

Chesapeake Bay Preservation Area Board Agenda

October 3, 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, October 3, 2022** at 10:00 a.m. in the New Council Chamber - 2401 Courthouse Drive, Building 1, Second Floor, Virginia Beach, VA.

An informal session will be held the same day at 9:00 a.m. in room 2034, City Manager's Conference Room - 2401 Courthouse Drive, Building 1, 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 **October 3, 2022**

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

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

NEW BUSINESS AGENDA ITEMS	
<p>1. Charles Ryan Fanelli [Applicant & Property Owner]</p> <p>949 Bobolink Dr GPIN 2418-23-2541 City Council District: District 6, formerly Lynnhaven Accela Record: 2022-CBPA-00051</p> <p>Variance Request – Encroachment into the RPA to construct paver patio areas with associated walkways and driveway redevelopment.</p> <p>Staff Planner – Cole Fisher Staff Report – page 7</p>	
<p>2. Jennifer Ward [Applicant & Property Owner]</p> <p>1029 Bobolink Dr GPIN 2418-14-9684 City Council District: District 6, formerly Lynnhaven Accela Record: 2022-CBPA-00052</p> <p>Variance Request – Encroachment into the RPA to construct porch additions, relocate swimming pool and patio area, construct new pool deck and retaining wall.</p> <p>Staff Planner – Cole Fisher Staff Report – page 23</p>	

NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Chanticleer Associates Limited Partnership & Pennsylvania Reality Group VA II, Inc. [Applicants & Property Owners]

1416 Taureau Ct, 1478 Petite Ct & Ackiss Land, Sec B, Lots N, O, P, & Q

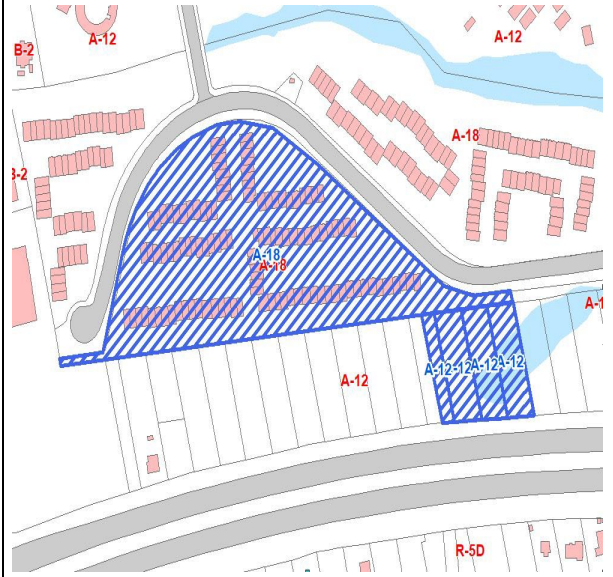
GPINs 2417-08-3383, 2417-17-3946, 2417-17-4910, 2417-17-4976 & 2417-17-5942

City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00053

Variance Request – Encroachment into the RPA to construct a clubhouse building with associated parking lot and sidewalks.

Staff Planner – Cole Fisher

Staff Report – page 35



4. Lee & Mary Murphy [Applicants & Property Owners]

2712 Spigel Dr

GPIN 1498-52-4788

City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00055

Variance Request – Encroachment into the RPA to construct a building addition, front porch, and driveway expansion.

Staff Planner – Cole Fisher

Staff Report – page 37



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

3281 Doncaster Rd

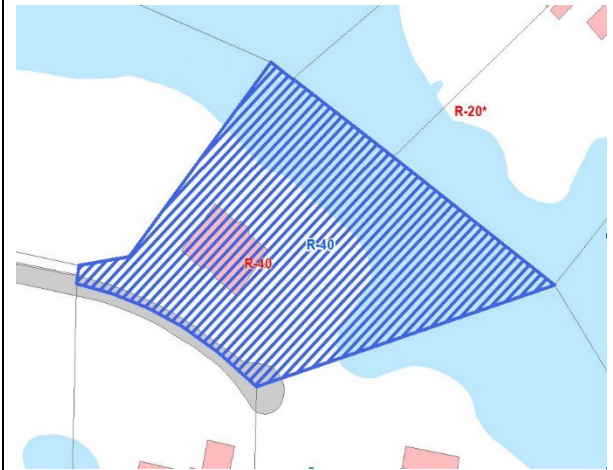
GPIN 1498-01-4329

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 47



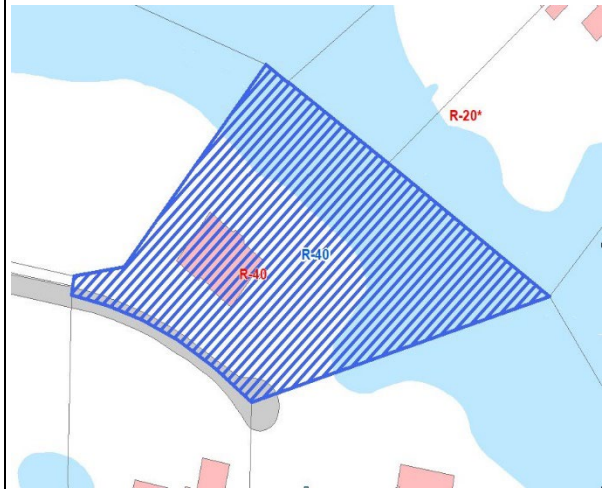
RESTORATION HEARING

6. 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

Statement of Noncompliance – Development within the Resource Protection Area (RPA) buffer that deviates from the conditions of the December 19, 2012 CBPA Board variance.

Staff Planner – Cole Fisher
Staff Report – page 63



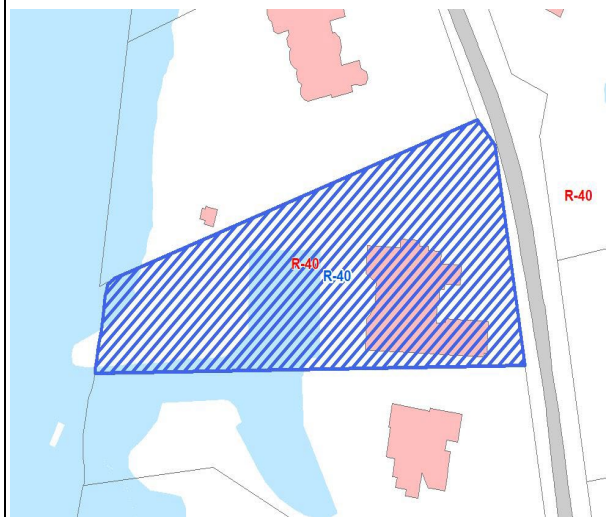
SHOW CAUSE AGENDA ITEMS

7. Dennis & Janice Ellmer
[Property Owners]

2871 River Road
GPIN 1499-41-4751
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPV-00002

Statement of Noncompliance – Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf.

Staff Planner – Cole Fisher
Staff Report – page 69

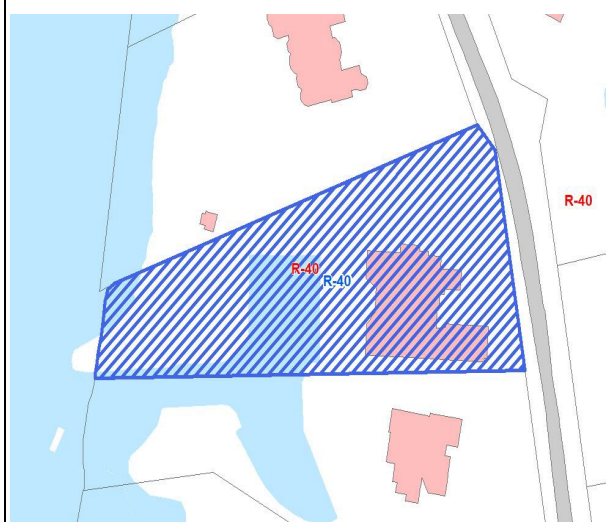


8. Kaitlyn Lord
SYNLawn
[Contractor]

2871 River Road
GPIN 1499-41-4751
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPV-00002

Statement of Noncompliance – Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf.

Staff Planner – Cole Fisher
Staff Report – page 75



TENTATIVE 2023 CBPA BOARD PUBLIC HEARING DATES

Monday	January 23	Monday	July 24
Monday	February 27	Monday	August 28
Monday	March 27	Monday	September 25
Monday	April 24	Monday	October 2
Monday	May 22	Monday	November 27
Monday	June 26	Thursday	December 28

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



Applicant & Property Owner **Charles Ryan Fanelli**
Address **949 Bobolink Drive**
Public Hearing **October 3, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct paver patio areas with associated walkways and driveway redevelopment.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 7, Page 193
Recorded 09/23/1926

GPIN

2418-23-2541

SITE AREA

31,609 square feet or 0.726 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

18,018 square feet or 0.414 acres

EXISTING IMPERVIOUS COVER OF SITE

3,619 square feet or 20 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,533 square feet or 25.2 percent of site

Area of Redevelopment in RPA

1,144 square feet

Area of New Development in RPA

940 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

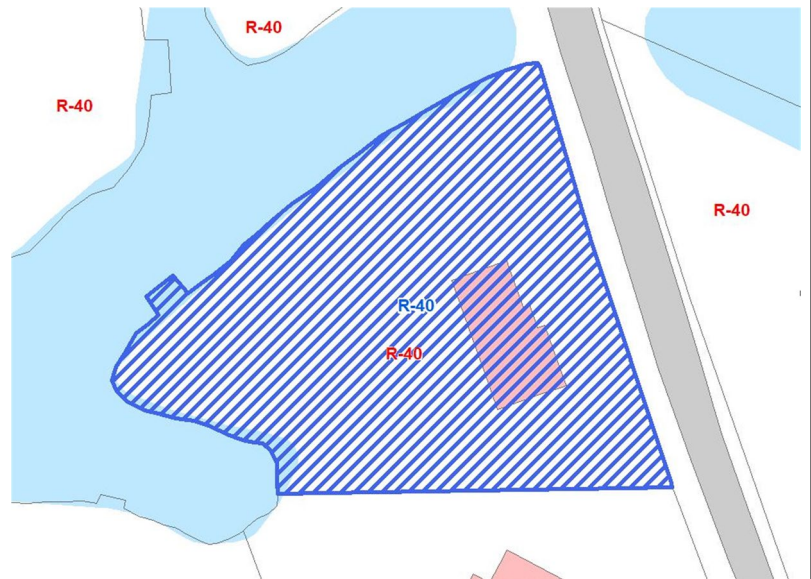
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing walkways and portion of gravel driveway

Construction Details

- Paver patio at rear of residence with associated paver walk
- Paver patio located in rear yard
- Redevelop gravel driveway into paver driveway

CBPA Ordinance Variance History

On April 28, 2014, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a first-floor building addition, gravel driveway expansion, brick wall expansion, brick walkway expansion, conversion of existing screened porch to sunroom, second floor addition, and wood deck 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.*
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 5 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 5' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
8. *Under deck treatment of sand and gravel shall be installed.*
9. *Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*

10. *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.*
11. *The conditions and approval associated with this variance are based on the site plan prepared by Gallup Surveyors and Engineers dated February 27, 2014, and sealed March 4, 2014 by Bruce Gallup.*
12. *The request to remove 3 trees in decline shall be noted on the revised site plan and shall occur prior to or concurrent with the proposed improvements.*
13. *If approved, the contractor or homeowner shall provide staff with updates on the site conditions, specifically the maintenance of the limits of construction every 15 working days until the project is completed. Please contact the Planning Department, Environment and Sustainability Office at (757) 385-8598 to coordinate.*
14. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
15. *No perimeter fill is authorized outboard of the proposed improvements.*
16. *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.*
17. *The proposed wood deck shall no expand past the top of bank.*
18. *Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh. Trees selected for pruning shall be indicated on the landscape / buffer restoration plan.*
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 \$168.66 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 184 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
20. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (739 sq. ft. x 200% = 1,478 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.*
21. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (1,757 sq. ft. x 100% = 1,757 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located within the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched*

restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.

22. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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. Approximately 100 linear feet of shoreline is proposed to be managed with this request.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 6
- Number of existing understory trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: Staff reviewed a Preliminary Project Request (PPR) for tree removal associated with this variance request. Of the 6 trees requested for removal 3 have been deemed diseased or dying by a certified arborist. The other 3 trees are in close proximity to the existing single-family residence and pose a hazard to the structure should there be a potential failure. Staff required mitigation at a 1:1 rate for the 3 trees that posed a potential hazard. Said mitigation has been conditioned below in addition to the buffer restoration associated with this variance request.

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request proposes to construct two new paver patio areas located in the rear yard of the lot connected by a paver walkway. In addition to the new impervious cover proposed on the lot, the existing walkway at the front of the residence and driveway are proposed to be redeveloped. A mulch path is proposed along the south side of the lot to provide access around the existing single-family residence and allow for maintenance of the existing and proposed landscaped areas. As submitted, the variance request will increase the overall impervious cover from 3,619 square feet or 20 percent of the lot above water and wetlands to 4,533 square feet or 25.2 percent of the lot above water and

wetlands. This increase in impervious cover on a lot that predates the adoption of the Chesapeake Bay Preservation Area (CBPA) Ordinance occurs within the 50-foot seaward and 50-foot landward buffers of the Resource Protection Area (RPA). To Staff's knowledge the applicant of this variance request is not associated with the previous CBPA variance granted for this lot.

After visiting the site, Staff is of the opinion that the peninsula shaped lot with narrow uplands within the 100-foot RPA buffer creates significant challenges for the redevelopment of this lot. These physical conditions create a unique situation for this lot in comparison to other lots in the area subject to the provisions of the CBPA Ordinance. Given these conditions of the lot, encroaching into the 100-foot RPA is unavoidable. As such, Staff is of the opinion that the layout depicts the majority of land disturbance outside of the most sensitive portions of the lot to the greatest extent practicable with the variance request being conscious of the unique physical conditions of the property.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1926 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and offers that approximately 9 CBPA variances have been granted to other owners of properties adjacent to and along the same waterway as this lot. Those variances have dealt with similar encroachments requests and have been conditions in the same manner as the recommended conditions associated with this variance request.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff acknowledges the applicant's statement and is of the opinion that the outdoor spaces – specifically the paver patio area is an appropriate size given the minimal deck space off the rear of the residence.
- 4) The applicant's agent provides that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation and naturalized planting/buffer areas will be increased and help with the improvement of water quality."* Staff offers that this request utilizes redevelopment over existing impervious cover to the greatest extent practicable in addition to the best management practices introducing bioretention planting beds and over 100 linear feet of shoreline management with approximately 800 square feet of native shoreline plantings and naturalization.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention & naturalized planting/buffer will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is

of the opinion that the best management practices and enhancement of the existing natural shoreline provide merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater potential.

Given the above comments, Staff recommends the following **16** 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 consisting of native shoreline plantings, understory trees, and shrubs shall be installed within the RPA per the designated areas on the CBPA Exhibit. Said installation shall be installed at the following rate: **3 understory trees, 9 small shrubs, and 800 square feet of native shoreline plantings.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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.

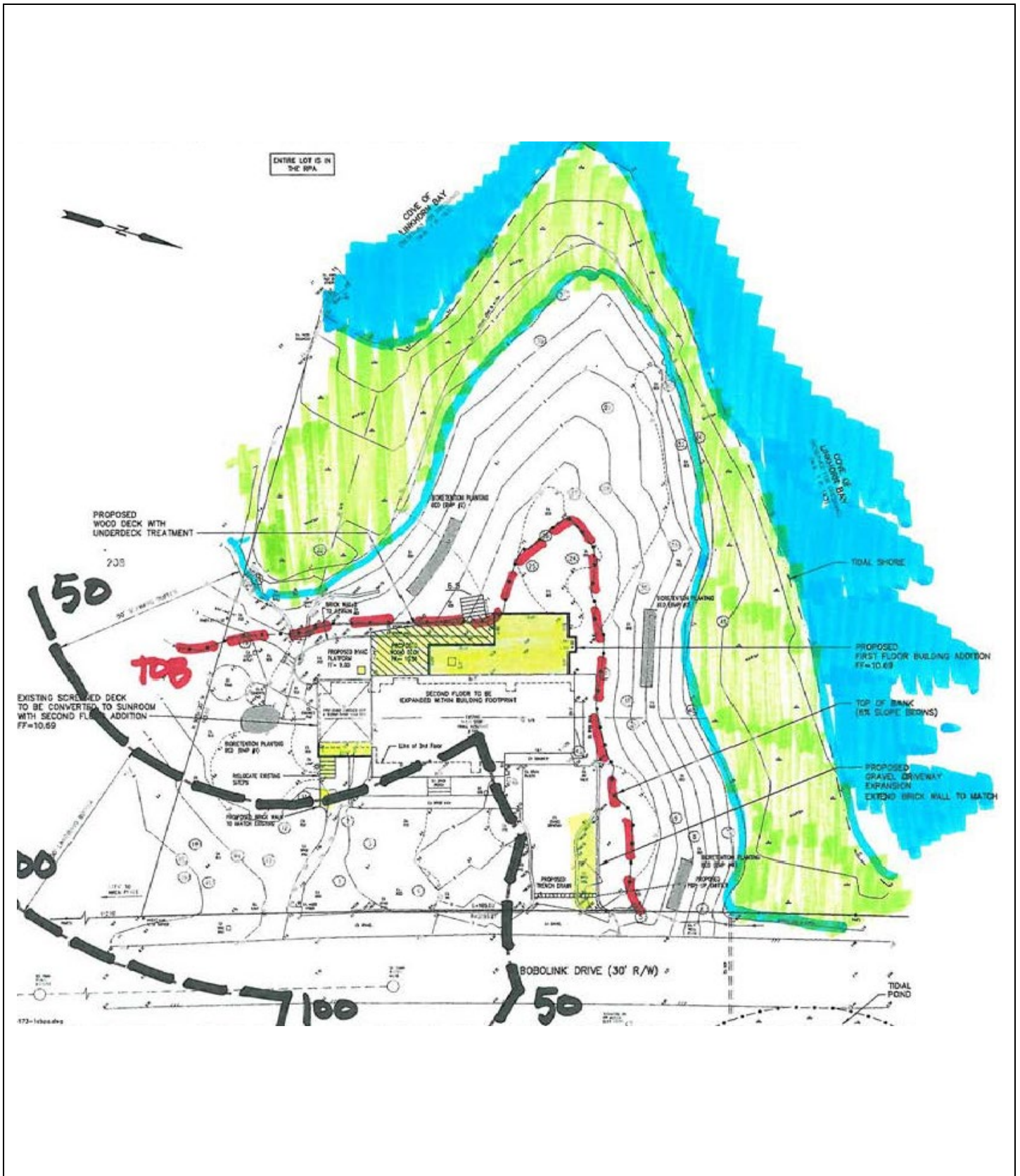
- 5) Mitigation for the three (3) pine trees to be removed is required at a 1:1 ratio (3 new canopy trees to be planted).
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.

- 10) 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 not included with this variance request.
- 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) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 15) This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted April 28, 2014 with exception to condition 16 and 20 as provided.
 - *“16. 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.”*
 - *“20. Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (739 sq. ft. x 200% = 1,478 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4” – 6” in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.”*
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 26, 2022, prepared by WPL Landscape Architecture, signed August 15, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

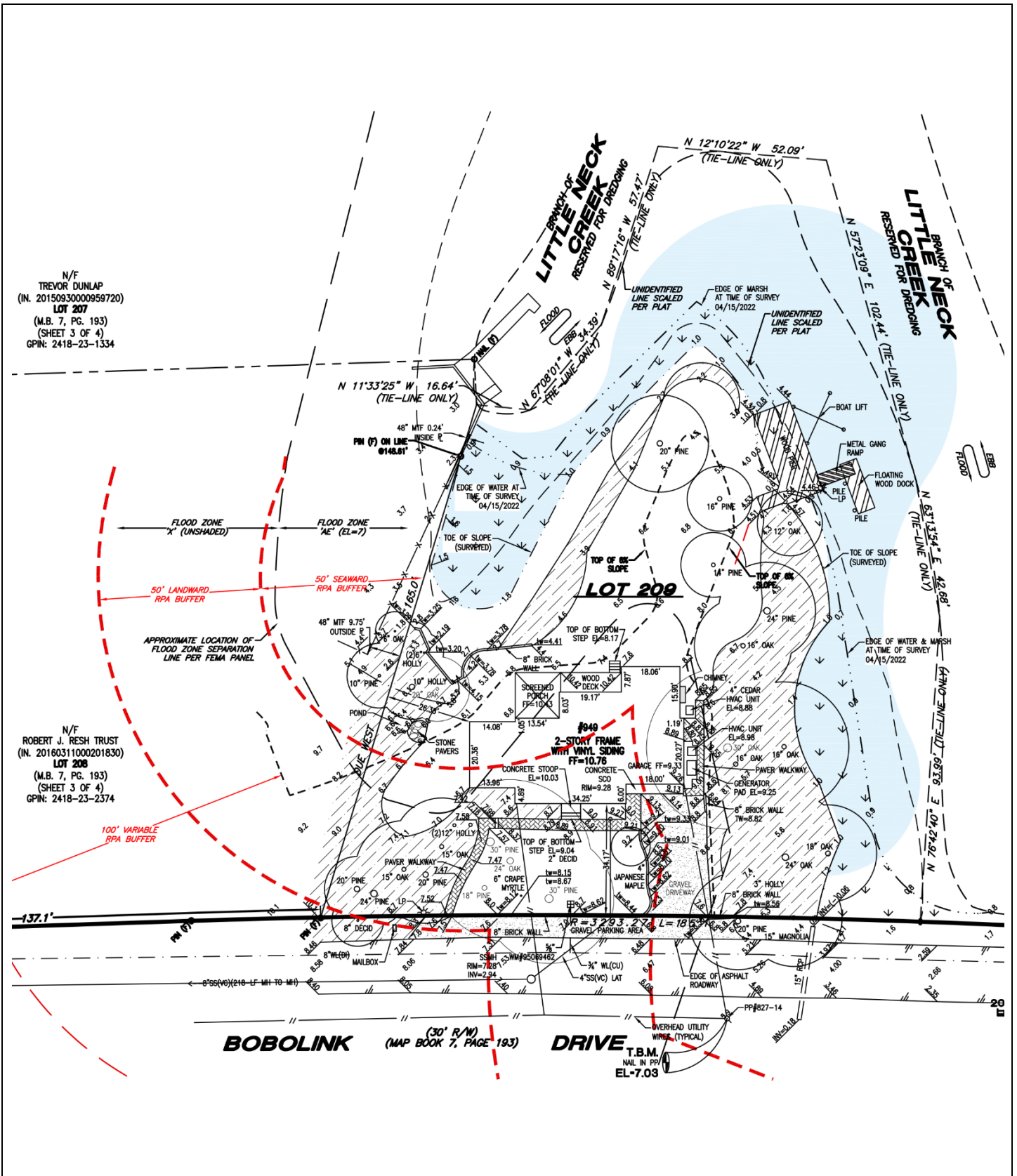
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Existing Conditions



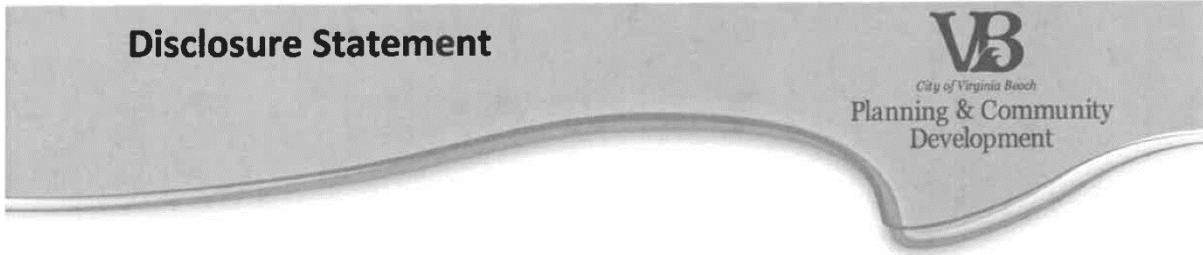
N/F
TREVOR DUNLAP
(IN. 2015093000959720)
LOT 207
(M.B. 7, PG. 193)
(SHEET 3 OF 4)
GPIN: 2418-23-1334

N/F
ROBERT J. RESH TRUST
(IN. 20160311000201830)
LOT 208
(M.B. 7, PG. 193)
(SHEET 3 OF 4)
GPIN: 2418-23-2374

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 Charles Ryan Fanelli

Does the applicant have a representative? Yes No

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

Billy Garrington, GPC, Inc

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

Department of Commerce Federal Credit Union

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

Yes **No**

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

Charles Ryan Fanelli

Print Name and Title

8-30-22

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Jennifer Ward**
Address **1029 Bobolink Drive**
Public Hearing **October 3, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct porch additions, relocate swimming pool and patio area, construct new pool deck and retaining wall.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 18, Page 84
Recorded 12/07/1946

GPIN

2418-14-9684

SITE AREA

69,959 square feet or 1.606 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

65,128 square feet or 1.495 acres

EXISTING IMPERVIOUS COVER OF SITE

12,608 square feet or 19 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

15,669 square feet or 24.1 percent of site

Area of Redevelopment in RPA

3,853 square feet

Area of New Development in RPA

2,242 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

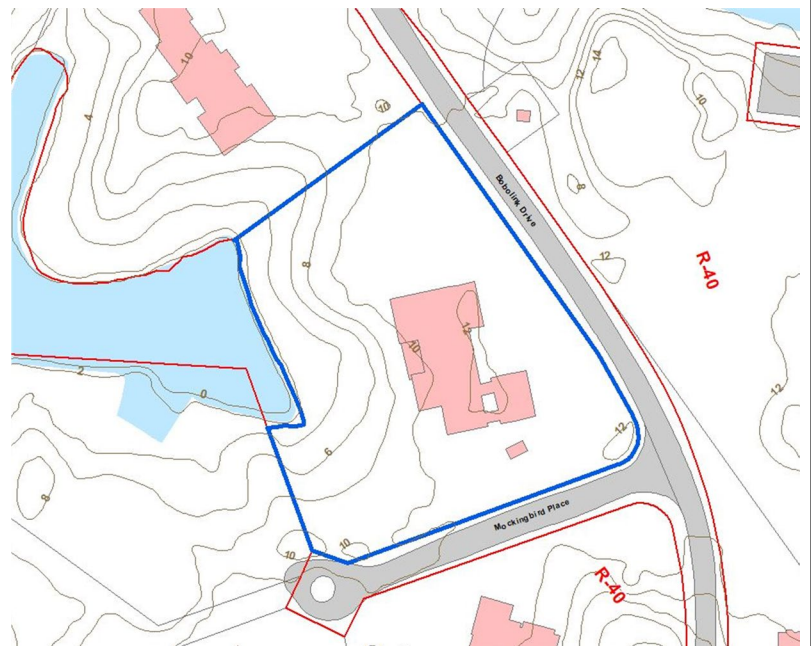
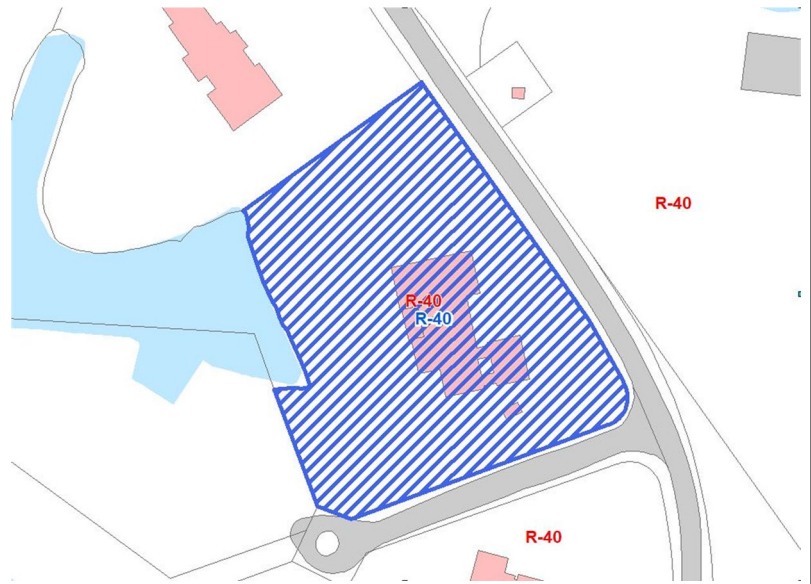
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete patio
- In-ground swimming pool with associated brick pool patio surround
- Brick porch
- Concrete driveway

Construction Details

- Swimming pool with pool decking and hot tub area
- Two covered porch areas with raised planters
- Patio and fire pit area
- Redevelop and expand driveway with pavers

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

The shoreline is hardened by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased or dying existing understory trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The one tree being requested for removal is within the delineated limits of construction for the proposed swimming pool surround area. The existing understory tree is within a defined planting bed area adjacent to the existing single-family residence.

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 construct two covered porch additions off the rear of the residence that are primarily over existing impervious cover and redevelop the existing swimming pool and pool surround, slightly expanding the proposed pool deck within the 50-foot landward buffer over pervious cover – existing lawn area. In addition to the redevelopment of these existing accessory structures, the applicant desires to construct a patio with fire pit area. At the front of the residence within the City’s variable width buffer and Resource Management Area (RMA), the applicant desires to redevelop and expand their existing concrete driveway with a new paver driveway.

Overall, the request increases the impervious cover of the lot from 12,608 square feet or 19 percent of the site above water or wetlands to 15,660 square feet or 24.1 percent of the site above water or wetlands. Of the 2,242 square feet of new development in the Resource Protection Area (RPA), approximately 1,421 square feet is proposed within the 50-foot landward buffer, of which approximately 450 square feet is allocated to the proposed patio with fire pit area. Staff is of the opinion that the redevelopment of the existing improvements on the lot as proposed reflects the minimum necessary to afford relief subject to the recommended conditions below regarding the patio and fire pit area due to the lot being platted in 1946 and the existing single-family residence being constructed in 1962. In addition, the 100-RPA is primarily devoted to turf and Staff is of the opinion that the introduction of buffer restoration aids to the pervious of the lot and offer merit towards water quality improvement on the lot.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the property was platted in 1946 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff acknowledges the statement provided by the applicant and is of the opinion that the location of the proposed improvements within the RPA are similar to other lots developed in this neighborhood for encroachments into the 50-foot landward buffer in areas currently devoted to turf.
- 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 applicant’s agent provides that the variance is the minimum necessary to afford relief because *“we have designed the improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts.”* Staff concurs and offers that the variance request utilizes approximately 3,853 square feet of redevelopment with this request.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be increased to facilitate treatment from the new improvement and part of the*

city street improvements.” Staff concurs with the statement provided by the applicant’s agent and is of the opinion that the 100-RPA is primarily devoted to turf and that the introduction of buffer restoration aids to the perviousness of the lot offering merit towards water quality improvement.

- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that much of the RPA on this lot is turf and the stormwater management methodology and buffer restoration will benefit the lot and the watershed.

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

Recommended Conditions

- 1) The proposed patio and fire pit area shall be constructed on an aggregate base to allow for infiltration of rainwater.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,242 square feet x 200 percent = 4,484 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: **7 canopy trees, 7 understory trees, 22 large shrubs, and 33 small shrubs.**

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

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

- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) 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 not included with this variance request.
- 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 \$513.79 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 28, 2022, prepared by WPL Landscape Architecture, signed August 11, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

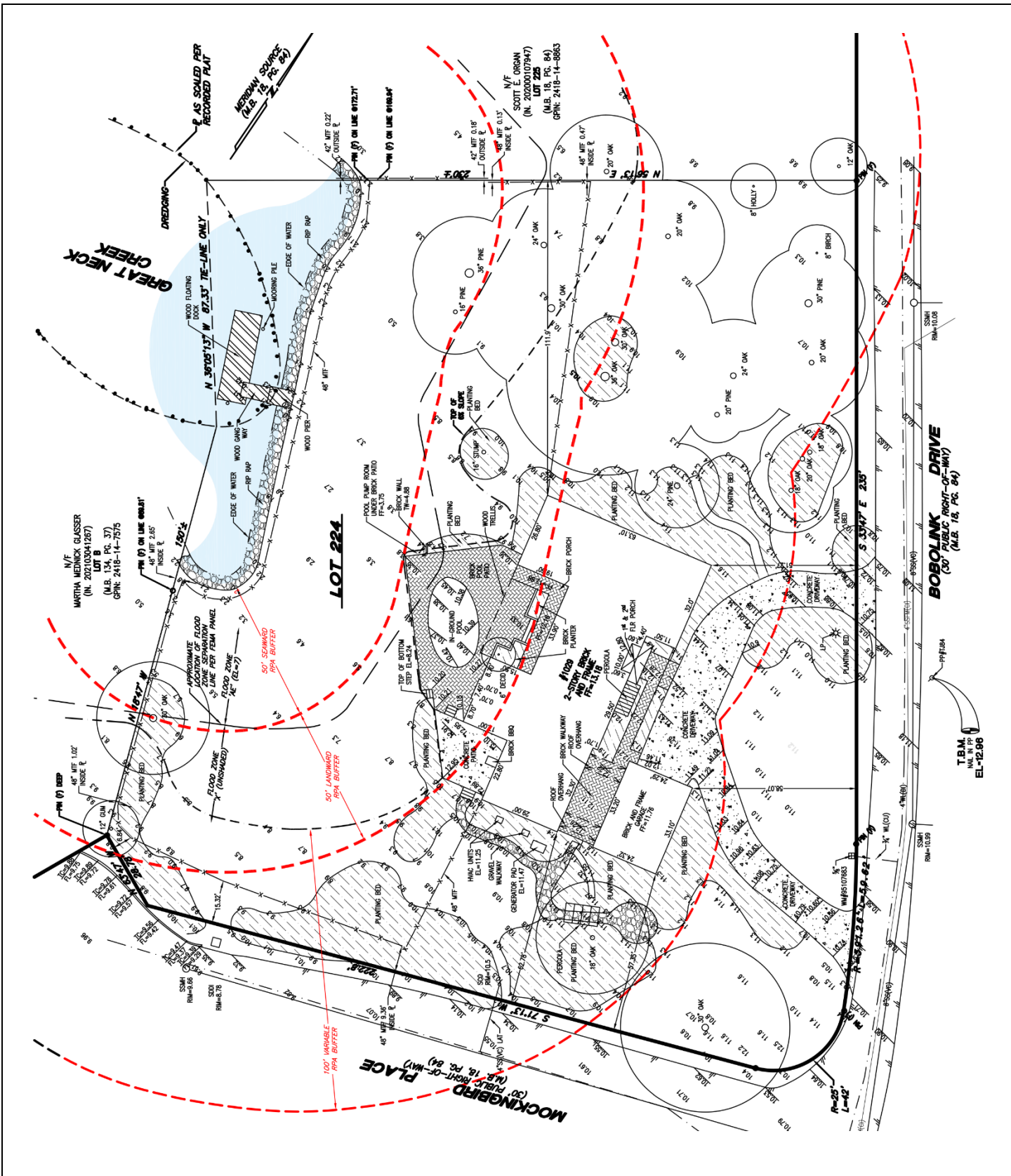
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

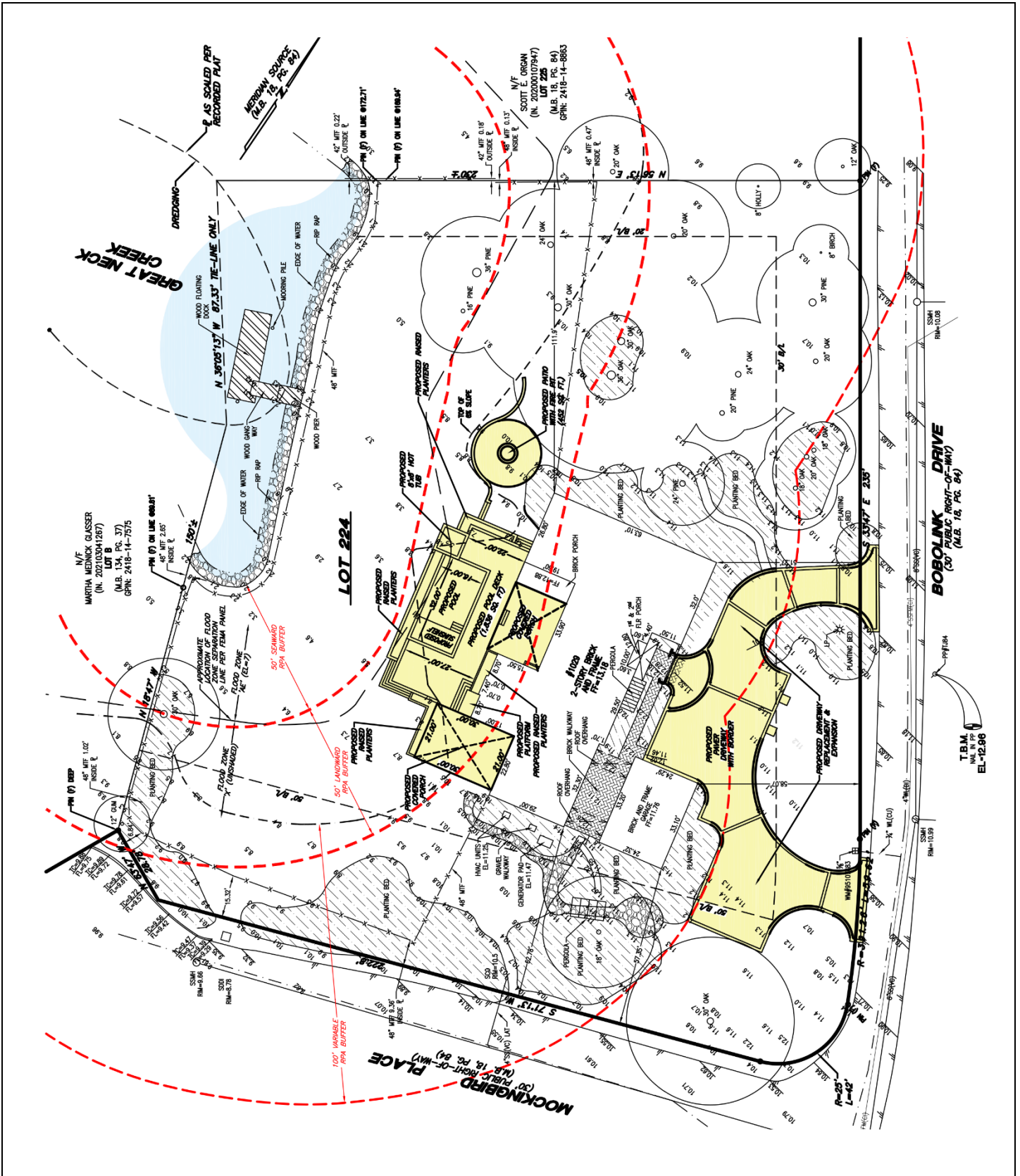
Site Aerial



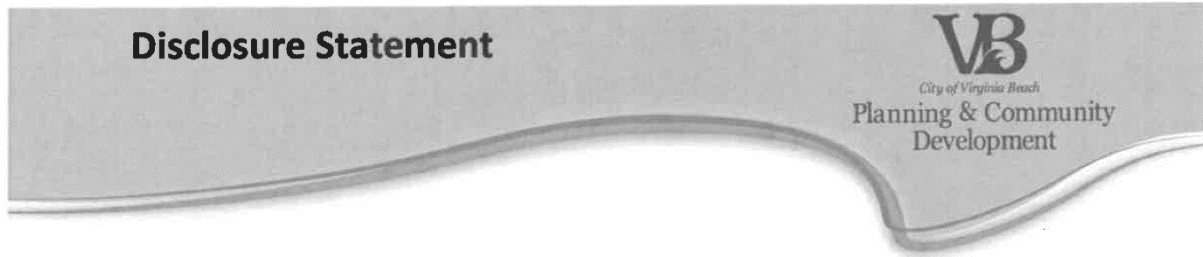
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name Jennifer George Ward

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington, GPC, Inc

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

Atlantic Coast Mortgage, LLC

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

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

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

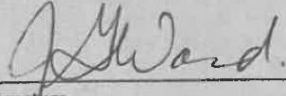
- If yes, identify the firm and individual providing the service.
WPL

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

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

Applicant Signature

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



Applicant Signature
Jennifer George Ward

Print Name and Title

Date
8/25/22

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

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

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

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

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Applicant & Property Owner **Chanticleer Associates Limited Partnership & Pennsylvania Reality Group VA II, Inc.**
 Address **1416 Taureau Court, 1478 Petite Court & Ackiss Land, Sec B, Lots N, O, P, & Q**
 Public Hearing **October 3, 2022**
 City Council District **District 6**, formerly Beach

Agenda Item

3

The variance request is being deferred to the Monday, November 7, 2022 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to allow additional time to address Staff's concerns.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct clubhouse building with associated parking lot and walkways.

Applicant's Agent

Evan Waagen
 MSA, P.C.

Staff Planner

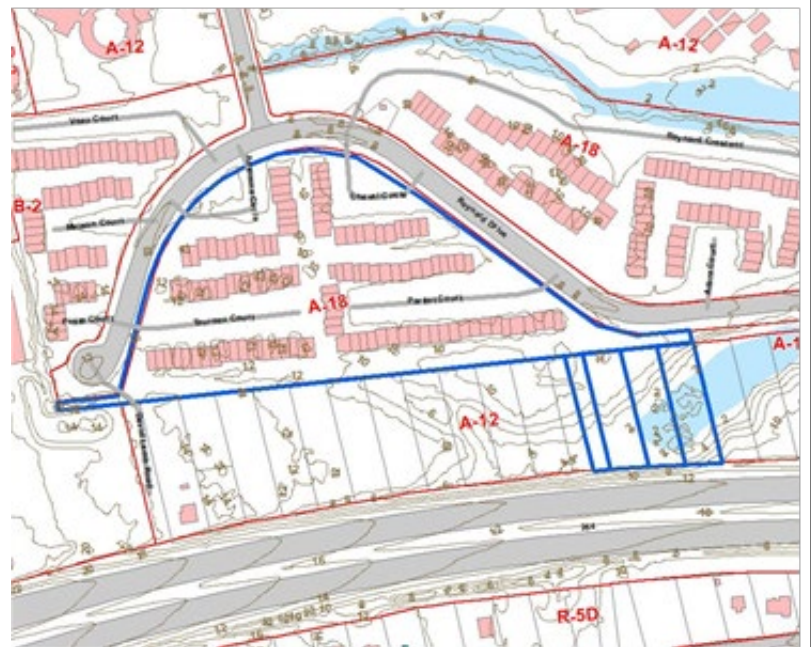
Cole S. Fisher

Lot Recordation

Map Book 67, Page 49

GPIN

2417-17-3946, 2417-17-4910, 2417-17-4976,
 2417-17-5942



Site Aerial





Applicant & Property Owner **Lee & Mary Murphy**
 Address **2712 Spigel Drive**
 Public Hearing **October 3, 2022**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, front porch, and driveway expansion.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultant. Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 74, Page 26
 Recorded 07/07/1967

GPIN

1498-52-4788

SITE AREA

46,151 square feet or 1.060 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

35,775 square feet or 0.821 acres

EXISTING IMPERVIOUS COVER OF SITE

8,226 square feet or 23 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,329 square feet or 23.3 percent of site

Area of Redevelopment in RPA

815 square feet

Area of New Development in RPA

193 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

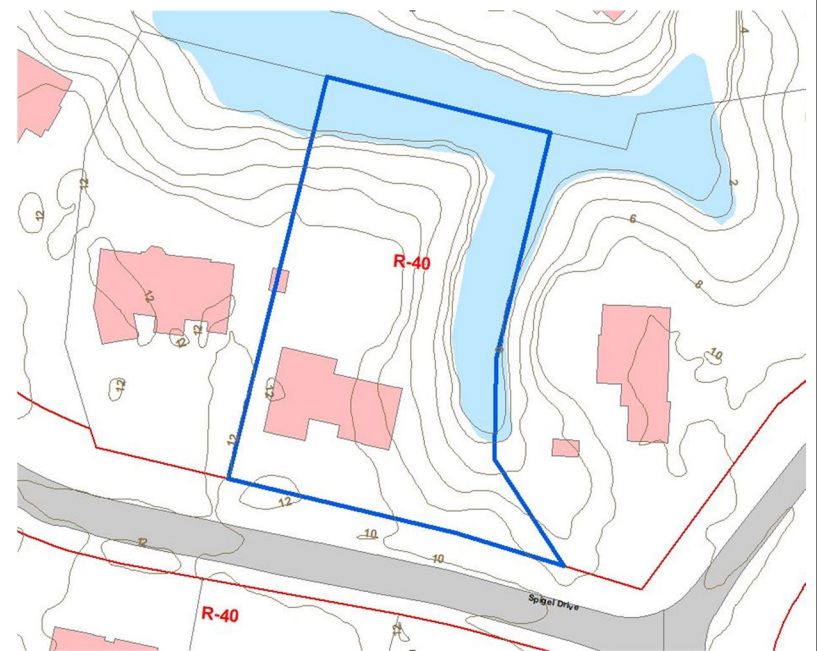
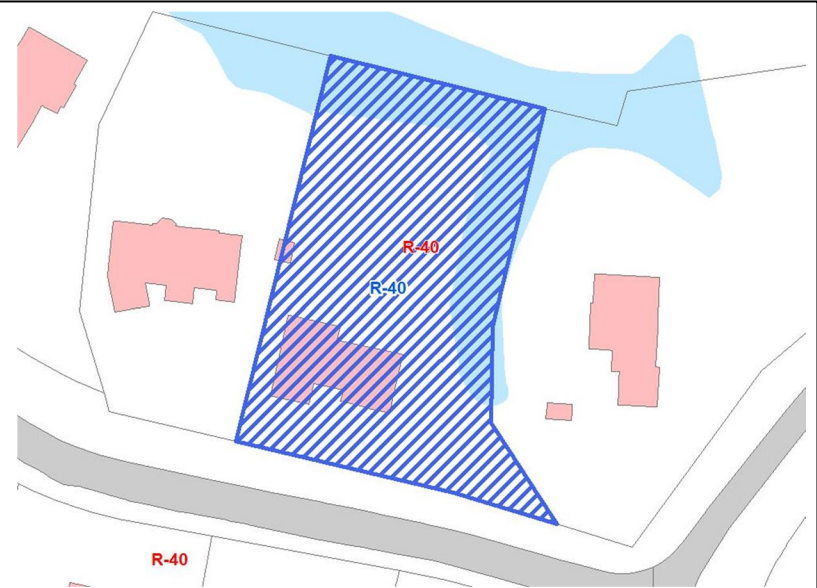
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



-Summary of Proposal

Demolition Details

- Portions of existing wood deck
- Concrete driveway with associated walk

Construction Details

- Enclosed screen porch over existing deck
- Front porch addition
- Replace and expand existing driveway

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is stabilized by a timber bulkhead.

Riparian Buffer

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant proposes to construct a new front porch with associated walkway and a screened porch over the existing deck at the rear of the residence. Also associated with this variance request is the redevelopment and expand the existing concrete driveway. As proposed, this variance request utilizes 815 square feet of redevelopment over existing impervious cover and adds approximately 193 square feet of new impervious cover in the Resource Protection Area (RPA) due to the front porch addition and walkway within the 100-foot Resource Protection Area (RPA).

Lee & Mary Murphy

Agenda Item 4

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Staff is of the opinion that the proposed improvements as situated on the lot does not pose a substantial detriment to water quality given the recommended conditions below.

The following comments are offered relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent 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 1968 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“we have designed the improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed layout of the improvements. Staff offers that the location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offers stormwater mitigation for the bay. If approved, the owner will install stormwater mitigation and naturalized planting/buffer areas to improve water quality.”* As previously mentioned, Staff is of the opinion that the proposed changes with this variance request is not of substantial detriment to water quality. As the agent indicated in the WQIA, this variance request has minimal land disturbance to the property and with the proposed mitigation methods, the project provides additional benefits to the water quality of the Chesapeake Bay.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention & naturalized planting/buffer will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant’s approach to ensure a no net increase in nonpoint source pollution is acceptable. These management techniques include bioretention stormwater bed plantings within the riparian buffer to slow and treat the on-site stormwater runoff before entering the river.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 400 square feet of buffer shall be installed for the proposed new impervious cover within the RPA.

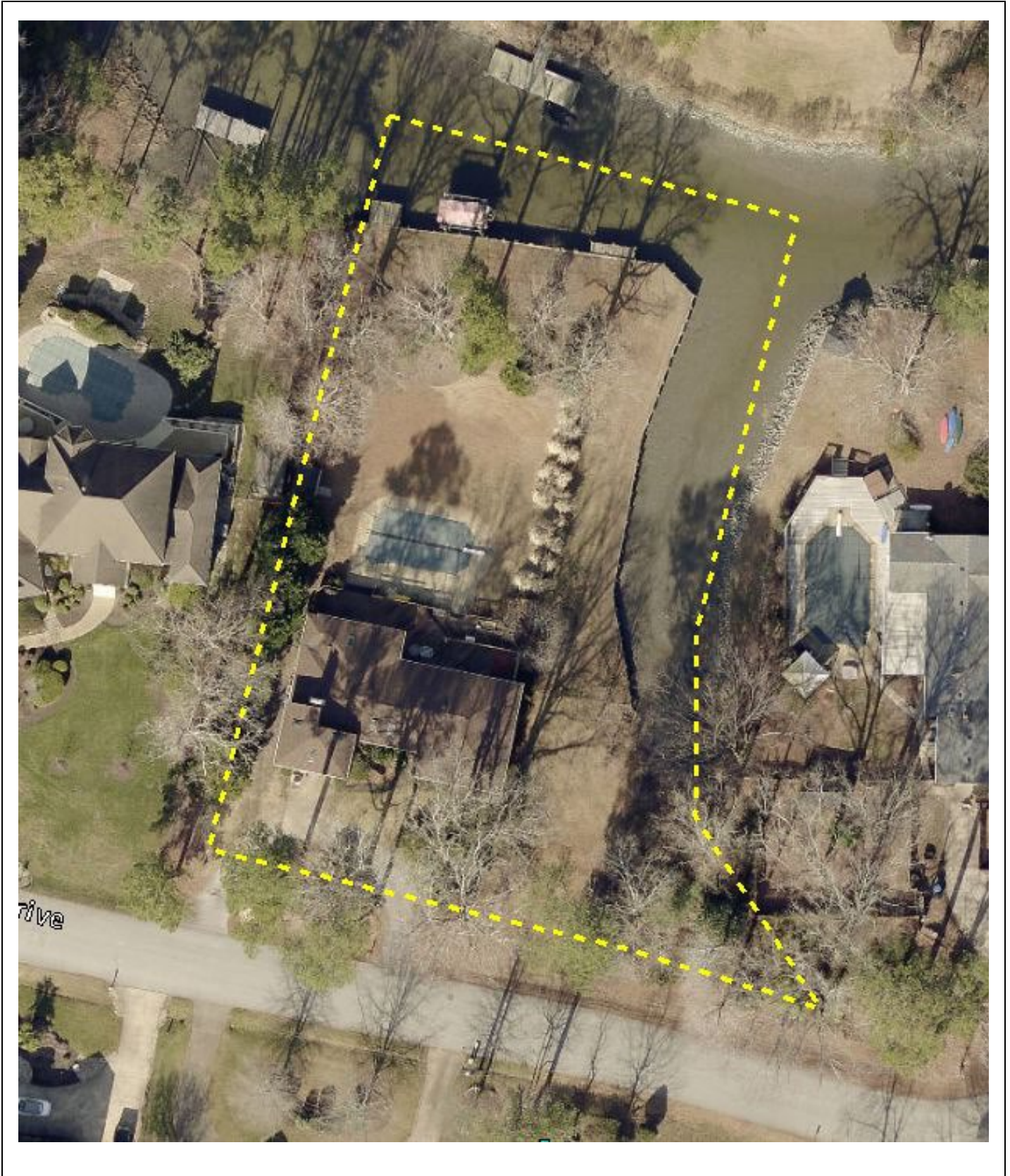
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

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

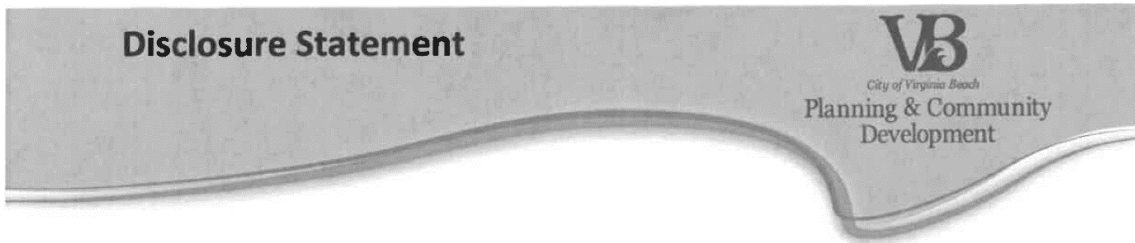
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. 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.

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

Site Aerial



Disclosure Statement



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

Applicant Disclosure

Applicant Name Lee D Murphy & Mary S Murphy

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington, GPC, Inc

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

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

Yes **No**

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

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

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

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

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

WPL & Progressive R & D (Ken Kirby)

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

Applicant Signature

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

Applicant Signature

Lee D Murphy and/or Mary S Murphy

Print Name and Title

09-06-2022

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



Applicant & Property Owner **Francis & Lauren Cuozzo**
Address **3281 Doncaster Road**
Public Hearing **October 3, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

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

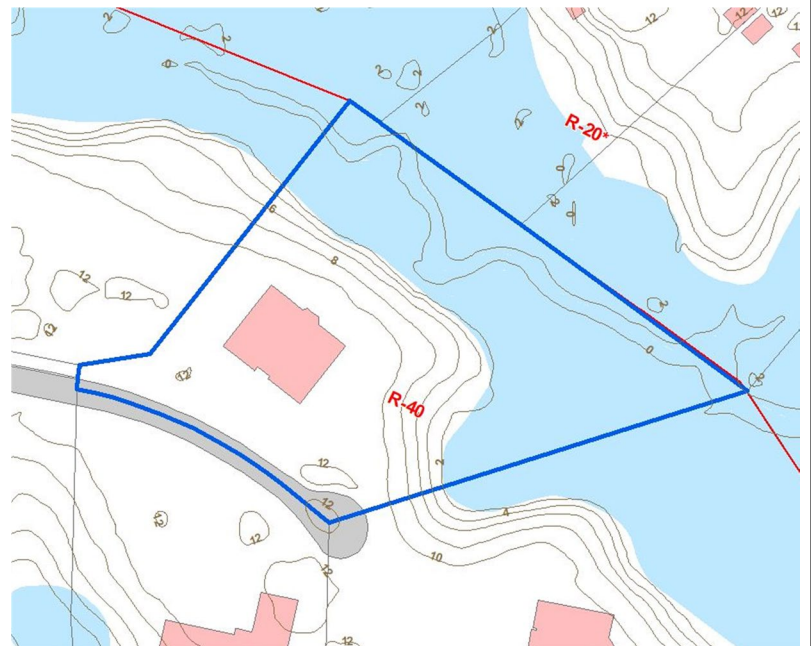
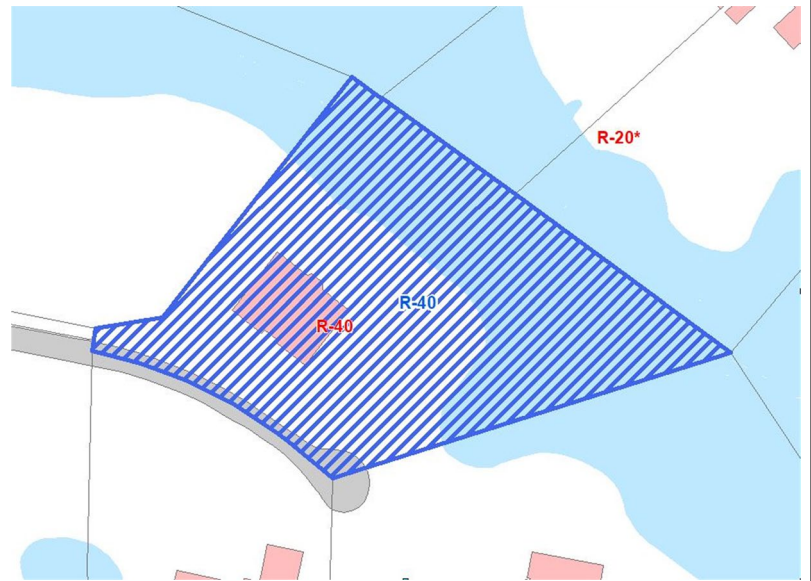
50-foot Seaward Buffer
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



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 drainpipes 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 the swimming pool patio area and surround, located primarily within the 50-foot seaward buffer of the Resource Protection Area (RPA). The applicant desires 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.

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 be 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. 400 square feet of buffer restoration shall be installed within the RPA.

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.

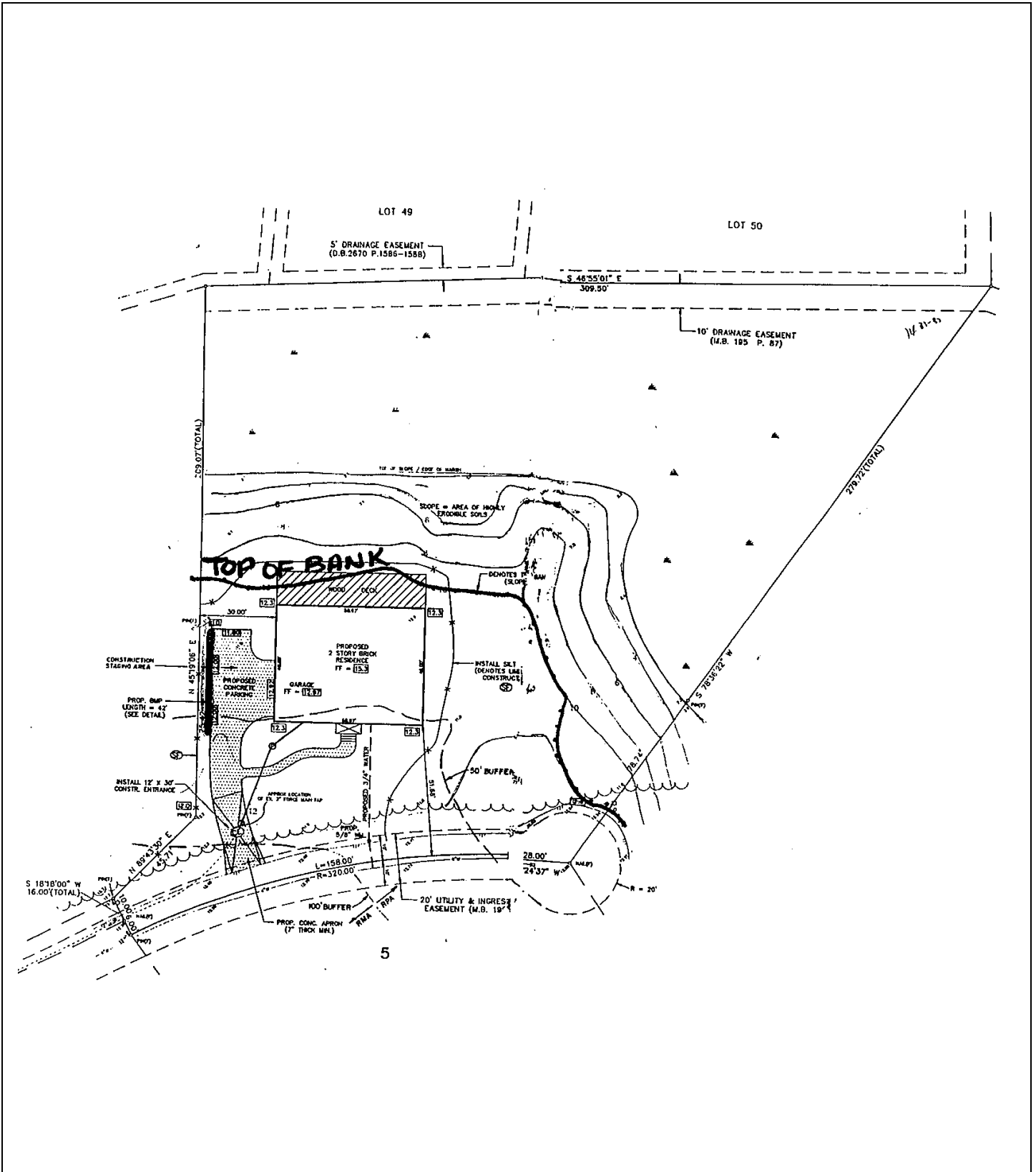
Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted 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.

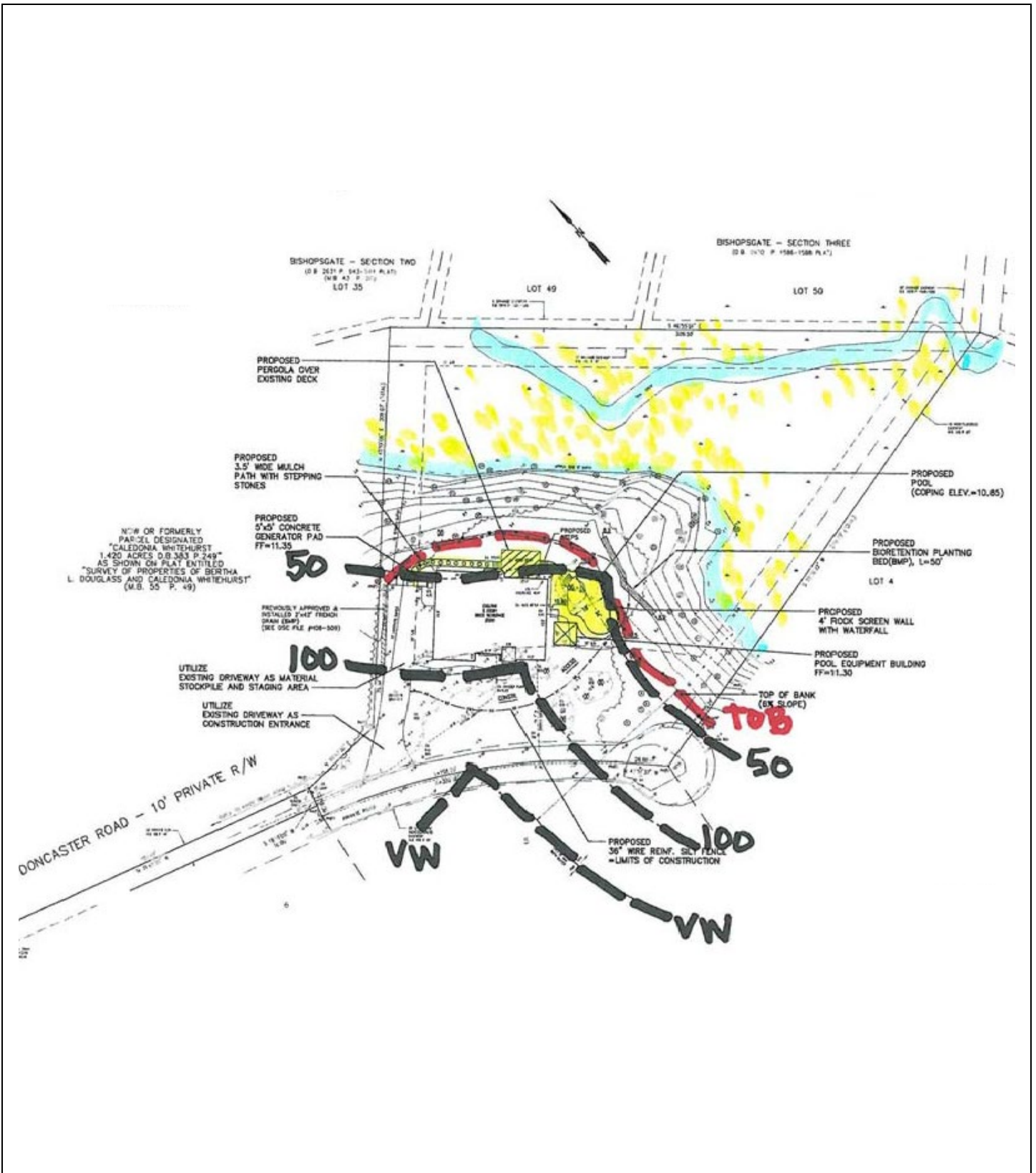
Site Aerial





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December 19, 2012 CBPA Board Variance Exhibit

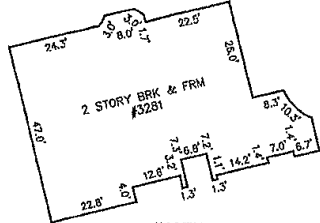


CBPA Exhibit – Existing Conditions

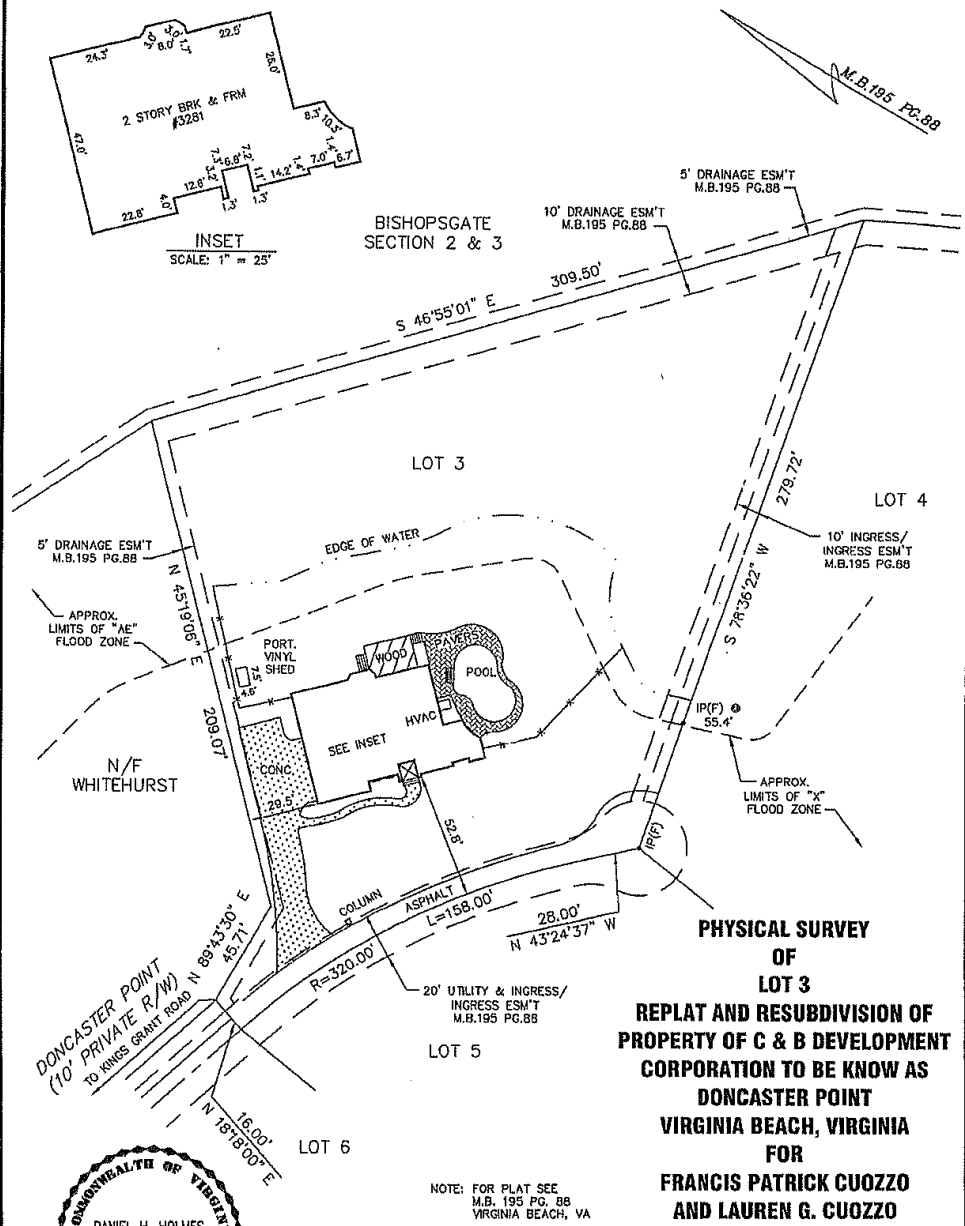
THIS IS TO CERTIFY THAT I, ON JULY 27, 2020, SURVEYED THE PROPERTY SHOWN HEREON AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE AS SHOWN HEREON. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

SIGNED: *[Signature]*

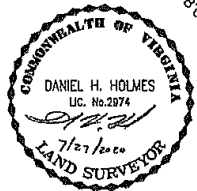
- NOTES:**
- 1) THE PROPERTY SHOWN HEREON APPEARS TO LIE IN "X" (UNSHADED) & "AE" (8.0) FLOOD ZONE ACCORDING TO F.E.M.A. MAP PANEL NO. 515531-0102G REVISED JAN. 18, 2015.
 - 2) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT, AND MAY NOT SHOW ANY/ALL EASEMENTS AFFECTING THE PROPERTY.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



INSET
SCALE: 1" = 25'



**PHYSICAL SURVEY
OF
LOT 3
REPLAT AND RESUBDIVISION OF
PROPERTY OF C & B DEVELOPMENT
CORPORATION TO BE KNOWN AS
DONCASTER POINT
VIRGINIA BEACH, VIRGINIA
FOR
FRANCIS PATRICK CUOZZO
AND LAUREN G. CUOZZO**



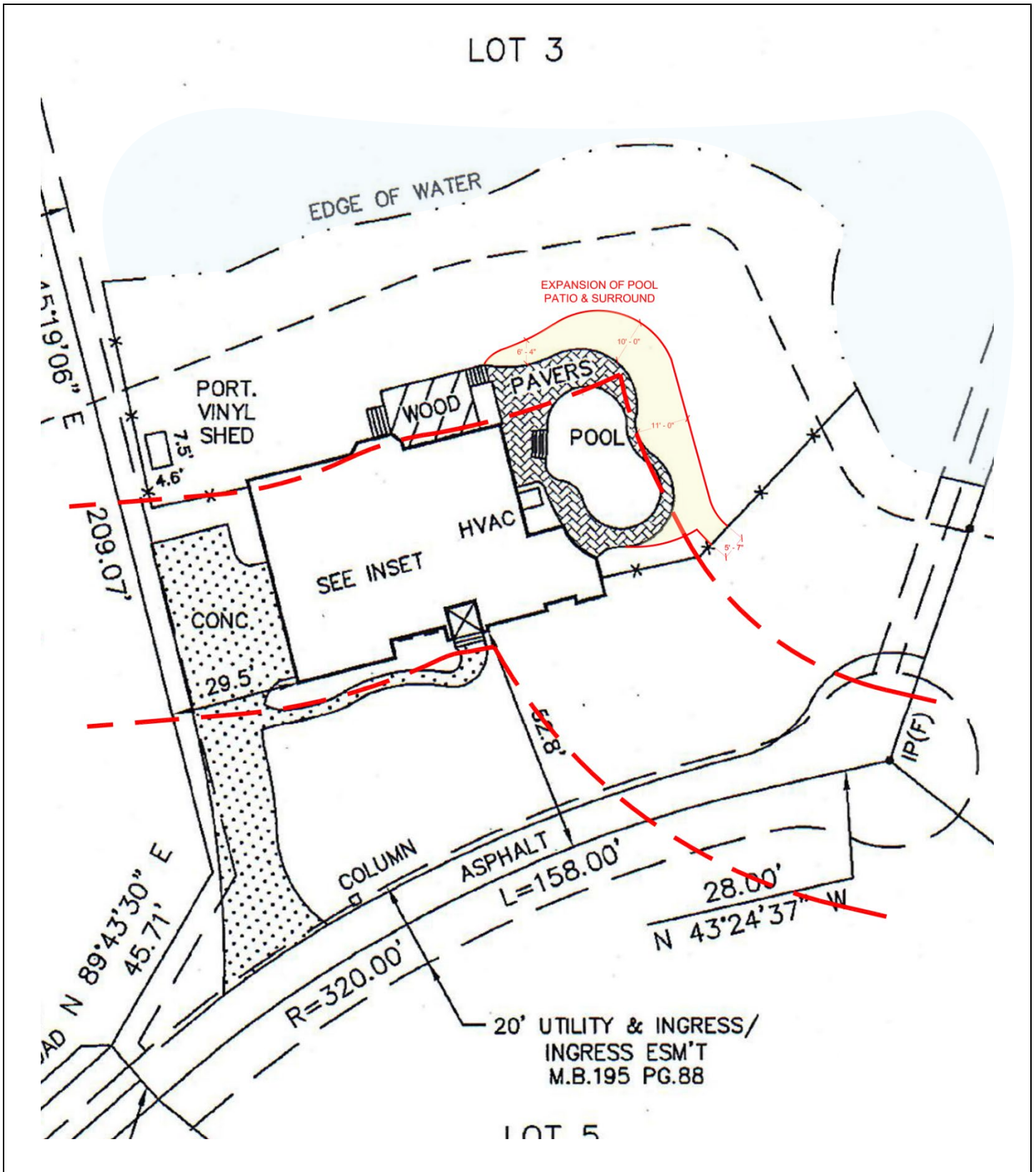
**WARD M. HOLMES
LAND SURVEYOR, P.C.**
0225 GRANBY STREET
NORFOLK, VA 23503
PHONE: 757-480-1230
FAX: 757-683-7390

DATE: JULY 27, 2020	SHEET 1 OF 1
SCALE: 1" = 40'	
DRAWN BY: WTL	
JOB NO. 20-665	

1020/21

(4854)

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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


Disclosure Statement



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

AS NEEDED, PAGE LEFT BLANK



Address of Noncompliance **3281 Doncaster Road**
Property Owner **Francis & Lauren Cuozzo**
Public Hearing **October 3, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

6

Noncompliance with the CBPA Ordinance

Development within the Resource Protection Area (RPA) buffer that deviates from the conditions of the December 19, 2012 CBPA Board variance. Constructed an after-the-fact paver patio expansion to the existing swimming pool surround.

Restoration Hearing

Noncompliance found. On September 8, 2022 the Chesapeake Bay Preservation Area (CBPA) Board made a finding of noncompliance with the provisions of the CBPA Ordinance for the unauthorized improvements.

A civil charge was not imposed to the property owner. A Restoration Hearing was ordered by the CBPA Board for the property owner – Francis & Lauren Cuozzo.

Lot Description

Lot 3, Bishopgate

Lot Recordation

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

GPIN

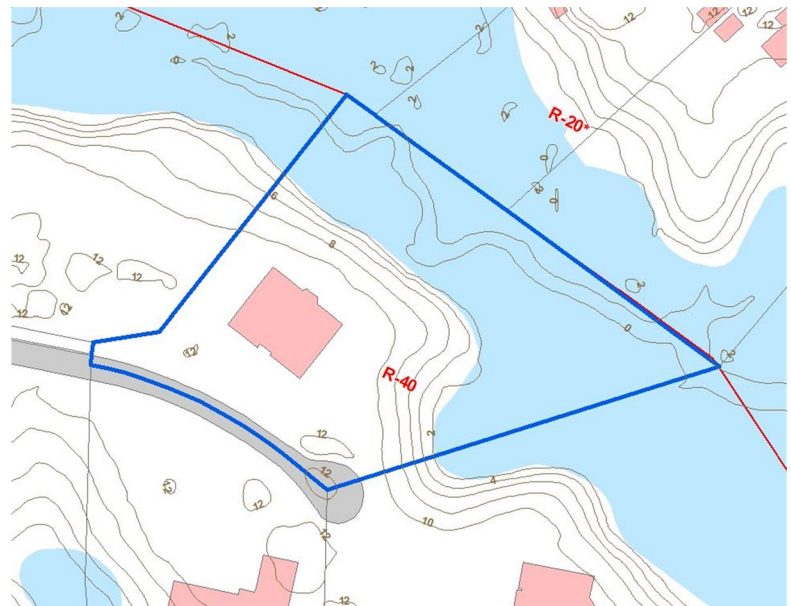
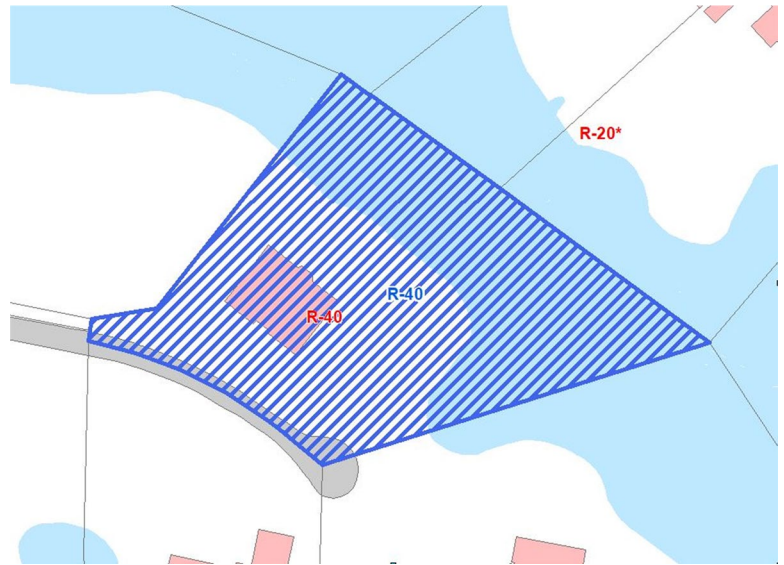
1498-01-4329

Applicant's Agent

Ryan Early
Solid Structures

Staff Planner

Cole S. Fisher



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

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 drainpipes 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.

History of Noncompliance

To Staff's knowledge, Francis & Lauren Cuozzo have no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot. In addition, the CBPA variances granted for the property on August 26, 1996 and December 19, 2012 were obtained by previous property owners.

Chronology of Noncompliant Event

July 11, 2020	Staff received a Chesapeake Bay Preservation Area (CBPA) Board variance application for the expansion of a previously approved pool patio surround.
August 1, 2022	At the CBPA Board Public Hearing it was determined that the improvements being constructed at the property referenced above deviate from the conditions of the December 19, 2012 CBPA Board variance.
August 15, 2022	Staff sent written notice to the property owner to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, September 8, 2022 for a show cause hearing.
September 8, 2022	Show Cause hearing was held and a noncompliance found. A motion was made at the September 8, 2022 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance. A civil charge was not imposed to the property owner. A Restoration Hearing for the October 3, 2022 public hearing was ordered by the CBPA Board for the property owner – Francis & Lauren Cuozzo.

Evaluation and Recommendation

The subject area of the unauthorized building expansion occurred within the 50-foot seaward and 50-foot landward buffer of the Resource Protection Area (RPA) of the Chesapeake Bay watershed adjacent to a tidal waterway. Staff estimates that the area of land disturbance associated with the unauthorized improvements is less than 2,500 with most of the land disturbance for the unauthorized improvements defined by the associated construction footprint of the unauthorized paver expansion.

Should the Board approve the aforementioned agenda item 5 after-the-fact CBPA variance request, Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives. However, should the after-the-fact application be denied, Staff recommends that the unauthorized improvements be removed, the site restored to the original conditions prior to the unauthorized construction activity, and the area of land disturbance stabilized with vegetative cover within 30 days from the date of the October 3, 2022 CBPA Board public hearing.

Site Aerial





Applicant of Noncompliance **2871 River Road**
Property Owner **Dennis & Janice Ellmer**
Public Hearing **October 3, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

7

Request

Reopen the show cause hearing for the property located at 2871 River Road.

Current Property Owner

Dennis and Janice Ellmer

Staff Planner

PJ Scully

Lot Recordation

Map Book 32, Page 18
Recorded 07/14/1952

Lot Description

Lot 6A, River and N. Shorehaven Waterfront

GPIN

1499-41-4751

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf

Location of Unauthorized Improvements

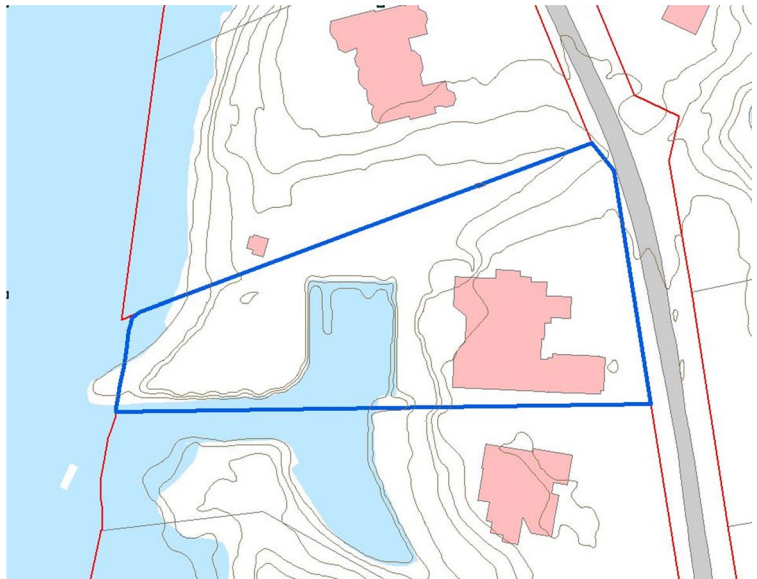
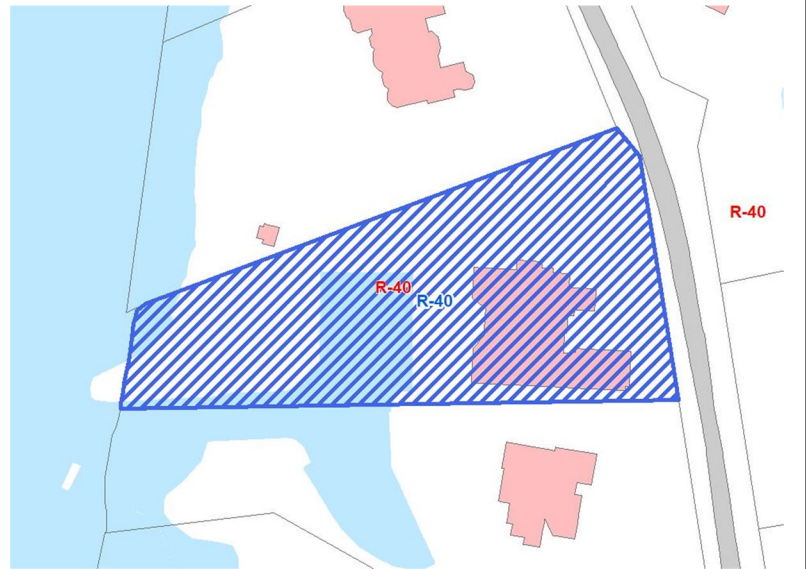
50-foot Seaward Buffer
50-foot Landward Buffer

CBPA Ordinance

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

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet



CBPA Ordinance Variance History

On November 24, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a single-family residence with the following conditions:

- 1. A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
- 2. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
- 3. Construction limits shall lie a maximum of 15' outboard of the project.*
- 4. All construction access ways shall be noted on the site plan, as well as the stockpile staging area. This condition applies to the demolition phase of the project as well.*
- 5. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$ 2,865.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 3,126 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
- 6. The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
- 7. All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
- 8. When the shoreline is hardened, a sloped revetment shall be installed along the northern and eastern portions of the project. In addition, a marsh toe breakwater revetment shall be installed seaward of the proposed marsh. Tidal marsh compensation shall be approximately 1,500 square feet. A Joint Permit Application will be necessary.*
- 9. Buffer restoration shall be installed equal to 125% of proposed impervious cover (15,629 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
- 10. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
- 11. No less than 17 trees shall be installed on-site.*
- 12. Pool decking shall be a maximum of 4'x4'x4'x8' (diving board end).*
- 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.*

On July 23, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a four-foot-high brick fence, auxiliary parking area, ornamental fence / knee wall along ROW, automatic gate, 225' by 6'

paver walkway, 4' solid brick wall with brick columns, steppingstone pathways, short masonry retaining walls with backfill, stone storage area, retaining wall on the northern side of the residence, and tree removal (19). with the following conditions:

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Construction limits shall lie a maximum of 15' outboard of the project.*
5. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area.*
6. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$709.00 and is based on 25% of the new impervious cover above that previously authorized. Said payment shall provide for the equivalent of an approximate 774 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
7. *The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
8. *All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
9. *Buffer restoration shall be installed equal to 125% of proposed impervious cover and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan. Buffer restoration shall be extended to run parallel to the bulkhead, minimum 4' wide buffer where turf meets bulkhead.*
10. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
11. *No less than eighty (80) trees shall be installed. Said trees shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable.*
12. *The proposed paver walkway shall be a maximum of 4' in width and shall be comprised of organic material or its equivalent.*
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. *Conditions in addition to other variance conditions imposed.*
15. *It is the Boards opinion that the impervious cover approved is the maximum the lot can support.*

History of Noncompliance

To Staff's knowledge, Dennis and Janice Ellmer has no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

Chronology of Noncompliant Event

August 8, 2022	City Staff visited the property located at 2871 River Road to investigate an inquiry regarding land disturbance occurring on the property.
August 15, 2022	Staff sent written notice to the property owner to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, September 8, 2022 for a show cause hearing.
September 8, 2022	<p>Show Cause hearing was held and a noncompliance found. A motion was made at the September 8, 2022 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance. The Board determined that the relative degree of deviation for the subject activity of noncompliance was high and the environmental impact to be high.</p> <p>A civil charge of \$10,000 was imposed at the September 8, 2022 CBPA Board public hearing to the property owner. A Restoration Hearing was ordered by the CBPA Board for the property owner, Dennis & Janice Ellmer to be 60 to 90 days from the September 8, 2022 CBPA Board public hearing.</p>
September 14, 2022	Staff received an email from a CBPA Board member informing that a motion to reopen the show cause hearing for 2871 River Road will be made at the October 3, 2022 CBPA Board public hearing.

Evaluation and Recommendation

Relative Degree of Deviation

Staff write-up from the September 8th, 2022 show cause hearing.

"The subject activity of noncompliance, land disturbance associated with the installation of synthetic turf was performed without obtaining a variance to the Chesapeake Bay Preservation Area Ordinance.

Land disturbance associated with the noncompliance appears to be greater than 2,500 square feet."

Environmental Impact

Staff write-up from the September 8th, 2022 show cause hearing.

"The subject area of noncompliance occurred within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area, Resource Protection Area (RPA) adjacent to a contiguous tidal wetland of a tidal waterway. All associated land disturbance has occurred in areas that were devoted to turf. No woody vegetation has been removed."

Recommendation

Staff's recommendation at the September 8, 2022 show cause hearing for the noncompliance activities at 2871 River Road was that the degree of deviation or noncompliance has been low and the environmental impact has been low.

Dennis & Janice Ellmer

Agenda Item 7

Page 72

After deliberating the show cause, the CBPA Board found that the relative degree of deviation for the subject activity of noncompliance was high and the environmental impact to be high. Since the September 8, 2022 CBPA Board public hearing Staff received correspondence from a CBPA Board member stating that they intend to make a motion at the Monday, October 3, 2022 CBPA Board public hearing to reopen the show cause hearing regarding the matter of noncompliance at 2871 River Road. Should the motion to reopen the show cause hearing be approved by the CBPA Board, then the show cause may be redeliberated. Should the motion fail the findings from the September 8, 2022 CBPA Board public hearing stand.

Site Aerial





Applicant of Noncompliance **2871 River Road**
Contractor Name **Kaitlyn Lord, SYNLawn**
Public Hearing **October 3, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

8

Request

Reopen the show cause hearing for the property located at 2871 River Road.

Property Owner's Contractor

Kaitlyn Lord
SYNLawn

Staff Planner

PJ Scully

Lot Recordation

Map Book 32, Page 18
Recorded 07/14/1952

Lot Description

Lot 6A, River and N. Shorehaven Waterfront

GPIN

1499-41-4751

Current Property Owner

Dennis and Janice Ellmer

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

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Location of Unauthorized Improvements

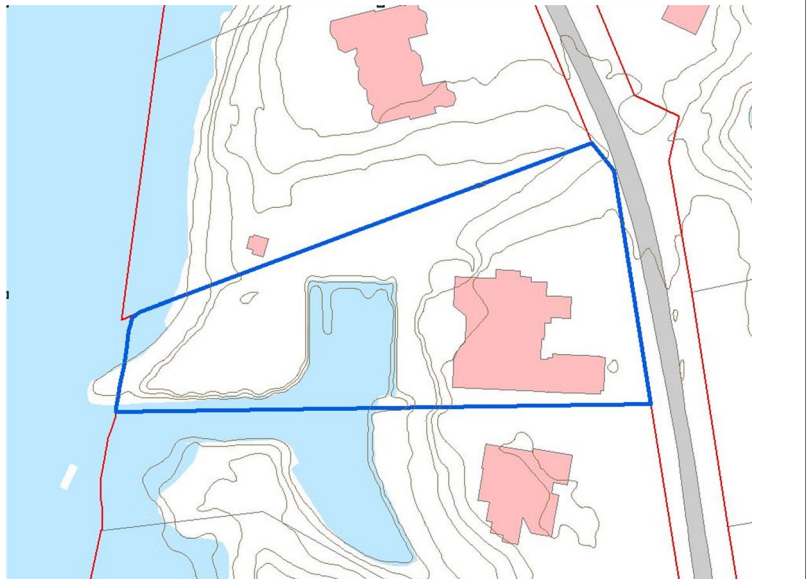
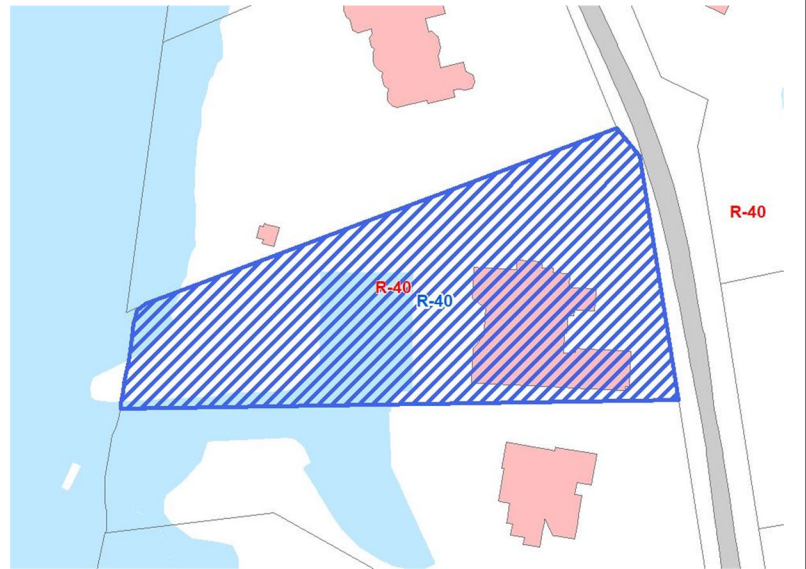
50-foot Seaward Buffer
50-foot Landward Buffer

CBPA Ordinance

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

AMOUNT OF LAND DISTURBANCE

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CBPA Ordinance Variance History

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- 1. A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
- 2. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
- 3. Construction limits shall lie a maximum of 15' outboard of the project.*
- 4. All construction access ways shall be noted on the site plan, as well as the stockpile staging area. This condition applies to the demolition phase of the project as well.*
- 5. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$ 2,865.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 3,126 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
- 6. The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
- 7. All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
- 8. When the shoreline is hardened, a sloped revetment shall be installed along the northern and eastern portions of the project. In addition, a marsh toe breakwater revetment shall be installed seaward of the proposed marsh. Tidal marsh compensation shall be approximately 1,500 square feet. A Joint Permit Application will be necessary.*
- 9. Buffer restoration shall be installed equal to 125% of proposed impervious cover (15,629 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
- 10. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
- 11. No less than 17 trees shall be installed on-site.*
- 12. Pool decking shall be a maximum of 4'x4'x4'x8' (diving board end).*
- 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.*

On July 23, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a four-foot-high brick fence, auxiliary parking area, ornamental fence / knee wall along ROW, automatic gate, 225' by 6'

paver walkway, 4' solid brick wall with brick columns, steppingstone pathways, short masonry retaining walls with backfill, stone storage area, retaining wall on the northern side of the residence, and tree removal (19). with the following conditions:

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Construction limits shall lie a maximum of 15' outboard of the project.*
5. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area.*
6. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$709.00 and is based on 25% of the new impervious cover above that previously authorized. Said payment shall provide for the equivalent of an approximate 774 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
7. *The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
8. *All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
9. *Buffer restoration shall be installed equal to 125% of proposed impervious cover and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan. Buffer restoration shall be extended to run parallel to the bulkhead, minimum 4' wide buffer where turf meets bulkhead.*
10. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
11. *No less than eighty (80) trees shall be installed. Said trees shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable.*
12. *The proposed paver walkway shall be a maximum of 4' in width and shall be comprised of organic material or its equivalent.*
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. *Conditions in addition to other variance conditions imposed.*
15. *It is the Boards opinion that the impervious cover approved is the maximum the lot can support.*

History of Noncompliance

To Staff's knowledge, SYNLawn has no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

Chronology of Noncompliant Event

August 8, 2022	City Staff visited the property located at 2871 River Road to investigate an inquiry regarding land disturbance occurring on the property.
August 15, 2022	Staff sent written notice to the contractor to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, September 8, 2022 for a show cause hearing.
September 8, 2022	<p>Show Cause hearing was held and a noncompliance found. A motion was made at the September 8, 2022 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance. The Board determined that the relative degree of deviation for the subject activity of noncompliance was high and the environmental impact to be high.</p> <p>A civil charge of \$10,000 was imposed at the September 8, 2022 CBPA Board public hearing to the contractor.</p>
September 14, 2022	Staff received an email from a CBPA Board member informing that a motion to reopen the show cause hearing for 2871 River Road will be made at the October 3, 2022 CBPA Board public hearing.

Evaluation and Recommendation

Relative Degree of Deviation

Staff write-up from the September 8th, 2022 show cause hearing.

"The subject activity of noncompliance, land disturbance associated with the installation of synthetic turf was performed without obtaining a variance to the Chesapeake Bay Preservation Area Ordinance.

Land disturbance associated with the noncompliance appears to be greater than 2,500 square feet."

Environmental Impact

Staff write-up from the September 8th, 2022 show cause hearing.

"The subject area of noncompliance occurred within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area, Resource Protection Area (RPA) adjacent to a contiguous tidal wetland of a tidal waterway. All associated land disturbance has occurred in areas that were devoted to turf. No woody vegetation has been removed."

Recommendation

Staff's recommendation at the September 8, 2022 show cause hearing for the noncompliance activities at 2871 River Road was that the degree of deviation or noncompliance has been medium and the environmental impact has been low.

After deliberating the show cause, the CBPA Board found that the relative degree of deviation for the subject activity of noncompliance was high and the environmental impact to be high. Since the September 8, 2022 CBPA Board public hearing Staff received correspondence from a CBPA Board member stating that they intend to make a motion at the Monday, October 3, 2022 CBPA Board public hearing to reopen the show cause hearing regarding the matter of noncompliance at 2871 River Road. Should the motion to reopen the show cause hearing be approved by the CBPA Board, then the show cause may be redeliberated. Should the motion fail the findings from the September 8, 2022 CBPA Board public hearing stand.

Site Aerial



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