposed with this variance request.
- 2) The applicant’s agent provides that *“the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“we have designed the improvements over existing improvements to the greatest extent practicable to maximize redevelopment and to minimize site impacts.”* Staff is of the opinion that the proposed improvements, as situated in the rear yard, utilizes redevelopment of the existing impervious cover to the greatest extent and has proposed a minimal increase in impervious cover. In addition, the new impervious cover will not displace any mature forested floor and occurs over an area current devoted to turf.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff offers that the proposed improvements redevelop existing impervious cover within the buffer and given the method of construction provided by the applicant minimal land disturbance within an area currently devoted to turf.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load Staff has provided the recommended conditions below.

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. 400 square feet of buffer restoration shall be installed. 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.

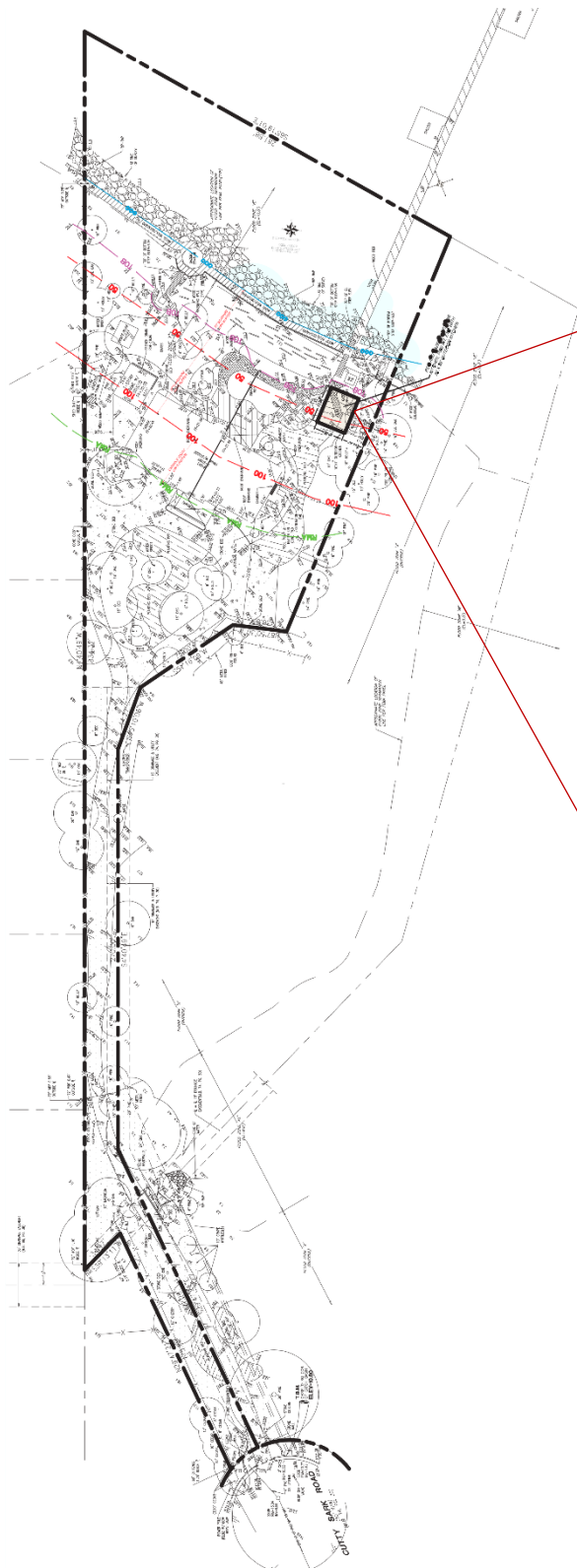
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
6. Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed roof associated with the outdoor kitchen area.
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 – Proposed Improvements, Location Exhibit & Conceptual Design



CBPA Exhibit – Overall Property

Outdoor Kitchen Concept







# Disclosure Statement

## Disclosure Statement



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

### **Applicant Disclosure**

**Applicant Name** KENNETH R. LINDAUER AND DEANNE LINDAUER

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)

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- If **yes**, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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<sup>1</sup> "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.

<sup>2</sup> "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.

TRUIST BANK

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

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

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

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

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

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

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

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

# Disclosure Statement



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

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

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

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

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

Print Name and Title

MAY 31, 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	Kenneth Lindauer



Applicant & Property Owner **William & Kendall Mager**  
Address **1324 Chewink Court**  
Public Hearing **July 8, 2022**  
City Council District **District 8**, formerly Bayside

Agenda Item

**6**

**Variance Request**

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

**Applicant's Agent**

Charles Wermers  
Wd&a

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 69, Page 25  
Recorded 04/27/1966

**GPIN**

2418-22-2342

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

67 square feet

**Area of New Development in RPA**

128 square feet

**Location of Proposed Impervious Cover**

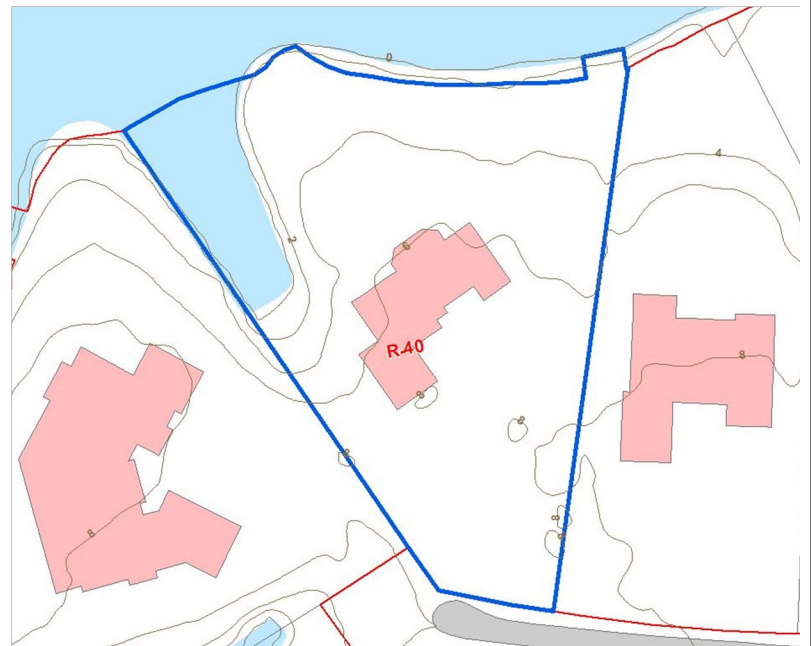
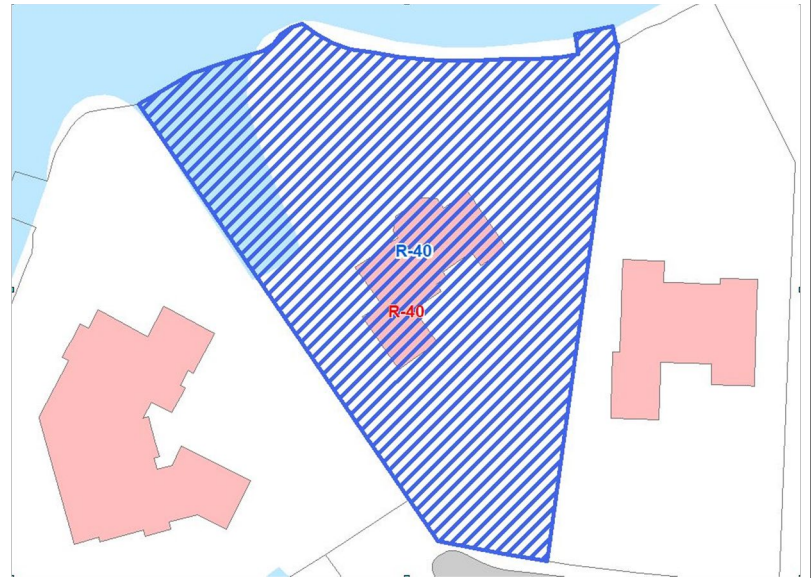
50-foot Seaward Buffer  
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as submitted



## Summary of Proposal

### Construction Details

- Wood deck expansion

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

### Shoreline

Shoreline is hardened by a wooden bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of 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 new wood deck over portions of an existing deck and lawn area within the 50-foot seaward buffer of the Resource Protection Area (RPA). Additionally, the applicant is proposing to redesign the front entry of the residence and redevelop a portion of the concrete driveway area adjacent to the front of the residence to construct an additional bathroom. This variance request introduces 128 square feet of new impervious cover on the lot from the proposed deck and Staff is of the opinion that this request will not cause a substantial detriment to water quality as proposed given the recommended conditions below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed encroachment was limited."* Staff is of the opinion that the request is minimal and limits the encroachment into the Resource Protection Area to the

greatest extent practicable given the desires of the current property owner to redevelop portion of the existing single-family residence built in 1985.

- 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 was built prior to the CBPA.”* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s Ordinance; therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“200 square feet of new and redevelopment is less than a single buffer restoration unit.”* Staff is of the opinion that the proposed improvements, as situated in the rear yard, utilizes redevelopment of the existing impervious cover to the greatest extent and has proposed a minimal increase in impervious cover.
- 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 minimal encroachment will have minimal affect and will be mitigated.”* Staff acknowledges the statement provided by the applicant’s agent and offers the recommended conditions below as a means towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.
- 5) The applicant’s agent provides that *“By providing buffer restoration as required”* offers merit as a means towards managing the variance request to be a no net increase in nonpoint source pollution load. Staff concurs.

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. 400 square feet of buffer restoration shall be installed. 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.

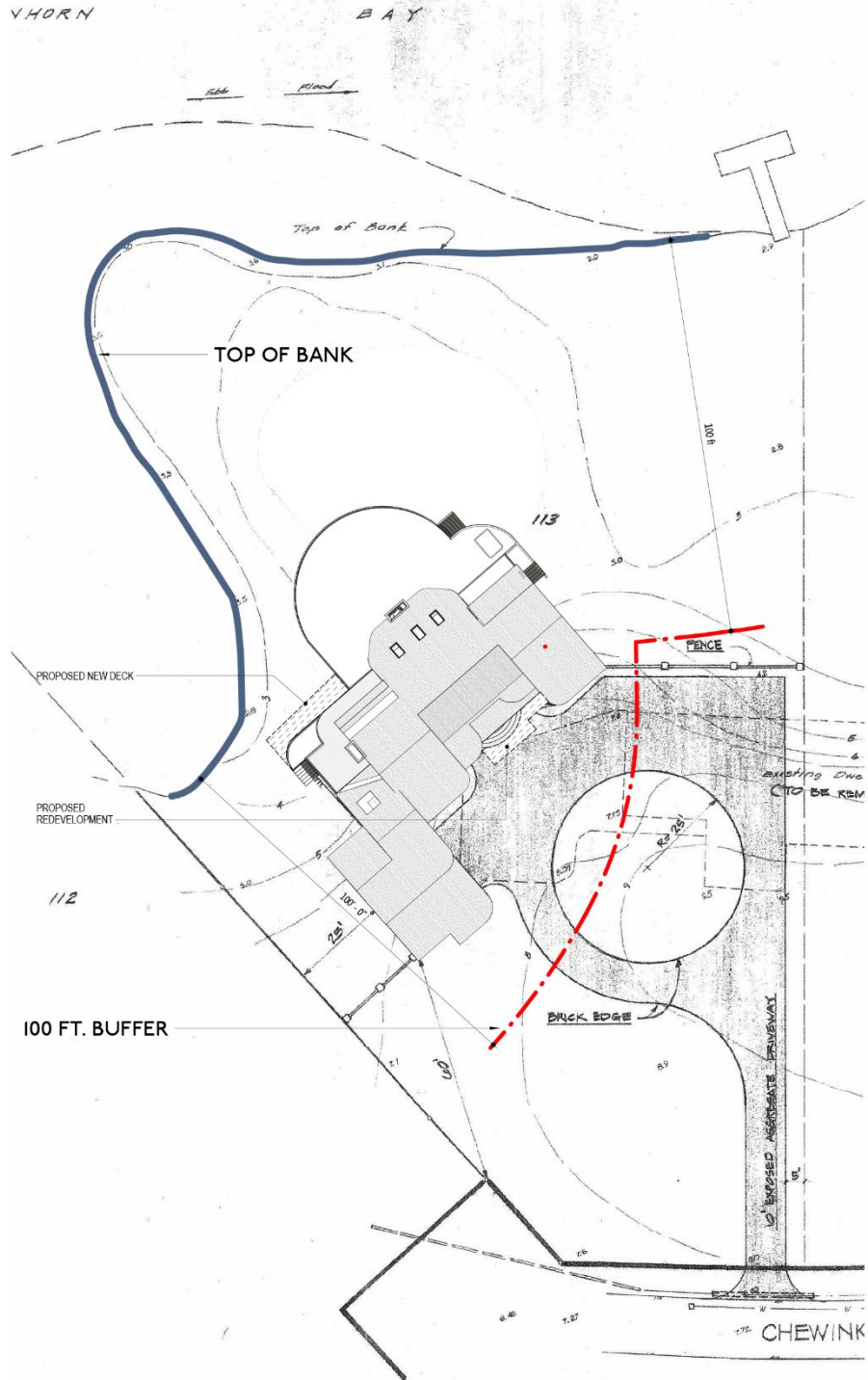
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and 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 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 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

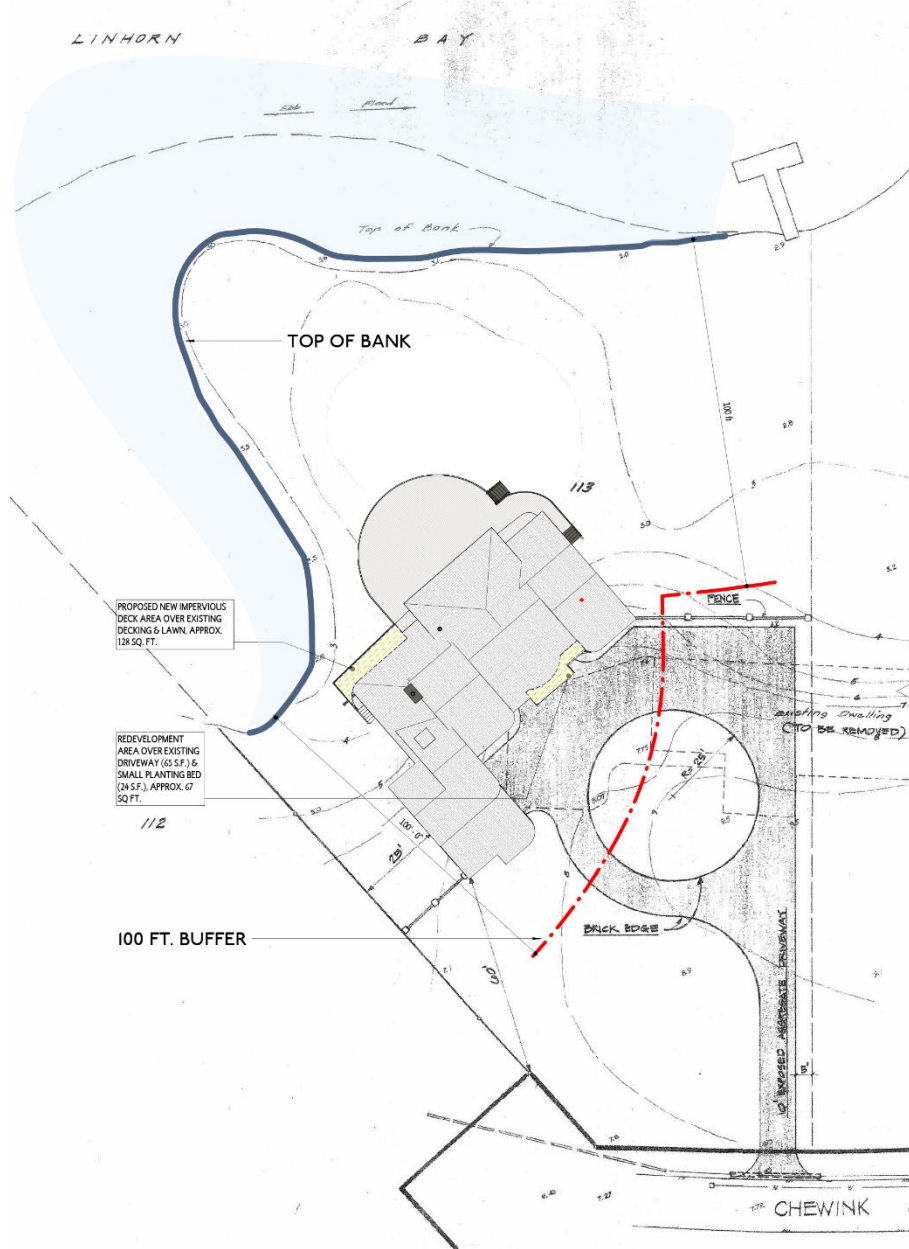


**CBPA Exhibit – Existing Conditions**



1 Existing Site Plan  
G1.3 1" = 20'-0"

# CBPA Exhibit – Proposed Improvements



2 Proposed Site Plan  
GL3 1" = 20'-0"

PLAN FOR REFERENCE ONLY. REFER TO ENGINEERED SITE PLAN FOR CIVIL AND LANDSCAPE WORK AND REQUIREMENTS





# Disclosure Statement

## Disclosure Statement



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

### Applicant Disclosure

Applicant Name William Grant Mager

Does the applicant have a representative?  Yes  No

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

Charles Wermers (Managing Member of Wermers Design & Architecture, PLC)

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)

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- If **yes**, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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<sup>1</sup> "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.

<sup>2</sup> "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?

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## 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.

AmeriHome Mortgage

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

Yes  No

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

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

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

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

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

Charles Wermers (Managing Member of Wermers Design & Architecture, PLC)

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.

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# Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property?  **Yes**  **No**
- If **yes**, identify the company and individual providing the service.
- 
7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property?  **Yes**  **No**
- If **yes**, identify the firm and individual providing the service.
- 
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property?  **Yes**  **No**
- If **yes**, identify the firm and individual providing the service.
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### 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**

William Grant Mager, Owner

**Print Name and Title**

6/6/22

**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	

The application is being withdrawn.

**Variance Request**

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

**Applicant's Agent**

David Butler, P.E.  
 Gallup Surveyors and Engineers

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 24, Page 22  
 Recorded 7/15/1948

**GPIN**

1488-16-6587

**SITE AREA**

201,260 square feet or 4.620 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

172,454 square feet or 3.959 acres

**EXISTING IMPERVIOUS COVER OF SITE**

12,256 square feet or 7.1 percent of site



AS NEEDED, PAGE LEFT BLANK