

Chesapeake Bay Preservation Area Board Agenda

August 1, 2022



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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, August 1, 2022** at 10:00 a.m. in the Council Chamber - 2403 Courthouse Drive, Building 3 (former City Hall), Second Floor, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - 2403 Courthouse Drive, Building 3 (former City Hall), Second Floor, Virginia Beach, VA. During the informal session, Staff briefs the Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing that follows. For information or to examine copies of proposed plans, ordinances or amendments call (757) 385-4621 or go to www.vbgov.com/cbpa or visit the Department of Planning and Community Development, 2875 Sabre Street, Suite 500, Virginia Beach, Virginia by appointment.

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

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

THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

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

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

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

- 2. CONSENT AGENDA:** The second order of business is consideration of the "consent agenda." The consent agenda contains those items:

- a. that the Board believes are unopposed and
- b. which have a favorable Staff recommendation.

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

Process for the Consent Agenda:

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

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

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

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

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

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

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



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **August 1, 2022**

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

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

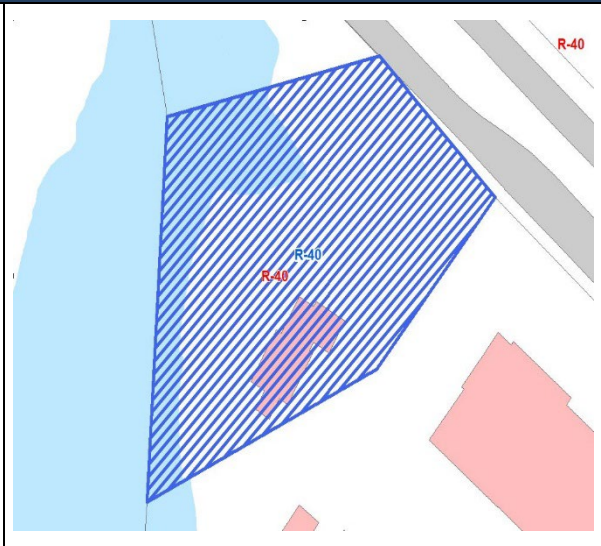
OLD BUSINESS AGENDA ITEMS

1. 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 construct 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 7



NEW BUSINESS AGENDA ITEMS

2. Shane Spanitz & Jennifer Cosentino
[Applicants & Property Owners]

3105 Lynnhaven Dr
GPIN 1499-08-7657
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00034

Variance Request – Home elevation with an encroachment into the RPA to construct a wood deck off rear of residence.

Staff Planner – Cole Fisher
Staff Report – page 17



NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. James Bennett & Mary Mantey
[Applicants & Property Owners]

1618 Duke of Windsor Rd

GPIN 2408-88-5861

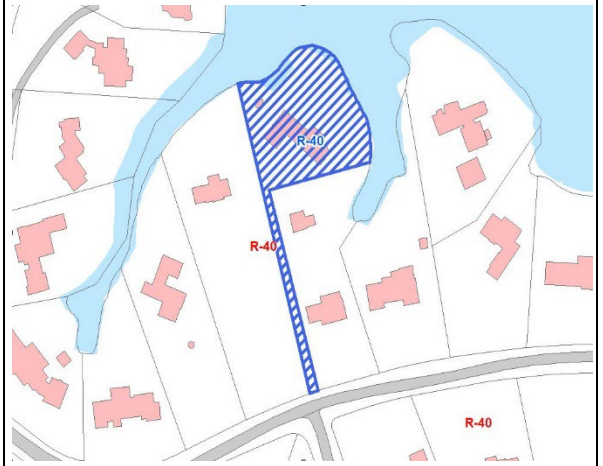
City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00035

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

Staff Planner – Cole Fisher

Staff Report – page 29



4. Richard & Melanie Hanson
[Applicants & Property Owners]

321 Susan Constant Dr

GPIN 2419-61-9612

City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00036

Variance Request – Encroachment into the RPA to construct paver walkway and shed.

Staff Planner – Cole Fisher

Staff Report – page 39



5. Grant & Lisa Sibley
[Applicants & Property Owners]

1500 Quail Point Rd

GPIN 2408-94-9255

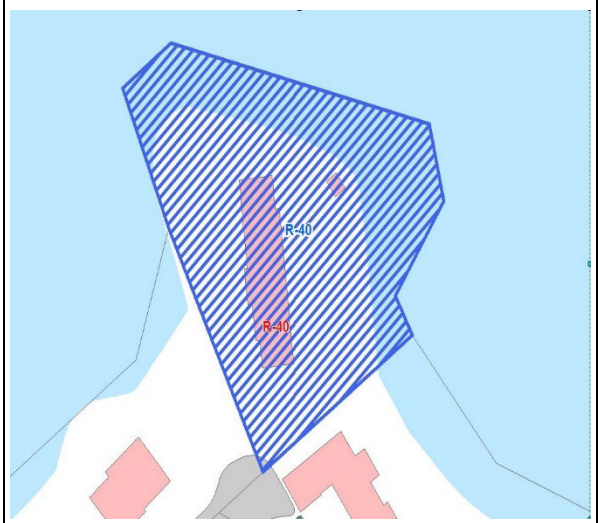
City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00037

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

Staff Planner – Cole Fisher

Staff Report – page 49



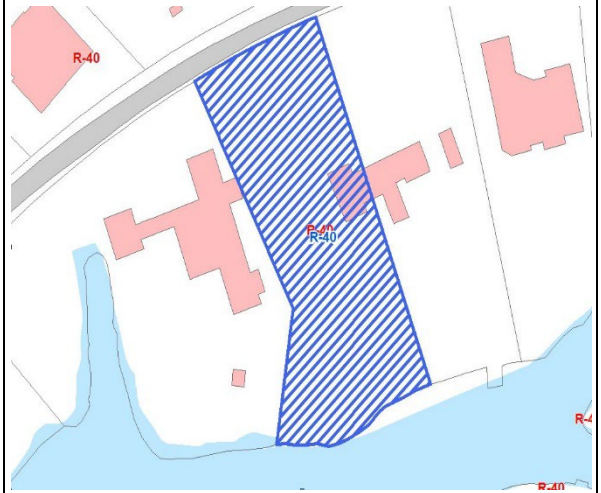
NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Alston D Johnston RT
[Applicant & Property Owner]

1333 Starling Ct, Lot 213
GPIN 2418-13-8688
City Council District: District 6, formerly Lynnhaven
Accela Record: 2022-CBPA-00039

Variance Request Encroachment into the RPA to construct a single-family residence with mother-in-law suite and associated accessory structures.

Staff Planner – Cole Fisher
Staff Report – page 63

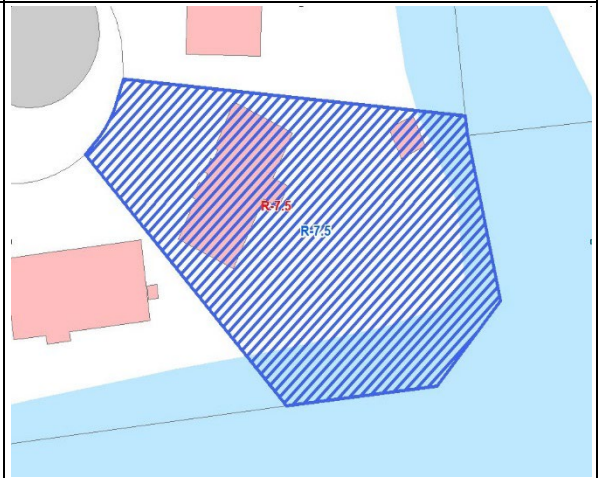


7. Patricia Pickett
[Applicant & Property Owner]

404 S Newtown Rd
GPIN 1456-79-7949
City Council District: District 1, formerly Kempsville
Accela Record: 2022-CBPA-00033

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

Staff Planner – Cole Fisher
Staff Report – page 75

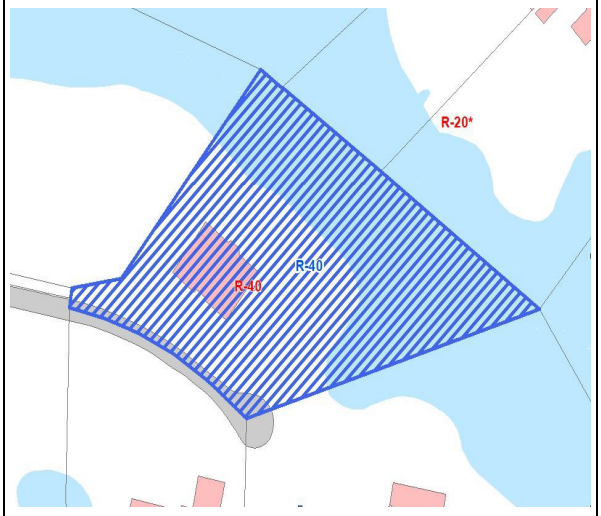


8. Francis & Lauren Cuozzo
[Applicants & Property Owners]

3281 Doncaster Rd
GPIN 1498-01-4329
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00041

Variance Request – Encroachment into the RPA for an after-the-fact expansion of the pool patio and surround.

Staff Planner – Cole Fisher
Staff Report – page 85



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

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Applicant & Property Owner **Amir Islam & Ariel Whitmire**
 Address **1879 N. Great Neck Road**
 Public Hearing **August 1, 2022**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

1

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

Staff Planner

PJ Scully

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

PROPOSED IMPERVIOUS COVER OF SITE

9,631 square feet or 19.6 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

2,024 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

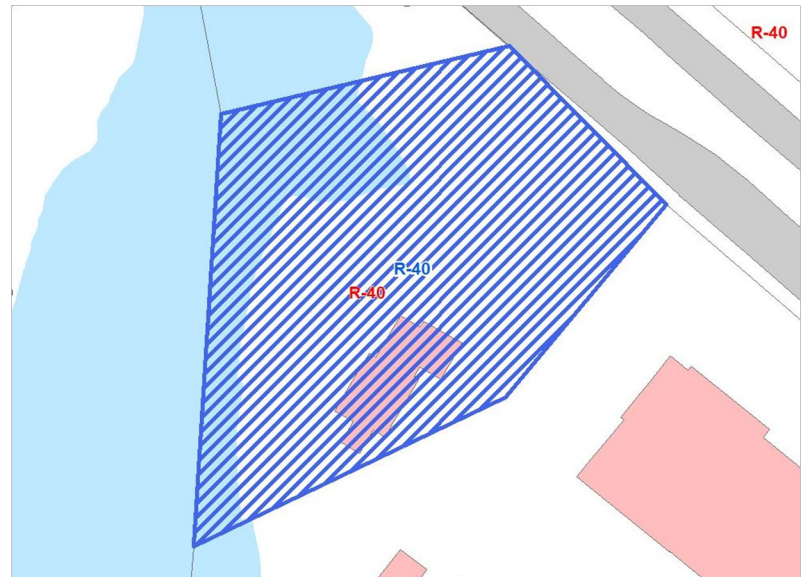
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Stacked retaining walls with associated fill
- New patio area with pavilion and associated walkway
- Wood storage shed

CBPA Ordinance Variance History

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

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

- July 8, 2022 CBPA Board Public Hearing

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Udorthents Urban Series (well-drained and moderately well-drained soils)

Shoreline

Shoreline is stabilized by a timber bulkhead with other portions left in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 5
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the condition of the proposed trees to be removed are exhibiting early signs of decline and that removal of these trees is necessary for the construction of the proposed improvements.

Stormwater Management Methodology

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

Evaluation and Recommendation

During the site visit, Staff walked the lot with the applicant who indicated that significant settling due to the loss of soil along the seaward edge of the existing swimming pool has occurred over a duration of time, which has led to the failure

of the existing retaining wall along the seaward edge of the swimming pool. As a result, portions of the existing concrete swimming pool surround are being stabilized by timber supports. To address the condition of the retaining wall the applicant's agent proposes to remove the retaining wall and stacked rip rap to construct a new interlocking block wall approximately 3 to 5 feet seaward of the existing concrete swimming pool surround. Given the existing conditions of the retaining wall, location of the swimming pool, and topography of the rear yard, Staff is of the opinion that the construction of a new retaining wall is warranted to abate any further erosion and provide better support to retaining the existing improvements against further failure.

To better provide access around the existing single-family residence and an area for the family to sit in the rear yard, the applicant's agent proposes a small patio area adjacent to the existing concrete walk off the rear of the residence. A retaining wall is proposed along the seaward edge of the patio area due the existing grade elevations and to limit the amount of fill material proposed within the RPA. An additional retaining wall is proposed landward of the toe of slope to soften the grade elevation along the existing bank to provide a more useable area of the rear yard. The applicant is also proposing an additional retaining wall further down the slope of the backyard to prevent sediment migration and runoff into the marsh. Staff is of the opinion that the applicant has limited the proposed retaining wall with associated backfill to an appropriate area given the topography of the rear yard and existing grade elevations transitioning from an elevation of approximately 2 feet above sea level to approximately 9 feet above sea level within a relatively short section of the property.

To further address the redevelopment of this lot towards being in harmony with the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance, the following comments are offered relative to the findings of the Ordinance specific to this variance request.

- 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 *"unique situation that the pool and house location are situated at the brow of a slope and significant erosion is occurring at the base of both which needs to be addressed along back of house and pool."* Staff is of the opinion that the applicant is providing correcting measures that address the conditions of the existing improvements with minimal encroachment proposed into the RPA buffer to accommodate the needs of the new residents.
- 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 *"owner is looking to level off areas to the width needed for functionality and prevent further erosion and secure assets on site from further decay. This proposal will help mitigate runoff into the water and treat it properly though bio retention methods."* Staff concurs with the statement provided by the applicant's agent and offers that the increase in impervious cover is distributed through multiple areas of improvements specific to walkways, retaining walls and small patio area. The distribution of new impervious cover within the RPA occurs within the rear, side and front yards of the existing residence.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this request will reestablish a natural buffer along the base of these improvements that will provide a cohesive plan that balances the built environment with erosion control, water quality and natural habitats. The premise is to have these improvements blend in with the surrounding buffers."* Staff concurs.

- 5) *“All water flow will be directed to a bmp along the base of the proposed walls in planting beds to provide a no net increase in non-point pollution”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff supports the applicant’s agent location of new impervious cover on the lot and the methodology of locating best management practices seaward of the proposed improvements.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,024 square feet x 200 percent = 4,048 square feet.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$463.83 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated July 12, 2022, prepared by DCLA, signed July 12, 2022 by David M. Chewey. 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.

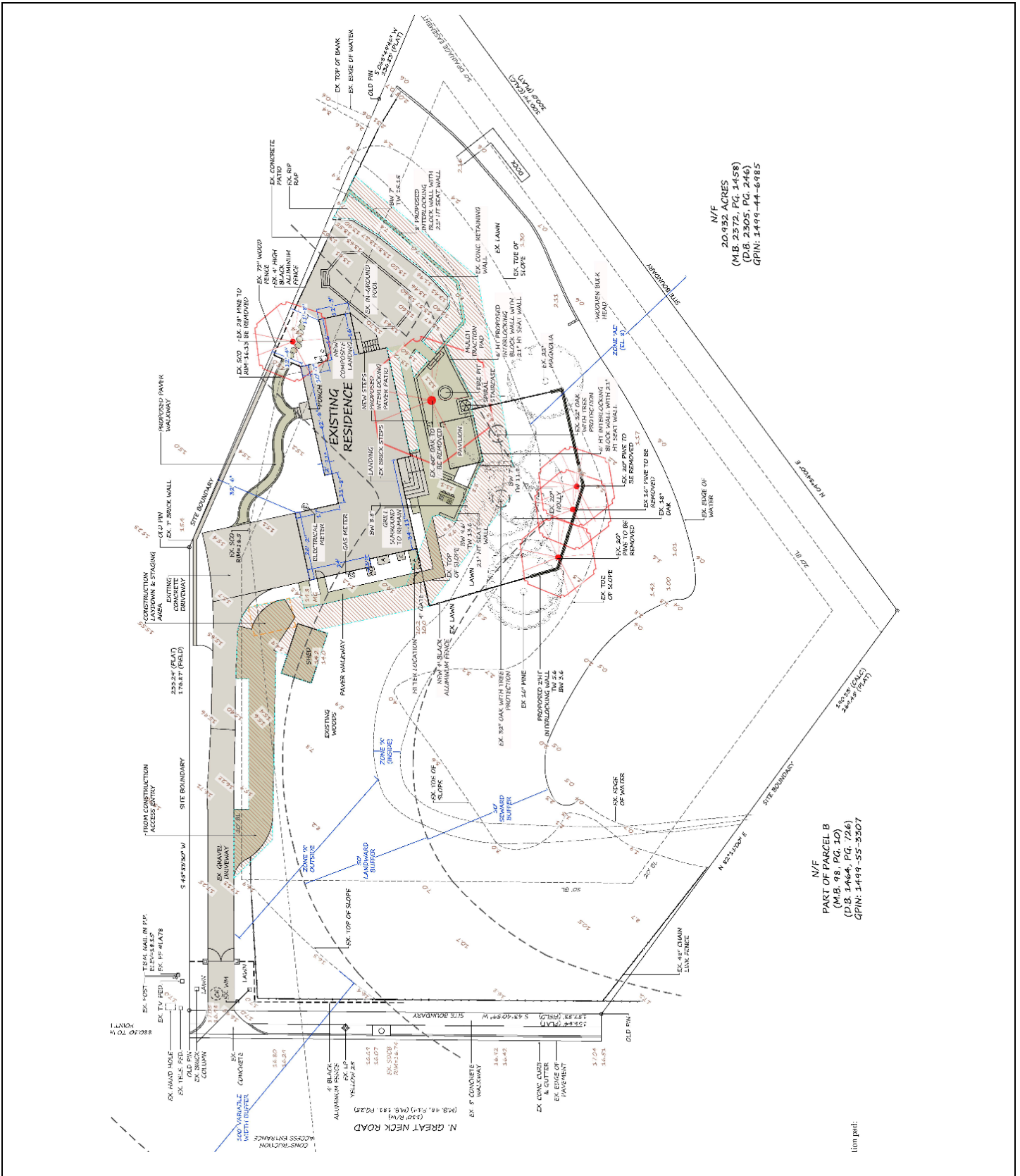
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 – Proposed Improvements



N/F
 20.952 ACRES
 (M.B. 2372, PG. 2458)
 (D.B. 2305, PG. 246)
 QPIN: L444-44-6785

N/F
 PART OF PARCEL B
 (M.B. 98, PG. 10)
 (D.B. 1464, PG. 726)
 QPIN: L444-55-5507

Item part:

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 Amir Islam Ariel Whitmire

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

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

David Chewey Landscape Architect

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

McLean Mtg Company

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.

David Chewey Landscape Architect

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



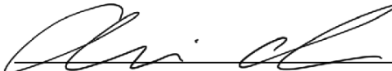
- 6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the company and individual providing the service.

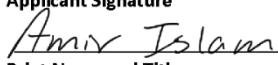
- 7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the firm and individual providing the service.

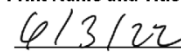
- 8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the firm and individual providing the service.

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


Print Name and Title


Date

- Is the applicant also the owner of the subject property? **Yes** **No**
- If **yes**, you do not need to fill out the owner disclosure statement.

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



Applicant & Property Owner **Shane Spanitz & Jennifer Cosentino**
Address **3105 Lynnhaven Drive**
Public Hearing **August 1, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

2

Variance Request

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

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 37, Page 08
Recorded 05/15/1954

GPIN

1499-08-7657

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

36 square feet

Area of New Development in RPA

224 square feet

Location of Proposed Impervious Cover

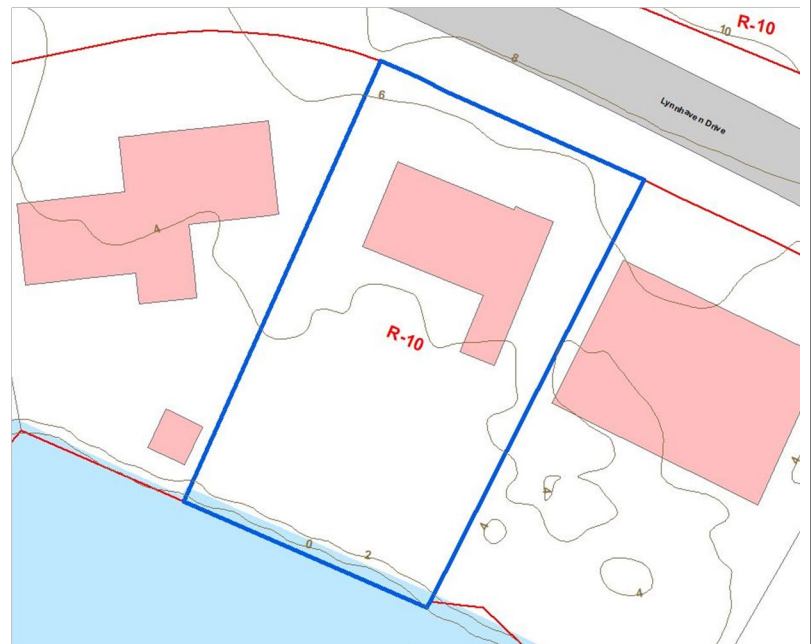
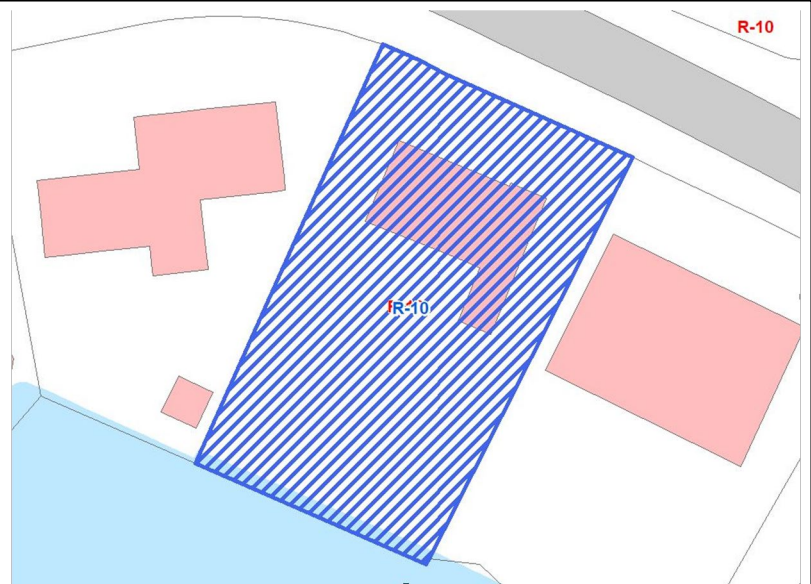
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Wood deck off the rear of the existing single-family residence

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Corolla Series (deep, moderately well-drained sandy soils)

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

Shoreline

Shoreline is stabilized 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 raising the existing single-family residence to meet the standards set forth in the Floodplain Ordinance as the entire property is located within the AE flood zone with a base flood elevation (BFE) of seven (7). In addition to the home elevation, the applicant is proposing to construct a new wood deck off the rear of the existing residence. This request will add 224 square feet of new impervious cover in the upper reach of the 50-foot landward buffer of the Resource Protection Area (RPA). The applicant also proposes to install gravel underdeck treatment to abate erosion and the migration of sediment from the proposed improvements. Staff is of the opinion that the increased impervious cover will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay given the topography of the lot and location of improvements within the RPA.

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 *“Adding the back deck to make up for FEMA required lift to have access to the back of the house. We will be adding sufficient vegetation to increase buffer and the deck will be uncovered and drip through with deck under treatment.”* Staff concurs and is of the opinion that should the Board grant the variance to encroach into the RPA feature with the proposed timber deck, that a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded with the improvement of their lots.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“adding the back deck to make up for FEMA required lift to have access to the back of the house.”* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“we are adding because of FEMA lift we will be adding vegetation to increase buffer and the deck will be uncovered and drip through.”* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“we will be adding vegetation to increase buffer and the deck will be uncovered and drip through with deck under treatment. adding because of FEMA lift.”* Given the method of construction provided by the applicant and limitations conditioned regarding land disturbance, Staff is of the opinion that the variance request will not be of substantial detriment to water quality given the recommended conditions provided in this Staff report.
- 5) *“We will be adding vegetation to increase buffer and the deck will be uncovered and drip through”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that this is a sparsely wooded lot and would benefit from buffer restoration coupled with the flat topography of the lot providing pervious cover for run-off produced from the proposed improvements to sheet-flow across before draining into tidal waters.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees and 6 large 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. All erosion and sediment control measures shall be staked in the field for review by City Staff prior to land disturbance.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the rear and side 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. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, in the RPA may not be removed.
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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
7. The construction access way, stockpiling area and contractor parking area shall be noted on the building plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. Under deck treatment of sand and gravel shall be installed.
10. 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

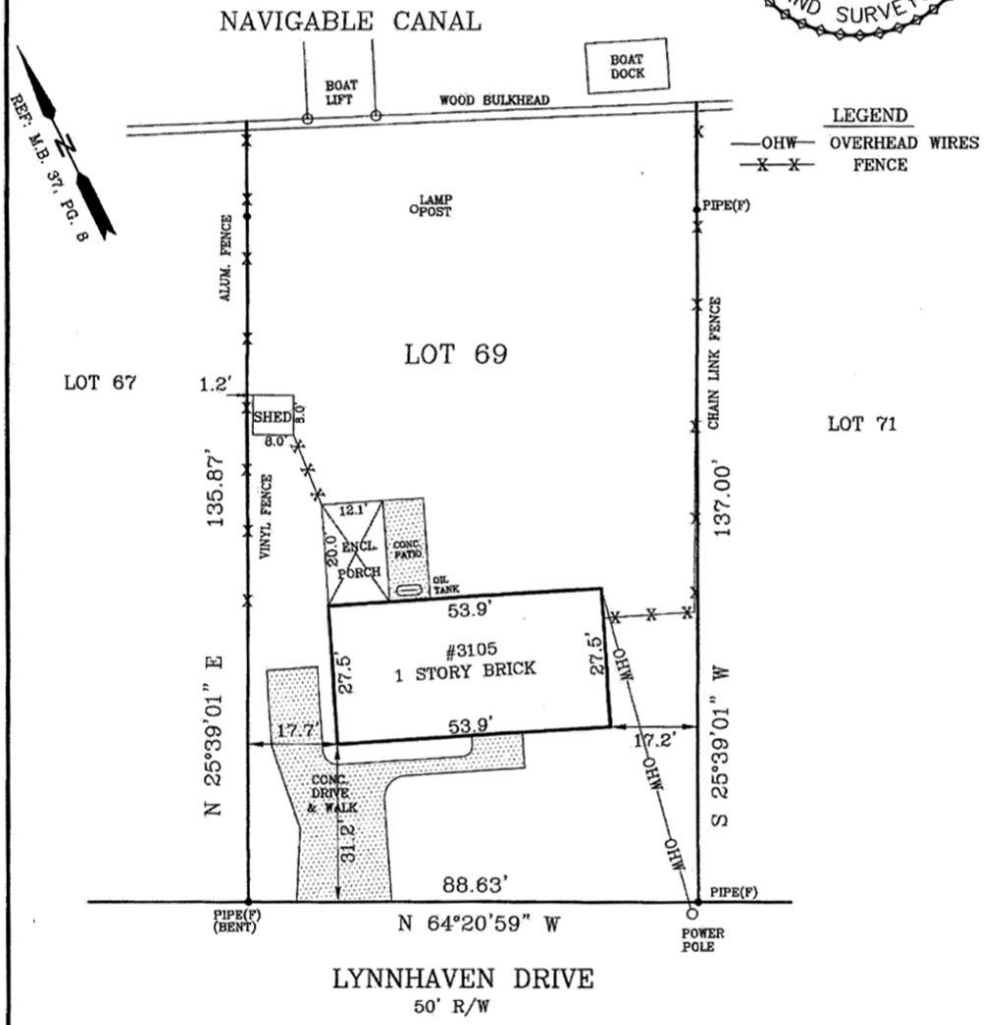
THIS IS TO CERTIFY THAT ON JANUARY 19, 2022, I SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDING ARE AS SHOWN ON THIS PLAT. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS, EXCEPT AS SHOWN. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND, CONSEQUENTLY, MAY NOT DEPICT ALL MATTERS AFFECTING THE TITLE OF THE PROPERTY SHOWN.

THIS PLAN REFERS TO THE SAME LOT AS SET FORTH ON PLAT DATED APRIL 27, 1954 AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF VIRGINIA BEACH, VIRGINIA IN MAP BOOK 37, PAGE 8.

THIS PROPERTY APPEARS TO FALL INSIDE FLOOD ZONE "AE" AS SCALED FROM COMMUNITY PANEL #515531 0037 G. THE FIRM EFFECTIVE DATE WAS 1/16/2015.

ADDRESS: 3105 LYNNHAVEN DRIVE

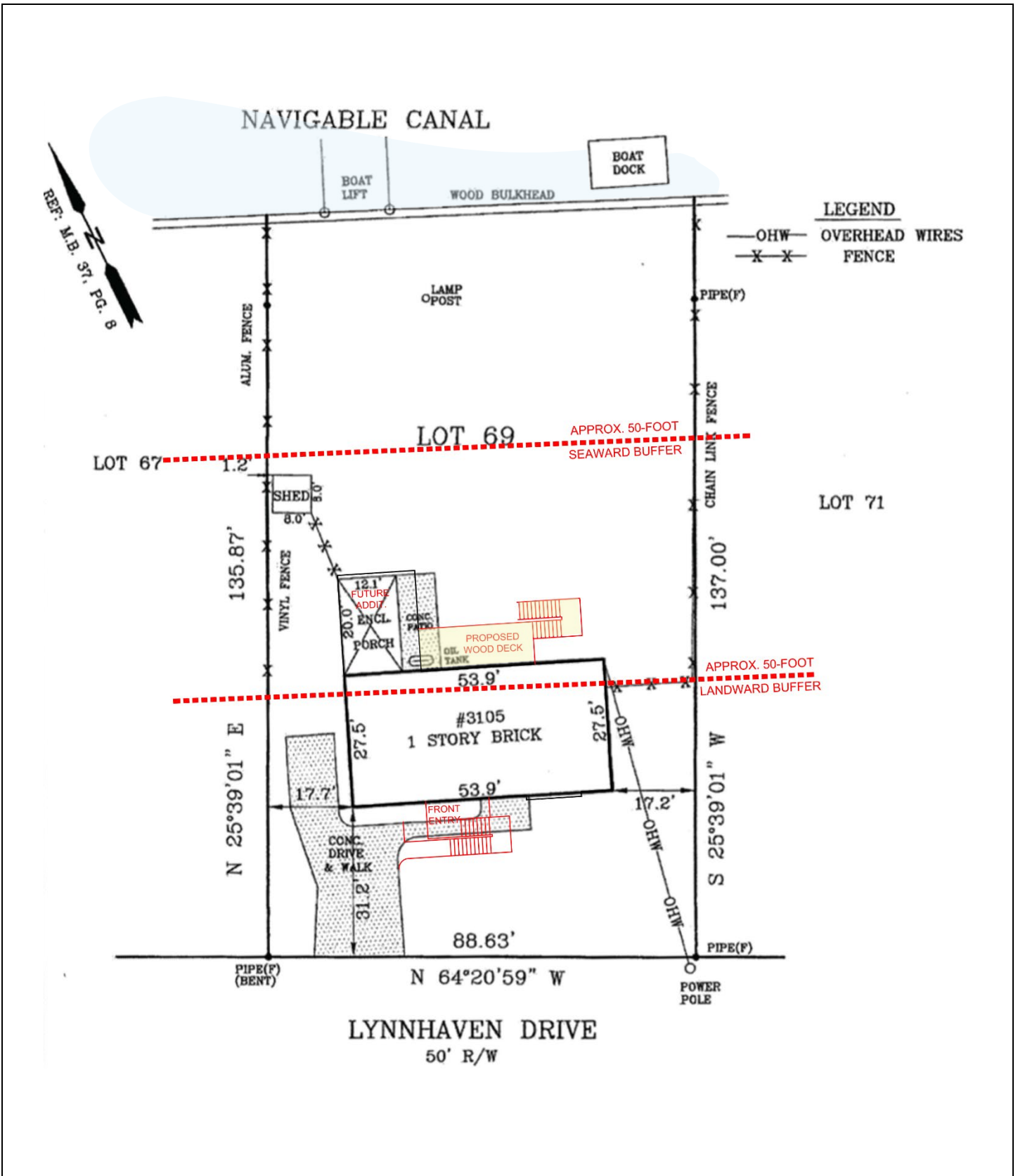
NOTE: THE PLAT OF RECORD CALLS FOR THE LOW WATER LINE AS THE MEANDERING REAR PROPERTY LINE. THIS SURVEY SHOWS THE EXISTING BULKHEAD AS THE REAR PROPERTY LINE.



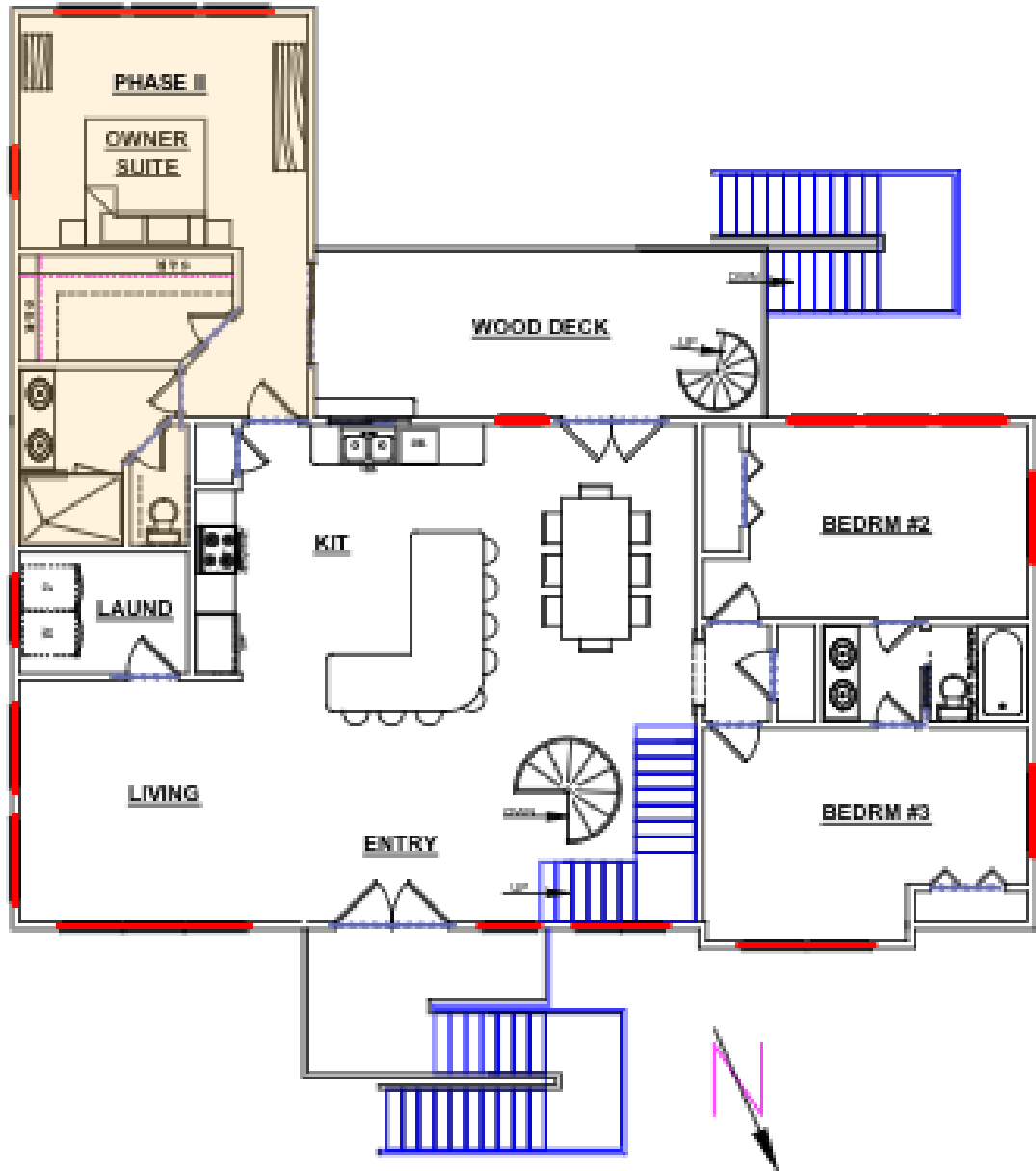
PHYSICAL SURVEY OF
 LOT 69
 LYNNHAVEN COLONY
 SECTION 2
 VIRGINIA BEACH, VIRGINIA
 FOR: SHANE M. SPANITZ & JENNIFER J. CONSENTINO

SCALE: 1" = 25'
 MICHAEL MURPHY LAND SURVEYING
 1108 CARRIAGE COURT - CHESAPEAKE, VA. 23322
 757-754-2145 mm4ky@cox.net
 DATE: 1/24/2022

CBPA Exhibit – Proposed Improvements, Overlay



CBPA Exhibit – Proposed Improvements, Floor Plan



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 Shane Spanitz

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

- If yes, identify the financial institutions.

Mr.cooper

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

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

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

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

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

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

terry gee

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

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

Disclosure Statement



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

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

mike turley

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.

mike schooley

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

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

Applicant Signature

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

Applicant Signature

shane spanitz

Print Name and Title

Shane Spanitz home owner 6-20-2022

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 **James Bennett & Mary Mantey**
 Address **1618 Duke of Windsor Road**
 Public Hearing **August 1, 2022**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

3

Variance Request

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

Applicant's Agent

Self-Represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 65, Page 01
 Recorded 02/25/1965

GPIN

2408-88-5861

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

391 square feet

Location of Proposed Impervious Cover

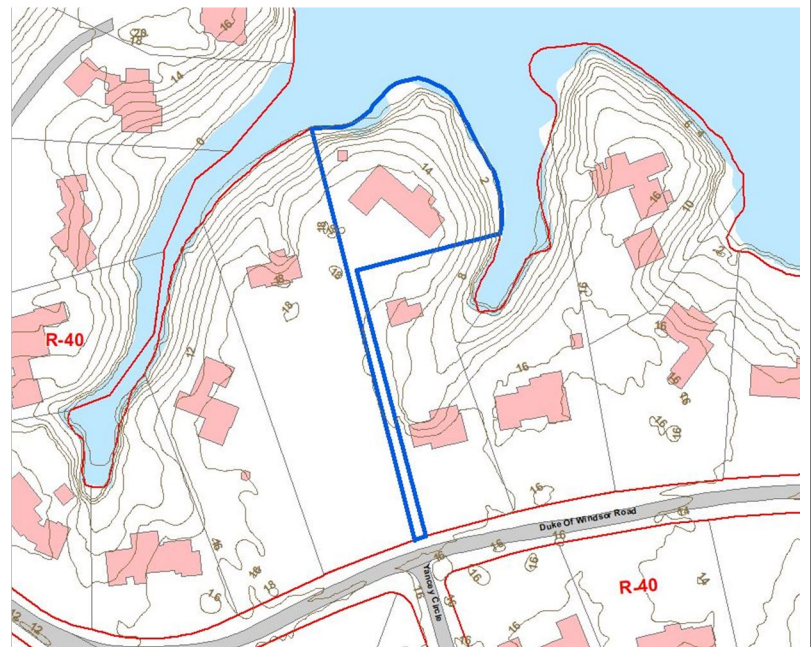
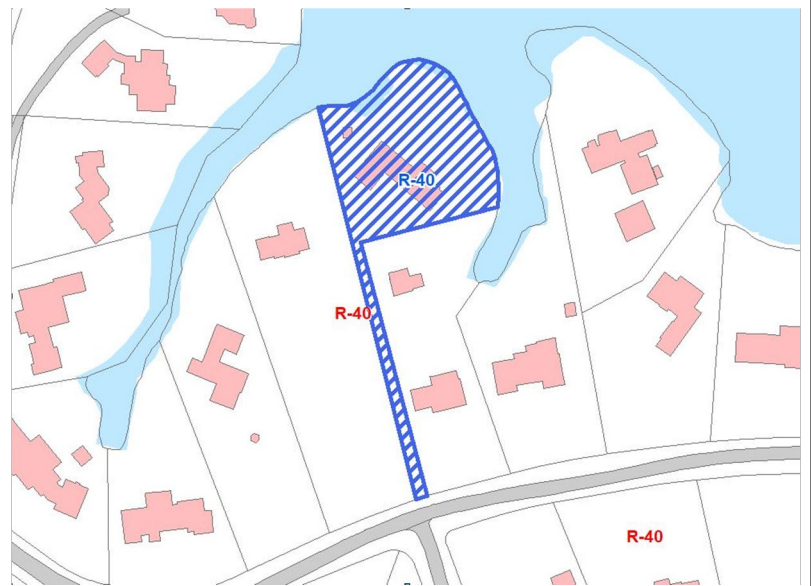
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- New swimming pool with paver patio surround

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

A Wetlands Board application was approved on November 15, 2021 to stabilize the shoreline by constructing a granite sill/rip rap revetment, oyster castles, and a living shoreline. The permit was issued on June 1, 2022.

Riparian Buffer

Heavily 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 desires to construct a swimming pool with paver patio surround in the rear yard of the lot contiguous to Linkhorn Bay. This request adds 391 square feet of new impervious cover within the Resource Protection Area (RPA), which is all situated within the 50-foot landward buffer of the RPA. As shown on the CBPA exhibit, the proposed swimming pool will extend off the existing patio area in the rear yard of the lot and will include a standard stone paver surround. This is a moderately wooded lot with a gradual slope to the edge of water in the area of the proposed improvements. In addition to the proposed upland improvements, the applicant has taken additional measures with their shoreline development project to include a living shoreline component to provide additional benefits to the property, water quality, and the overall watershed.

As submitted, Staff is of the opinion that the layout of the proposed improvements reflect the minimum necessary to afford relief given the size of the proposed swimming pool (391 square feet), minimizes land disturbance to the greatest extent practicable (less than 2,500 square feet), and the efforts made by the applicant to maintain and enhance the

existing riparian buffer on site coupled with the redevelopment of the shoreline (1,800 square foot wetland vegetation/living shoreline) to abate further erosion.

To further support the variance request as submitted, the applicant provides the following comments relative to the findings of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the property was platted in 1964, the proposed improvements are keeping with the development of the neighborhood.”* Staff offers that several property owners within this neighborhood have made request for exception to construct swimming pools and other accessory structures within the RPA and have been granted those exceptions with similar conditions as provided below.
- 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 existing lot is located in the RPA and this property was platted in 1964.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“keeping within a small area for construction we plan to mitigate all areas necessary for compaction and reduce runoff.”* Staff is of the opinion that the proposed improvements, as situated in the rear yard, and entirely in the landward buffer, provide merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“all water flow from impervious areas will be directed into rain barrels, conservation landscapes, or pervious areas for best management practices to reduce storm water runoff.”* Staff commends the applicant for their multiple approaches towards managing run-off from the improvements on the lot.
- 5) *“After installing a living shoreline, we plan to install a riparian buffer to decrease any stormwater entering waterway. For construction we plan to stockpile material on existing hard surfaces along with a single construction entrance on the right side of home away from the water”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds that the applicant is also installing a living shoreline and planting over 1,800 square feet of vegetated wetlands along their shoreline.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees and 6 large 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.

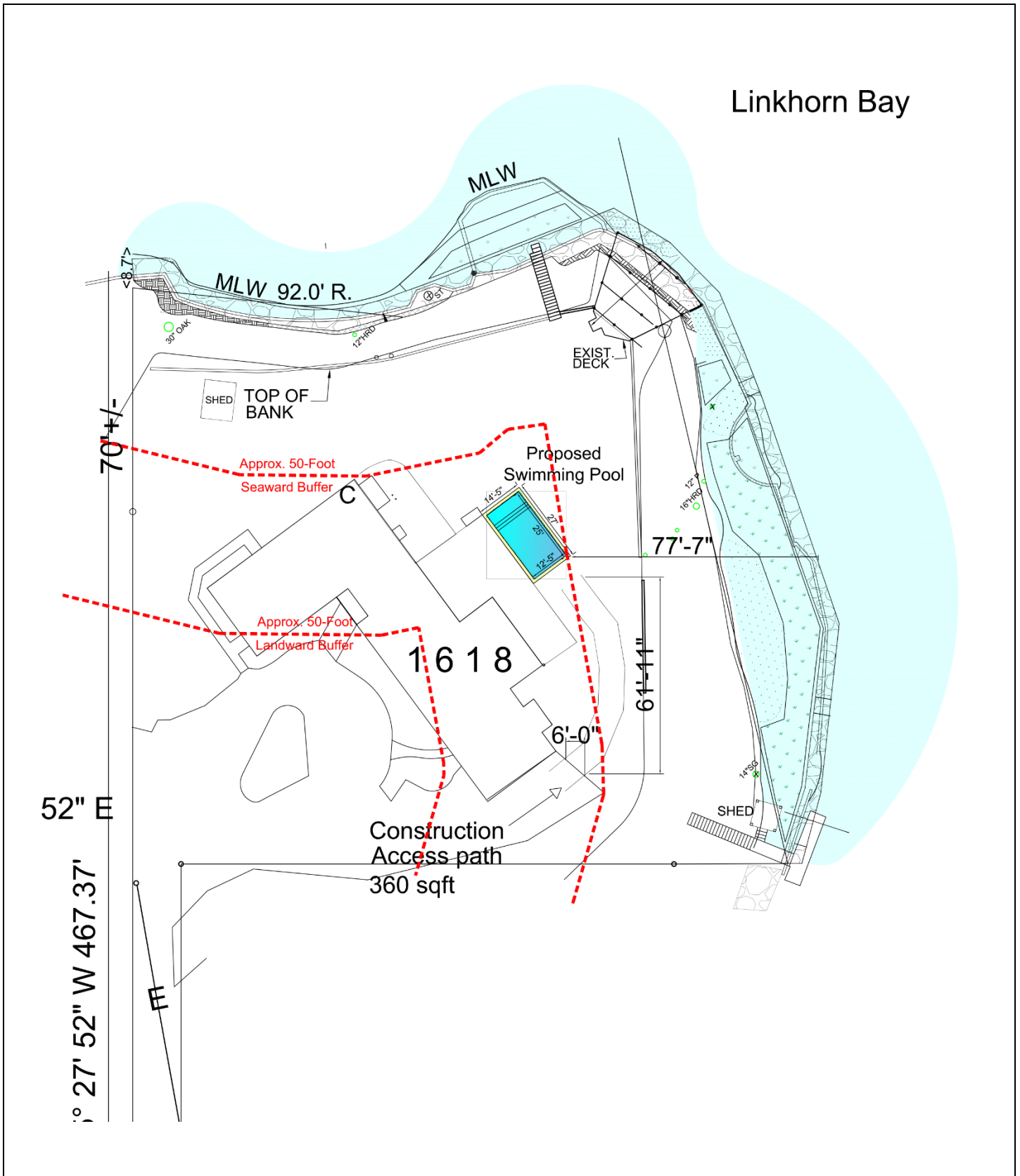
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project and construction accessway prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. 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



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 James Bennett

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Chase

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.

Tom Rowe - Ocean Leisure Pools

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

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

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

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

Applicant Signature

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

Applicant Signature

Print Name and Title

James Bennett, MD

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Variance Request

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

Applicant’s Agent

Robert Simon

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 80, Page 30
Recorded 06/03/1969

GPIN

2419-61-9612

SITE AREA

19,515 square feet or 0.45 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,515 square feet or 0.45 acres

EXISTING IMPERVIOUS COVER OF SITE

7,115 square feet or 37 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,670 square feet or 39 percent of site

Area of Redevelopment in RPA

1,347 square feet

Area of New Development in RPA

556 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

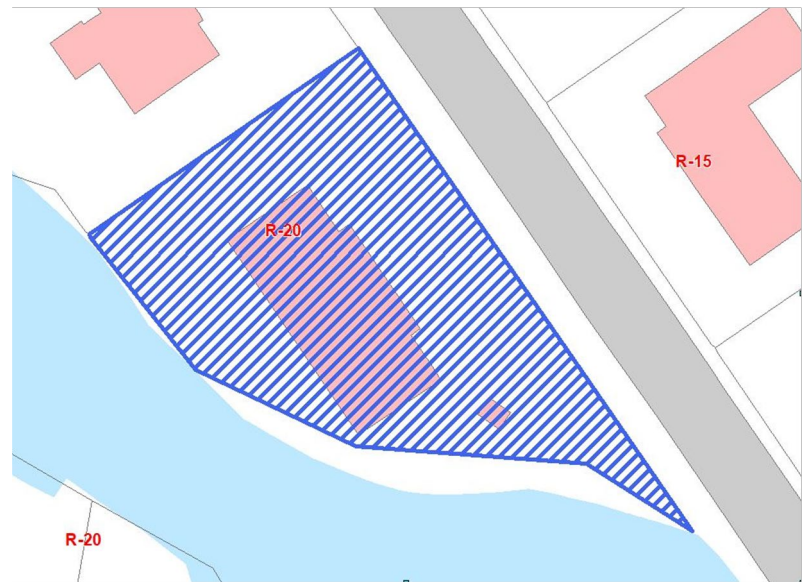
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Redevelopment of concrete driveway with concrete pavers – same footprint

Construction Details

- Storage shed
- Paver walkway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Lakehurst Series (deep, moderately drained sandy marine and eolian sediment soils)
Psammets Series (well-drained and moderately well-drained soils, sandy material)

Shoreline

Shoreline is stabilized by a timber bulkhead.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a 366 square foot paver walkway and a 150 square foot storage shed in the rear yard of the lot. The area where the proposed improvement will be constructed has a minimal slope with an underlying soil condition that is moderately-well drained. Staff is of the opinion that the request to encroach into the 50-foot seaward buffer as presented will not cause a substantial increase in runoff nor be a detriment to water quality in the Chesapeake Bay watershed given these environmental conditions. In addition, the existing concrete driveway will be redeveloped within the same foot and replaced with concrete pavers. Of the 1,750 square feet of redevelopment, approximately 1,347 square feet is located within the 50-foot landward buffer with the remaining 403 square feet located within the Resource Management Area (RMA) of the Chesapeake Bay watershed.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that several properties along this manmade canal fall within the RPA with the 50-foot seaward buffer comprising much of the rear upland for those lots.
- 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 redevelopment of the driveway is all over the existing footprint and the shed and walkways are minimized in size to have minimal impact in the RPA."* Staff is of the opinion that the request is minimal, and the size and layout of the proposed improvements limit the impacts to the RPA buffer to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality."* 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) *"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 adds that this is a sparsely wooded lot with the majority of the lot devoted to turf.

Given the above comments, Staff recommends the following **8** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) 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) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **556 square feet x 200 percent = 1,112 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual,

prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 small shrubs.**

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

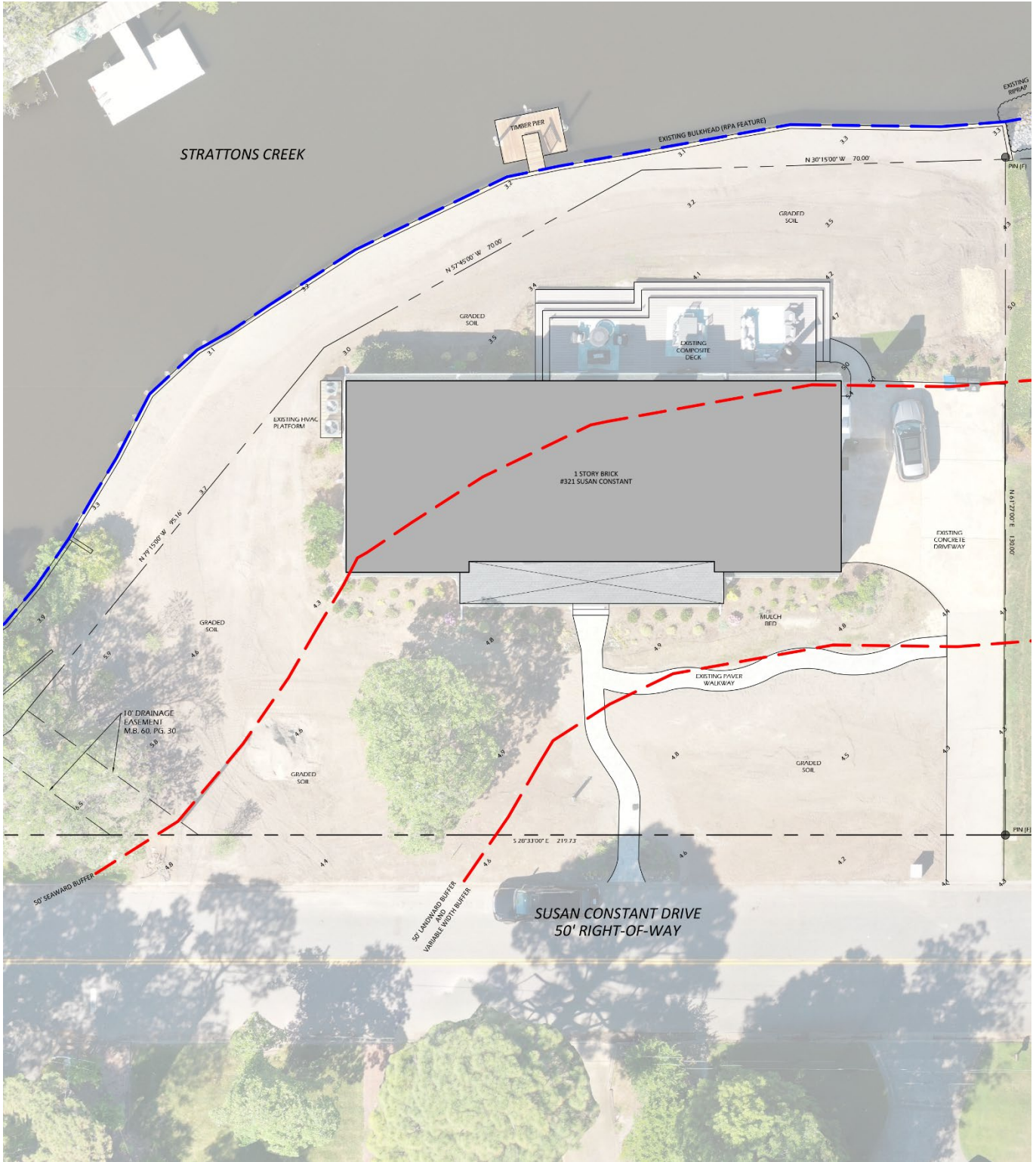
- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 5) 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.**
- 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) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 8) The conditions and approval associated with this variance are based on the exhibit plan dated June 30, 2022, prepared by Chesapeake Bay Site Solutions, Inc., signed June 30, 2022 by Robert Simon. 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 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.

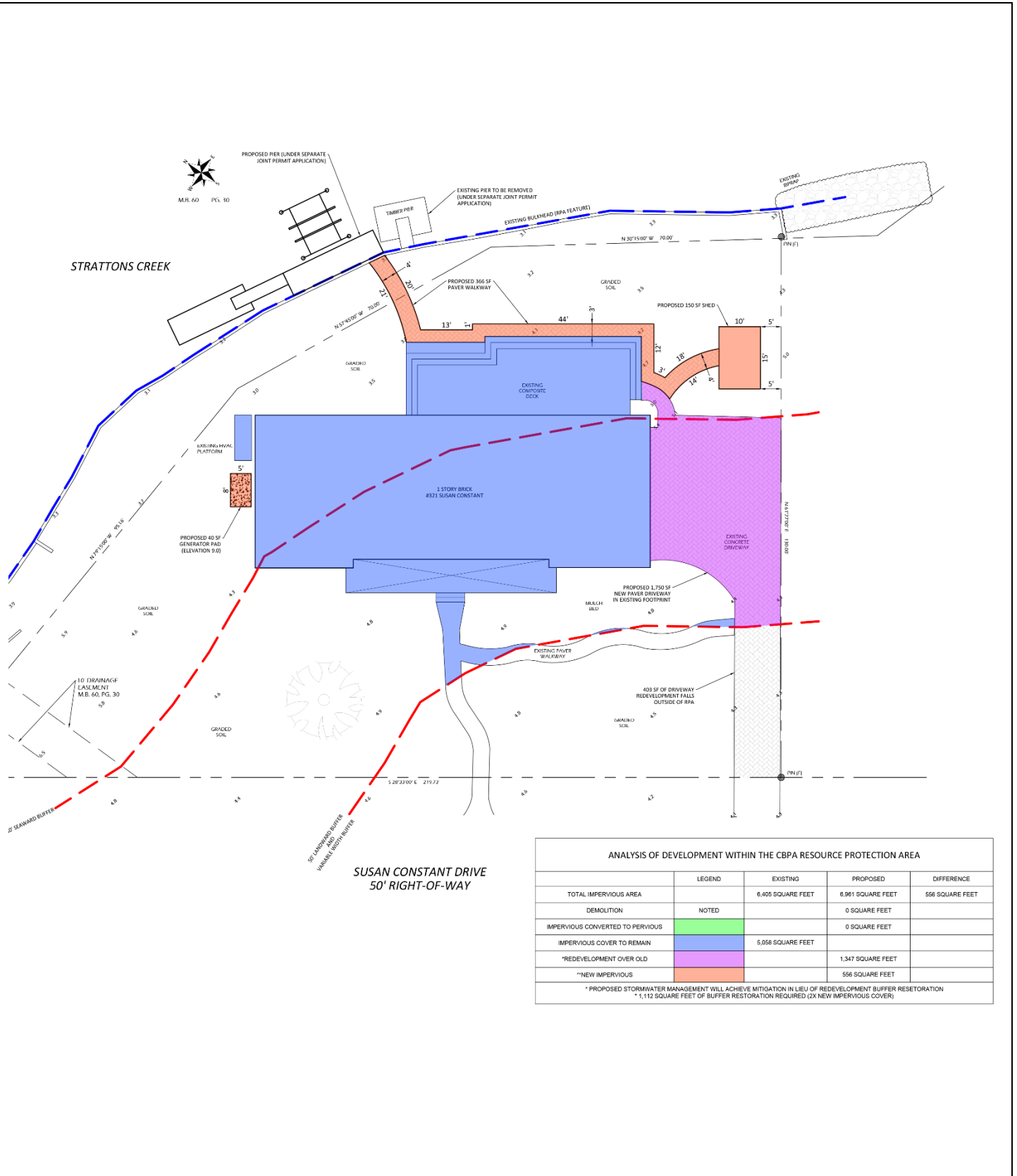
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements with Color Analysis



Disclosure Statement



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

Applicant Disclosure

Applicant Name Richard A. Hanson

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-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Towne Bank

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

Yes No

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

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

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

Pat Corban

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

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

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

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

Disclosure Statement



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

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

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

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

Waterfront Consulting, Inc. and Chesapeake Bay Site Solutions

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.

Richard A. Hanson

Applicant Signature

Richard A. Hanson, Applicant/Owner

Print Name and Title

7/1/22

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



Applicant & Property Owner **Grant & Lisa Sibley**
 Address **1500 Quail Point Road**
 Public Hearing **August 1, 2022**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

5

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 47, Page 58
 Recorded 08/24/1959

GPIN

2408-94-9255

SITE AREA

56,546 square feet or 1.298 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,614 square feet or 0.841 acres

EXISTING IMPERVIOUS COVER OF SITE

1,882 square feet or 4.9 percent of site

**9,212 square feet or 25.2 percent of site 0 existing impervious cover associated with 2016 variance request.*

PROPOSED IMPERVIOUS COVER OF SITE

8,643 square feet or 23.6 percent of site

Area of Redevelopment in RPA

386 square feet

Area of New Development in RPA

7,590 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

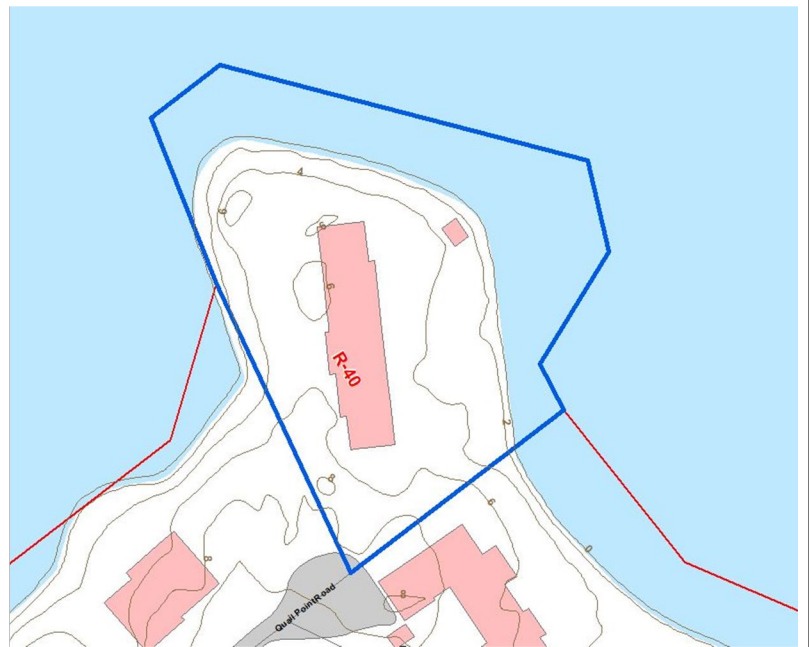
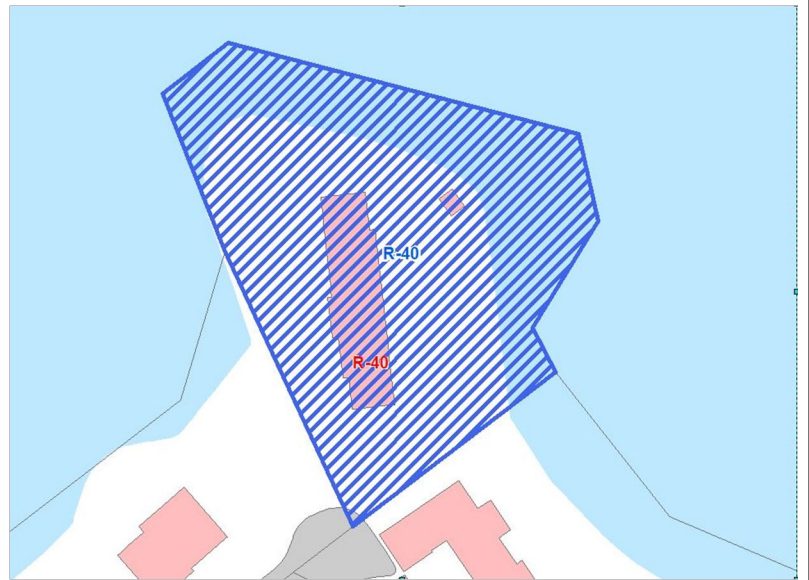
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

- Two-story single-family residence with attached garage
- Permeable paver driveway
- Swimming pool and spa with terrace area

CBPA Ordinance Variance History

On February 22, 2016, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the demolition of the existing residence and associated accessory structures to construct a new residence with swimming pool, patio areas, and driveway 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 15' from improvements.*
5. *Construction limits shall lay a maximum of 15' seaward of improvements.*
6. *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 3:1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
7. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
8. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
9. *A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
10. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting /*

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

11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
12. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: 1,959 sq. ft. x 200% = 3,918 sq. feet. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: 10 canopy trees, 20 understory, and 30 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" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 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. *A means or method to abate the ongoing shoreline erosion shall be addressed on the submitted site plan. A Joint Permit Application (JPA) is required. Bank stabilization work shall occur prior to or concurrent with construction of the new residence.*
14. *The proposed walkways, exclusive of the walkway to the front door, shall be constructed of organic material (mulch), and maximum of 4' in width, with steppingstones not to exceed 50% of the path area.*
15. *Pool decking shall be as depicted on the site plan sealed 12/29/15.*
16. *The pool shall be constructed prior to or concurrent with the residence.*
17. *Under deck treatment of sand and gravel shall be installed.*
18. *No perimeter fill is authorized outboard or seaward of the proposed improvements.*
19. ***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 \$448.94 and is based on 25% of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 489 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
20. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*
21. *The conditions and approval associated with this variance are based on the exhibit plan dated 12/29/15 prepared by Gallup Surveyors and Engineers, signed by Bruce Gallup, P.E. Deviation from said conditions during site plan review may require resubmittal for Board consideration. 22. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
22. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The*

Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.

The February 22, 2016 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

Shoreline

On February 21, 2022, a Wetlands Board application was approved for a proposed 500 linear foot long rip rap revetment and backfill with a five-foot wide shelf area of Pacific Juniper planting. The permit was issued on May 6, 2022.

Riparian Buffer

Undeveloped lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as within the footprint of the proposed residence and driveway.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to develop this vacant lot with a two-story single-family residence with an in-ground pool, attached garage, terrace, and permeable-paver driveway. A CBPA Board variance was granted in February 2016 to demolish the existing residence and associated structures and redevelop the lot. The property ownership has since changed, and the new applicant has brought forth a new proposed layout to develop the vacant lot. As such, this variance request has been submitted for a reconsideration to Condition 20 of the February 22, 2016 Chesapeake Bay Preservation Area (CBPA) variance – *“It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.”*

Staff provides a breakdown of the impervious cover calculations comparing the 2016 board variance to this new request in the table below.

	2016 Variance	2022 Variance	Difference
50-foot Seaward Buffer	1,479 square feet	230 square feet	1,249 square feet (<i>reduction</i>)
50-Foot Landward Buffer	6,631 square feet	8,413 square feet	1,782 square feet (<i>increase</i>)
Overall Impervious Cover	8,110 square feet	8,643 square feet	533 square feet (<i>increase</i>)

As submitted the CBPA variance request reduces the amount of impervious cover within the 50-seaward buffer. The increase in impervious cover within the 50-foot landward buffer primarily occurs along the eastern side of the residence with the proposed terrace and two parking space adjacent to the garage. To mitigate for the increase impervious cover the applicant is proposing to construct the driveway out of a permeable pavement system.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff is of the opinion that the applicant's approach to redevelop this peninsula shaped lot is in harmony with the redevelopment of adjacent lots that have minimized encroachments into the 50-foot seaward buffer on lots platted prior to the adoption of the CBPA Ordinance.
- 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 minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff adds that the layout of the proposed redevelopment of this lot minimizes encroachment into the RPA buffer to the greatest extent practicable and situates the majority of the proposed improvements to the 50-foot landward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven oyster heritage program all to benefit water quality."* Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has included a BMP mulch bed between the proposed improvements and the water, permeable pavers for the proposed driveway, and wetlands plantings incorporated with their Wetlands Board permit approval.
- 5) *"Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers that the lot currently offers no stormwater management. The applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers and bioretention BMP beds as well as the conditioned buffer restoration in areas currently devoted to turf.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 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 increase in new impervious cover within the 50-foot landward buffer: **1,782 square feet x 200 percent = 3,564 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: **8 canopy trees, 8 understory trees, 16 large shrubs, and 24 small shrubs.**

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

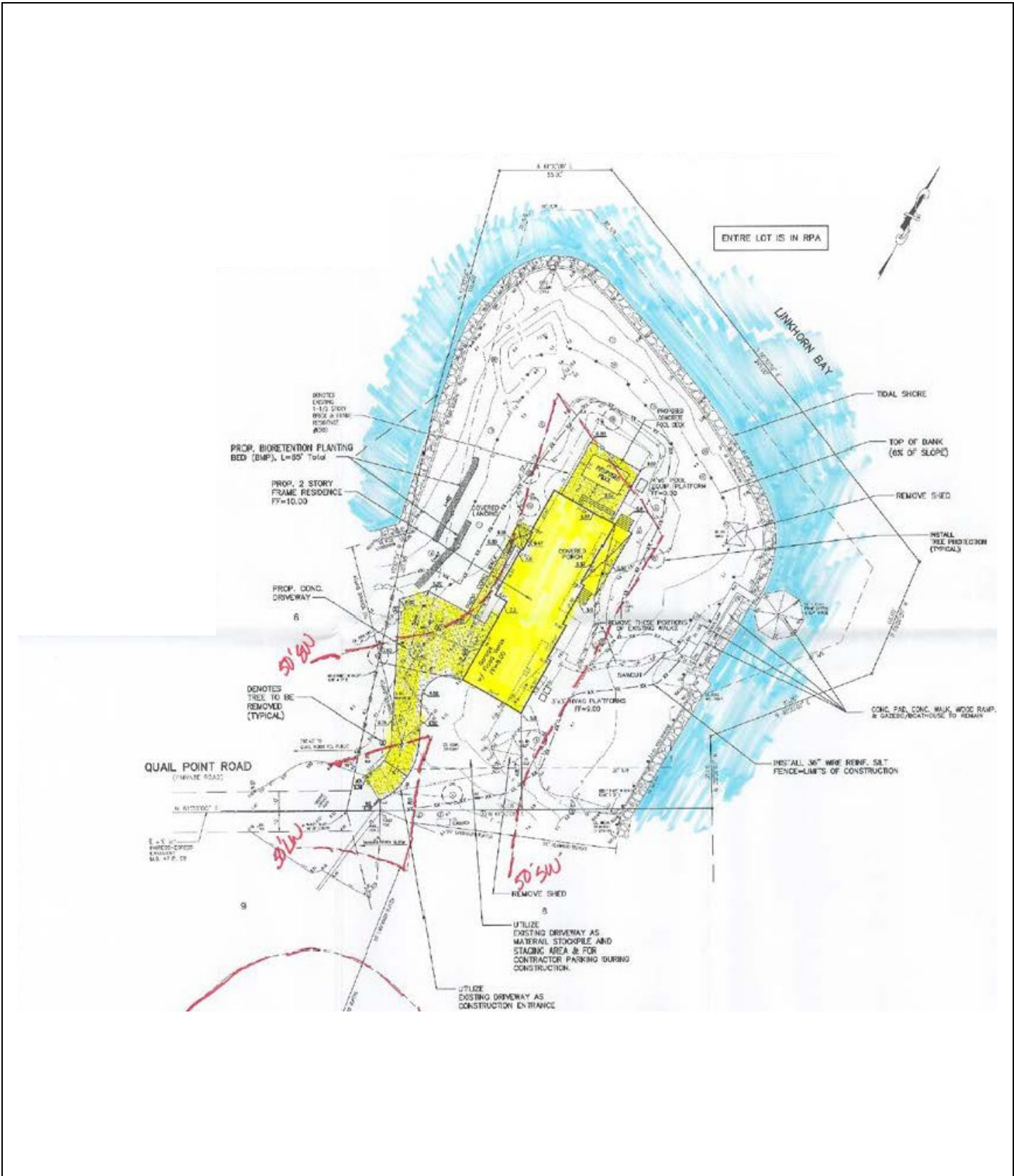
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 14) This variance and associated conditions **will supersede** the conditions of the Board variance granted February 22, 2016.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated April 25, 2022, prepared by Gallup Surveyors & Engineers, signed April 25, 2022, by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

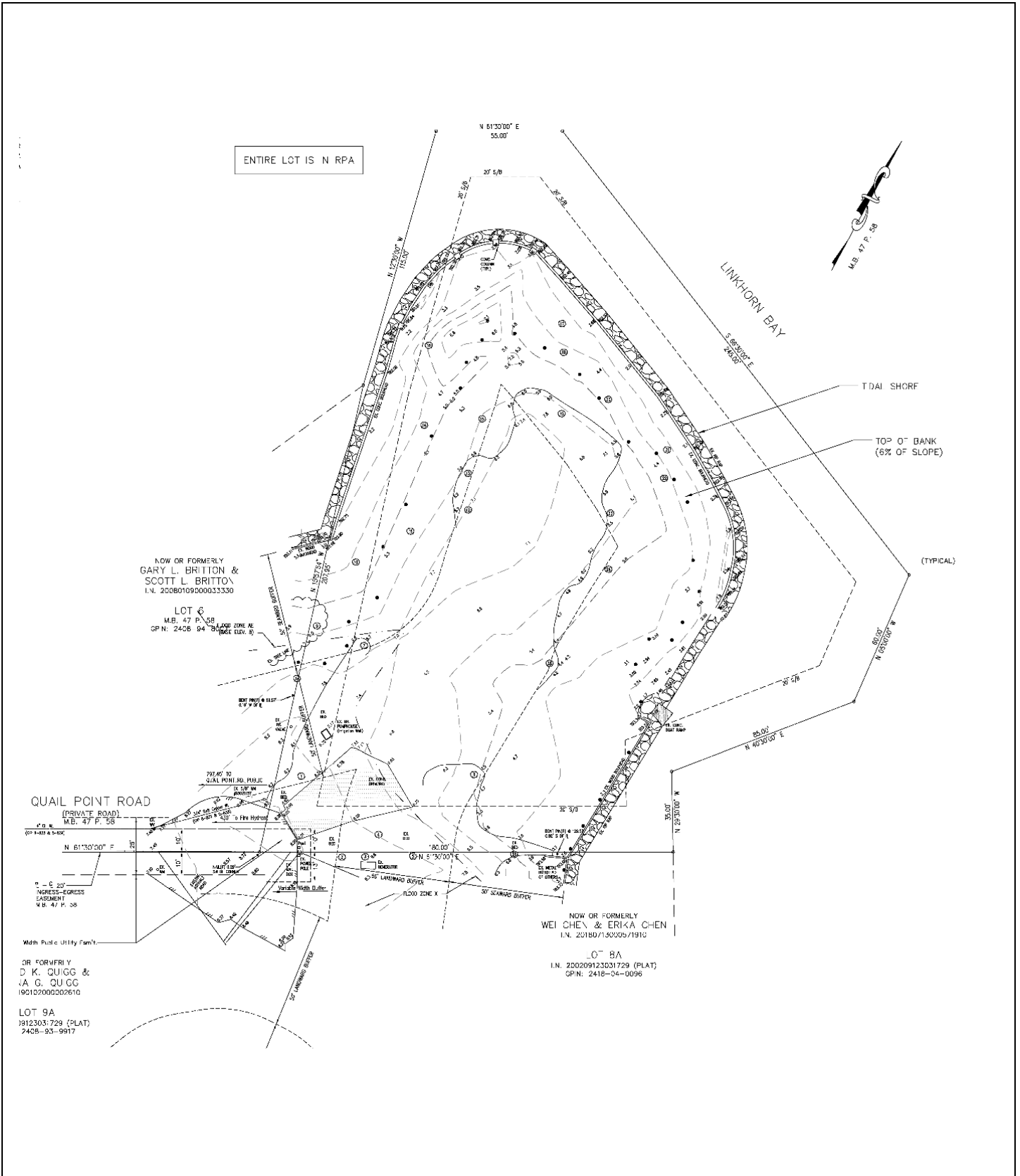
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

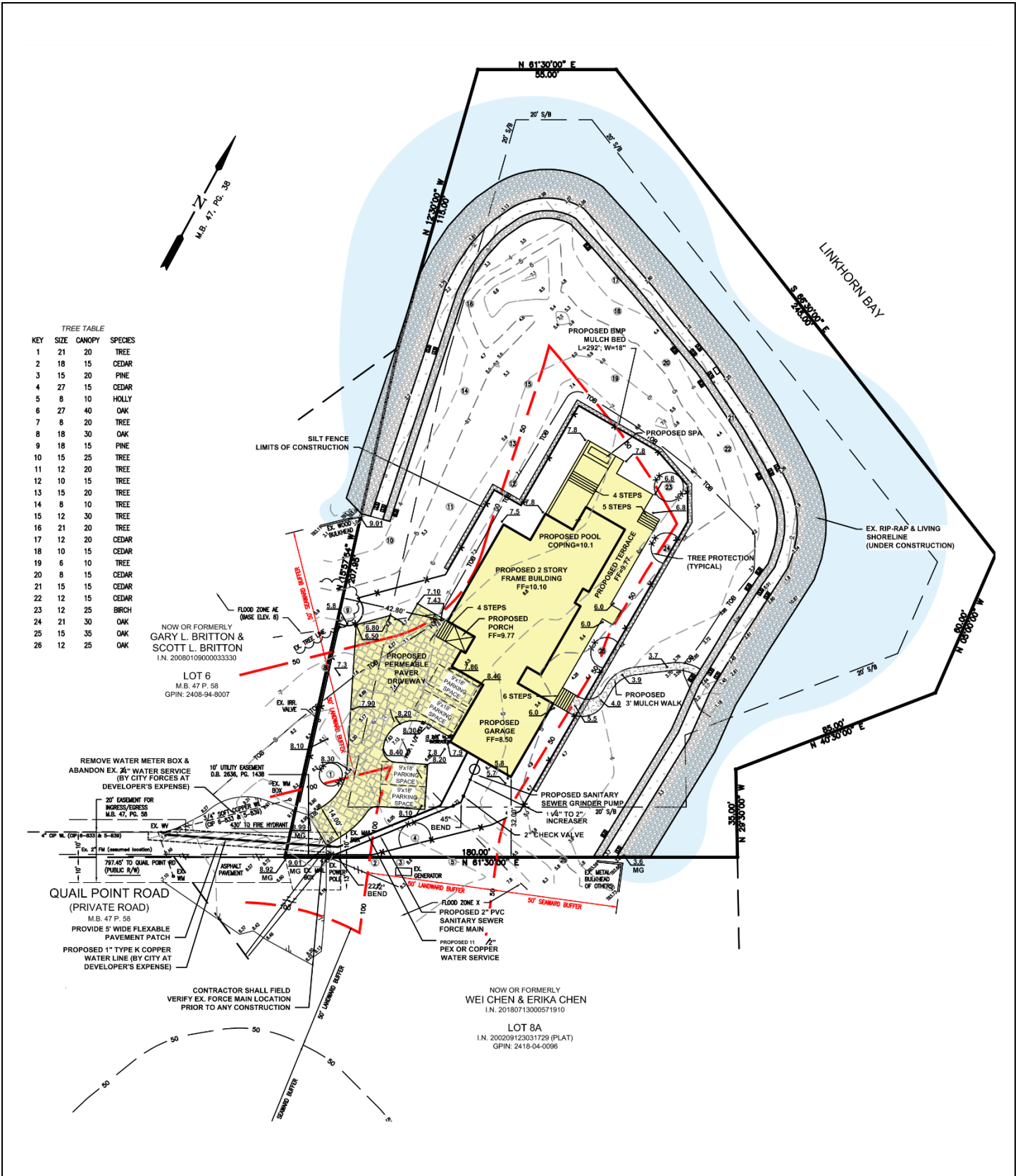




CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name GRANT SIBLEY

Does the applicant have a representative? Yes No

If yes, list the name of the representative.

① GOVERNMENTAL PERMITTING CONSULTANTS - BILLY GARRINGTON

② GALLUP SURVEYORS & ENGINEERS - DAVID BUTLER

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

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

~~_____~~
~~_____~~
~~_____~~

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

~~_____~~
~~_____~~

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No THE LAND PURCHASE WAS FINANCED WITH TOWNE BANK.

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

THE IMPROVEMENTS AND HOUSE CONSTRUCTION WILL NOT BE FINANCED.

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.

~~HERS DESIGN STUDIO ALLISON EWING (434) 979-3222~~

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.

HERS DESIGN STUDIO. ALLISON EWING (434) 979-3222

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.

SHOREBREAK MARINE. JOHN COSGROVE (757) 837-3428

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

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

GALLUP SURVEYORS. DAVID JUTNER (757) 428-8132

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

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

Applicant Signature

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

Applicant Signature

Print Name and Title

GRANT SIBLEY

Date

JAN 3, 2022

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

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

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

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



Applicant & Property Owner **Alston D. Johnston RT**
Address **1333 Starling Court, Lot 213**
Public Hearing **August 1, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

6

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 7, Page 193

Recorded 07/1926

GPIN

2418-13-9771

SITE AREA

36,375 square feet or 0.835 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

35,181 or 0.808 acres

EXISTING IMPERVIOUS COVER OF SITE

1,071 square feet or 3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,989 square feet or 19.9 percent of site

Area of Redevelopment in RPA

620 square feet

Area of New Development in RPA

2,164 square feet, 100-foot RPA

4,205 square feet, 100-foot variable width

Location of Proposed Impervious Cover

50-foot Landward Buffer

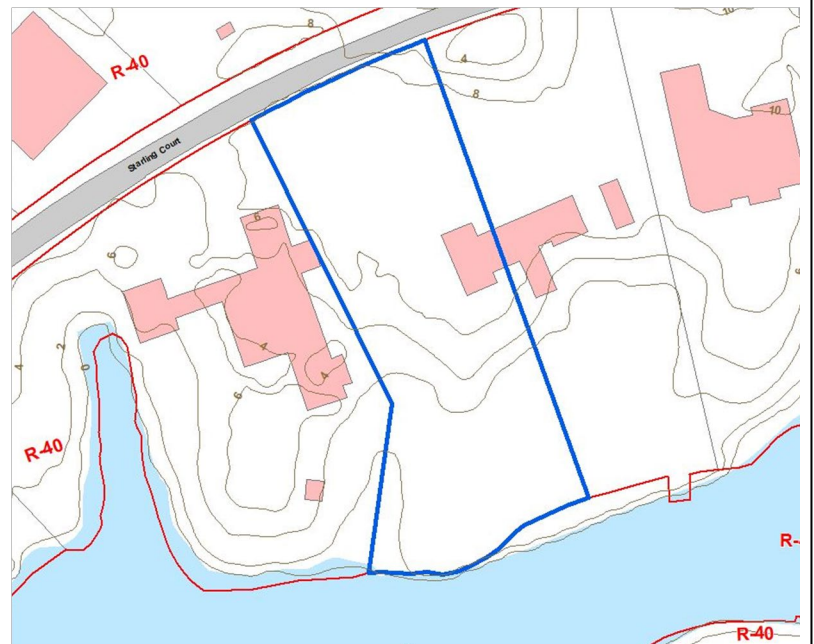
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing single-family residence and associated accessory structures

Construction Details

- Two – story single family residence with attached garage
- Swimming pool with pool surround and associated retaining wall
- 1 – story attached mother-in-law suite
- Permeable paver driveway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Multiple Zones – Zone 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 wood bulkhead.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 20
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: All trees being requested for removal are within the delineated limits of construction of the primary residence and the associated accessory structures/driveway area. Trees shall be mitigated for through additional buffer restoration measures.

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

An existing single-family residence currently sits within the property limits of both lots 212 and 213 of Starling Court. The applicant wishes to demolish the existing residence to construct a new two-story single-family home with associated accessory structures encroaching into the landward buffer of the Resource Protection Area (RPA). In the rear yard, the

applicant is proposing an in-ground swimming pool with an associated pool surround and retaining wall. These accessory structures and portions of the proposed single-family home encroach within the landward limits of the 100-foot RPA on this portion of the lot. Additionally, the applicant is proposing an attached mother-in-law suite and permeable paver driveway in the front yard of the lot, with a small portion of the driveway impacting the landward buffer. As submitted, this proposal increases in impervious cover of the site from 1,071 square feet to 6,989 square feet (3 percent to 19.9 percent) of the total lot area above water and wetlands, all while avoiding impacts to the seaward buffer of the RPA. Staff is of the opinion that the applicant's agent has submitted an exhibit that redevelops this lot in an acceptable manner situating the majority of the proposed improvements on the lot outside of the 100-foot RPA buffer to the greatest extent practicable.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff adds that the layout of the proposed redevelopment of this lot minimizes encroachment into the 100-foot RPA buffer to the greatest extent practicable and situates the majority of the proposed improvements within the 100-foot variable width buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bio retention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven oyster heritage program all to benefit water quality."* Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has included a BMP mulch bed between the proposed improvements and the water and permeable pavers for the proposed driveway.
- 5) *"Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. The applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers and bioretention BMP beds as well as the conditioned buffer restoration in areas currently devoted to turf. The applicant

has also situated the proposed redevelopment of this lot as such so that there are no impacts to the 50-foot seaward buffer and minimal impacts to the 50-foot landward buffer.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,164 square feet x 200 percent = 4,328 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: **10 canopy trees, 10 understory trees, 20 large shrubs, and 30 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) A wire double row of wire reinforced 36" silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and staked in the field for review by City Staff prior to land disturbance.

- 8) 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.**
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) **** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$495.91 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 23, 2022, prepared by Gallup Surveyors & Engineers, signed June 23, 2022 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

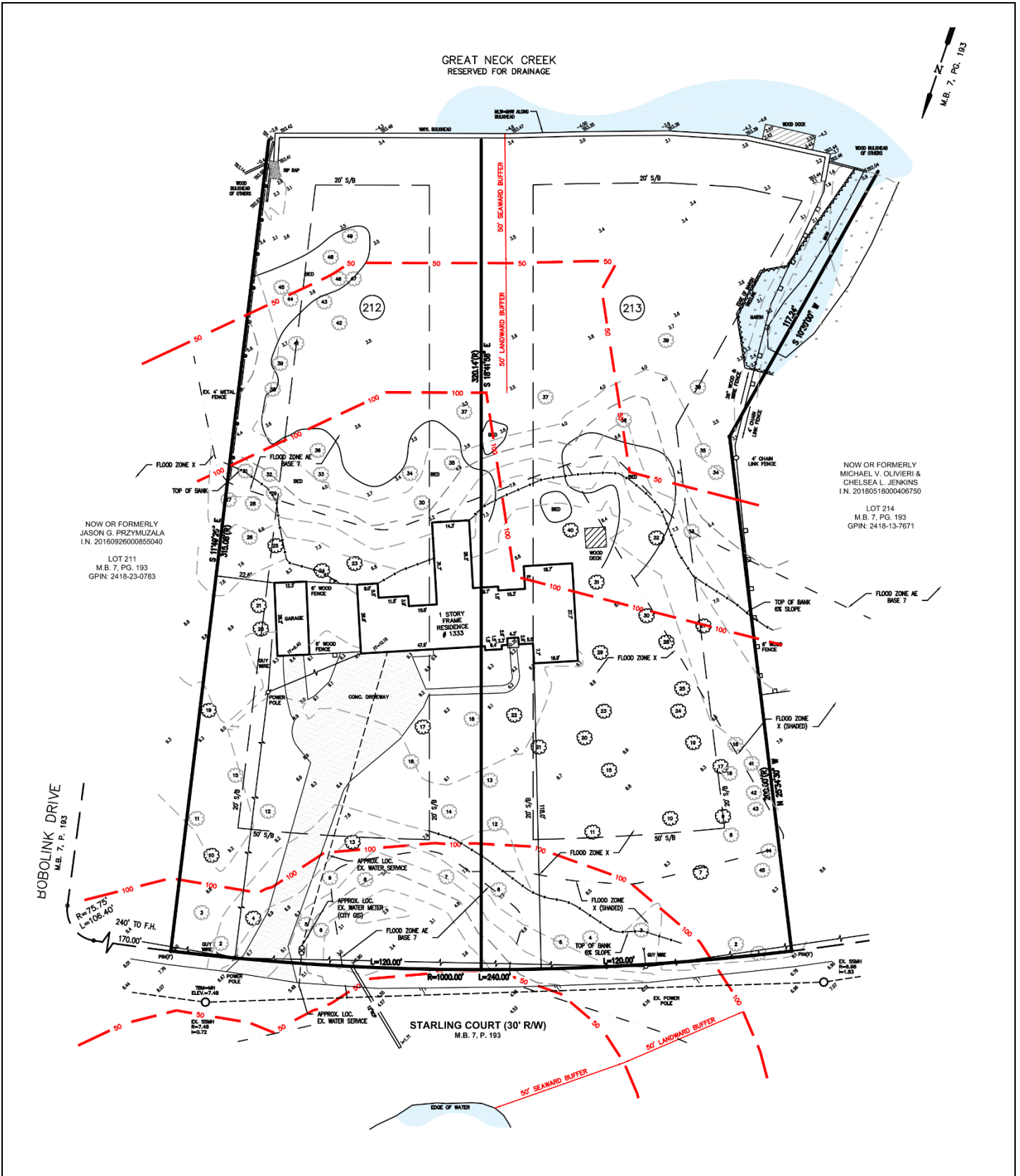
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*****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.

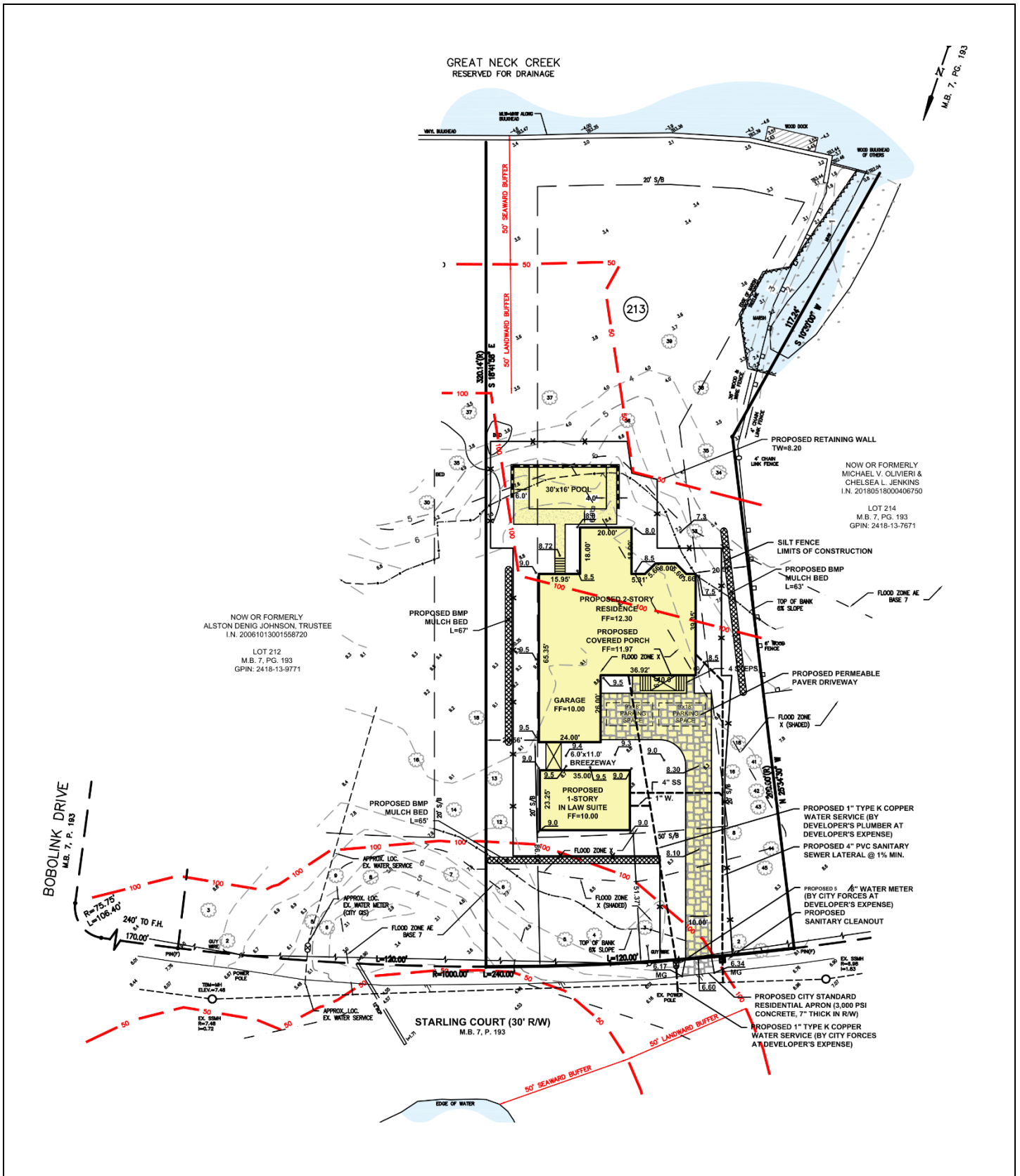
Site Aerial



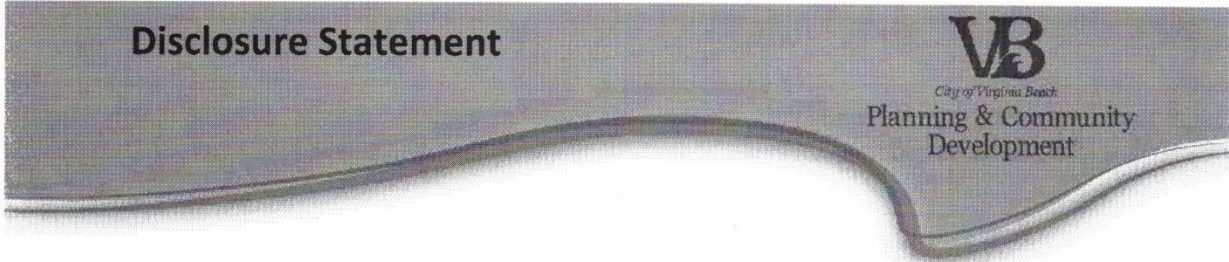
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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 ALSTON D JOHNSON TRUST

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)

ALSTON D JOHNSON

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



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

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

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

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

DAVID BUTLER GALLUP SURVEYORS

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.**

Alston D Johnson Trust

Applicant Signature

ALSTON D JOHNSON TRUST

Print Name and Title

April 7, 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 **Patricia & Wayne Pickett**
 Address **404 S. Newtown Road**
 Public Hearing **August 1, 2022**
 City Council District **District 1**, formerly Kempsville

Agenda Item

7

Variance Request

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

Applicant's Agent

Self-Represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 82, Page 7
 Recorded 09/1969

GPIN

1456-79-7949

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

99 square feet

Area of New Development in RPA

139 square feet

Location of Proposed Impervious Cover

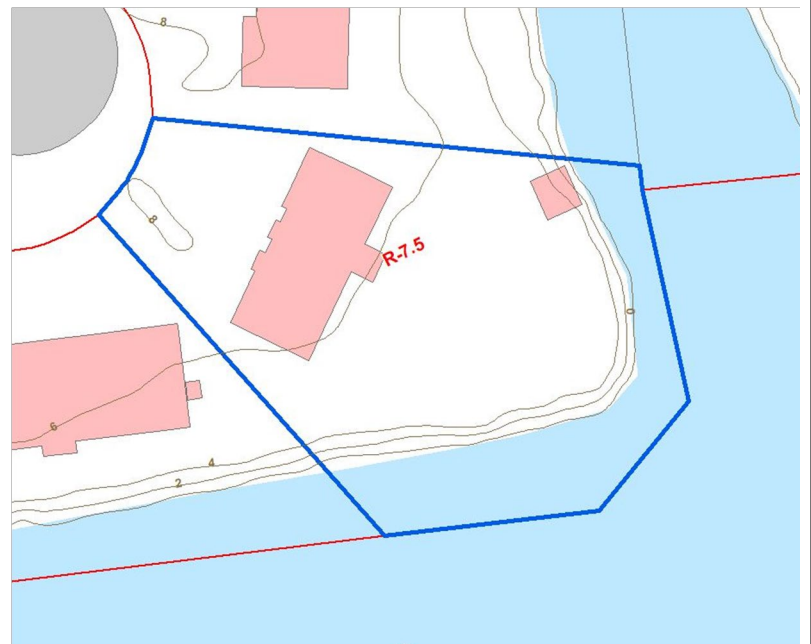
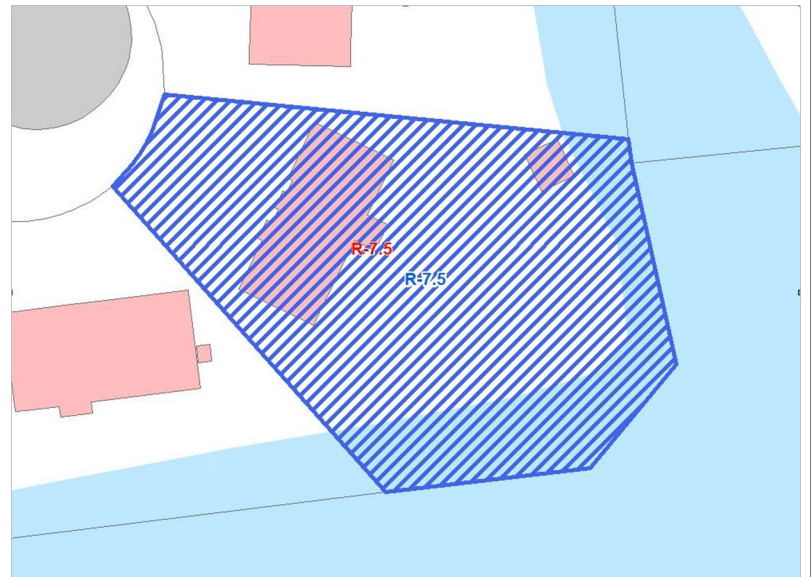
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Wood frame shed

Construction Details

- Wood frame shed

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Udorthents Series (well-drained and moderately well-drained soils)

Shoreline

Shoreline is stabilized by a timber bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: The applicant is requested to remove two cedar trees within close proximity to the existing shed. Staff is recommending additional mitigation in recommended condition 2 to compensate for the removal of these two healthy cedar trees.

Stormwater Management Methodology

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

Evaluation and Recommendation

This is a sparsely wooded lot that is relatively flat with little elevation change within the 50-foot seaward buffer of the Resource Protection Area (RPA). The applicant is proposing to replace an existing 99 square foot shed on their property with a larger 238 square foot shed within the seaward buffer of the Resource Protection Area (RPA) to accommodate for storage purposes. This request redevelops approximately 99 square feet of existing impervious cover from the footprint of the existing shed and adds 139 square feet of new impervious cover with the expansion in size of the proposed shed. Staff is of the opinion that the construction of the new shed will not cause a substantial detriment to water quality given

the lot being stabilized with turf, there being no signs of detrimental erosion occurring on the lot, and the topography of the rear yard being relatively flat.

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 *"to grant or deny the approval of the variance request should not be based upon who the applicant is, but rather the primary basis for the disposition of the request & should be the merit of the application, the projected impact on the general water quality, the health & life of marine , aquatic life, public interests & property values."* 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 *"this variance request is based upon the desire to improve the integrity of the building structure which is presently located in the CBPA so that aged & decaying wood construction composite material does not become detached & become a source of contamination into the water way. This request comes as the result of time & aging material."* Staff concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, this lot falls within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"this variance request in the minimum necessary to afford relief as we desire to maintain the property in a manner that is in harmony with CBPA values & afford us the space to store yard equipment so that oils & other chemicals are less likely to spill, drip or otherwise run off into the water way."* Staff adds that the seaward buffer falls on the majority of the lot and the proposed improvements, as situated in the rear yard, provides merit towards the variance request being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this variance request is in harmony with the purpose & intent of this ordinance as it will facilitate the storage of powered tools & equipment in sheltered conditions where spillage of oil, gas & other contaminant could inadvertently make it to the ground. The new replacement shed will enhance over all appearance & improve property values."* Staff concurs and adds that the entire lot falls within the AE flood zone with a base flood elevation of eight (8).
- 5) *"We developed plans to minimize runoff from property by planting trees, shrubs & vegetation. We use natural & organic (non-chemical) plant support, we mulch our grass (natural fertilizer) to promote ground cover, soil retention & minimize run off. Trash discards & etc are properly disposed of & nothing is dumped into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that coupled with the required buffer restoration that this variance request will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit, specific to setbacks. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large 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. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
5. 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

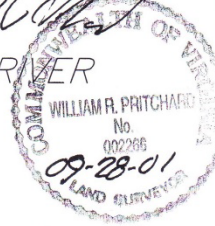


CBPA Exhibit – Existing Conditions

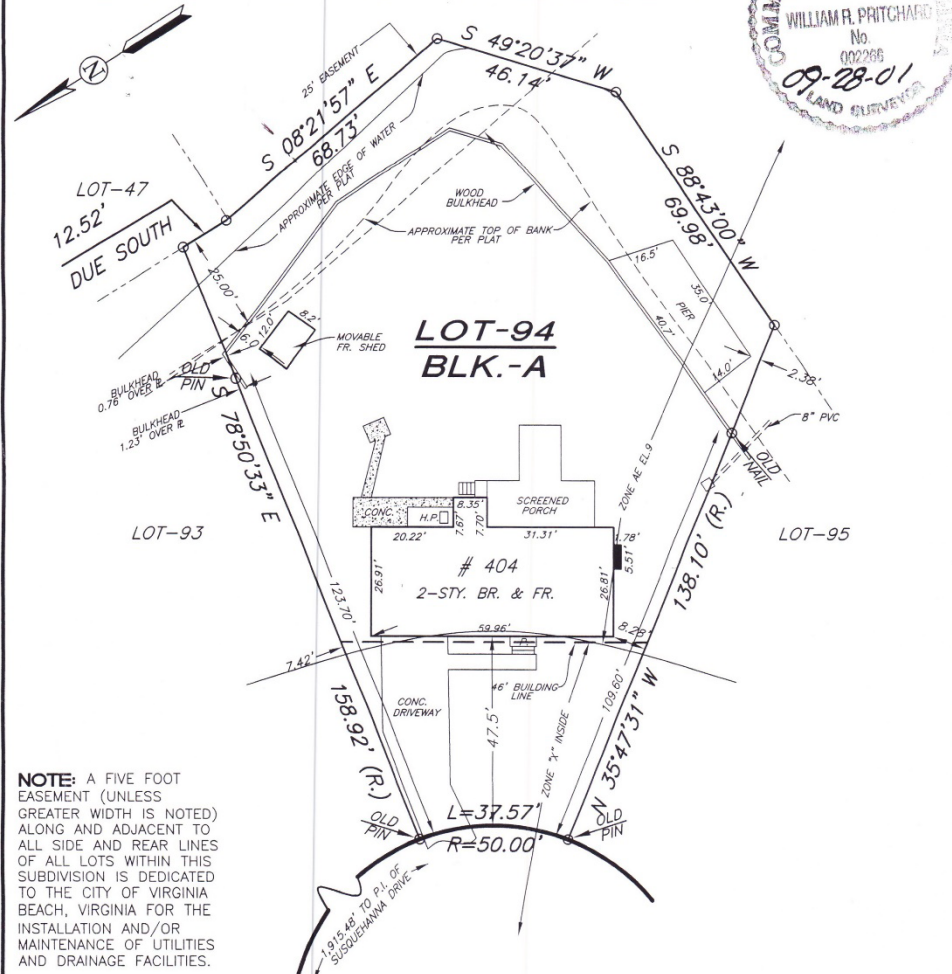
THIS IS TO CERTIFY THAT I, ON SEPTEMBER 26, 2001, SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE AS SHOWN ON THIS PLAT. THE BUILDINGS STAND WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

SIGNED

William R. Pritchard



EASTERN BRANCH OF ELIZABETH RIVER



NOTE: A FIVE FOOT EASEMENT (UNLESS GREATER WIDTH IS NOTED) ALONG AND ADJACENT TO ALL SIDE AND REAR LINES OF ALL LOTS WITHIN THIS SUBDIVISION IS DEDICATED TO THE CITY OF VIRGINIA BEACH, VIRGINIA FOR THE INSTALLATION AND/OR MAINTENANCE OF UTILITIES AND DRAINAGE FACILITIES.

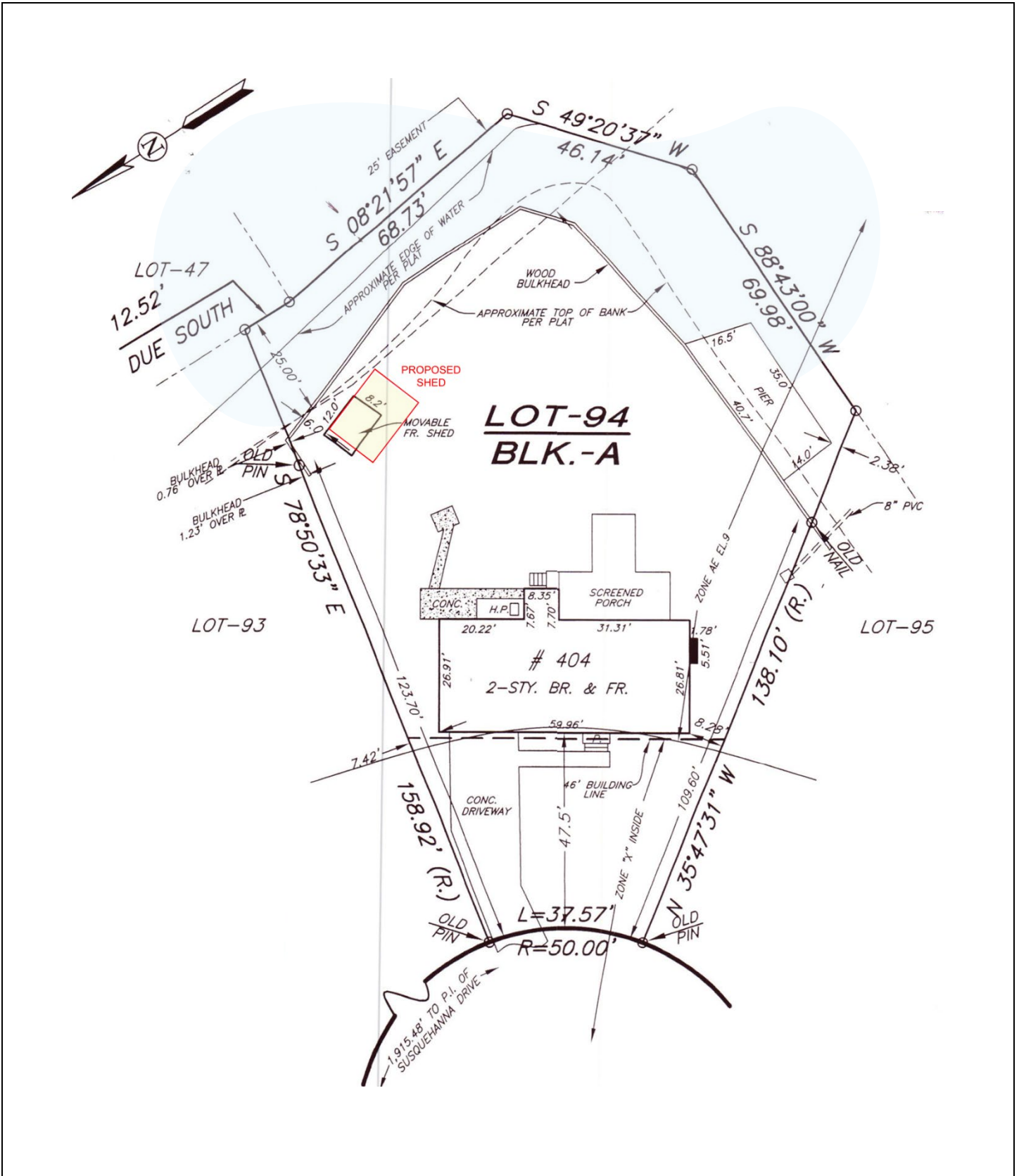
FIELD= SOUTH NEWTOWN ROAD (50' R/W)
PLAT=NEWTOWN ROAD

FLOOD INFORMATION: THE PROPERTY SHOWN HEREON APPEARS TO FALL WITHIN FLOOD ZONE "X" (INSIDE) (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN) AND FLOOD ZONE AE (EL.9.0) (BASE FLOOD ELEVATIONS DETERMINED) AS SHOWN ON F.E.M.A.'S FLOOD INSURANCE RATE MAP (F.I.R.M.) FOR THE CITY OF VIRGINIA BEACH, VIRGINIA, COMMUNITY PANEL NO. 515531 0026E DATED DECEMBER 5, 1996. W.P. LARGE INC. IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. THIS SURVEY DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE SUBJECT TO FLOODING. FOR FURTHER INFORMATION, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

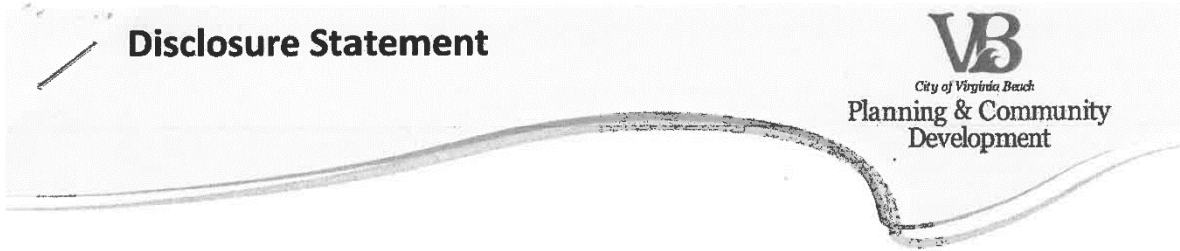
W.P. LARGE, INC.
 ENGINEERING • SURVEYING
 • PLANNING •
 LANDSCAPE ARCHITECTURE
 242 MUSTANG TRAIL - SUITE 8
 VIRGINIA BEACH, VIRGINIA
 PH. (757) 431-1041 • FAX (757) 463-1412
 DM wpl@wplarge.com

PHYSICAL SURVEY
 OF
LOT-94 ; BLOCK-A
 SUBDIVISION OF
ARROWHEAD
 SECTION 8-A
 PLAT RECORDED IN M.B. 82, PG. 7, IN THE CLERK'S OFFICE
 OF THE CIRCUIT COURT, VIRGINIA BEACH, VA
 VIRGINIA BEACH, VIRGINIA
 For
PATRICIA PICKETT
 SCALE: 1" = 30'
 SEPTEMBER 26, 2001
 VIRGINIA BEACH F.B. 775 PG. 12 PLAT: A-185 JN: 201-1836

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 Patricia Pickett, Wayne Pickett

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

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

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

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1 | Page

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

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

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

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2 | P a g e

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.
Old Hickory BUILDINGS RICHARD ASBELL
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.

Patricia C. Pickett
Wayne Pickett
 Applicant Signature *PATRICIA PICKETT,*
WAYNE PICKETT
 Print Name and Title *05/20/2022*
05/10/2022

- 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	

12 of 14



Applicant & Property Owner **Francis & Lauren Cuozzo**
Address **3281 Doncaster Road**
Public Hearing **August 1, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to an after-the-fact expansion of the pool patio and surround

Applicant's Agent

Ryan Earley, Solid Structures

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 195, Page 87
Recorded 09/27/1989

GPIN

1498-01-4329

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

615 square feet

Location of Proposed Impervious Cover

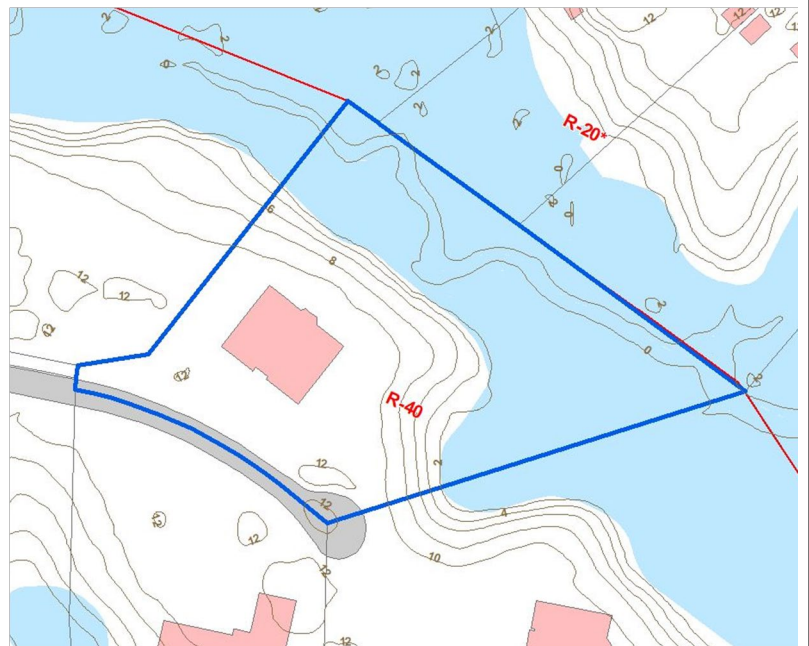
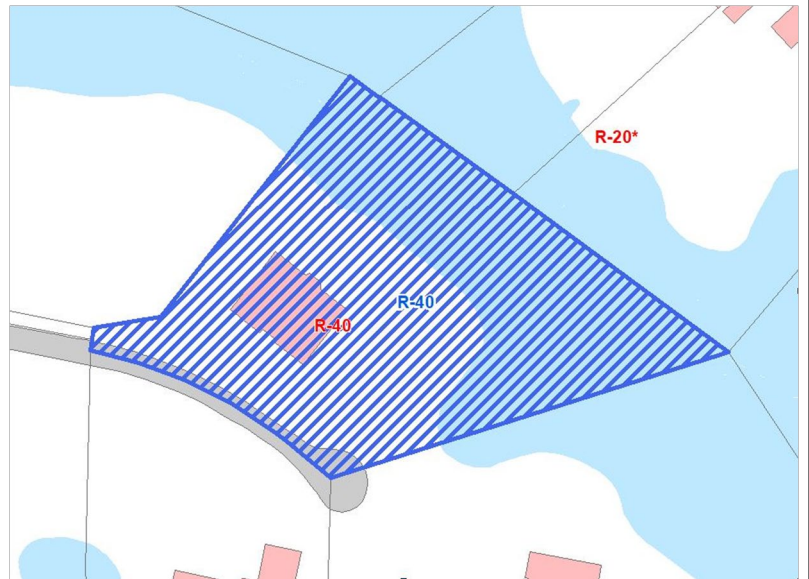
50-foot Seaward Buffer
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Expansion of existing pool patio and surround

CBPA Ordinance Variance History

On August 26, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, concrete driveways and decking:

1. *No portion of the proposed structure or accessory structure (deck) shall be located below the top-of-bank.*
2. *The site plan shall be revised to depict the limits of construction not to extend more than ten feet beyond the top-of-bank. The plan shall include a note that all area outside the limits of construction including all of the area below the top-of-bank remain in a natural state.*
3. *All trees six inches in caliper or greater to be removed must be identified on the revised site plan. Mitigation shall be at a 1-1 ratio, or planting beds be installed equal to displaced tree canopy or any combination thereof.*
4. *Erosion and sediment control measures are to be doubled on the seaward side of the project.*
5. *A revised site plan shall be submitted to the DSC for review and approval prior to the issuance of a building permit.*

On December 19, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of concrete generator pad, mulch path with steppingstone, pergola, swimming pool, rock screen wall with waterfall, and pool equipment building:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *Wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate*

of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.

- 6. Construction limits shall lie a maximum of 10' outboard of improvements.*
- 7. The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
- 8. The pool shape, size, and location shall be as shown on the submitted plan.*
- 9. The pool shall be constructed prior to or concurrent with all proposed improvements (the 12' x 12' pool equipment building).*
- 10. Under deck treatment of sand and gravel shall be installed.*
- 11. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
- 12. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized (trees, landscaping and mulched organic surfaces) areas, planting beds, and turf zones.*
- 13. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
- 14. The conditions and approval associated with this variance are based on the site plan prepared by Gallup Surveyors and Engineers dated October 11, 2012 and sealed November 1, 2012 by Bruce Gallup.*
- 15. All trees six inches in caliper or greater to be removed, exclusive of construction footprint and access way shall be mitigated for at a 1:1 ratio (7 trees total). Said mitigation for removed trees is in addition to the required buffer restoration.*
- 16. No portion of the pool, pool decking or rock screen wall shall be located seaward of the 50' seaward buffer.*
- 17. In addition to condition 7 listed above, the construction access way shall incorporate soil and root protection. Said method (i.e. wood mats, 6 – 12" of mulch, logging mats, etc.) shall be consistent with the publication Managing Trees during Construction, a companion publication to the ANSI A300 Part 5: Tree, Shrub and Other Woody Plant Maintenance – Soil and Root Protection.*
- 18. Disconnect existing downspouts from underground drain pipes discharging below the top-of-bank and install gravel downspout intercepts.*
- 19. Provide a means of erosion and sediment control (i.e. gravel downspout intercept, gravel dripline intercept, etc.) of stormwater run-off from proposed pergola.*
- 20. Mature trees exist adjacent to tidal waters; the select removal of lower tree limbs shall be identified and performed thereby permitting sunlight to interface with tidal fringe marsh.*

21. Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.
22. ***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 \$272.25 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 297 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
23. Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (1,189 sq. ft. x 200% = 2,378 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 have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (280 sq. ft. x 100% = 280 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 have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Rappahannock Series (deep and poorly drained soils)

Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed to limb up low hanging branches shading existing tidal marsh and to remove invasive plant species.

Riparian Buffer

Heavily to moderately 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 current property owner is new to the area, recently purchased the subject lot, and is not associated with the previous CBPA Variances. As submitted, the applicant is proposing to expand the existing footprint of their pool patio area and surround, located primarily within the 50-foot seaward buffer of the Resource Protection Area (RPA). The applicant wishes to expand this area to provide more space for outdoor seating and a hard surface to place a fire pit on. Staff provides that to construct a paver patio on a gravel bed, as proposed with this request does not require a building permit, however given the location of the improvements within the 100-foot RPA buffer a variance to the Chesapeake Bay Preservation Area (CBPA) Ordinance is required.

Staff is of the opinion that the proposed improvements as submitted are not in harmony with the conditions of the 2012 CBPA Variance, specifically regarding encroachment into the 50-foot seaward buffer. As offset from the edge of water shown on the Proposed Improvements Exhibit (physical survey dated July 27, 2020) encroachment into the 50-foot seaward buffer is unavoidable given the proximity to the edge of marsh.

An analysis of the previous CBPA Variances is as follow.

	1996 Variance	2012 Variance	This Variance Request
Overall Impervious Cover	5,213 square feet	6,268 square feet	615 additional square feet

The applicant and their agent provide the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property within the Lynnhaven River watershed.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"it is an expansion of a paver patio that will create minimum effect on water's edge and neighbors."* While Staff acknowledges that the property owner is new to the area, Staff is of the opinion that the CBPA Board put in place conditions associated with the previous CBPA Variances. Staff offers the recommended conditions below for the Board's consideration.
- 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 *"we are building within the RPA and need promising to extend the paver patio."* 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 fall within the RPA.

- 3) The variance is the minimum necessary to afford relief because *“the homeowner has limited the size of the expansion only to provide additional seating for the family.”* Staff is of the opinion that the minimum necessary to afford relief is two parted - first, the minimum necessary to afford relief as set by the conditions of the CBPA Variance and second, those based off the need of the current property owner as submitted with this variance request. Staff offers the recommended conditions below as a means to address both the previous CBPA Variance conditions and the desire of the current property owner.
- 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 *“most of the paver area is to the left side of the property, not the waters edge.”* While Staff acknowledges the statement provided, the encroachment is primarily located in the 50-foot seaward buffer and offers the recommended conditions below as a means for this variance request and those previous to be in harmony with the purpose and intent of the CBPA Ordinance.
- 5) *“We are doing one route of construction entrance and not impacting any vegetation that already provides benefit to the site”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that a mature vegetated shoreline is present, has not been disturbed and offers a filter strip for filtering runoff. In addition, Staff offers the recommended conditions below as a means to enhance the existing conditions towards providing long-term water quality benefits.

Should the Board consider this variance request, Staff recommends the following **8** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
3. The area of the proposed patio adjacent to the existing swimming pool shall reduce by 235 square feet and limited to the southside of the existing pool adjacent to the 3-foot-wide pool surround. The reduction of the proposed patio area shall be staked in the field and approved by Staff prior to installation.
4. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **380 square feet x 200 percent = 1,230 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, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

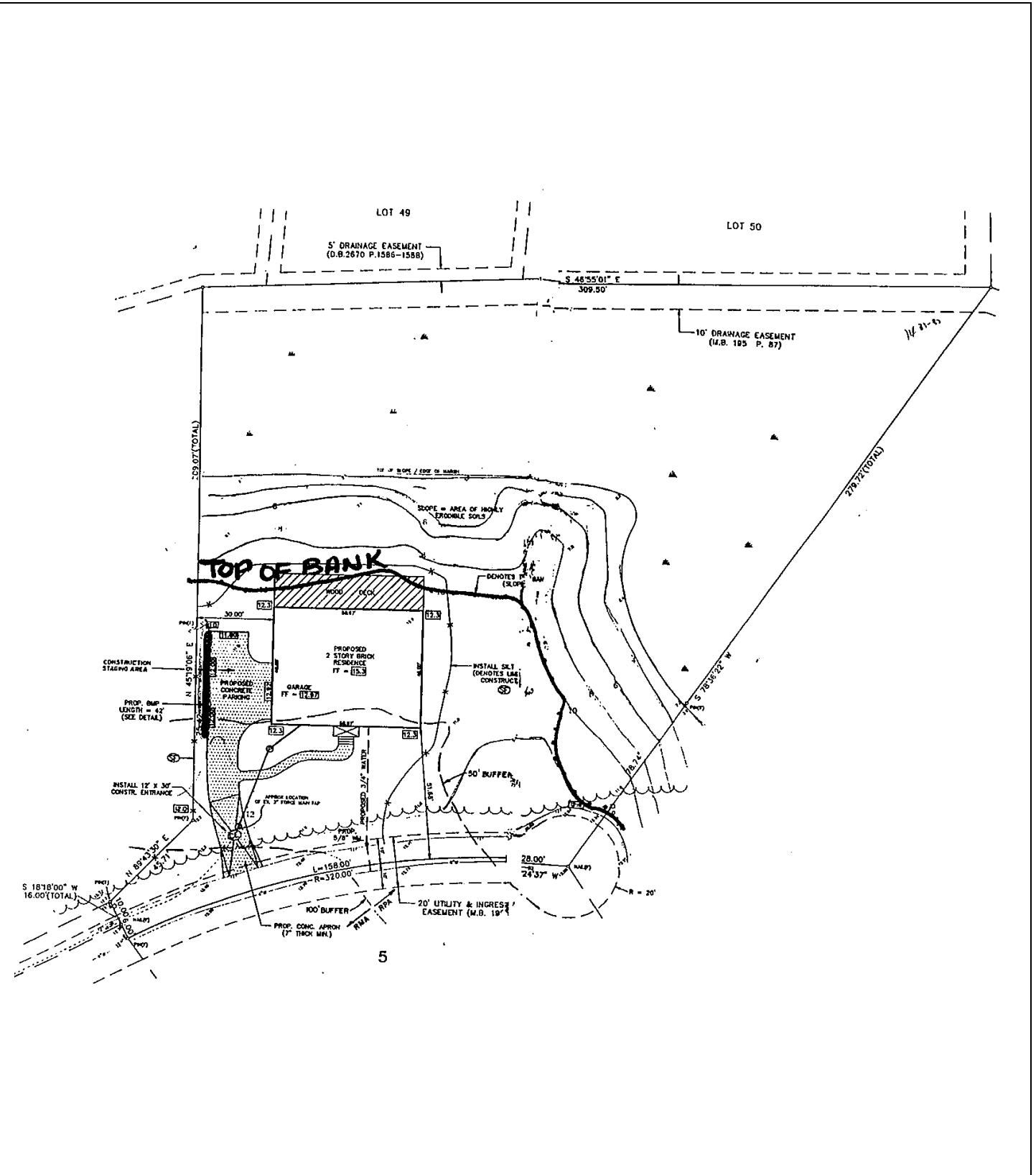
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 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.

5. Buffer restoration of 2,378 square feet conditioned by the December 19, 2012 CBPA Variance shall be installed and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted August 26, 1996 and December 19, 2012.

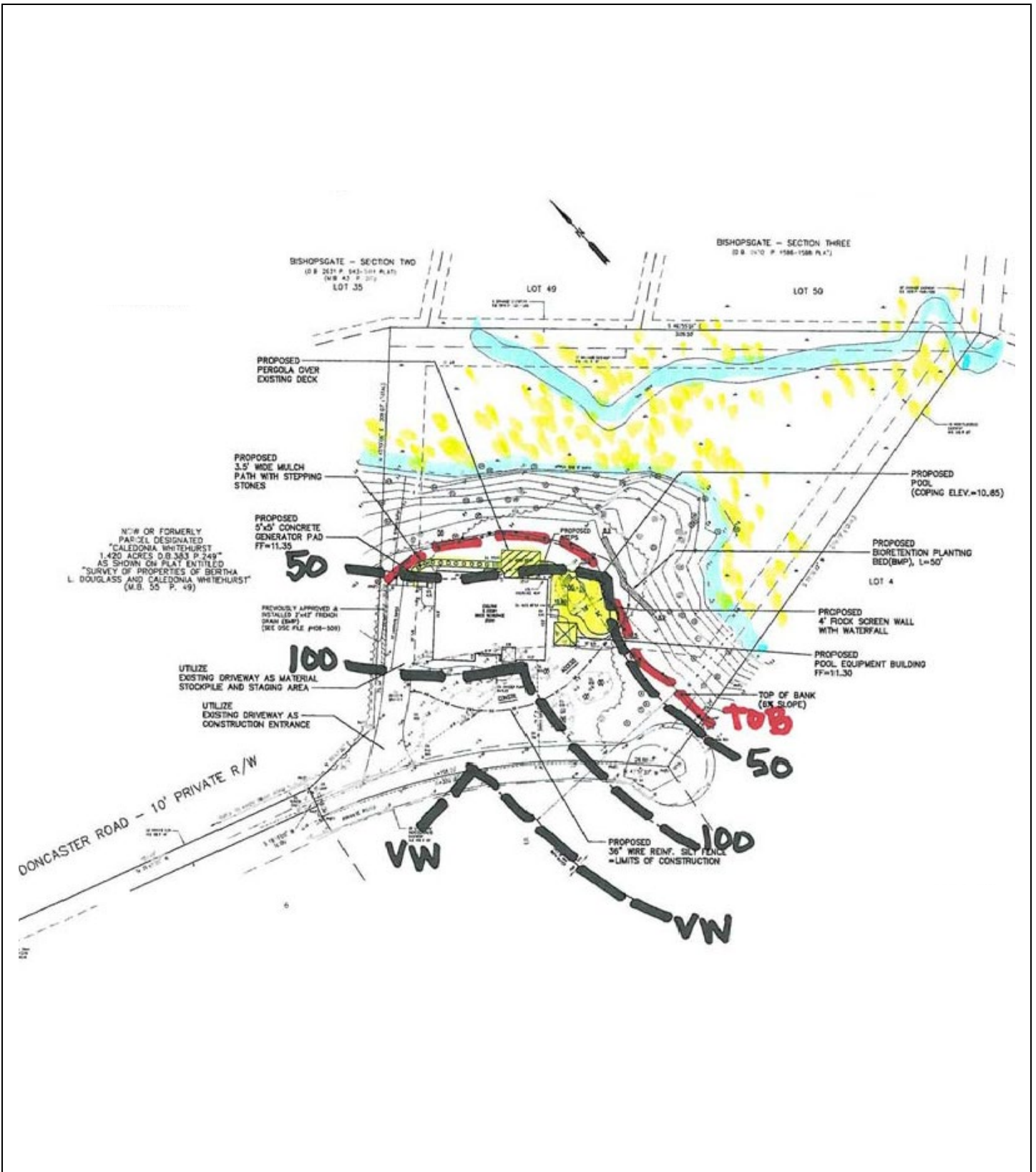
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





December 19, 2012 CBPA Board Variance Exhibit



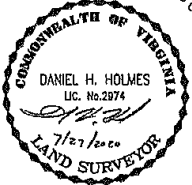
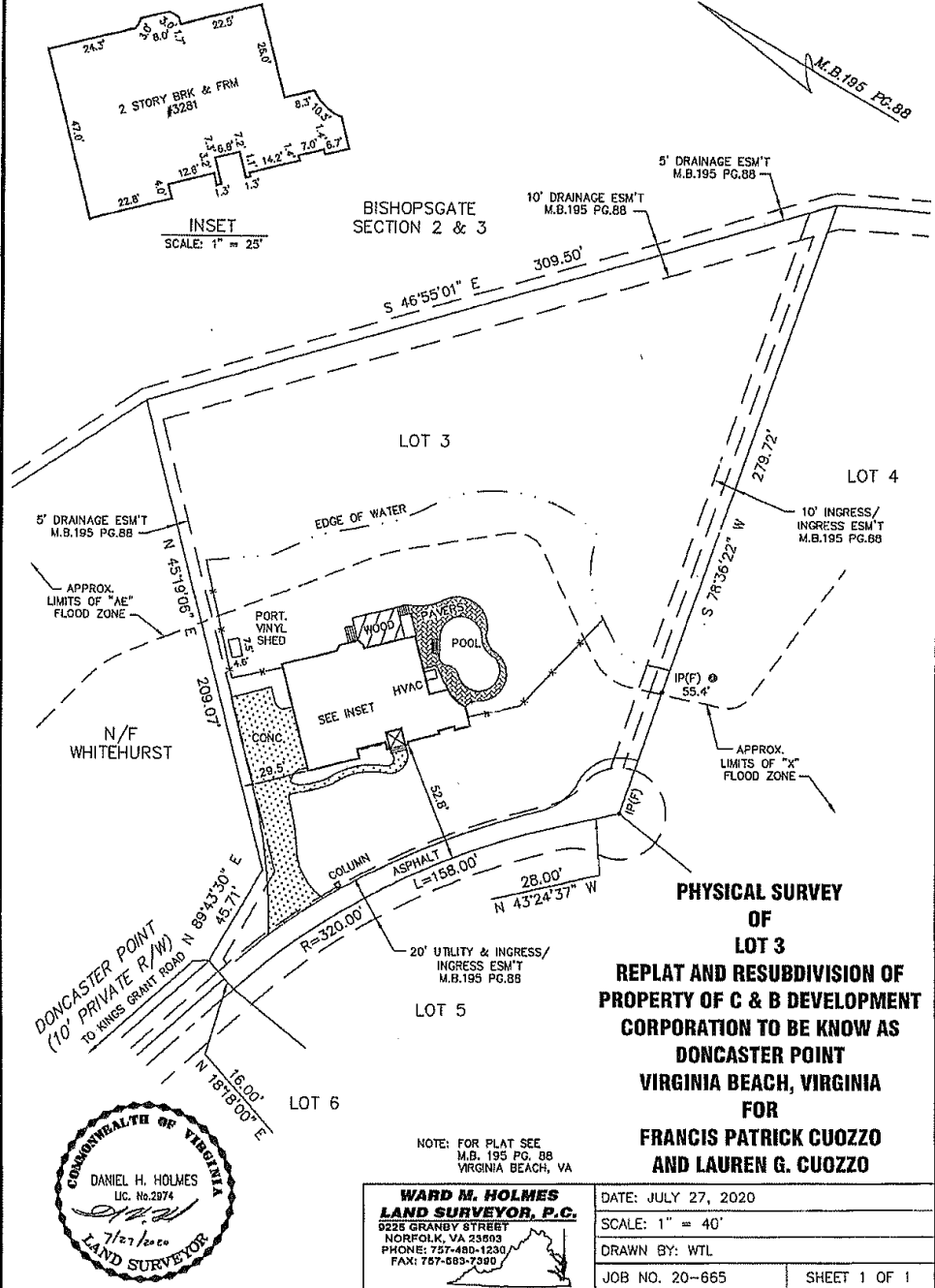
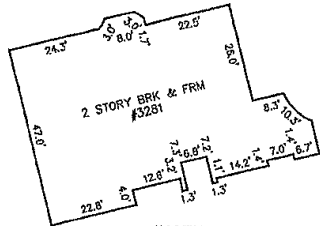
CBPA Exhibit – Existing Conditions

THIS IS TO CERTIFY THAT I, ON JULY 27, 2020, SURVEYED THE PROPERTY SHOWN HEREON AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE AS SHOWN HEREON. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

SIGNED: *[Signature]*

NOTES:

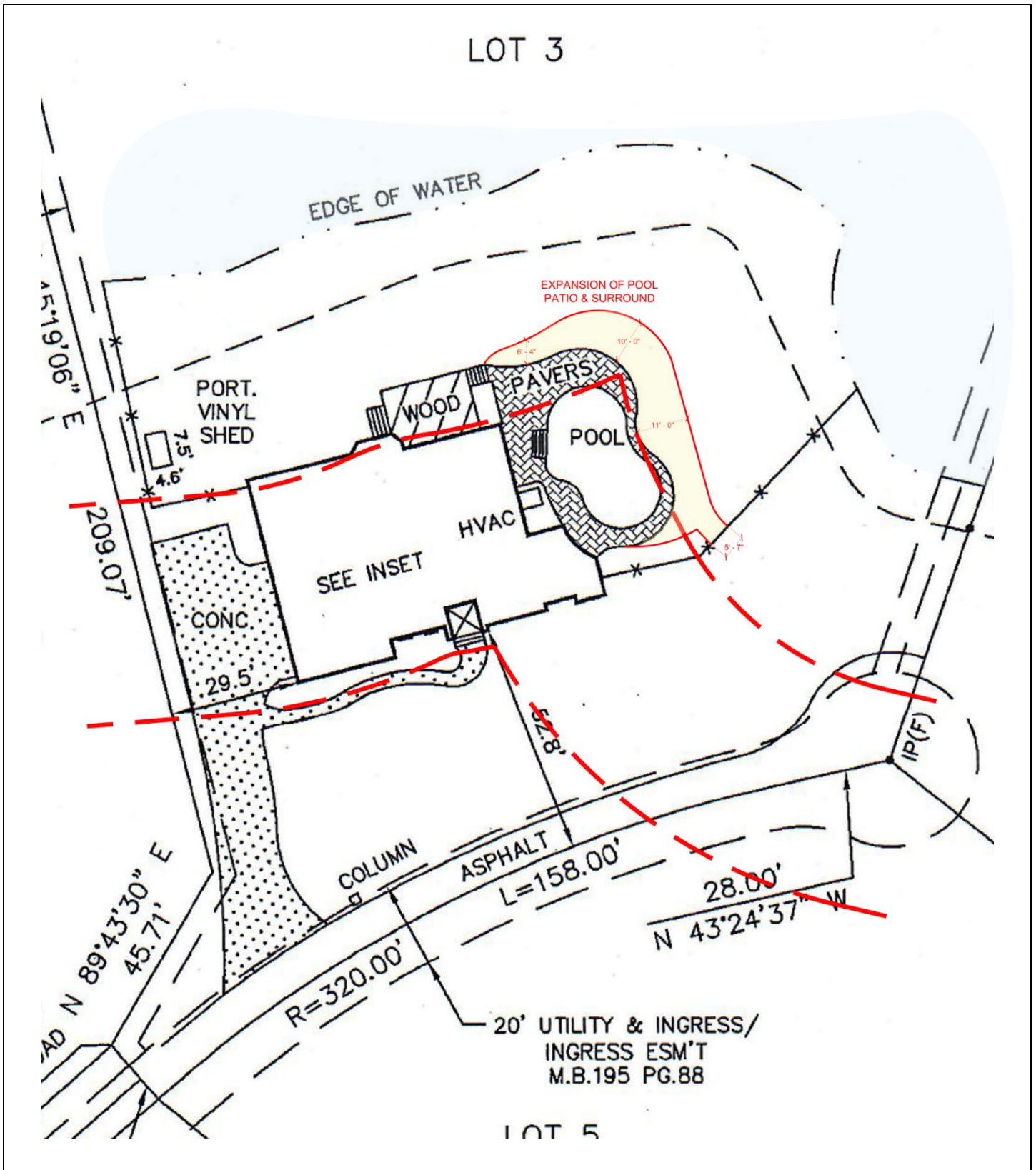
- 1) THE PROPERTY SHOWN HEREON APPEARS TO LIE IN "X" (UNSHADED) & "AE" (8.0) FLOOD ZONE ACCORDING TO F.E.M.A. MAP PANEL NO. 515531-0102G REVISED JAN. 18, 2015.
- 2) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT, AND MAY NOT SHOW ANY/ALL EASEMENTS AFFECTING THE PROPERTY.
- 3) THIS DRAWING IS MADE TO THE ORIGINAL PURCHASER OF THE SURVEY, AND IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.



1020/21

(4854)

CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Dr Francis P Cuozzo

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Solid structure Ryan Earley

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-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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.
Solid Structures

- 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
Francis P. Cuozzo
 Print Name and Title
7/12/2022
 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	