



Chesapeake Bay Preservation Area Board Agenda

December 5, 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, December 5, 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 **December 5, 2022**

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

ADMINISTRATIVE AGENDA ITEMS

- 1. Election of 2023 Chesapeake Bay Preservation Area Board Officers**
Chairman, Vice Chairman and Secretary

Staff Report – page 7

OLD BUSINESS AGENDA ITEMS

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

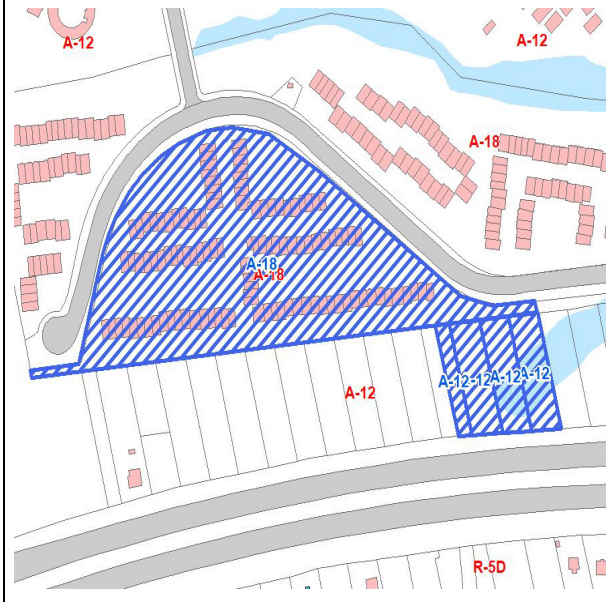
1416 Taureau Ct, 1478 Petite Ct & Ackiss Land, Sec B, Lots N, O, P, & Q

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 9



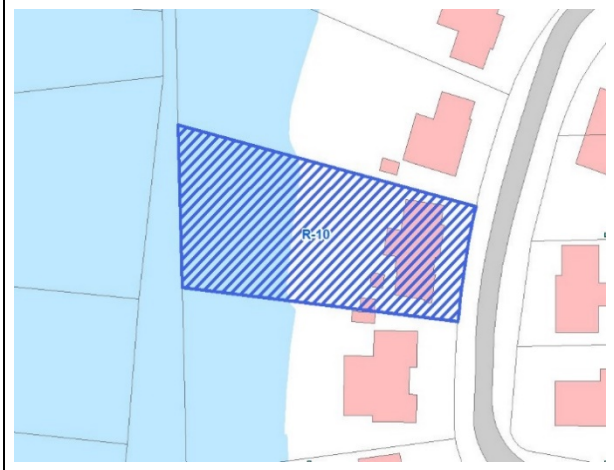
- 3. Doan Van Nguyen**
[Applicants & Property Owners]

3525 N Crestline Drive
GPIN 1456-29-0579

City Council District: District 1, formerly Kempsville
Accela Record: 2022-CBPA-00063

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

Staff Planner – Cole Fisher
Staff Report – page 25



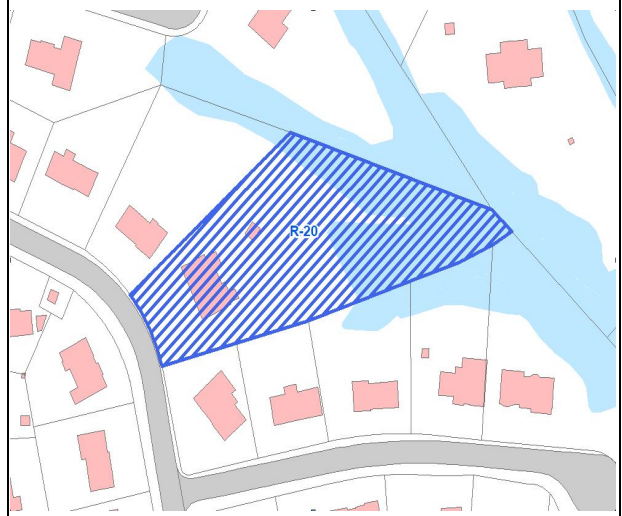
NEW BUSINESS AGENDA ITEMS

4. Patrick & Ashley Holmes
[Applicants & Property Owners]

832 Bishopgate Ln
GPIN 1498-02-6405
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00064

Variance Request – Encroachment into the RPA to construct a pool surround with retaining walls and pool house.

Staff Planner – Cole Fisher
Staff Report – page 35



5. Romeo Spino
[Applicants & Property Owners]

2021 Thomas Bishop Ln
GPIN 1499-56-4825
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00065

Variance Request – Encroachment into the RPA to construct a swimming pool, patio, redevelop driveway and construct new parking area.

Staff Planner – Cole Fisher
Staff Report – page 47

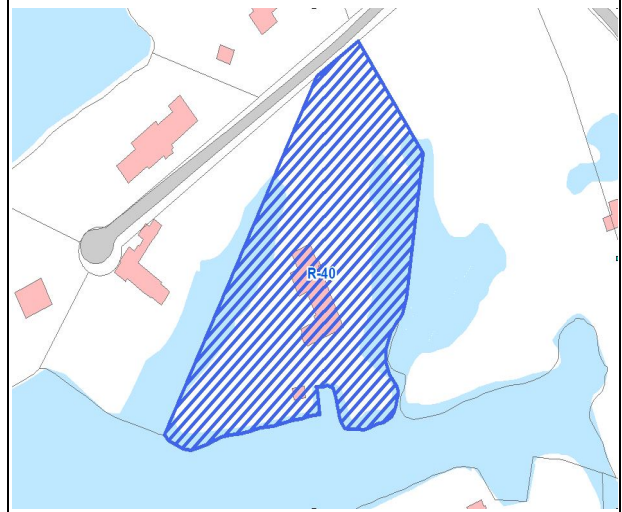


6. Jeffrey & Jennifer Stedfast
[Applicants & Property Owners]

100 Ridge Rd
GPIN 2418-55-4453
City Council District: District 6, formerly Beach
Accela Record: 2022-CBPA-00066

Variance Request – Encroachment into the RPA to construct a swimming pool, paver patio & hot tub, and associated retaining walls.

Staff Planner – Cole Fisher
Staff Report – page 49



NEW BUSINESS AGENDA ITEMS (CONTINUED)

7. Adam & Jill Rex

[Applicants & Property Owners]

Sea Breeze Trl, Lot 8, Subdivision of Sea Breeze Farm

GPIN 1489-72-2236

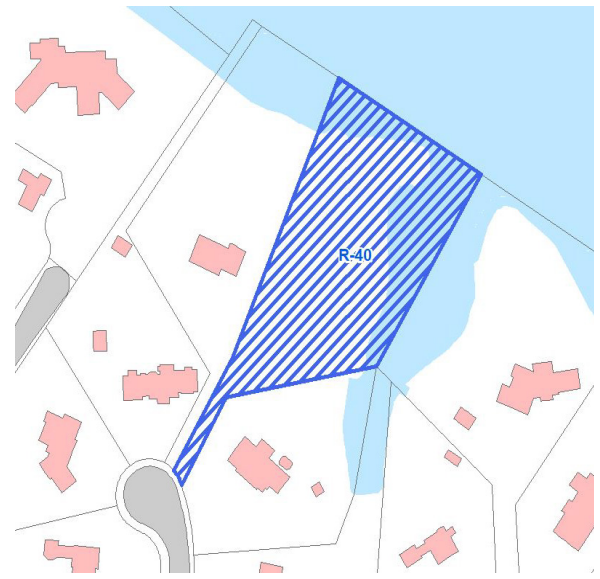
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00067

Variance Request – Encroachment into the RPA to construct a two-story single-family home with associated swimming pool, patio, walkways, and driveway/parking area.

Staff Planner – Cole Fisher

Staff Report – page 65



8. Luke & Stephanie Hillier

[Applicants & Property Owners]

2405 & 2409 Windward Shore Dr

GPINs 1499-98-7334 & 1499-98-6249

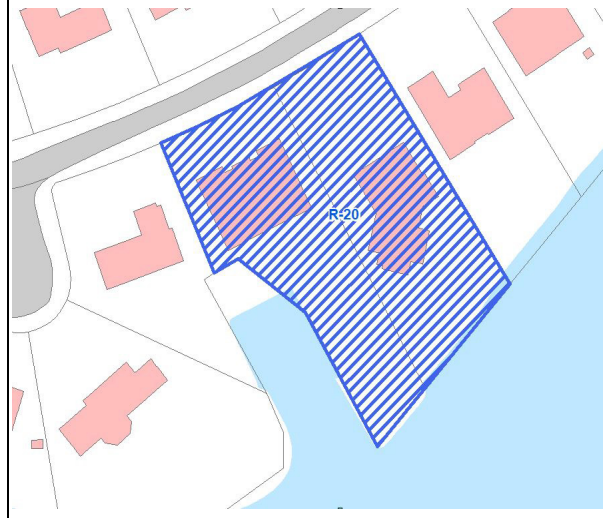
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00054

Variance Request – Encroachment into the RPA to construct a two-story addition, swimming pool, patio, deck, walkways, and driveway/parking area.

Staff Planner – Cole Fisher

Staff Report – page 81



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.

TENTATIVE 2023 CBPA BOARD PUBLIC HEARING DATES

Monday **January 23**
 Monday **February 27**
 Monday **March 27**
 Monday **April 24**
 Monday **May 22**
 Monday **June 26**

Monday **July 24**
 Monday **August 28**
 Monday **September 25**
 Monday **October 23**
 Monday **November 27**
 Thursday **December 28**

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2022 Chesapeake Bay Preservation Area Board Members

- Dave Jester, Chair
- Dave France, Vice Chair
- Casey Jones, Secretary
- June Barrett-McDaniels
- Bill Burnette
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

**2023 Chesapeake Bay Preservation Area Board
Election of Officers**

Chair
Vice Chair
Secretary

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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 **December 5, 2022**
 City Council District **District 6**, formerly Beach

Agenda Item
2

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

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 67, Page 49 & Map Book 12, Page 29
 Recorded 02/26/1966 & 11/10/1939

GPIN

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

SITE AREA

228,703 square feet or 5.25 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

195,186 square feet or 4.48 acres
 * Project area is 17,863 square feet

EXISTING IMPERVIOUS COVER OF SITE

*0 square feet or 0.0 percent of project area

PROPOSED IMPERVIOUS COVER OF SITE

*8,785 square feet or 49 percent of project area

Area of Redevelopment in RPA

1,306 square feet – within City ROW

Area of New Development in RPA

7,479 square feet

Location of Proposed Impervious Cover

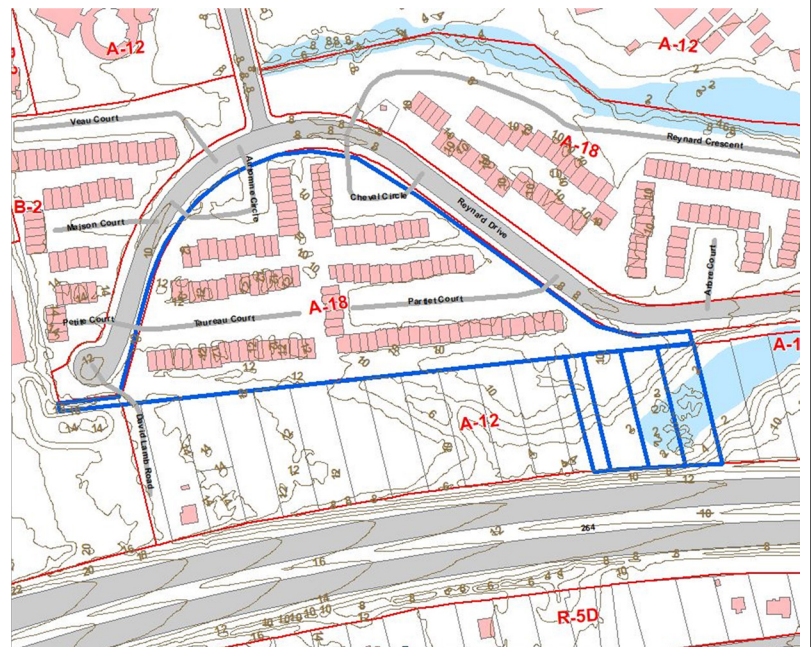
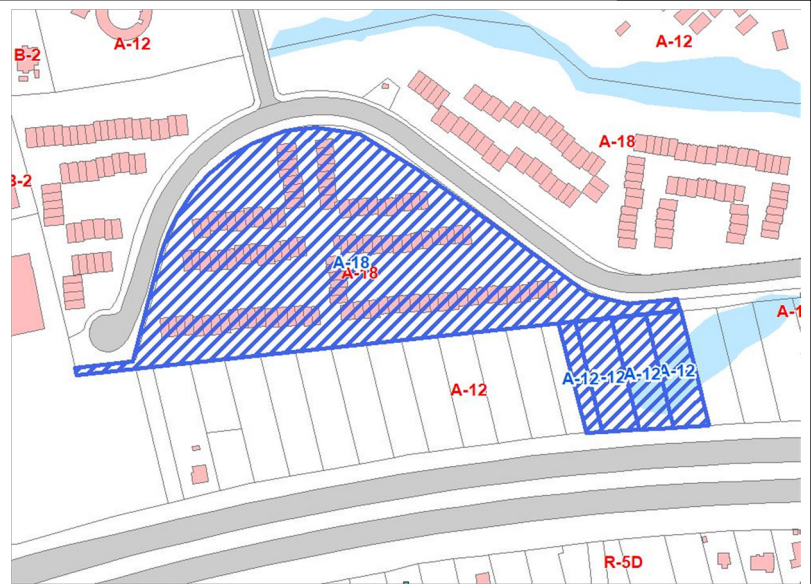
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Clubhouse events building for existing apartment complex
- Asphalt parking area with associated sidewalks

CBPA Ordinance Variance History

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

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

- October 3, 2022 CBPA Board Public Hearing

Environmental Conditions

Flood Zone

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

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

Nawney 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, specifically *Smilax rotundifolia* (Roundleaf Greenbrier).

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 14
- Number of existing understory trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of which 9 of the trees are located within the 100-foot variable width buffer of the RPA. Staff has coordinated with the Virginia Beach Parks and Recreation Landscape Management Division to identify nine trees that fall within the City's Right-Of-Way. Pursuant to the City's Urban Forestry Management Plan, to ensure minimal detrimental effects on the city's urban forest, mitigation for the nine trees proposed for removal shall be at a 3:1 ratio. When replacements are not feasible on a site, funds may be donated to a tree replacement planting account used for plantings trees elsewhere in the watershed. Staff is of the opinion that replacement is feasible on site. Recommended condition 4 is provided regarding the mitigation for the trees being removed within the City's right-of-way in addition to the required buffer restoration.

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 preservation of the existing riparian buffer will be provided as a best management practice for stormwater run-off mitigation.

Chanticleer Associates Limited Partnership & Pennsylvania Reality Group VA II, Inc.

Agenda Item 2

Page 10

In July 2022 a presubmittal meeting was held with City Staff to discuss the proposed improvements. During the meeting Development Services Center (DSC) Stormwater Engineering provided comment regarding the existing 15-foot drainage easement. The 15-foot drainage easement may not be vacated, and the applicant's Engineer of record will address detailed drainage patterns so that existing stormwater flow patterns are not obstructed during site plan review with the DSC.

Evaluation and Recommendation

The applicant is proposing to construct a private use clubhouse building for the purpose of serving the adjacent apartment complex. Prior to the submittal of the Chesapeake Bay Preservation Area (CBPA) variance application, Staff held a pre-submittal meeting with the applicant and applicant's agent to discuss said improvements. Zoning Administration, Comprehensive Planning, Planning Administration, Development Services Center (DSC), Park & Recreation, Traffic Engineering, Public Utilities, and DSC Stormwater Engineering provided comments. Since the pre-submittal meeting, the applicant's agent has revised the layout of the proposed improvements to address those comments to the greatest extent practicable prior to detailed site plan review. As a result, the overall impervious cover associated with the proposed improvements was reduced from approximately 10,018 square feet to 8,785 square feet and the encroachment into the 100-foot Resource Protection Area (RPA) buffer from approximately 2,271 square feet to 1,623 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 findings of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property within the Lynnhaven River watershed.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act ("CBPA" or "Act") and the City's CBPA Ordinance. The application of the Act places a majority of the property within the RPA and would result in the loss of nearly all of the buildable area on this parcel. Since the enactment of the Act and CBPA Ordinance, countless property owners in this area have received similar variances for similar improvements."* Staff offers that the request to encroach into the 100-foot RPA buffer is consistent with similar commercial development requests within the Eastern Branch of the Lynnhaven River watershed in that the proposed improvements are landward of the top of bank feature, the majority of new impervious cover is situated within the City's 100-foot variable width buffer, and the CBPA Exhibit provides mitigation measure consistent with the performance standards set forth in the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"given that all of the proposed improvements will be located landward of the 50-foot seaward buffer, together with the fact that this is a uniquely situated lot where large portion of the lot falls within the RPA, the proposed encroachment is the minimum necessary to achieve a reasonable buildable area on this property."* Staff offers that the proposed improvements, existing 15-foot drainage easement, and the RPA buffer challenge the redevelopment of this lot. As such, the applicant's agent utilized this exception with the coupled challenges

above as a starting point and worked with Staff to refine the proposed improvements to meet these review standards while maintaining the existing drainage easement. As a result, the overall impervious cover of the proposed improvements was reduced from approximately 10,018 square feet to 8,785 square feet and the encroachment into the 100-foot Resource Protection Area (RPA) buffer from approximately 2,271 square feet to 1,623 square feet.

- 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 overall size of the improvements are the minimum necessary to afford relief and have been placed outside of the most sensitive portion of the riparian buffer. The improvements also preserve the riparian buffer ecosystem with the purpose and intent of this ordinance to not be injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare.”* Staff concurs with the statement provided by the applicant’s agent and offers that a detailed site plan review will be required should the variance be granted for the encroachment into the 100-foot RPA buffer. Said review will require a comprehensive review of the stormwater management from the proposed impervious cover meeting the requirements of the Linkhorn Bay Drainage Basin of the City’s Master Drainage Study.
- 5) *“When properly coordinated, the applicant’s proposed development, including the retention of a large area of existing naturalized forest, the implementation of buffer restoration and stormwater management facilities, will provide a means to manage towards a no net increase in nonpoint source pollution load.”* Staff concurs and adds that the required buffer restoration for the new impervious cover within the RPA will provide an additional means toward promoting the infiltration of stormwater runoff from upland improvements.

Given the above comments, Staff recommends the following **17** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A final subdivision plat shall be submitted for review, approval, and recordation to the Department of Planning and Community Development, Development Services Center (DSC) to vacate the existing internal property lines.
- 2) A Commercial Site Plan shall be submitted to the Department of Planning and Community Development, 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 in substantial compliance with the layout and plant legend submitted as a component of the CBPA Exhibit by MSA, P.C. and dated October 21, 2022.

The 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) In addition to the required buffer restoration for the new impervious cover within the Resource Protection Area (RPA), for the 2 understory trees located in the public right-of-way (ROW) the required mitigation is as follow.
- 3:1 ratio (6 new understory trees to be planted on the lot)

Minimum size at installation for replacement trees shall be as listed below:

- Understory tree (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) 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.
- 9) 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.**
- 10) 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.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,713.93 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including

oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

- 17) The conditions and approval associated with this variance are based on the exhibit plan dated October 21, 2022, prepared by MSA, P.C. 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.

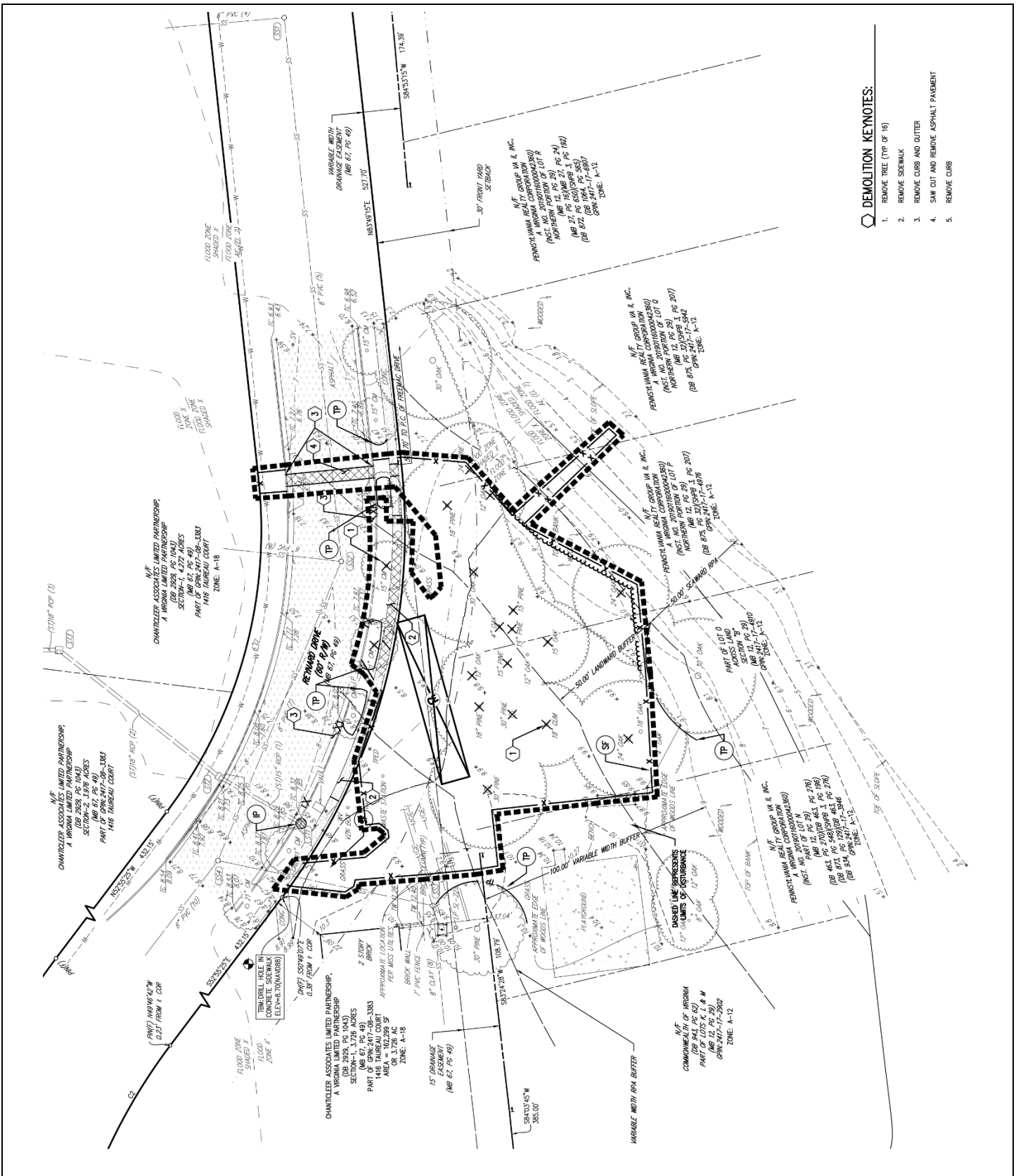
Site Aerial



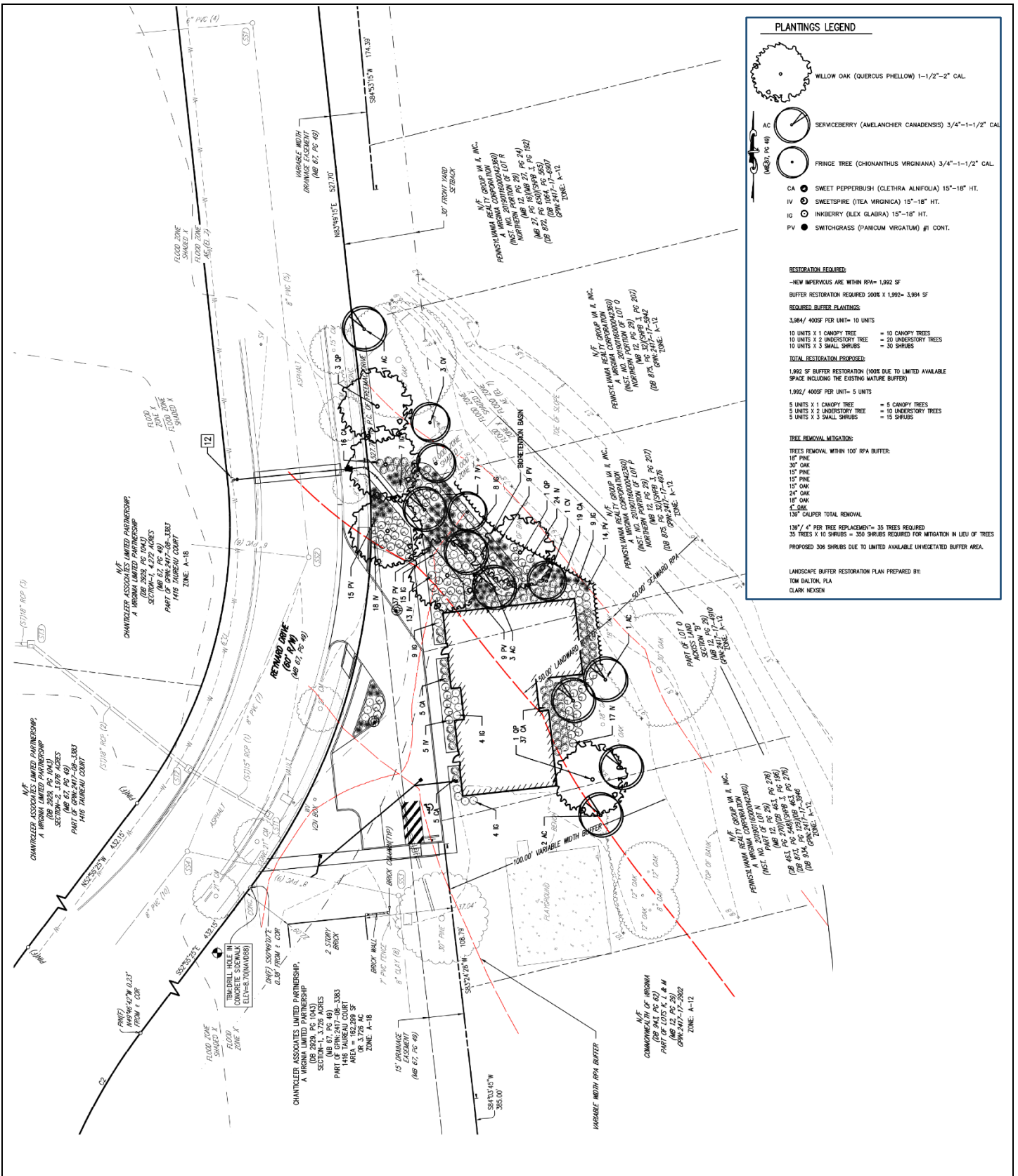
Site Aerial – Area of Proposed Improvements



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Chanticleer Associates, LP

Applicant Name

Does the applicant have a representative? Yes No

- If yes, list the name of the representative. Jayme Presley

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)
Jon J Goodman, President

- If yes, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)
None - Single Purpose Entity

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.

Berkadia Commercial 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.

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.

MSA, PC

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

Jon J Goodman, President

Print Name and Title

9-15-2022

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	

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

PA Realty Group VA, II, Inc

Applicant Name

Does the applicant have a representative? Yes No

- If yes, list the name of the representative. Jayme Presley

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)
Jon J Goodman, President
- If yes, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)
None - Single Purpose Entity

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.

Berkadia Commercial 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.
-

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

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

Disclosure Statement



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

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

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

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

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

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

Applicant Signature

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

Applicant Signature

Jon J Goodman, President

Print Name and Title

9-15-2022

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.

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



Applicant & Property Owner **Doan Van Nguyen**
Address **3525 N Crestline Drive**
Public Hearing **December 5, 2022**
City Council District **District 1**, formerly Kempsville

Agenda Item

3

Variance Request

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

Applicant's Agent

Self-Represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 37, Page 41
Recorded 04/04/1952

GPIN

1456-29-0579

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

240 square feet

Location of Proposed Impervious Cover

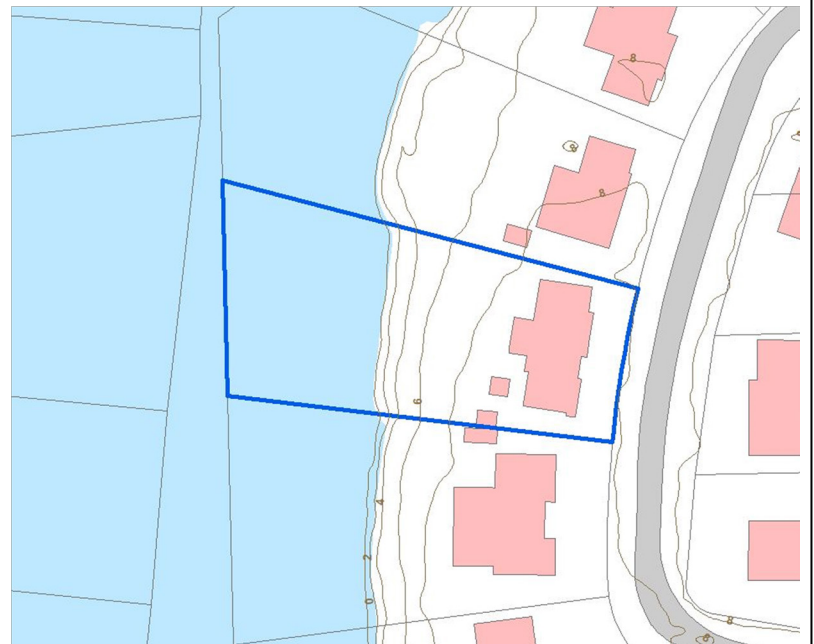
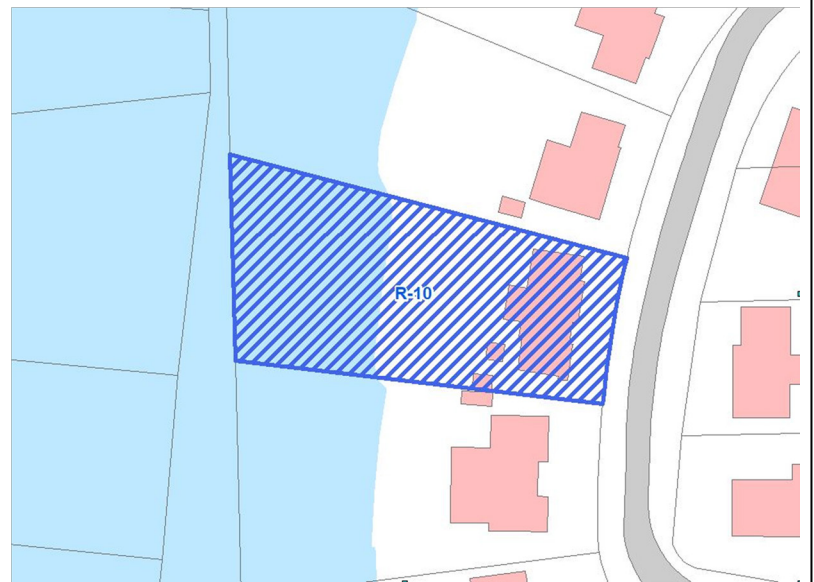
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Storage shed.

CBPA Ordinance Variance History

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

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

- November 7, 2022 CBPA Board Public Hearing

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

This is a sparsely wooded lot, and the applicant is proposing to construct a new 240 square foot storage shed within the 50-foot seaward buffer of the Resource Protection Area (RPA) on the property to accommodate for storage of various yard equipment. The applicant has recently purchased the property and Staff is of the opinion that the applicant's desired location of the shed will not cause a substantial detriment to water quality given the minimal encroachment into the existing riparian buffer area. However, Staff is of the opinion that the proposed improvements could be placed within the rear yard to avoid encroachment into the 50-foot seaward buffer. As such, Staff has provided recommended condition 1 below to address this concern.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"we are requesting the smallest size shed necessary for our equipment."* Staff concurs.
- 2) *"This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because this lot was platted prior to the adoption of the CBPA Ordinance."* Staff concurs
- 3) The variance is the minimum necessary to afford relief because *"means taken to minimize impacts include but not limited to, requesting the smallest size shed to fit existing equipment, and will not have to disrupt any existing trees. It will be constructed in a flat area with minimum excavation to existing area, will use silt fence to catch construction debris, will perform majority of debris producing construction in-front on driveway away from back buffer area."* Staff believes the size and location of the proposed improvements offers merit towards the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the shed is smallest necessary, and the buffer takes up the entire back yard of the lot."* Staff adds that much of the rear yard of the lot is taken up by the seaward buffer and would benefit by the required buffer restoration given the lot has minimal tree canopy cover.
- 5) *"We are minimizing impacts to the greatest extent practicable"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that coupled with the required buffer restoration that this variance request will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay.

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

Recommended Conditions

1. The proposed shed shall be located within the 50-foot landward buffer of the Resource Protection Area (RPA).
2. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit, specific to setbacks. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
3. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth.

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

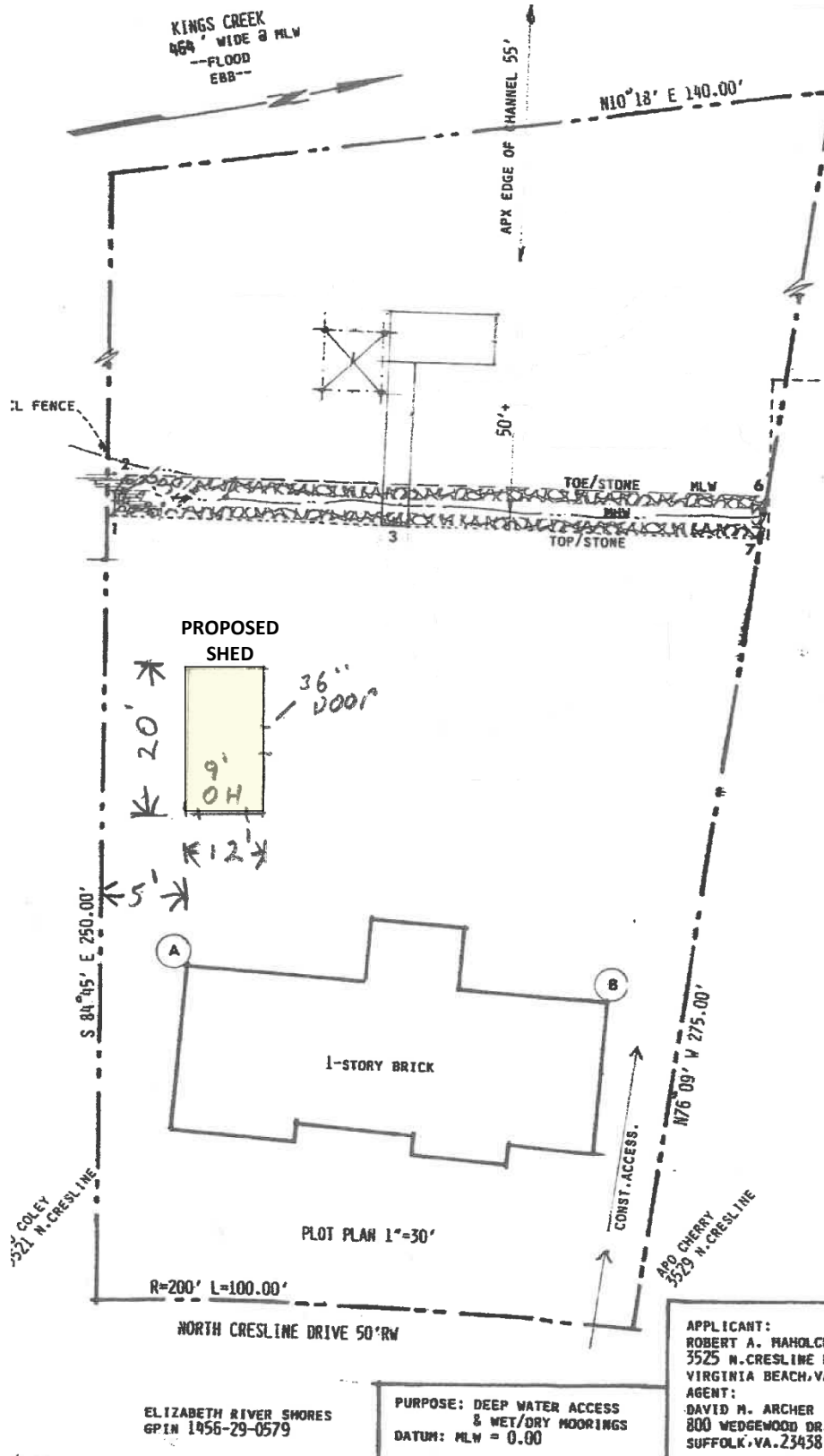
4. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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

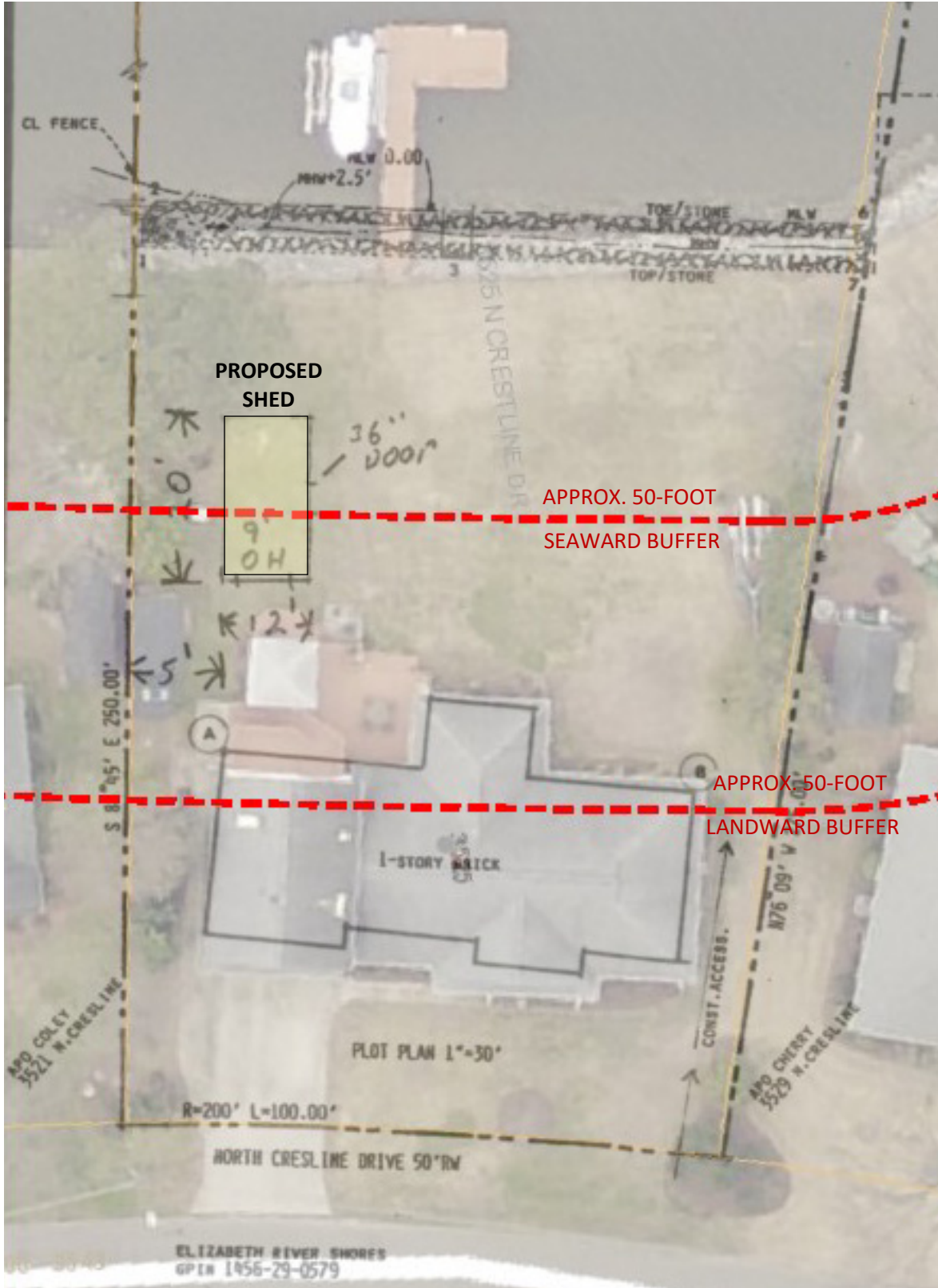
Site Aerial



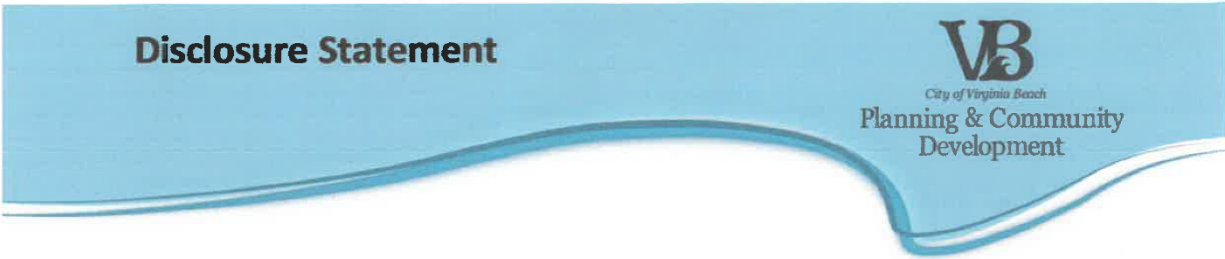
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Proposed Improvements, Aerial Overlay



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 DOAN VAN NGUYEN

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

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

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

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.
-
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.

Doan Van Nguyen
Applicant Signature

DOAN VAN NGUYEN
Print Name and Title

OCT. 13 - 22
Date

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

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

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

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

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a pool surround with retaining walls and pool house.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 200, Page 4
 Recorded 02/11/1990

GPIN

1498-02-6405

SITE AREA

75,182 square feet or 1.726 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

57,725 square feet or 1.325 acres

EXISTING IMPERVIOUS COVER OF SITE

9,140 square feet or 16 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,750 square feet or 18 percent of site

Area of Redevelopment in RPA

2,203 square feet

Area of New Development in RPA

2,259 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

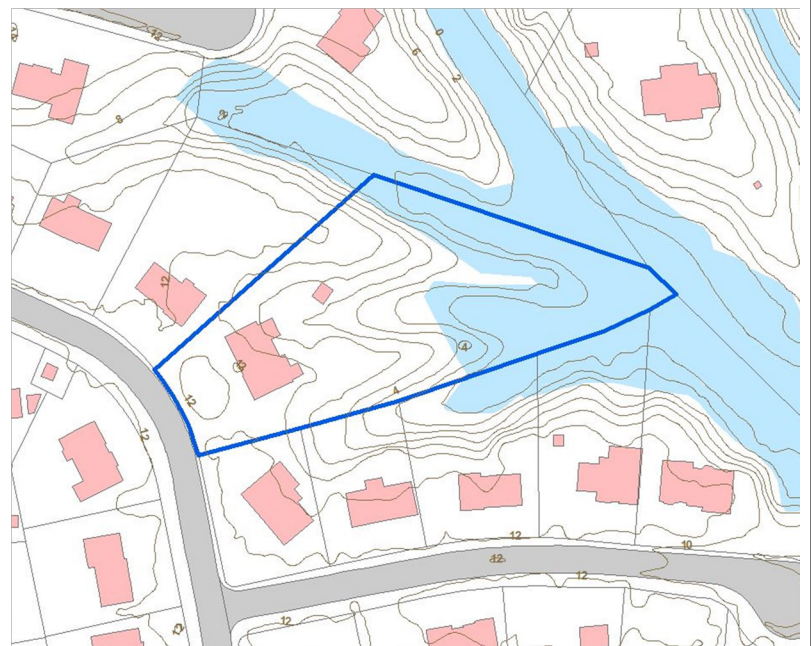
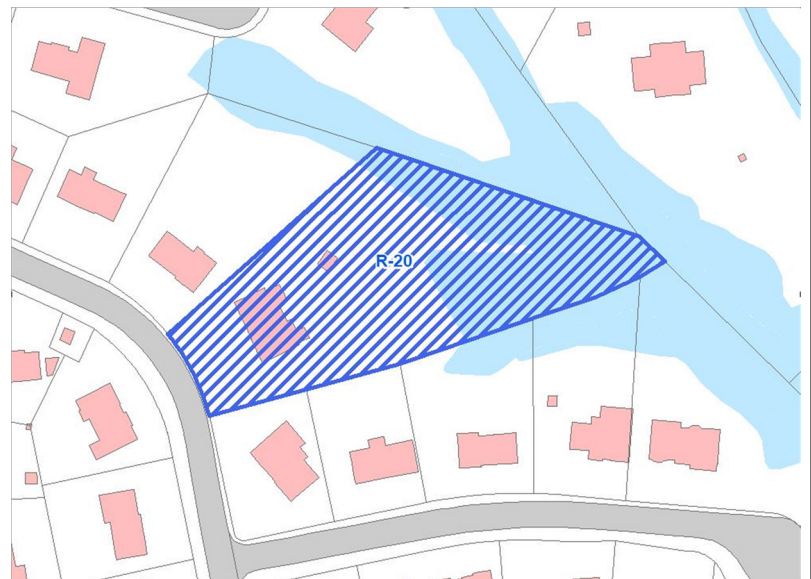
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood deck
- Framed shed

Construction Details

- Redevelop and expand wood deck off rear of residence
- Redevelop and expand pool surround with retaining walls
- Pool house

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of the proposed pool surround and retaining wall area.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that at grade gravel drip intercept for rooftop runoff, gravel downspout intercepts, infiltration beds, and sand/gravel underdeck treatment will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The existing irregular layout of the pool surround leaves the applicant with minimal space to lounge and use their existing swimming pool. As such, the applicant is proposing to redevelop and slightly expand the pool surround area,

Patrick & Ashley Holmes

Agenda Item 4

Page 36

construct a new pool house adjacent to the swimming pool, and redevelop and expand the existing wood deck off the rear of the residence. Overall, much of this lot within the Resource Protection Area (RPA) buffer is heavily wooded, and this request proposes to remove three trees that fall within the footprint of the proposed pool surround. With a moderate slope, the applicant is proposing a 65 linear foot retaining wall to provide stabilization for the seaward side of the swimming pool. With the redevelopment of the existing improvements the applicant's agent proposes to convert approximately 330 square feet of the proposed patio area to an artificial turf area to be used for games adjacent to the swimming pool given the rest of the proposed surround would be concrete pavers.

Staff worked with the applicant's agent to reduce the overall impervious cover from 11,323 square feet or 20 percent of site area above water and wetlands as originally submitted to 10,750 square feet or 18.6 percent of site area above water and wetlands. These reductions are derived from the applicant's agent reducing the number of proposed retaining walls, reducing portions of the wood deck expansion, and reducing portions of the pool patio surround footprint. As revised this variance request increases the overall impervious cover of the lot from 9,140 square feet to 10,750 square feet or from 16 percent to 18.6 percent of the lot area above water and wetlands, redevelops approximately 2,203 square feet of existing impervious cover, and converts 648 square feet of existing impervious areas within the riparian buffer to pervious areas. Approximately 1,333 square feet of the proposed new impervious cover falls within the variable width buffer portion of the RPA and 926 square feet falls within the landward buffer portion. As a means to be in harmony with the performance standards of the (Chesapeake Bay Preservation Area) CBPA Ordinance, the applicant's agent proposes three different best management practices (BMPs), including gravel downspout intercepts, infiltration beds, and sand/gravel underdeck treatment to further treat and slow runoff and promote infiltration of runoff to ensure that there is no increase in nonpoint source pollution load with this request.

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 *"granting a variance request in this circumstance would not confer privileges to the applicant which have been denied to other property owners within the CBPA Overlay District in this area."* Staff concurs and adds that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the 100-foot RPA and the Variable Width Buffer encumbers a large area of the back yard on this lot. Proposed improvements occur adjacent to existing impervious, and all is outside the 50' Seaward Buffer. The proposed placement of improvements is due to the proximity of their home within the RPA. While the proposed improvements increase their overall impervious surface in the RPA, all take place in areas that are currently dedicated to lawn and the total percentage of impervious is only 19.6%. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot."* While Staff acknowledges the statement provided by the applicant's agent, the specific conditions of the lot warrant an analysis of the proposed improvements to the access of the site, associated land disturbance to construct the proposed improvements, location within the RPA buffer of the proposed improvements and mitigation measures provided to enhance water quality. Therefore, Staff has provided the recommended conditions below as a means for the variance request to be in harmony with the intent of the CBPA Ordinance.

- 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 existing RPA buffer on this lot is comprised of some turf grass, canopy trees, leaf litter and some existing impervious cover. All proposed improvements occur outside the 50' Seaward Buffer and have been located only within the 50' landward and variable width buffers adjacent to their existing residence and/or impervious surfaces. This request will require the establishment of additional vegetation within the buffer to help address runoff from the proposed improvements. This request will not be injurious to the neighborhood and with the addition of vegetation, will not be a detriment to water quality as the applicant is mitigating impacts within the buffer to help with the increase in runoff generated by the proposed improvements. The proposed request is not expected to be injurious to the public welfare and is not of substantial detriment of water quality.”* Staff acknowledges that this request does not encroach into the 50-foot seaward buffer and that over half of the new impervious cover falls within the variable width buffer portion of the Resource Protection Area. The applicant has utilized an approach towards managing stormwater on a residential lot through the use multiple best management practices.
- 5) *“It is expected that City Staff will work with the applicant to ensure that the landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscape and a low retaining wall that should aid in slowing the velocity of stormwater leaving the site while allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs within the RPA buffer”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **17** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,259 square feet x 200 percent = 4,518 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: **11 canopy trees, 11 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.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 14) 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.

- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) ** 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 \$517.68 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated October 31, 2022, prepared by Painted Fern Landscape Architecture, signed October 31, 2022 by Jessica L. Nelson. 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.

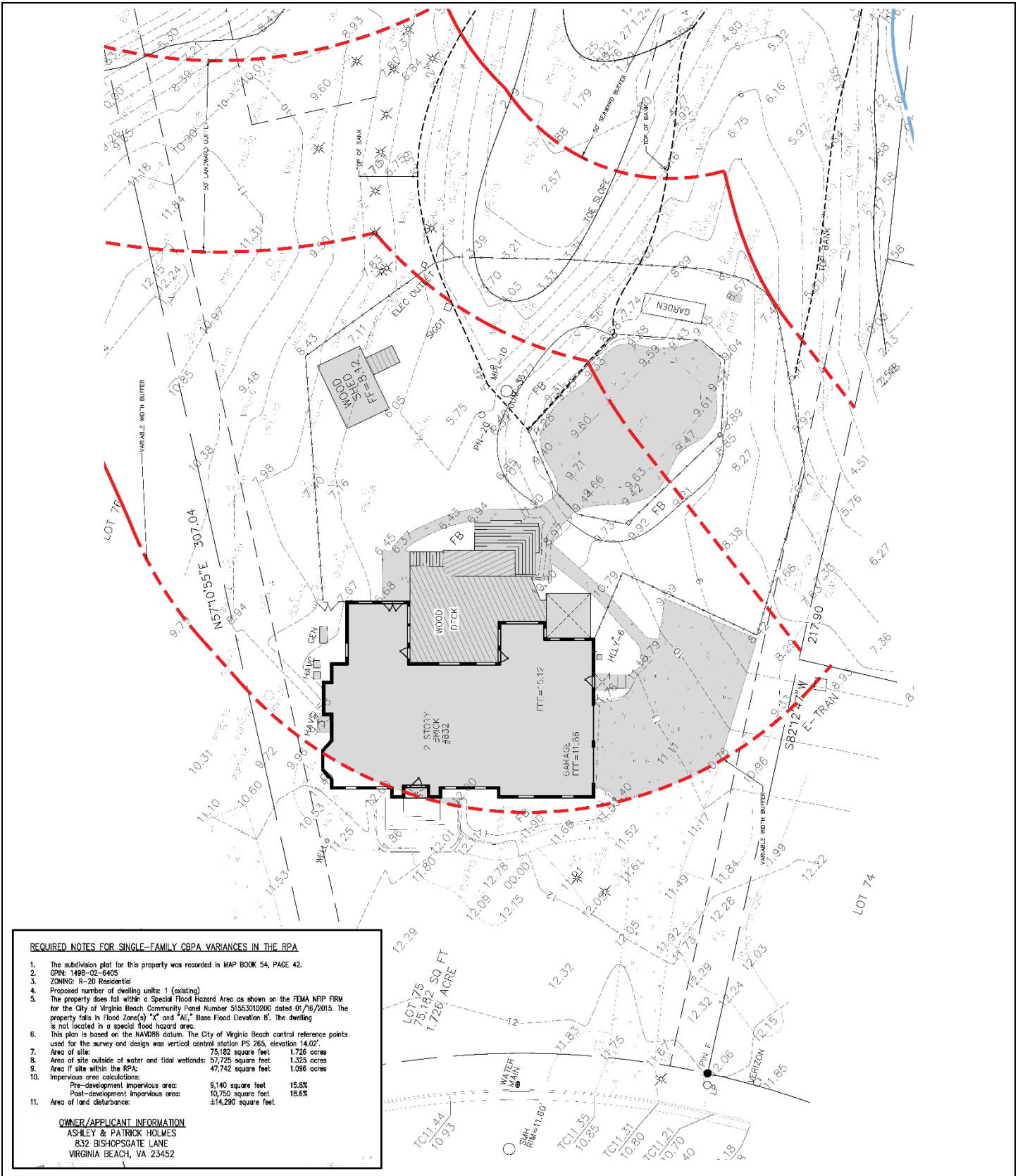
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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

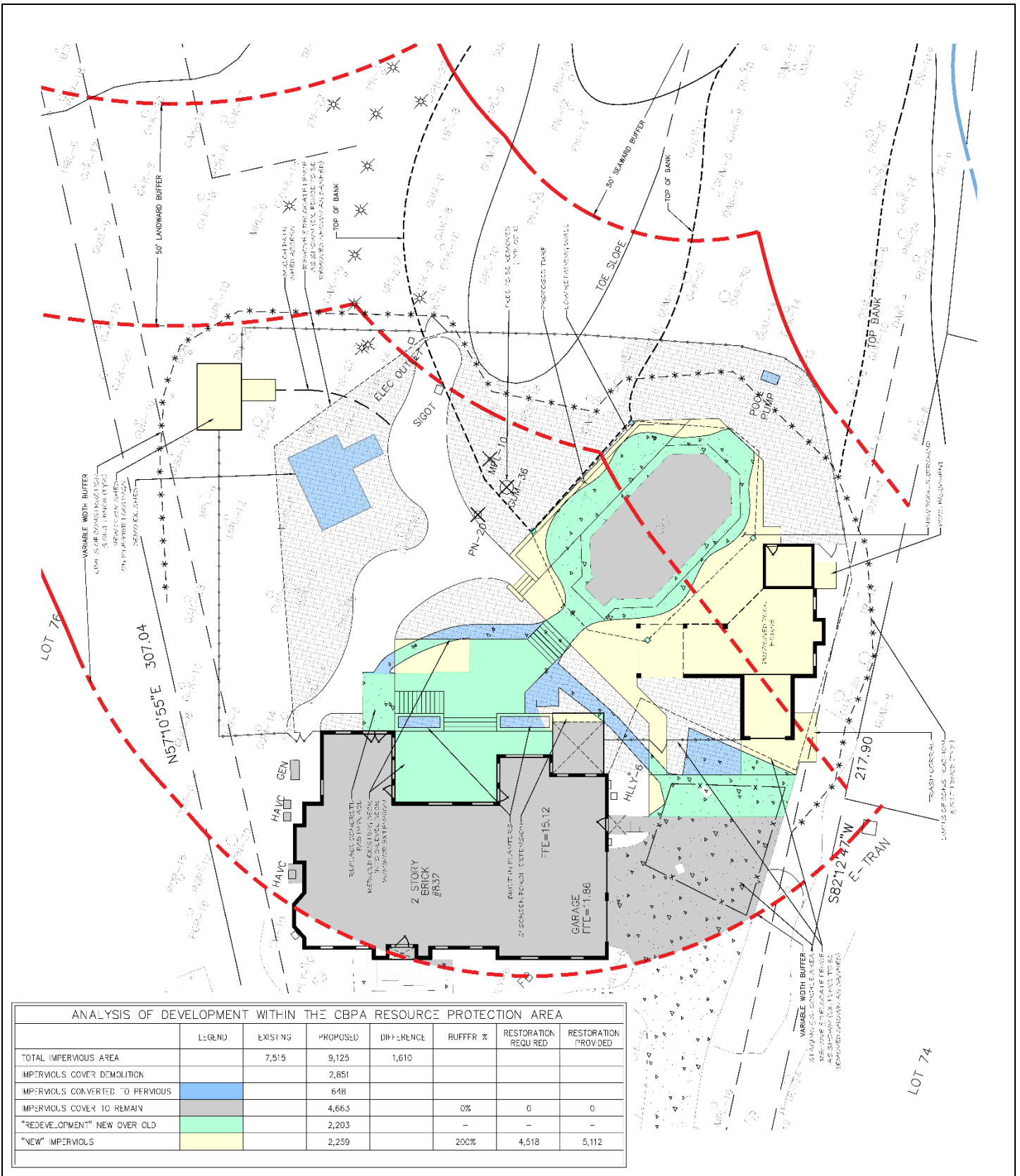


REQUIRED NOTES FOR SINGLE-FAMILY CBPA VARIANCES IN THE RPA

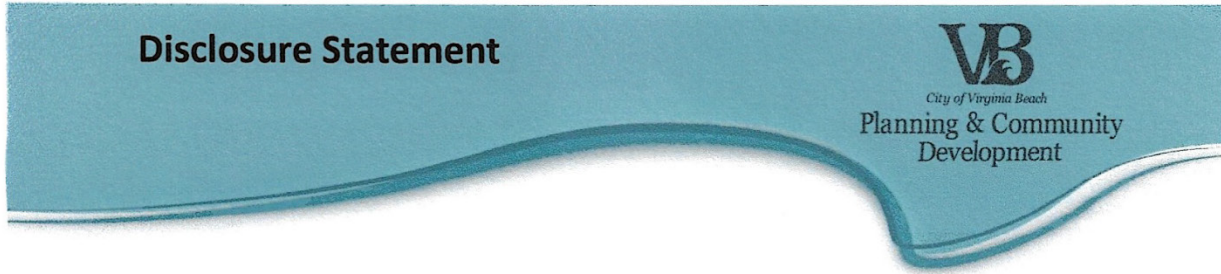
1. The subdivision plat for this property was recorded in MAP BOOK 54, PAGE 42.
2. CPIN: 1498-02-6405
3. ZONING: R-20 Residential
4. Proposed number of dwelling units: 1 (existing)
5. The property does fall within a Special Flood Hazard Area as shown on the FEMA NFIP FIRM for the City of Virginia Beach Community Panel Number 5155301020G dated 01/16/2015. The property falls in Flood Zone(s) "X" and "AE," Base Flood Elevation 8'. The dwelling is not located in a special flood hazard area.
6. This plan is based on the NAVD83 datum. The City of Virginia Beach control reference points used for the survey and design was vertical control station PS 265, elevation 14.02'.
7. Area of site: 75,182 square feet 1.728 acres
8. Area of site outside of water and tidal wetlands: 57,725 square feet 1.325 acres
9. Area of site within the RPA: 47,742 square feet 1.096 acres
10. Impervious area calculations:
 Pre-development impervious area: 9,140 square feet 15.8%
 Post-development impervious area: 10,750 square feet 16.6%
 Area of land disturbance: ±14,290 square feet

OWNER/APPLICANT INFORMATION
 ASHLEY & PATRICK HOLMES
 832 BISHOPSGATE LANE
 VIRGINIA BEACH, VA 23452

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 Ashley & Patrick Holmes

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington

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

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

- If yes, list the businesses that have a parent-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.

Chase Bank

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

Yes **No**

- If **yes**, identify the 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**

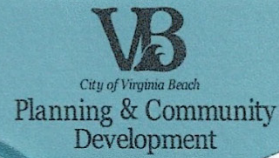
- If **yes**, identify the firm and individual providing the service.

Painted Fern, Jason Thomas

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.
- Compass & Chain, LLC. Land Surveying, Michael L. Perreault
-
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.**

Ashley D Holmes
Applicant Signature

Ashley D Holmes
Print Name and Title

10/28/2022
Date

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

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

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



Applicant & Property Owner **Romeo Spino**
 Address **2021 Thomas Bishop Lane**
 Public Hearing **December 5, 2022**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

The variance request is being deferred to the Monday, January 23, 2023 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 a wimming pool, patio, redevelop driveway and construct parking area.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

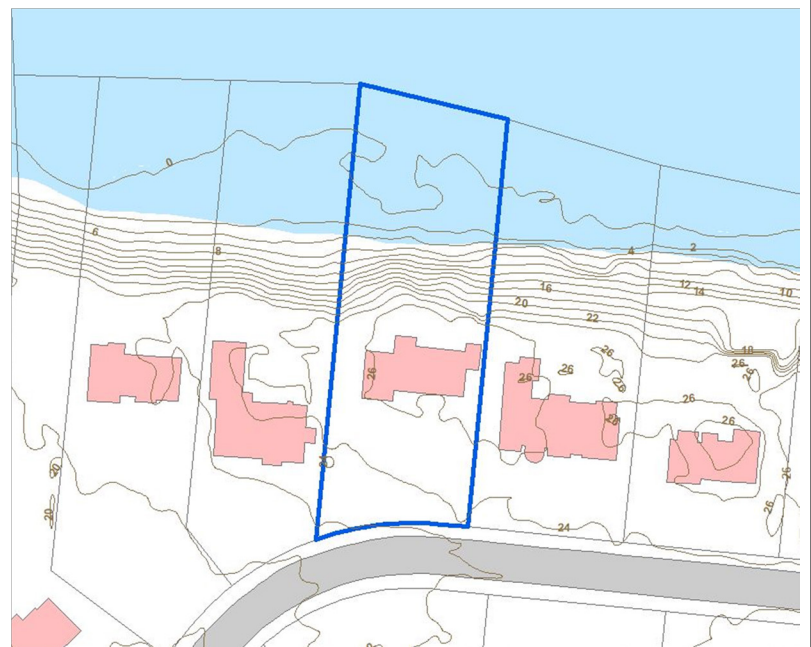
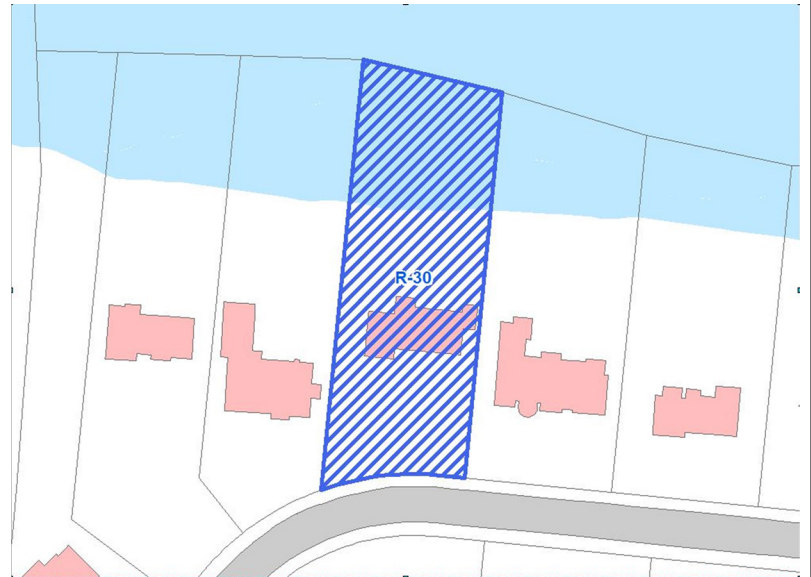
Map Book 136, Page 4

GPIN

1499-56-4825

CBPA Variance Request History

A CBPA board variance was approved on November 25, 1996 for the construction of a swimming pool, raised patio, and retaining wall



Site Aerial





Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, paver patio & hot tub, and associated retaining walls.

Applicant’s Agent

Billy Garrington
Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 5, Page 151
Recorded 11/1916

GPIN

2418-55-4453

SITE AREA

89,760 square feet or 2.061 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

60,224 square feet or 1.383 acres

EXISTING IMPERVIOUS COVER OF SITE

10,977 square feet or 18 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,158 square feet or 20 percent of site

Area of Redevelopment in RPA

1,119 square feet

Area of New Development in RPA

1,211 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

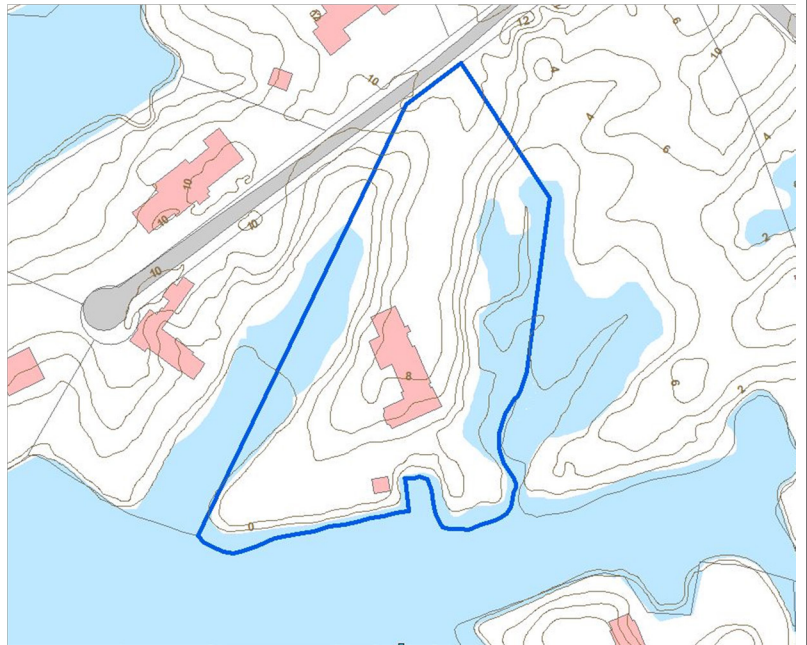
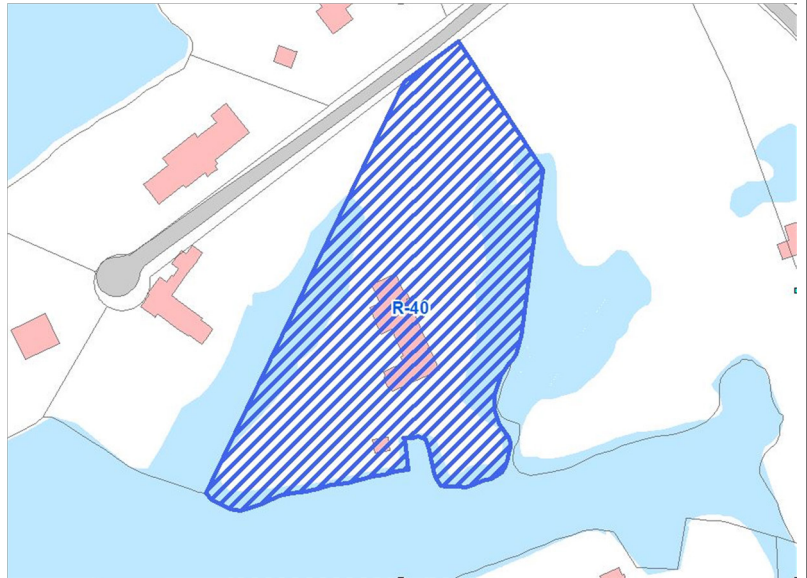
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Paver patio and walkway off rear of residence

Construction Details

- Raised paver patio with associated outdoor bar and grill area
- Raised swimming pool and hot tub
- Retaining walls along edge of raised patio
- New paver walkway and mechanical equipment pad

CBPA Ordinance Variance History

On September 24, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of walkways, asphalt driveway, basketball hoop, porous paver parking area, porous paver drive apron, shed, brick walk with trash storage area, steppingstone walk, brick walk in rear of residence, wood deck with outdoor shower, elevated stone patio with brick steps and built in planters, pergola, and built in gas grill 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 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 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. *Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*

9. *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.*
10. *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.*
11. *The conditions and approval associated with this variance are based on the site plan prepared by WP Large dated July 30, 2012 and sealed August 3, 2012 by William Pritchard.*
12. *In addition to aforementioned item 3 and 6, erosion and sediment control measures adjacent to the driveway replacement and expansion areas shall be as close to said improvements as possible.*
13. **Stormwater runoff from areas of either existing or proposed impervious cover equal to the amount of 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.*
14. *The select removal of trees and lower tree limbs adjacent to the inter-tidal fringe marsh zone shall be performed prior to the final inspection.*
15. ***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 \$327.24 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 357 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
16. *All improvements shall be built into the slope with no perimeter fill authorized inclusive of driveway and proposed shed.*
17. *The submitted site plan sequence of event schedule shall address the phasing of this project to include installation of improvements from south to north.*
18. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (1,428 sq. ft. x 200% = 2,856 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.*
19. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (4,165 sq. ft. x 100% = 4,165 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.

The September 24, 2012 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is partially stabilized by a wooden bulkhead reinforced by a rip rap revetment with remaining portions being left to a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of the footprint of the proposed swimming pool with an additional one dead tree requested for removal outboard of the limits of construction.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant proposes to construct a swimming pool with a hot tub and raised paver patio with associated retaining walls off the rear of the residence. Portions of an existing walkway will be redeveloped with the construction of these proposed improvements and the pool equipment pad situated off the rear of the existing single-family residence. Prior to the submittal of this Chesapeake Bay Preservation Area (CBPA) variance application Staff met with the applicant and their potential contractor on site to discuss the best placement of the proposed improvements given the following environmental conditions – tidal waterways along both sides of the lot, elevation of the lot at the proposed location of

Jeffrey & Jennifer Steadfast

Agenda Item 6

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the improvements ranging from approximately 2.4 feet above sea level to 8.1 feet above sea level, and retention of existing mature canopy tree cover to the greatest extent practicable. As a result of the meeting Staff is of the opinion that the applicant has situated the proposed improvements in the least sensitive portion of the lot with the layout the proposed swimming pool perpendicular to the existing residence therefore limiting encroachment into the 50-foot seaward buffer and utilizing the existing topography in placement of the proposed improvements at the highest portion of the lot. The applicant has also utilized redevelopment with this request with approximately half of the new improvements being redevelopment over existing impervious cover. Staff is of the opinion that the size of the proposed pool and the paver patio are acceptable and that the scope of the improvements should not be detrimental to water quality.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1916 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff offers the other properties along this cove have been redeveloped in similar fashion to the proposed improvements associated with this CBPA variance request. Unique to this lot is the geometry of the peninsula shaped uplands that draws the 50-foot seaward buffer from both sides of the lot of which other owners of property within this cove did not have to contend with when redeveloping their property.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the additions and improvements over existing structures to the greatest extent practicable to maximize the redevelopment and the minimize site impacts in the critical buffer areas."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the current stormwater mitigation for the bay will be enhanced with this variance request."* Staff is of the opinion that the location and size of the proposed swimming pool and the use of redevelopment associated with the existing patio area to create gathering space landward of the swimming pool offer merit towards the variance being the minimum necessary to afford relief.
- 5) *"Bioretention stormwater management will be placed between the improvements and the waterway 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 load is acceptable. These management techniques include bioretention stormwater bed plantings within the riparian buffer to slow, capture, and treat the on-site stormwater runoff before entering the river.

Given the above comments, Staff recommends the following **17** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,211 square feet x 200 percent = 2,422 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 24 small shrubs.**

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 15 feet from improvements.

- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) 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.
- 15) ** 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 \$302.75 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.
- 16) This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 24, 2012.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated October 21, 2022, prepared by WPL, signed October 24, 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.

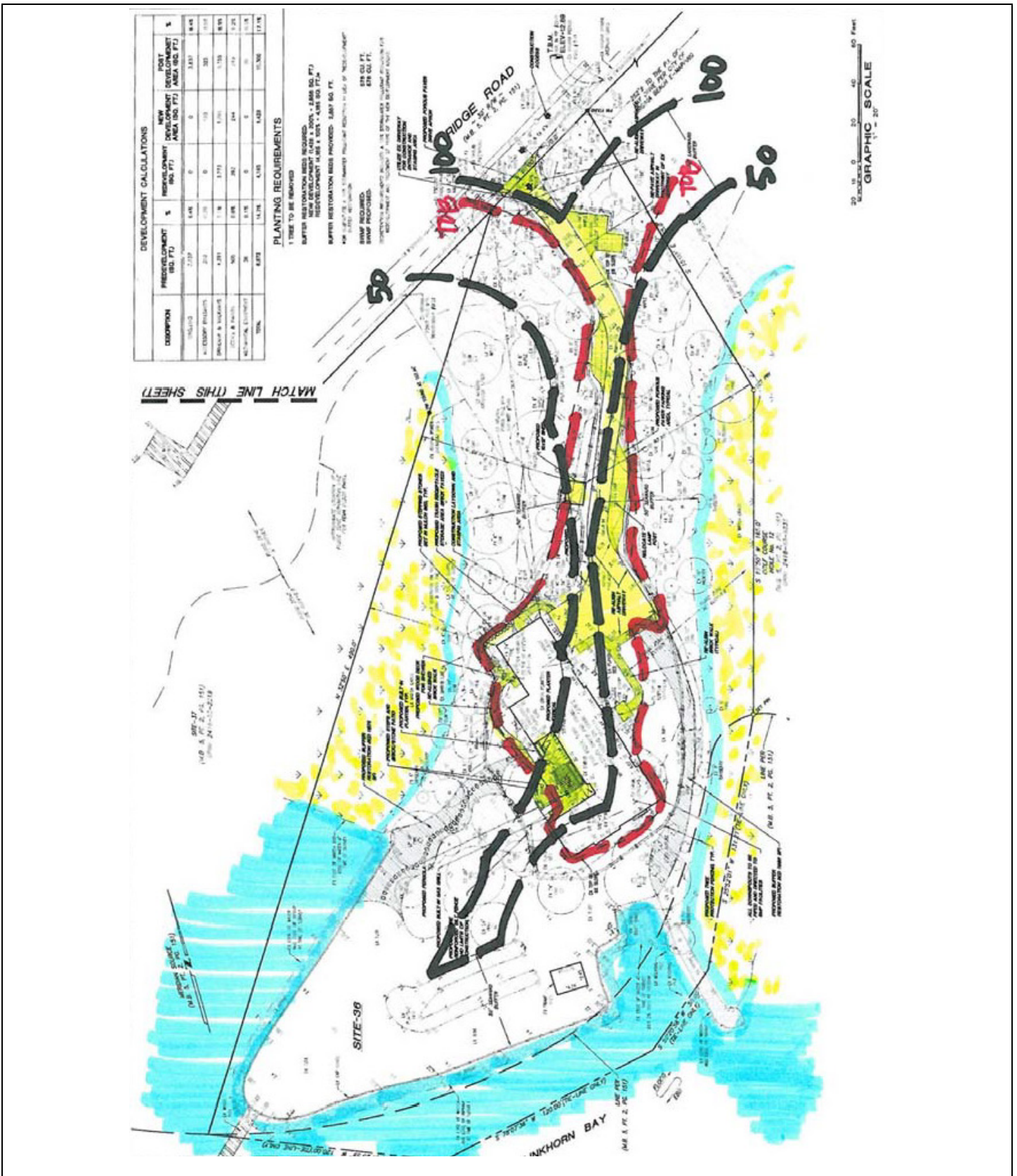
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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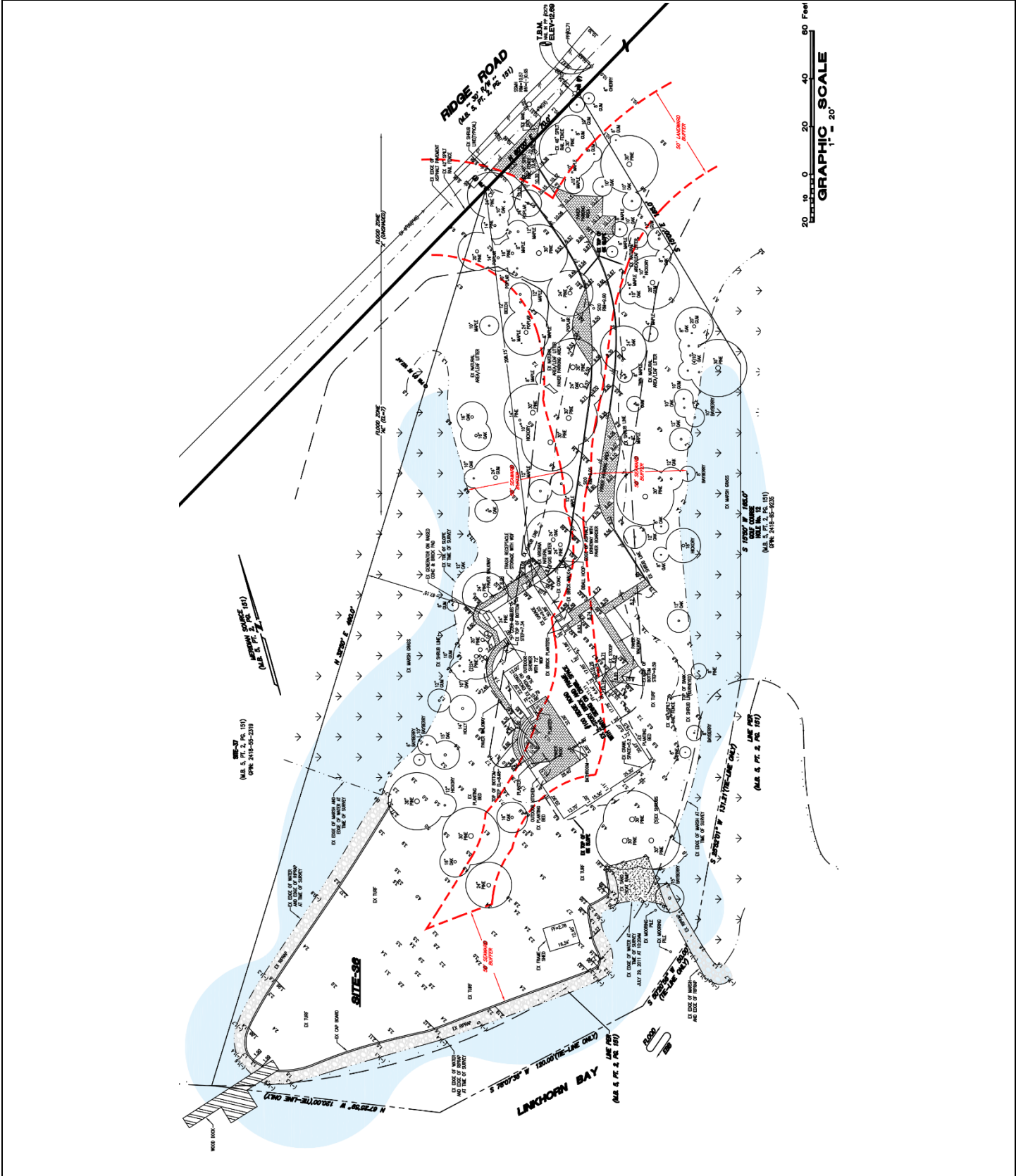
Site Aerial



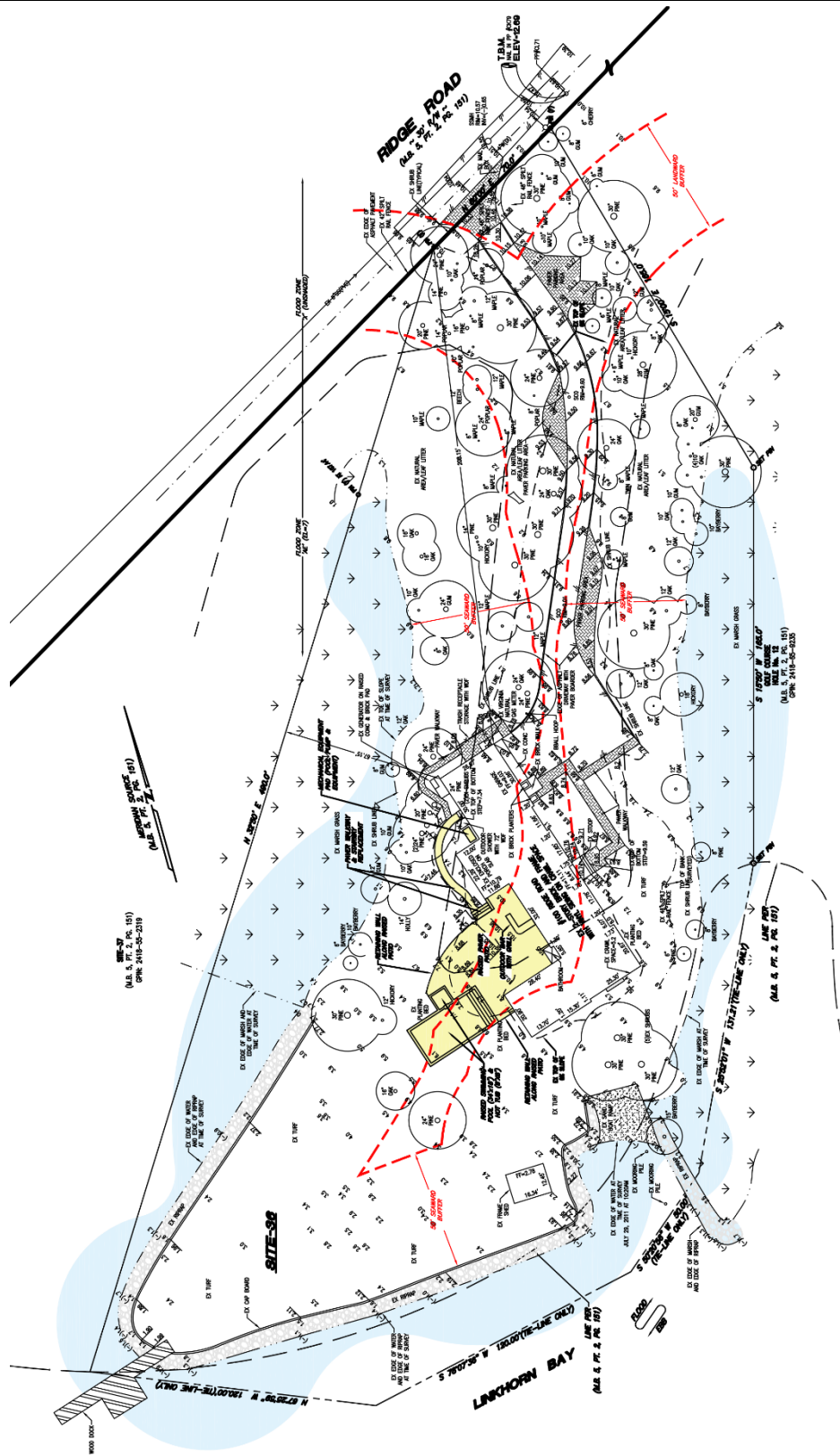
September 24, 2012 CBPA Board Variance Exhibit



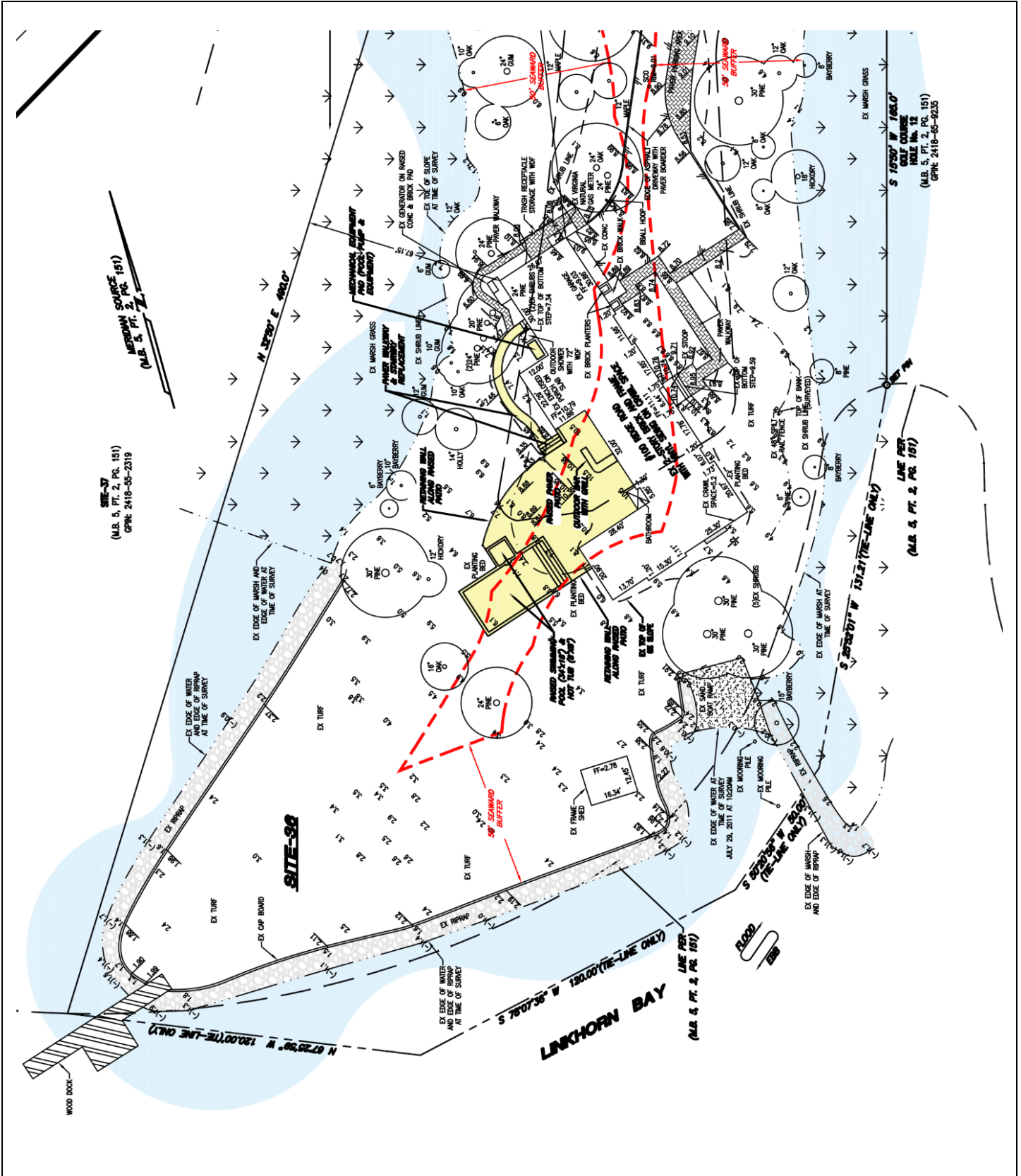
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Enlarged View of 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 Jeffrey M Stedfast & Jennifer D Stedfast

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

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



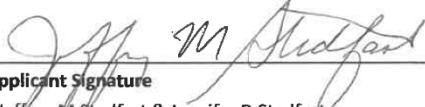

6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
 - If **yes**, identify the company and individual providing the service.
Visionscapes Land Design, Inc.

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

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

Applicant Signature

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

 Applicant Signature _____
 Jeffrey M Stedfast & Jennifer D Stedfast

Print Name and Title _____
 Jeffrey M. Stedfast Jennifer D. Stedfast

Date 10/31/2022

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

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story single-family home with associated swimming pool, patio, walkways, and driveway/parking area.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 83, Page 27
 Recorded 12/1968

GPIN

1489-72-2236

SITE AREA

87,894 square feet or 2.018 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

54,519 square feet or 1.252 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,438 square feet or 21 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

9,696 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

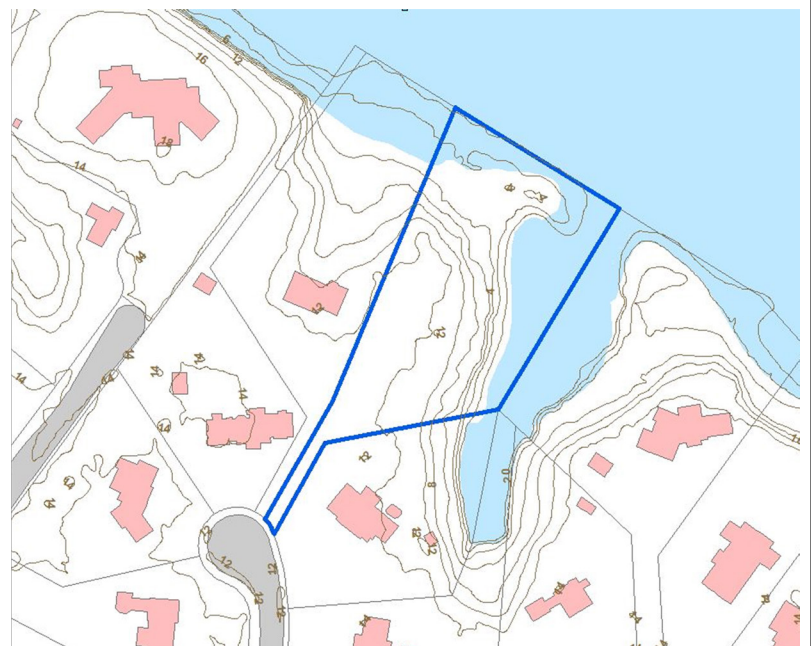
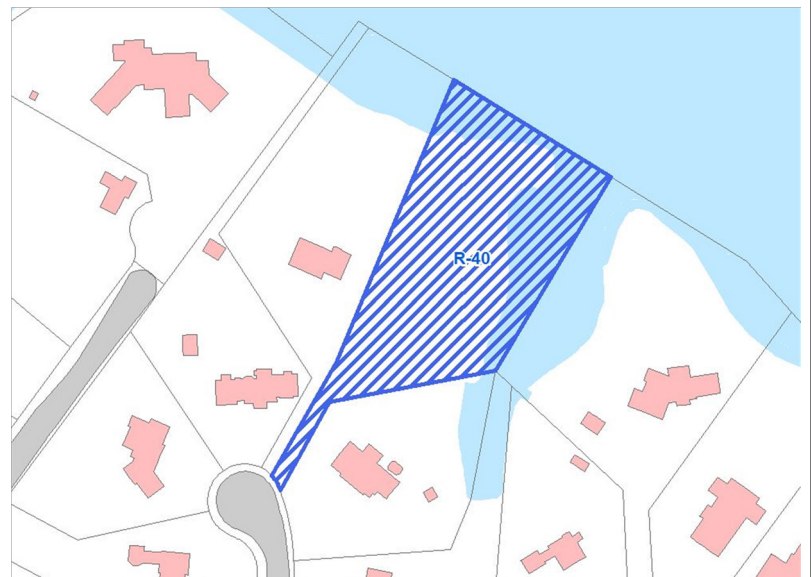
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

- Two-Story single-family residence
- Swimming pool and hot tub
- Paver patio and screened porch
- Driveway and parking area

CBPA Ordinance Variance History

On September 27, 2004, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence, pool, and associated decking and driveway with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *A 36" erosion and sedimentation control measure (silt fence) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *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' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities.*
7. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan.*
8. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
9. *The pool shall be constructed prior to or concurrent with the residence.*
10. ***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 \$2,573 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,807 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
11. *All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*

12. *Tree compensation shall be at a 2:1 ratio and shall be comprised of 50% evergreen and 50% deciduous species.*
13. *The conditions and approval associated with this variance are based on the site plan dated September 13, 2004, prepared by Horton & Dodd, P. C.*
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.*

On August 28, 2006, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence, concrete driveway, brick/paver parking area, 25' x 40' pool and spa, deck, and patio with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire re-enforced 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. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 10' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from proposed impervious cover shall be conveyed to stormwater management facilities*
7. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
8. *The pool shall be constructed prior to or concurrent with the residence.*
9. *The brick / paver patio in the rear and brick / paver parking area in the front shall be reduced by 15%.*
10. *All improvements shall be built into the slope with no perimeter fill permitted.*
11. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,377.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,592 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
12. *All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
13. *Buffer restoration totaling 2,593 sq. ft. shall be installed which is equal to 25% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall have a mulch layer of organic material 4" – 6" in depth. In addition to the aforementioned buffer restoration area, a minimum of sixteen (16) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees*

shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.

14. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. **The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.***
15. *The conditions and approval associated with this variance are based on the site plan dated July 14, 2006, prepared by J. Gregory Dodd and Horton & Dodd, P.C.*
16. *The post construction impervious cover shall be limited to 9,442 square feet, which was the impervious cover previously approved by the CBPA Board on 9-24-04.*
17. *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.*

None of these approvals have been acted upon.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and VE, Base Flood Elevation (BFE): 10

Soil Type(s)

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

Shoreline

Shoreline is in a natural state. A Joint Permit Application (JPA) shall be submitted for a futural rip rap and pier proposal along this shoreline.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated footprint of the proposed residence and the associated accessory structures. Staff is of the opinion that the canopy trees have reached their life expectancy and are showing signs of abnormal branching variations and the structure of the individual trees slightly deviates from normal canopy shape due to old growth die back and storm damage.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that rooftop disconnections, bioretention planting beds, living shoreline and shoreline tree limb removal management, and sand/gravel underdeck treatment will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The applicant desires to redevelop this platted vacant lot with a new single-family residence with associated screened porch and an inground swimming pool with paver patio pool surround. Additionally, through the Joint Permit Application (JPA) process, the shoreline will be hardened with a rip rap revetment as well as a private pier. This portion of the proposed improvements for the redevelopment of this lot will be reviewed by Staff and presented to the Wetlands Board if needed.

Staff met with the applicant's agent several times to discuss the proposed improvements in relationship to the conditions associated with the 2006 CBPA Variance for this lot – specifically condition 16 of the 2006 Chesapeake Bay Preservation Area (CBPA) Variance that states *“the post construction impervious cover shall be limited to 9,442 square feet, which was the impervious cover previously approved by the CBPA Board on 9-24-04.”* Staff offers that the applicant was not associated with the 2004 or 2006 CBPA Variances and that the property has had new ownership several times since those public hearings approximately 2 decades ago. As a result of those meetings, this request situates the proposed two-story single-family residence along the western portion of the lot against the side yard setback to the greatest extent practicable. This layout is consistent with the proposed improvement layouts of the previous CBPA Variance however does increase the overall impervious cover of the lot from the conditioned 9,442 square feet to 11,438 square feet. Staff points out that during the 2006 CBPA Variance review, surface water of swimming pools were not calculated into the overall impervious cover of a lot, as such the overall impervious cover associated with the 2006 CBPA Variance inclusive of the swimming pool surface water area is 10,417 square feet. Staff is of the opinion that this placement of the proposed improvements associated with this request limits encroachment into the 100-foot Resource Protection Area (RPA) to the 50-foot landward buffer and above the top of bank feature. In addition, due to the shape of this lot a large portion of the proposed new impervious cover is derived from the proposed driveway, of which the majority is located within the City's 100-foot Variable Width buffer and the Resource Management Area (RMA) of the Chesapeake Bay watershed. Given the shape of the lot and a large portion of the site being water and wetlands, Staff is of the opinion that the applicant has brought forth a proposed site layout that best situates the proposed improvements to minimize impacts into the RPA feature. Staff offers that the design concepts and layout of this proposal coupled with the recommended conditions and the use of both structural and nonstructural best management practices for mitigating stormwater offers merit towards the project addressing the performance standards set forth in the CBPA Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed dwelling and associated improvements are in keeping with the neighborhood.”* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the owners have designed the proposed improvements to be minimize the impact to the Chesapeake Bay, the new home has been designed and shifted around on the site to maximize to minimize site impacts and avoid development in the 50' seaward portion of the site.”* Staff concurs.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay.”* Staff concurs and offers the recommended conditions provided in this Staff report that include the installation of both structural and nonstructural best management practices to promote infiltration of stormwater as merit towards the findings of the CBPA Ordinance.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 6,585 square feet consisting of 10 canopy trees, 20 understory trees, 16 large shrubs, and 32 small shrubs with an additional 3,090 square feet of high marsh successional area/no mow zone below the top of back as depicted on the CBPA Exhibit.

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

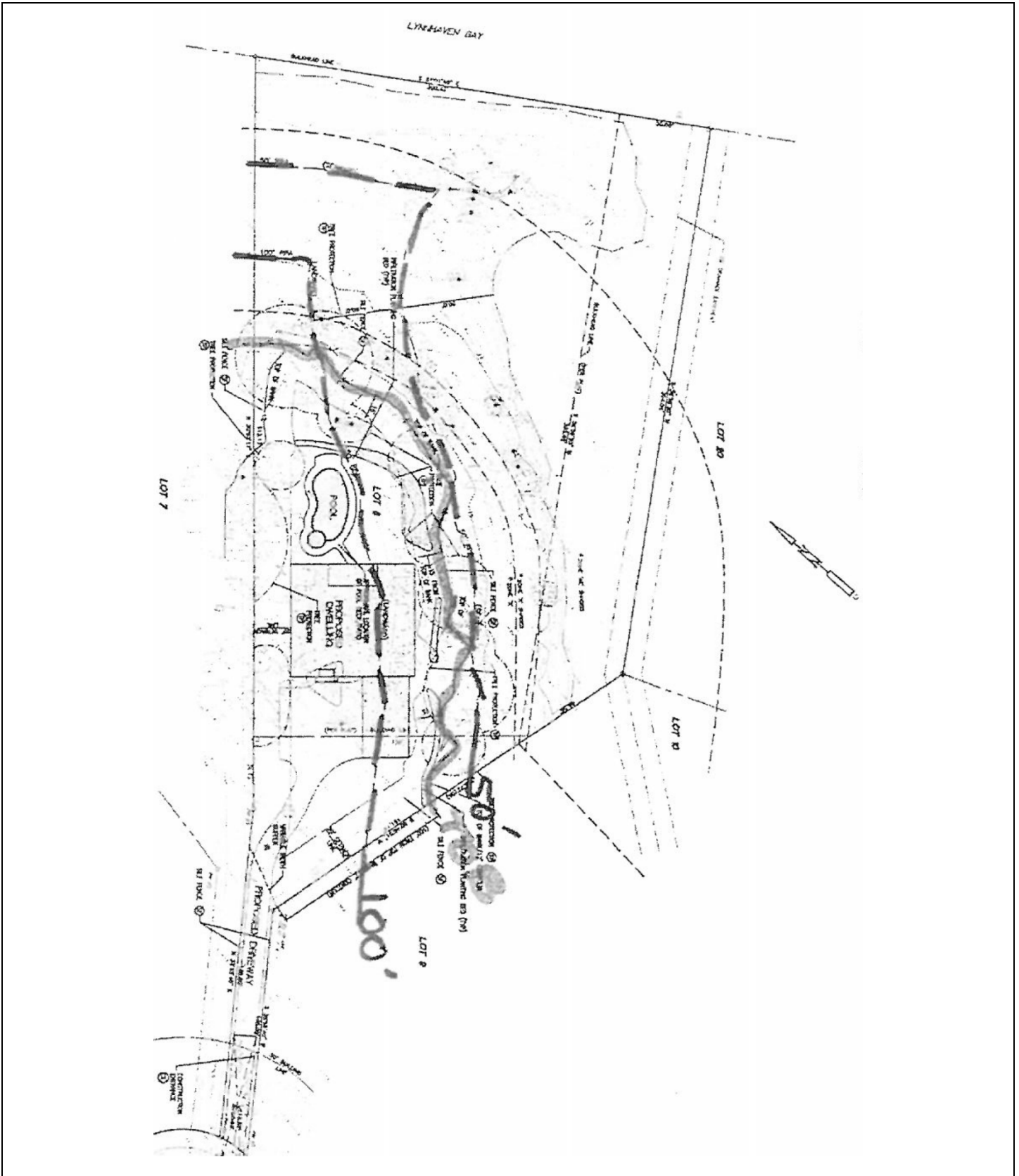
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts 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 \$2,424.00 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted September 27, 2004 and August 28, 2006.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 2, 2022, prepared by WPL, signed February 16, 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.

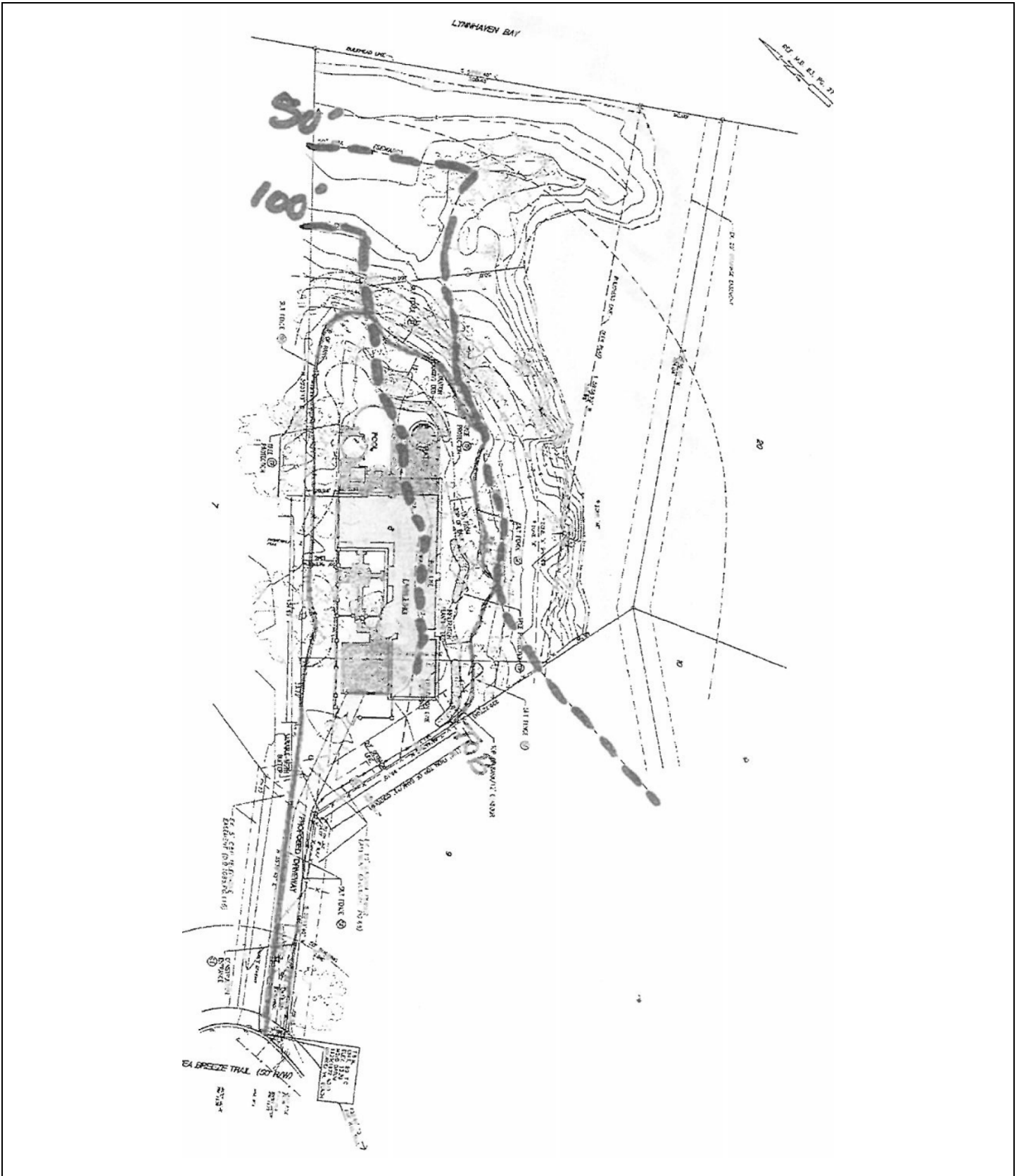
*****NOTE:** The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of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

Site Aerial

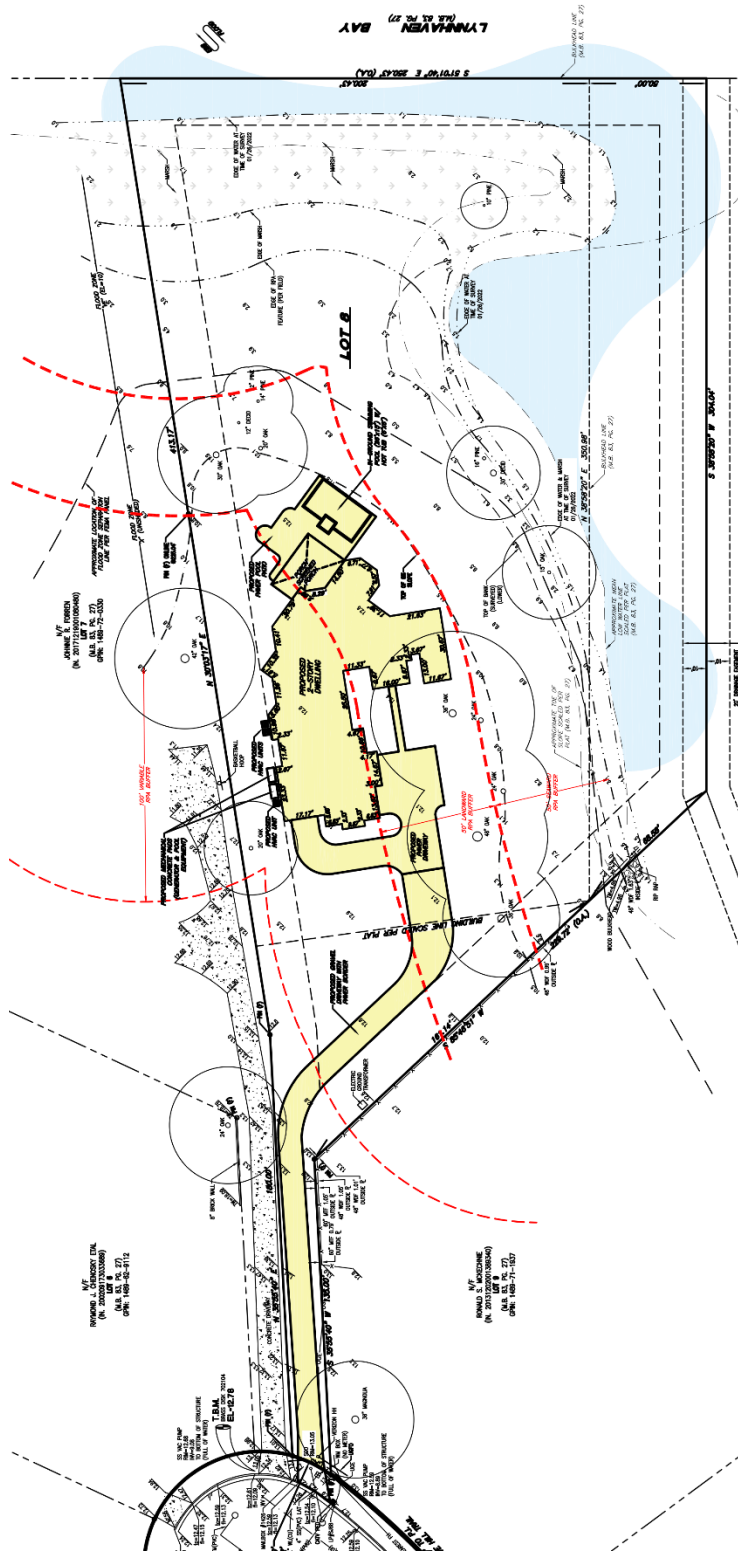




August 28, 2006 CBPA Board Variance Exhibit



CBPA Exhibit – Proposed Improvements



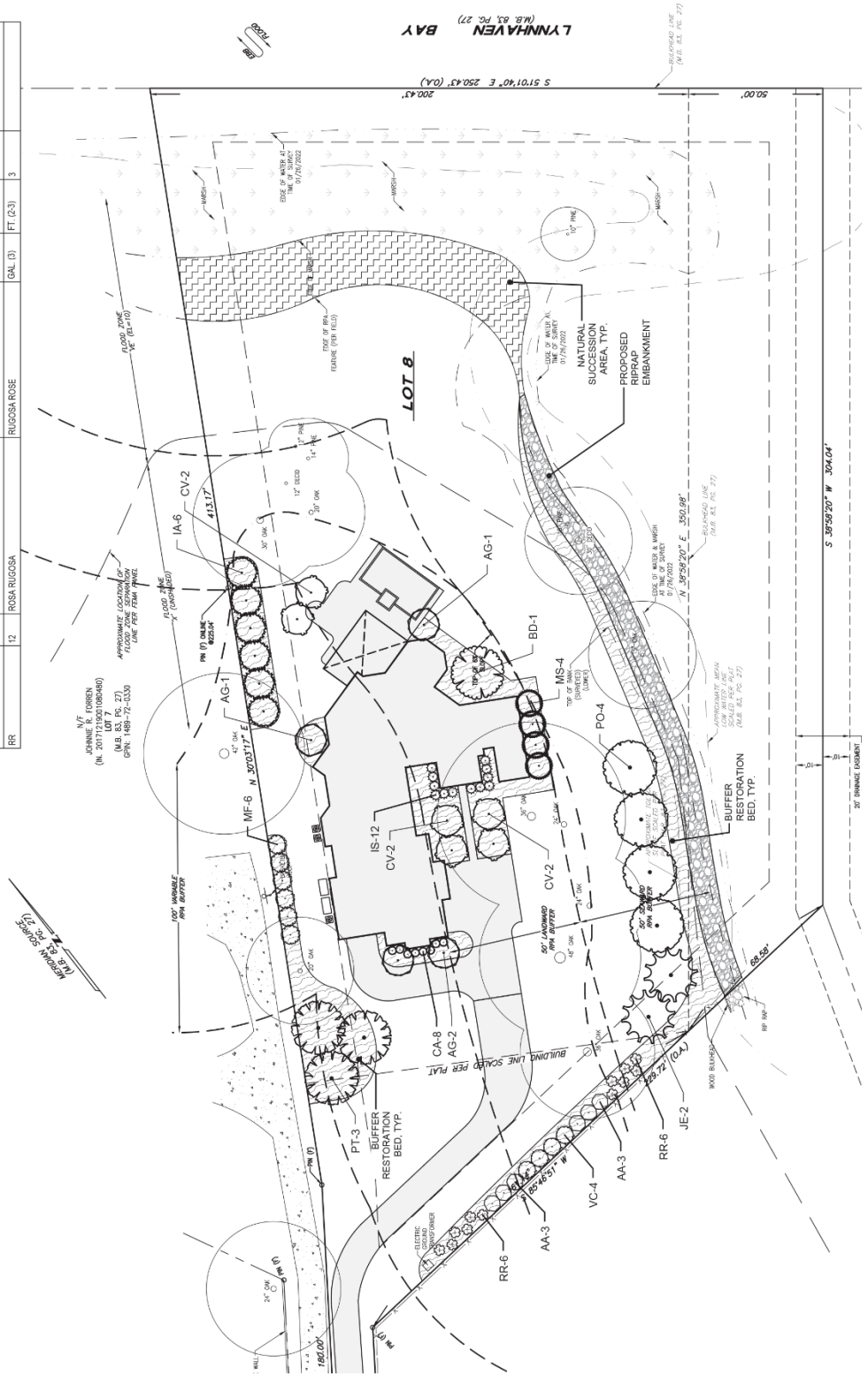
CBPA Exhibit – Restoration Plan

PLANTING REQUIREMENTS

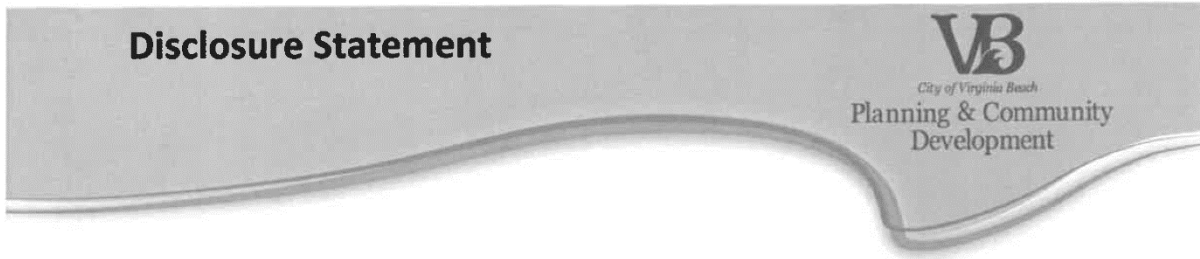
- BUFFER RESTORATION BEDS REQUIRED:
 - *NEW IMPERVIOUS AREA WITHIN RPA: 4,000 SQ. FT.
 - *BUFFER RESTORATION BEDS TO BE PROVIDED.
 - *BUFFER RESTORATION BED AREA: 6,885 SQ. FT.
 - *ADD. NATURAL SUCCESSION AREA: 3,090 SQ. FT.
- BUFFER AREA LIMITS REQUIRED:
 - *10 CANOPY TREES PROVIDED AND APPROVED EQUAL
 - *20 UNDERSTORY TREES
 - *18 LARGE SHRUBS PROVIDED
 - *TREES TO BE 50% EVERGREEN AND 50% DECIDUOUS SPECIES
- BUFFER AREA LIMITS PROVIDED:
 - *10 CANOPY TREES PROVIDED AND APPROVED EQUAL
 - *20 UNDERSTORY TREES
 - *18 LARGE SHRUBS PROVIDED
 - *3,690 SF NATURAL SUCCESSION AREA
 - *TREES TO BE 50% EVERGREEN AND 50% DECIDUOUS SPECIES
- CBPA BIORETENTION PLANTING BED REQUIRED: TBD CU FT.
- CBPA BIORETENTION PLANTING BED PROVIDED: TBD CU FT.

PLANT SCHEDULE CPBA BUFFER

QTY	BOTANICAL NAME	COMMON NAME	SIZE	HEIGHT	METHOD	REMARKS
1	BETULA NEGRA BIRCH*	DURA HEAVY RIDER BIRCH	GAL (15)	FT. (10-12)	1	3 STEM MIN. 5 STEM MAX.
2	JUNIPERUS VIRGINIANA	EASTERN RED CEDAR	GAL (15)	FT. (10-12)	1	SINGLE STEM
3	PINUS TAEDA	LOBLOLLY PINE	GAL (15)	FT. (12-14)	1	SINGLE STEM
4	PLATANUS OCCIDENTALIS	AMERICAN SYCAMORE	GAL (15)	FT. (10-12)	1	
UNCLERIFIED TREES						
QTY	BOTANICAL NAME	COMMON NAME	SIZE	HEIGHT	METHOD	REMARKS
4	AMELANCHIER X GR. AUTUMN BRILLIANCE	AUTUMN BRILLIANCE SERVICEBERRY	GAL (15)	FT. (6-8)	1	SINGLE STEM
6	CORYLUS VITIS VINTERKING	WINTER KING HAZELHORN	GAL (15)	FT. (6-8)	1	SINGLE STEM
6	ILEX OPACA	AMERICAN HOLLY	GAL (15)	FT. (6-8)	1	TREE-FORM
4	MAGNOLIA VIRGINIANA	SWEETBAY MAGNOLIA	GAL (15)	FT. (6-8)	1	
LARGE SHRUBS						
QTY	BOTANICAL NAME	COMMON NAME	SIZE	HEIGHT	METHOD	REMARKS
6	ARONIA ARBUTIFOLIA	RED CHOKEBERRY	GAL (7)	FT. (3-4)	3	
6	MYRTICA CERIFERA FAIRFAX*	FAIRFAX WAX MYRTLE	GAL (7)	FT. (5-6)	3	
4	VEIBURNUM AWABUKI CHINDO*	CHINDO SWEET VEIBURNUM	GAL (7)	FT. (5-6)	3	
SMALL SHRUBS						
QTY	BOTANICAL NAME	COMMON NAME	SIZE	HEIGHT	METHOD	REMARKS
8	CEANOTHUS AMERICANUS	NEW JERSEY TEA	GAL (3)	FT. (2-3)	3	
12	ILEX GLABRA SHAMROCK	SHAMROCK HEMLOCK HOLLY	GAL (3)	FT. (3-4)	3	
12	ROSA RUGOSA	RUGOSA ROSE	GAL (3)	FT. (2-3)	3	



Disclosure Statement



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Applicant Disclosure

Applicant Name Adam Thomas Rex and Jill Wight Rex

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**

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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



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

Applicant Services Disclosure

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

Yes **No**

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

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

Yes **No**

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

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

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

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

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

Art Ross Designs

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

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

Disclosure Statement



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

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

Mitch Ackaway

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

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

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 name of the attorney or firm providing legal services.

Applicant Signature

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

Applicant Signature

Adam Thomas Rex and Jill Wight Rex

Print Name and Title

10/31/22

Date

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

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

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

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

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story addition, swimming pool, patio, deck, walkways, and driveway/parking area.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 45, Page 37
 Recorded 08/15/1958

GPIN

1499-98-7334 (Lot 26) & 1499-98-6249 (Lot 27)

SITE AREA (Both Lot 26 and Lot 27)

63,668 square feet or 1.462 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

62,182 square feet or 1.428 acres

EXISTING IMPERVIOUS COVER OF SITE

23,401 square feet or 38 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

25,498 square feet or 41 percent of site

Area of Redevelopment in RPA

4,566 square feet

Area of New Development in RPA

3,870 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

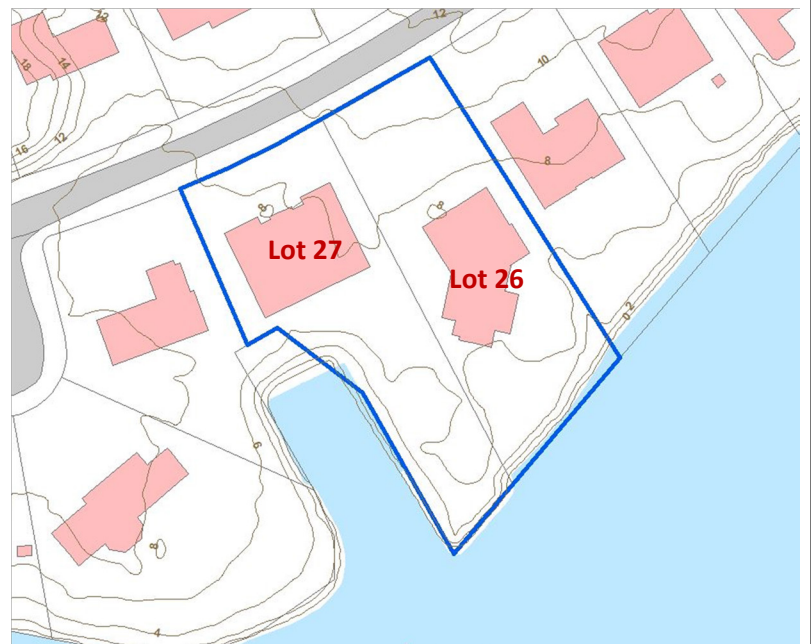
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- The existing improvements associated with Lot 26 have been removed (7/12/2022)
- Swimming pool with associated pool surround and retaining wall – Lot 27
- Pool pump shed – Lot 27
- Concrete circular driveway – lot 27

Construction Details

- Vacate property line between Lot 26 and Lot 27 to create one residential lot
- Two-story addition with associated covered porch (Lot 26) to existing single-family residence (Lot 27).
**Two story addition to existing single-family residence will create one single-family residence on one residential lot*
- Swimming pool and sunshelf with associated pool patio area and pool house
- Gravel pave walkway
- Permeable paver driveway and front walkway

CBPA Ordinance Variance History

Lot 27, 2409 Windward Shore Drive – on November 24, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for demolition of the single-family residence and construction of the new single-family residence with associated driveway, wood deck, and swimming pool with pool surround with the following conditions:

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance.*
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' seaward of improvements.*
4. *Tree compensation shall be at a 2:1 ratio - 10 trees installed.*
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 \$714.00 and is based on 25% of the proposed additional impervious cover. Said payment shall provide for the equivalent of an approximate 779 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
7. *Buffer restoration shall be provided equal to 150% of the proposed additional impervious cover (4,674 square feet).*
8. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*

9. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan.*
10. *All stormwater from existing and proposed impervious cover (inclusive of the RMA and new circular driveway) shall be conveyed to structural stormwater management facilities. (Bay Island precedes the Stormwater Management Ordinance. As such, stormwater runoff is directly discharged into the Lynnhaven River via Windward Shore Drive.)*
11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The November 24, 2003 Board granted variance improvements were not acted upon.

Lot 27, 2409 Windward Shore Drive – on June 27, 2005, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the demolition of the existing residence, walkways, deck, and patio. Construction of a single-family two-story residence, circular concrete driveway, concrete parking area, and wood deck with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, **inclusive of demolition.***
2. *A wire reinforced silt fence, acceptable to Civil Inspections, shall be installed prior to any land disturbance and shall remain in place during all phases of construction.*
3. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 15' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities*
7. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). Said condition shall be so noted on the site plan.*
8. *Under deck treatment of sand and gravel shall be installed.*
9. ***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 \$2304.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,513 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
10. *Buffer restoration totaling 11,059 sq. ft. shall be installed which is equal to 110% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
11. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*

12. *A minimum of twenty-two (22) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*
13. *The conditions and approval associated with this variance are based on the site plan dated September 12, 2003 with a last revision date of May 11, 2005, prepared by Gallup Surveyors and Engineers.*
14. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The June 27, 2005 Board granted variance has been acted upon and the associated improvements constructed.

Lot 26, 2405 Windward Shore Drive - on January 3, 2022, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence with associated accessory structures with the following conditions:

- 1) *A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
- 2) *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
- 3) *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,225 square feet x 200 percent = 4,450 square feet.***

*Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **8 canopy trees, 8 understory trees, 24 large shrubs, and 36 small shrubs.***

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

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

- 6) *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
- 7) *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
- 8) *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.*
- 9) *Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.***
- 10) *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
- 11) *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
- 12) *The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.*
- 13) *Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.*
- 14) *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
- 15) *Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.*
- 16) *No structural improvements shall encroach into the 50-foot seaward buffer other than the proposed walkway to the pier.*
- 17) *The conditions and approval associated with this variance are based on the exhibit plan dated November 24, 2021, prepared by WPL Landscape Architecture, signed November 30, 2021 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.*

The January 3, 2022 CBPA Board granted variance improvements have not been constructed but the existing improvements on the lot have been removed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Fripp Series (deep, excessively drained sandy marine and eolian sediment soils)

Shoreline

2405 Windward Shore Drive is stabilized by a wood bulkhead that connects to an existing wood bulkhead with reinforced rip rap revetment stabilizing 2409 Windward Shore Drive.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 11
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Per the submitted demolition plan, trees being requested for removal fall in between the two existing lots.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicants have owned Lot 26 (2405 Windward Shore Drive) and have recently purchased the adjacent property, Lot 27 (2409 Windward Shore Drive). Lot 26 was granted a variance to the Chesapeake Bay Preservation Area (CBPA) Ordinance in January 2022 for the construction of a single-family residence with associated accessory structures under the same property owners, who have now brought forth this new proposal for the two lots. Since the January 2022 CBPA Board public hearing the existing residence and associated accessory structures on Lot 26 have been demolished and the applicants desire to vacant the interior property line and construct a two-story building addition to the existing single-family residence located on Lot 27 as depicted on the CBPA Exhibit – Proposed Improvements provided below on page 96. With the two-story addition, the applicant proposed to construct a swimming pool with associated pool house within the 50-foot landward buffer of the Resource Protection Area (RPA) thus removing the existing swimming pools on both lots. The layout of the proposed improvements situates the addition in the center of Lot 26 with a new permeable paver driveway layout for both lots. A GravelPave pathway to the existing pier is the only portion of the project proposed within the 50-foot seaward buffer. The applicant's agent provides the following information as merit towards the proposed improvements associated with this variance request being in harmony with the performance standards of the CBPA Ordinance.

- Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural or nonstructural urban best management practices [City Code, Appendix A, Sec. 106(A)(3)] by introducing permeable pavers, and bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation.

- Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel [City Code, Appendix A, Sec. 106(B)(4)(a)(2)] by providing buffer restoration planting beds totaling approximately 12,165 square feet within the 50-foot seaward buffer of the RPA.
- Utilization of modular grid pavers on private property and in low-traffic zones [City Code, Appendix A, Sec. 106(A)(3)] by redeveloping the existing concrete driveways on the two lots to provide approximately 5,682 square feet of permeable pavers as a means to promote infiltration of rainwater on the site.
- The encroachment may not extend into the seaward fifty (50) feet of the buffer area [City Code, Appendix A, Sec. 106(A)(3)] by removing approximately 3,316 square feet of existing improves cover from the 50-foot seaward buffer with the redevelopment of the two lots. In addition, the GravelPave walkway to the existing pier is the minimum necessary to afford relief by providing a single point of access [City Code, Appendix A, Sec. 106(B)(1)(b)(4)] and provides a means of construction to effectively control erosion.

Should the Board desire to consider granting this variance request, the applicant's agent provide the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and 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 proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff acknowledges the statement provided by the applicant's agent and offers that vacating the property line associated with this variance request and evaluating the request based off the encroachment into the RPA buffer given the retreat of impervious cover within the 50-foot seaward buffer provides merit towards not conferring any special privilege to the property owner as other owners of property have been granted similar improvements.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was 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."* Staff acknowledges the statement provided by the applicant and offer that the redevelopment of the lot is consistent with the performance standards set forth in the CBPA Ordinance given the conditions of redevelopment the applicant has provided with the use of structural and nonstructural best management practices and retreat from the 50-foot seaward buffer of impervious cover.
- 3) The variance is the minimum necessary to afford relief because *"the owners will reduce the site from two (2) lots into one (1) lot. The proposed improvements will minimize the impact to the Chesapeake Bay, the new home has been placed towards the front setback line and shifted around on the site to maximize redevelopment, minimize site impacts, and avoid development in the 50-foot seaward portion of the site."* Staff concurs that the applicant has brought forth a comprehensive approach towards the redevelopment of these lots with the locations of the proposed improvements to maximize redevelopment and avoid encroachment of the structure within the 50-foot seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the*

improvements and the bay.” Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of permeable pavers, gravel downspout intercepts, and bioretention planting beds coupled with buffer restoration.

- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site bioretention and permeable pavers will be used as stormwater management practices and will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and acknowledges that the site currently offers no stormwater management and as stated above, the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using permeable pavers, gravel downspout intercepts, and bioretention planting beds. Staff is of the opinion that the proposed best management practices provide merit to minimize the erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **20** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A final subdivision plat shall be submitted for review, approval, and recordation to the Department of Planning and Community Development, Development Services Center (DSC) to vacate the existing internal property lines.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, 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) 12,165 square feet of buffer restoration shall be installed in substantial compliance with the Concept Plant Schedule and Buffer restoration Beds as provided on the CBPA Exhibit: **16 canopy trees, 39 understory trees, and 48 large shrubs.**

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. 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 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 15) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 16) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 17) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 18) ****** 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 \$886.87 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.

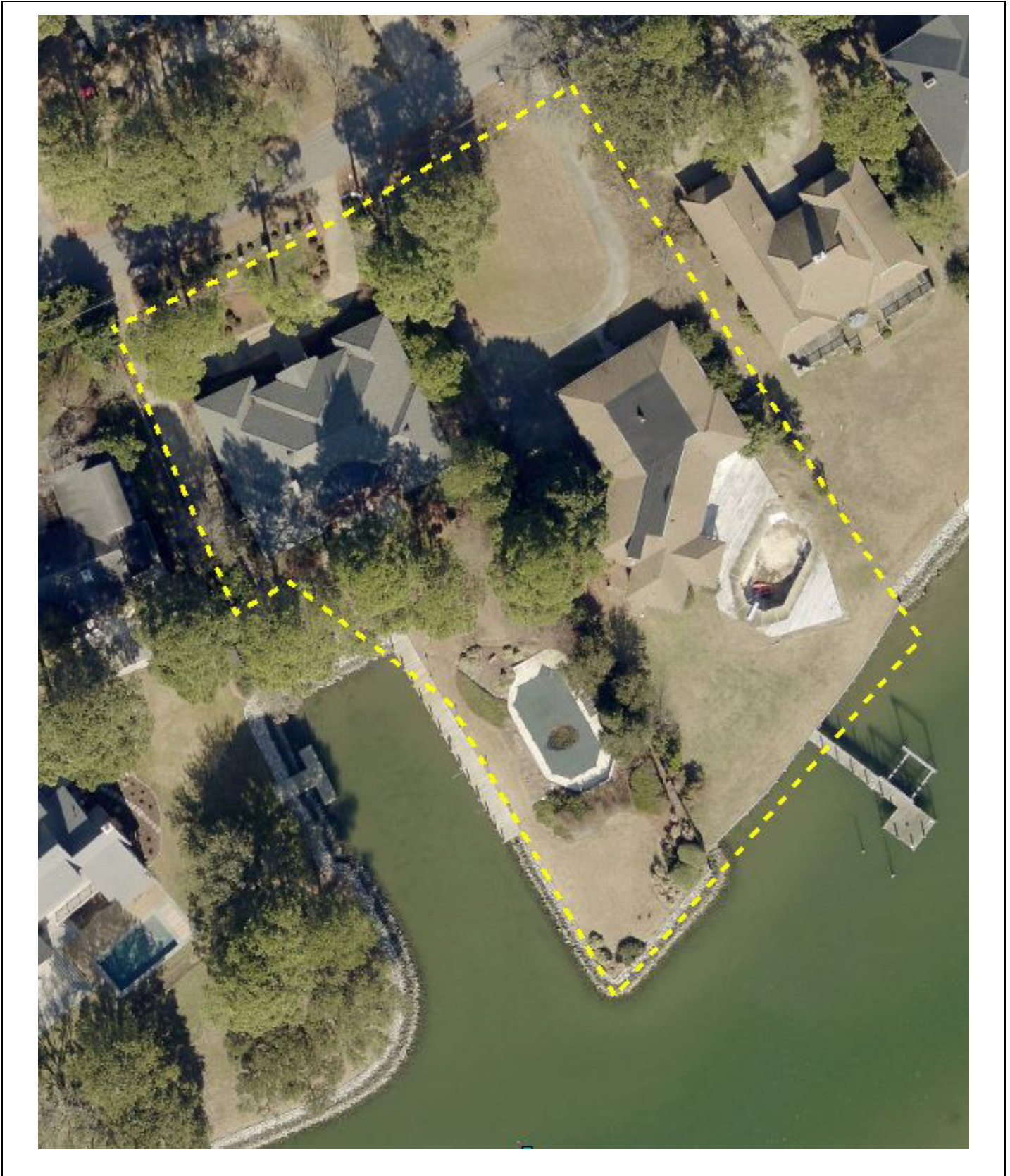
19) This variance and associated conditions will supersede to the conditions of the Board variance granted November 24, 2003, June 27, 2005, and January 3, 2022.

20) The conditions and approval associated with this variance are based on the exhibit plan dated August 30, 2022, prepared by WPL, signed October 31, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

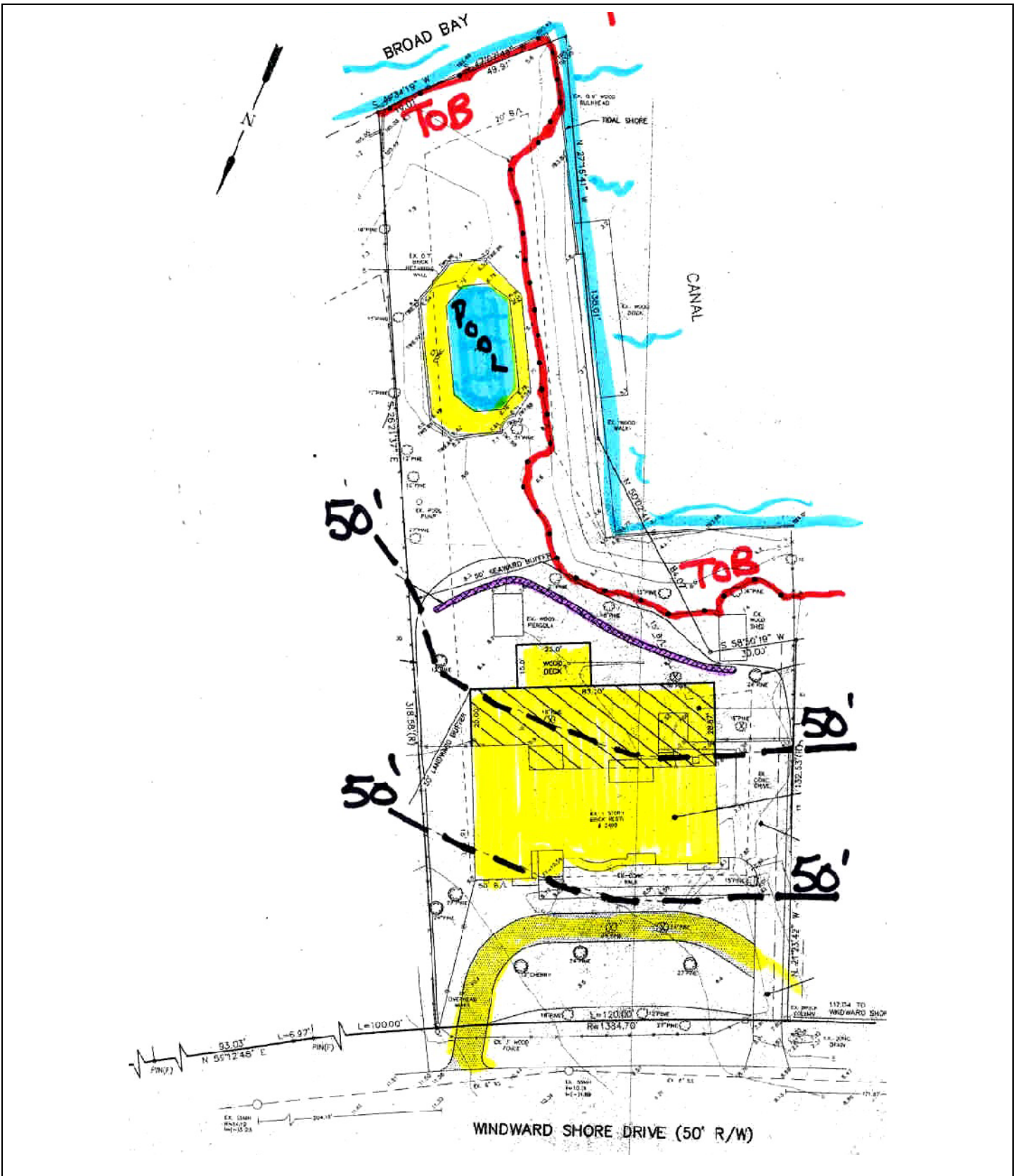
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

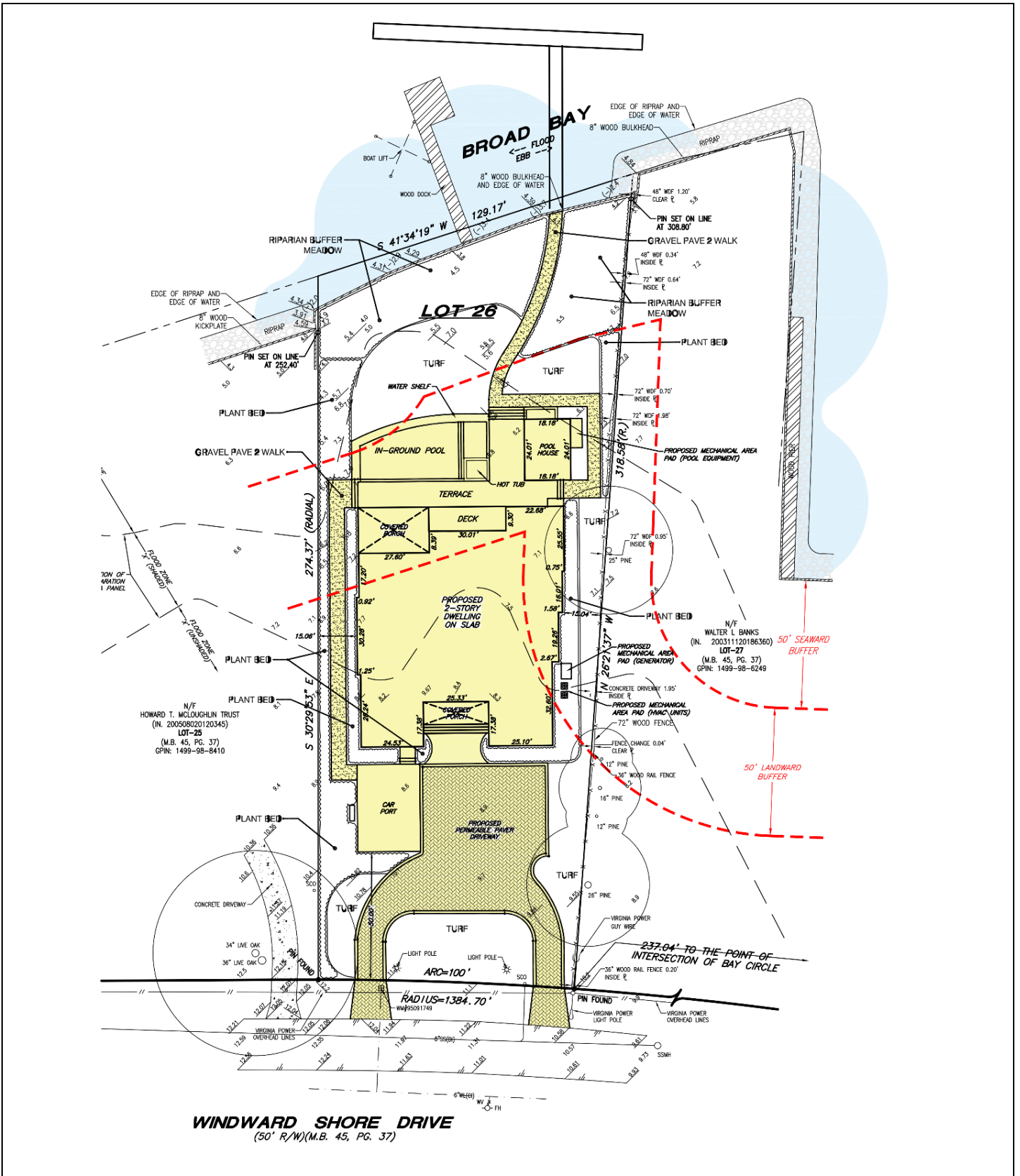
Site Aerial



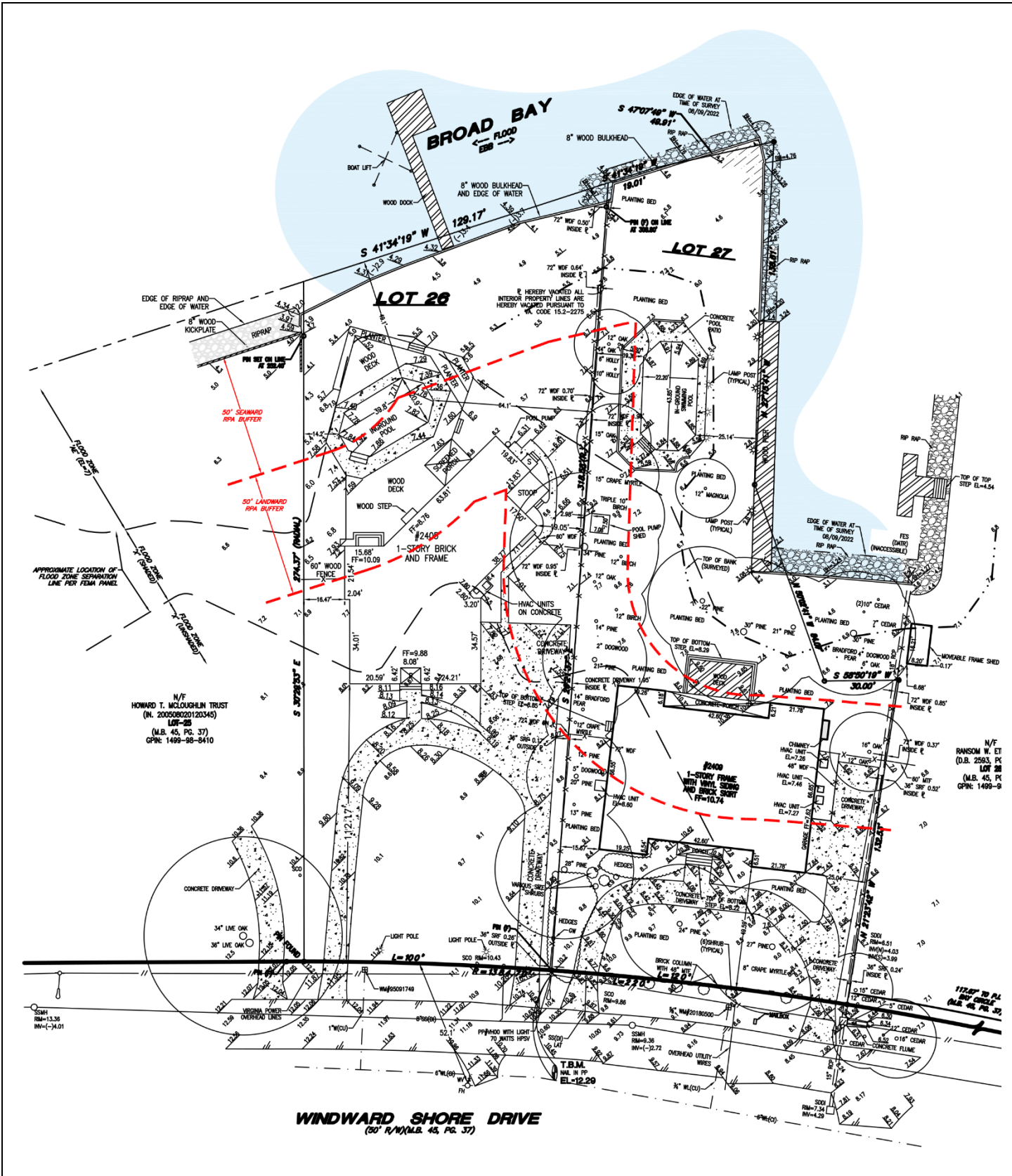
Lot 27, 2409 Windward Shore Drive - November 24, 2003 CBPA Board Variance Exhibit



Lot 26, 2405 Windward Shore Drive - January 3, 2022 CBPA Board Variance Exhibit

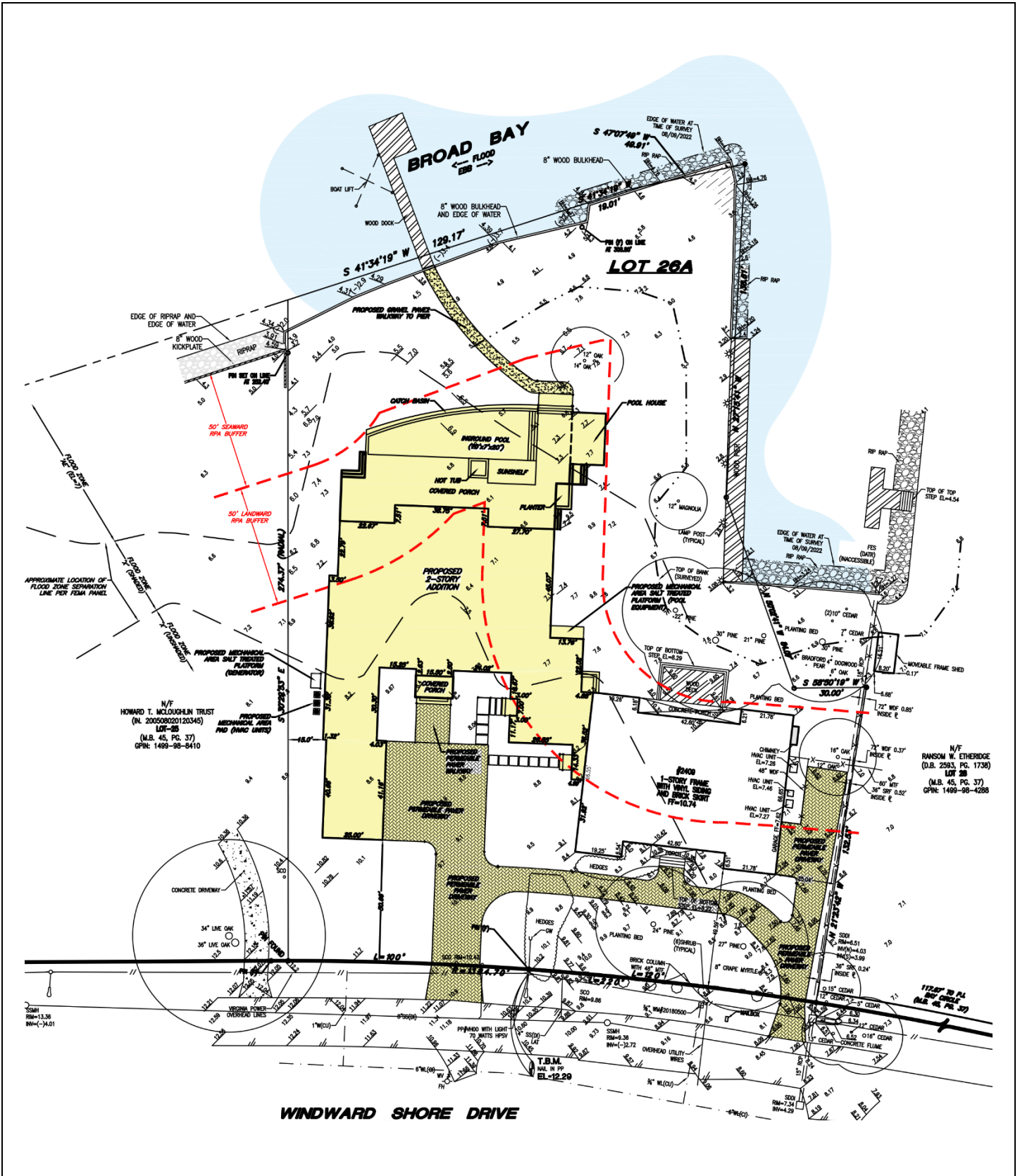


CBPA Exhibit – Existing Conditions

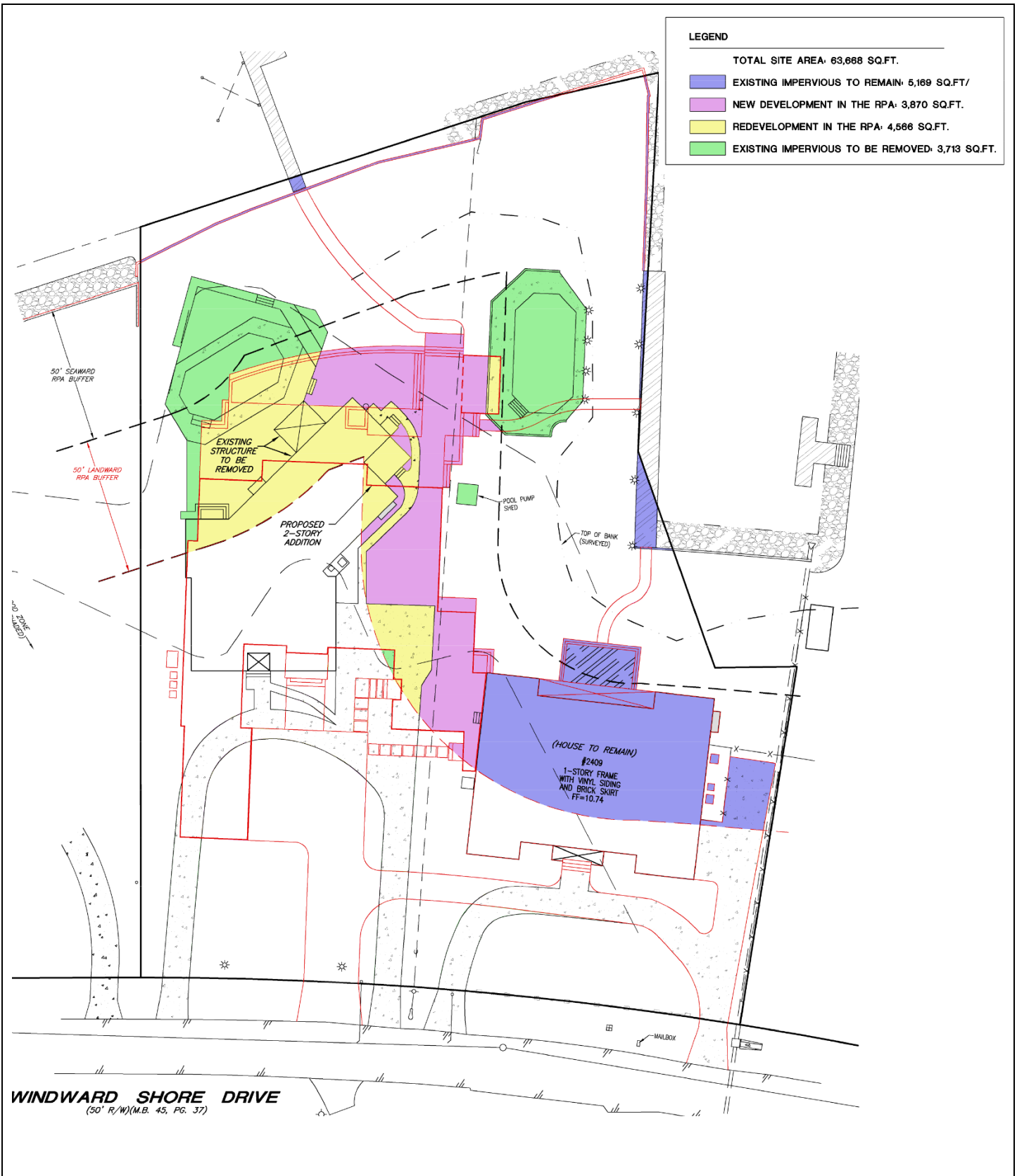


WINDWARD SHORE DRIVE
(50' R/W)(M.B. 45, PG. 37)

CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Impervious Cover Analysis



Disclosure Statement



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

Applicant Disclosure

Applicant Name Luke Hillier & Stephanie Hillier

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.
-

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

Yes No

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

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

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

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

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

WPL & Greg Battaglia, Battaglia Design

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

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

Disclosure Statement



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

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

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

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

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 name of the attorney or firm providing legal services.

Applicant Signature

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

Applicant Signature

Luke Hillier & Stephanie Hillier

Print Name and Title

11/26/2021

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