

Chesapeake Bay Preservation Area Board Agenda

January 3, 2022

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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

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

An informal session will be held the same day at 9:00 a.m. in the Council Chamber - City Hall, Bldg. 1 Municipal Center, 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 **January 3, 2022**

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

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

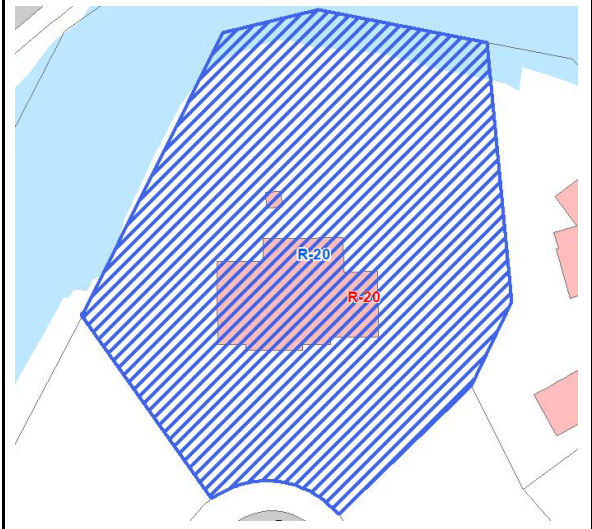
OLD BUSINESS AGENDA ITEMS

1. William & Louise Donigan
[Applicant & Property Owner]

452 Discovery Rd
GPIN 2419-51-6852
Council District – Lynnhaven
Accela Record 2021-CBPA-00057

Variance Request – Encroachment into the RPA to construct a swimming pool, stone pool deck, and retaining walls.

Staff Planner – Cole Fisher
Staff Report – page 5



NEW BUSINESS AGENDA ITEMS

2. Luke & Stephanie Hillier
[Applicant & Property Owner]

2405 Windward Shore Dr
GPIN 1499-98-7334
Council District – Lynnhaven
Accela Record 2021-CBPA-00077

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

Staff Planner – Cole Fisher
Staff Report – page 19



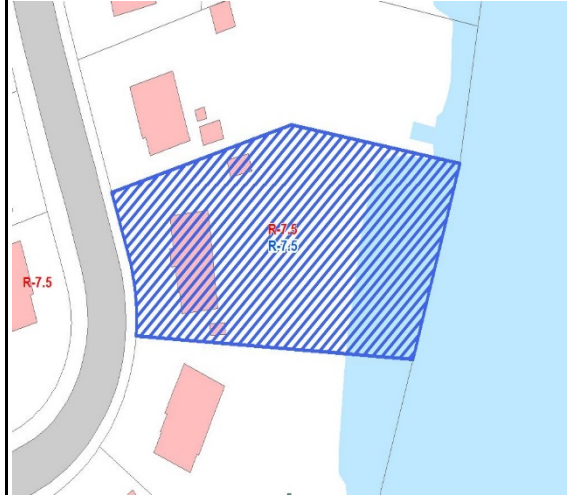
NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Christopher J Sevilla
[Applicant & Property Owner]

404 Putnam Rd
GPIN 1477-78-0408
Council District – Lynnhaven
Accela Record 2021-CBPA-00078

Variance Request – Encroachment into the RPA to construct a paver patio.

Staff Planner – Cole Fisher
Staff Report – page 31

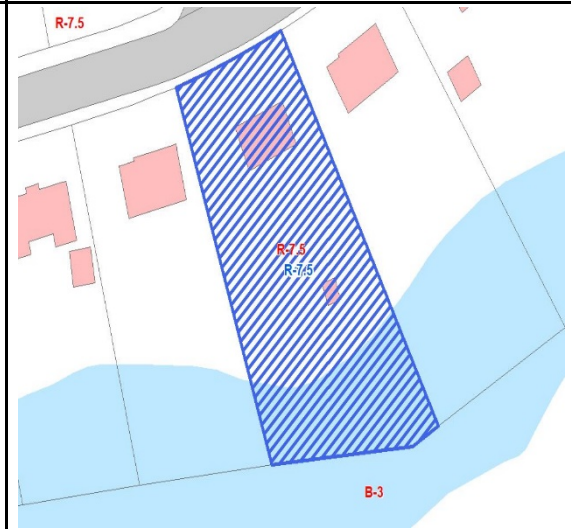


4. Brendan & Rosemarie Dougherty
[Applicant & Property Owner]

4413 Paul Jones Ln
GPIN 1477-67-6316
Council District – Lynnhaven
Accela Record 2021-CBPA-00079

Variance Request – Removal of 17 trees in the RPA.

Staff Planner – Cole Fisher
Staff Report – page 41



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

2022 CBPA BOARD PUBLIC HEARING DATES

Monday	January 3rd	Friday	July 8th
Monday	February 7th	Monday	August 1st
Monday	March 7th	Thursday	September 8th
Monday	April 4th	Monday	October 3rd
Monday	May 2nd	Monday	November 7th
Monday	June 6th	Monday	December 5th



Applicant & Property Owner **William & Louise Donigan**
 Address **452 Discovery Road**
 Public Hearing **January 3, 2022**
 City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, stone deck, and retaining walls.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 54, Page 42
 Recorded 11/05/1961

GPIN

2419-51-6852

SITE AREA

43,494 square feet or 0.998 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

40,481 square feet or 0.929 acres

EXISTING IMPERVIOUS COVER OF SITE

10,253 square feet or 25.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,860 square feet or 26.8 percent of site

Area of Redevelopment in RPA

1,216 square feet

Area of New Development in RPA

781 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

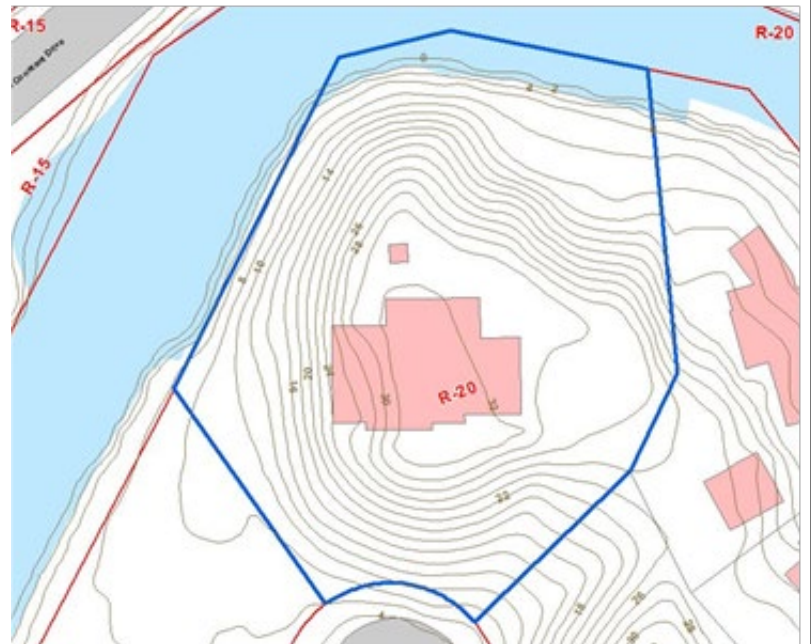
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Stone patio with associated retaining wall

Construction Details

- Swimming pool with associated hot tub and fire pit

CBPA Ordinance Variance History

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

Deferral History

- This variance request was deferred at the October 4, 2021 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the November 1, 2021 CBPA Board Public Hearing.
- This variance request was deferred for a second time at the November 1, 2021 CBPA Board Public Hearing to the January 3, 2022 CBPA Board Public Hearing.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is stabilized by a bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy 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.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that the preservation of the existing heavily wooded riparian buffer shall be a means to prevent an increase in nonpoint source pollution load in the watershed. Staff concurs and offers that an established riparian buffer provides significant merit towards water quality taking into account that a viable riparian buffer can achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients [City Code, Appendix F, Sec 106 (B)(3)(a)].

Evaluation and Recommendation

Excerpt from the October 4, 2021 CBPA Board Staff Report.

“This variance requests proposes to remove the existing stone patio, retaining walls, and hot tub to construct a new stone pool deck, fire pit, pool, and hot tub area. This property is characterized by a very steep grade in the front and rear yard with approximate topographic elevations adjacent to the bulkhead of 5 to 6 feet above sea level to and approximate topographic elevations adjacent to the single-family residence of 32 feet above sea level. Given these existing elevations of the lot, the applicant proposes to construct a retaining wall contiguous to the seaward edge of the proposed swimming pool and patio area as a means to prevent rainwater runoff at the rear yard of the property where these improvements are proposed. In addition, due to the significant change in topography, to provide safe pedestrian access to the water the applicant proposes to construct a five-foot wide gravel path from the cul-de-sac on the western side of the house running along and adjacent to the existing bulkhead to the pier. The location of this path avoids the steepest portions of the site; however, the gravel path is counted towards the percentage of impervious cover. During the site visit, Staff was informed of an emergency where the Virginia Beach Fire Department had to float an individual requiring medical assistance across the canal on a paddle board to Susan Constant Drive due to lack of access to the rear yard and existing pier area.

As proposed, this request increases the overall impervious cover of the lot from 10,253 square feet to 12,162 square feet (23.6 percent to 28 percent of the lot). Approximately 1,194 square feet of the proposed improvements are considered redevelopment over existing impervious cover and 2,740 square feet of this request classified as new impervious cover. Of the new impervious cover in the RPA, approximately 1,960 square feet is associated with the proposed gravel path adjacent to the existing bulkhead. The applicant is proposing to convert approximately 830 square feet of existing impervious cover to pervious cover in an area adjacent to the single-family residence and an area near the existing pier.”

Since the deferral by the CBPA Board at the November 2021 public hearing, the applicant’s agent has worked to address the Board’s concerns regarding the proposed gravel path adjacent to the existing bulkhead and to reduce the impact of development within the 50-foot seaward buffer of the RPA. Based on this, the applicant has decided to withdraw this portion of the CBPA Variance 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 *“no special privilege by this plan. In concert, with similar variance requests.”* Staff concurs and is of the opinion that the applicant has designed the proposed improvements in a manner that complements the existing topography of the lot with the use of materials to limit imperviousness and limit land disturbance with the use of retaining walls.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *the existing lot is wholly located in the RPA and contains tremendous contour relief from the existing house to the water’s edge. The lot was developed prior to the creation of the Chesapeake Bay Preservation Ordinance.”* Staff concurs with the applicant’s agent that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because *the proposed improvements are located near the main house and contained with retaining walls to limit the extends of grading and fill. The*

proposed gravel path is needed to safely access the rear of the property.” Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance’s required findings with the proposed size and locations of the structures. Staff is of the opinion that the proposed structures offer merit towards the variance being the minimum necessary to afford relief.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the existing locations of buffer are heavily wooded and will remain so. The existing buffer plus the proposed buffer mitigation will help enhance water quality.”* Staff is of the opinion that the proposed improvements with this variance request will not be of substantial detriment to water quality. This lot has a mature tree canopy, and the applicant has taken measures to minimize impacts in the RPA by keeping the main improvements in the landward portion of the buffer.
- 5) *“Stormwater from the development will drain via overland flow and shallow concentrated pathways to the point of discharge at the property limits. No change in flow patterns is proposed.”* Staff is of the opinion that the proposed buffer restoration measures will contribute to the goal of a no net increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The pool shall be constructed concurrent with all proposed improvements proposed in this variance application that will be adjacent to the existing single-family residence.
- 3) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements, shall be authorized outboard or seaward of the proposed improvements.
- 4) Submitted concurrent with the site plan shall be a separate 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 and turf zones.
- 5) 1,563 square feet of buffer restoration shall be installed on the lot as depicted on the CBPA Exhibit provided for the CBPA Variance request. 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 to the greatest extent practicable.

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings.

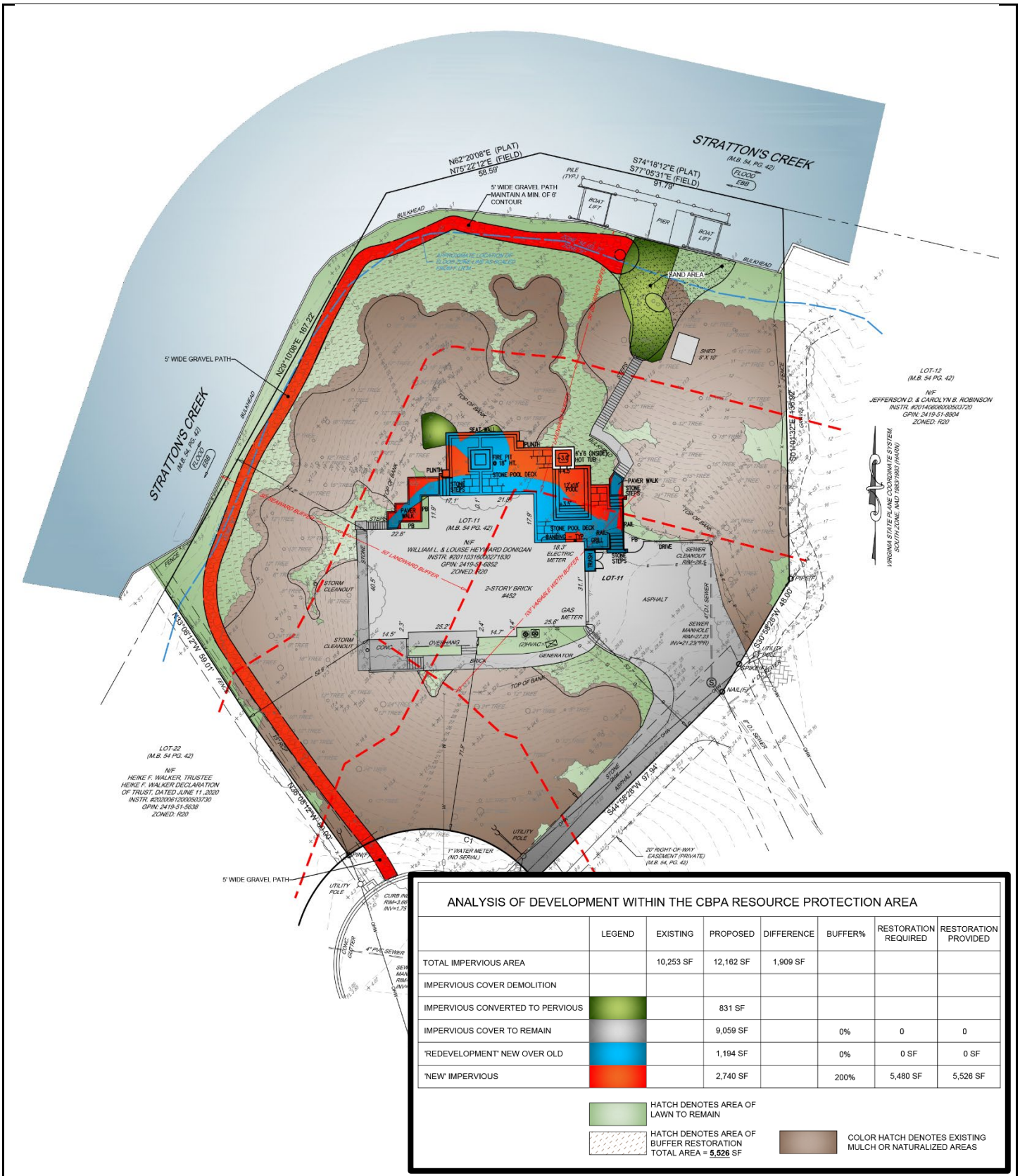
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector and Civil Inspections Staff prior to any land disturbance, including demolition.
- 8) Land disturbance 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) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements the required silt fence shall be installed no further seaward of than 5 feet.
 - Along the remain portions of the property the required silt fence shall be installed 10 feet from all proposed improvements.
- 10) Construction limits and all construction activities shall be contained within the limits of the condition silt fence.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$178.97 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services and signed November 23, 2021 by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

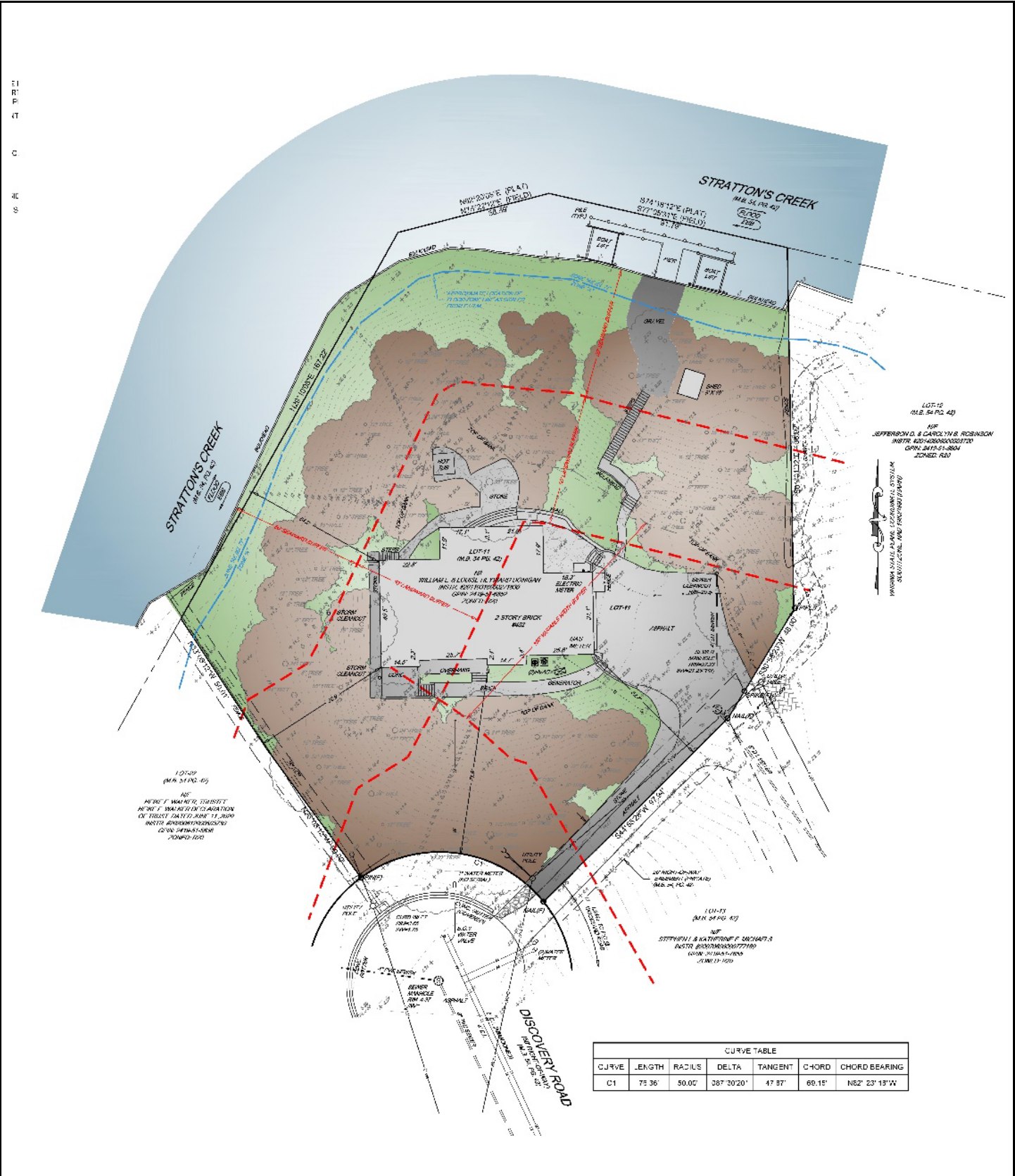
*** NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial

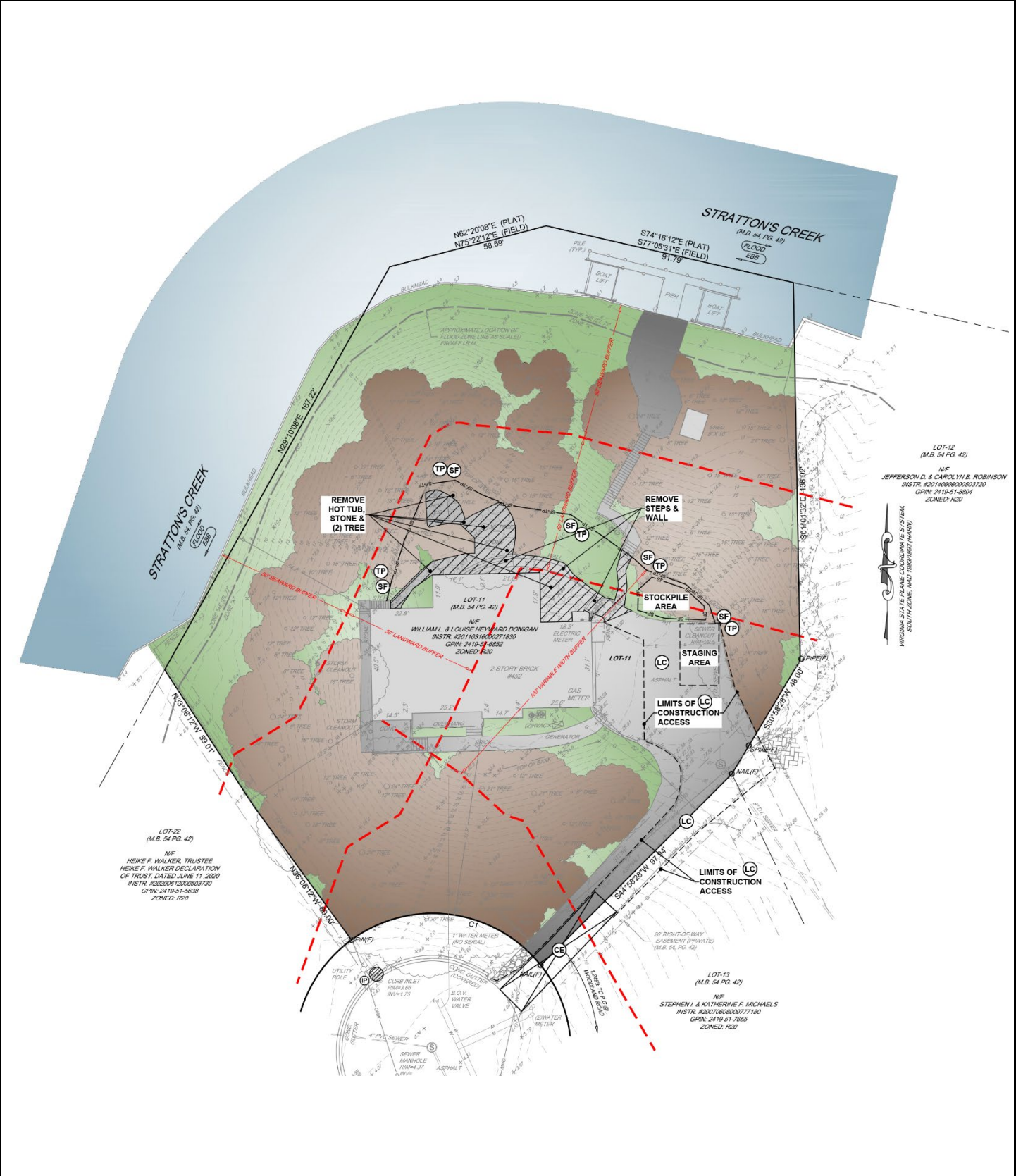




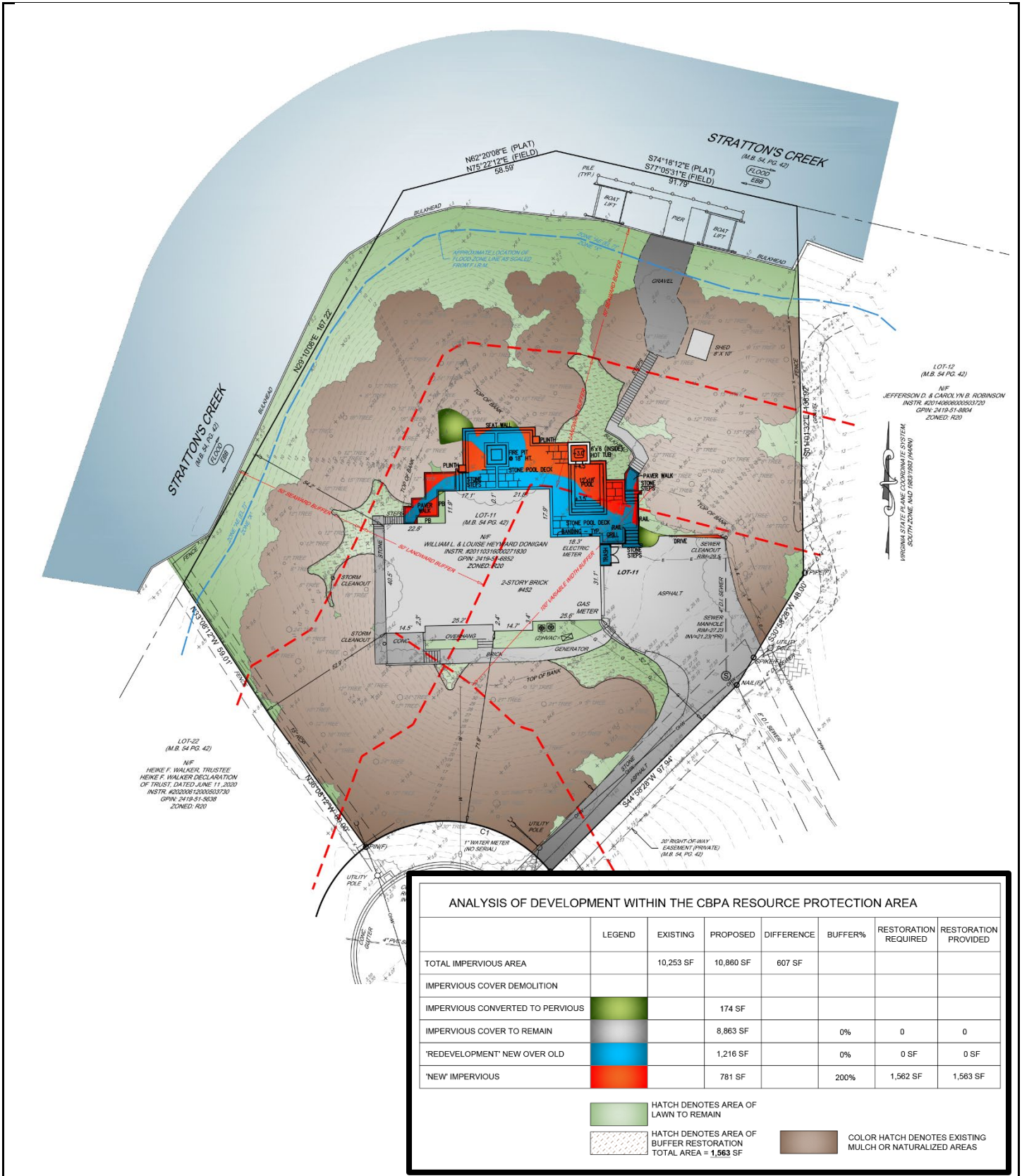
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Demolition Plan



Revised CBPA Exhibit – Proposed Improvements and Color Analysis



Disclosure Statement



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

Applicant Disclosure

Applicant Name Heyward William and Louise Donigan

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.

Towne Bank equity line

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.

Richard Tobin / Tobin & Collins New Jersey

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.

Siska Aurand (Landscape Architect) - John Watson

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.
- Gaddy Engineering Services, LLC - Mike Gaddy
-
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.

William & Louise Donigan

Applicant Signature

William & Louise Donigan

Print Name and Title

8/31/21

Date

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

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

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

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

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Applicant & Property Owner **Luke & Stephanie Hillier**
 Address **2405 Windward Shore Drive**
 Public Hearing **January 3, 2022**
 City Council District **Lynnhaven**

Agenda Item

2

Variance Request

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

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1499-98-7334

SITE AREA

32,714 square feet or 0.751 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

31,814 square feet or 0.730 acres

EXISTING IMPERVIOUS COVER OF SITE

12,686 square feet or 39.9 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

16,850 square feet or 53 percent of site

Area of Redevelopment in RPA

4,116 square feet

Area of New Development in RPA

2,225 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing single-family residence and associated accessory structures

Construction Details

- Single family residence with associated walkways
- Permeable driveway with car port
- Swimming pool with pool deck and hot tub area
- Covered porch
- Detached pool house and mechanical area pad

CBPA Ordinance Variance History

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

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

Shoreline is developed with a wooden bulkhead.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request is for the demolition of the existing single-family residence and swimming pool in order to redevelop the site with a new single-family residence with an in-ground pool, pool house, terrace, and two gravel paver walkway areas. This request increases the overall impervious cover on the lot from 12,686 square feet to 16,850 square

feet with approximately 6,341 square feet of that overall impervious cover being located in the Resource Protection Area (RPA) as follows.

	Existing Conditions	Proposed Improvements	Difference
50-foot Seaward Buffer	1,364 square feet	396 square feet	968 square feet (<i>reduction</i>)
50-Foot Landward Buffer	4,886 square feet	5,992 square feet	1,106 square feet (<i>increase</i>)
Resource Management Area	6,748 square feet	10,462 square feet	3,714 square feet (<i>increase</i>)
Overall Impervious Cover	12,686 square feet	16,850 square feet	4,164 square feet (<i>increase</i>)

While there will be a 968 square foot reduction of impervious cover within the 50-foot seaward buffer, the redevelopment of the lot increases the overall impervious cover within the 100-foot RPA buffer by approximately 138 square feet. The majority of new impervious cover associated with this variance request occurs within the Resource Management Area (RMA) of the Chesapeake Bay watershed, totaling approximately 3,714 square feet. With the increase in overall impervious cover, the applicant is proposing to construct the circular driveway, approximately 3,545 square feet or 21 percent of the overall impervious cover on the lot, with a permeable paver system and the walkway to the water with a non-compacting ‘GravelPave’ grid system. Staff offers that both systems provide merit towards meeting the performance standards set forth in the Chesapeake Bay Preservation Area (CBPA) Ordinance to promote infiltration of stormwater and a means of minimizing impervious cover [City Code, Appendix F, Sec. 106 (A)(3)(c)(3)].

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed dwelling and associated improvements are in keeping with the neighborhood.”* Staff is of the opinion that the CBPA Exhibit provided coupled with the use of materials and stormwater methodology integrating multiple best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not afforded to other owners of property in the neighborhood based upon the extent of redevelopment proposed to the existing conditions of this lot.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather *“the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance.”* Staff concurs with the statement provided by the applicant’s agent.
- 3) The applicant’s agent provides that 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 placed towards the front setback line and shifted around on the site to maximize the redevelopment, to minimize site impacts, and avoid development in the 50’ seaward portion of the site.”* Staff acknowledges that the placement of the proposed residence minimizes encroachment into the 50-foot seaward buffer and utilizes the redevelopment of impervious cover on the lot to the greatest extent practicable.
- 4) The applicant’s agent provides that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed 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.

- 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 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 as well as the installation of the conditioned 4,450 square feet of buffer restoration that restores the lack of tree canopy cover on the lot. 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 **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: **2,225 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) Upon granting of a variance, a revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval within 60 days from the date of this hearing. Once the plans have been approved, **CBPA / CIVIL permit** must be obtained within 30 days. All required restoration must be installed or in

the process of installation within 45 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.

- 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.

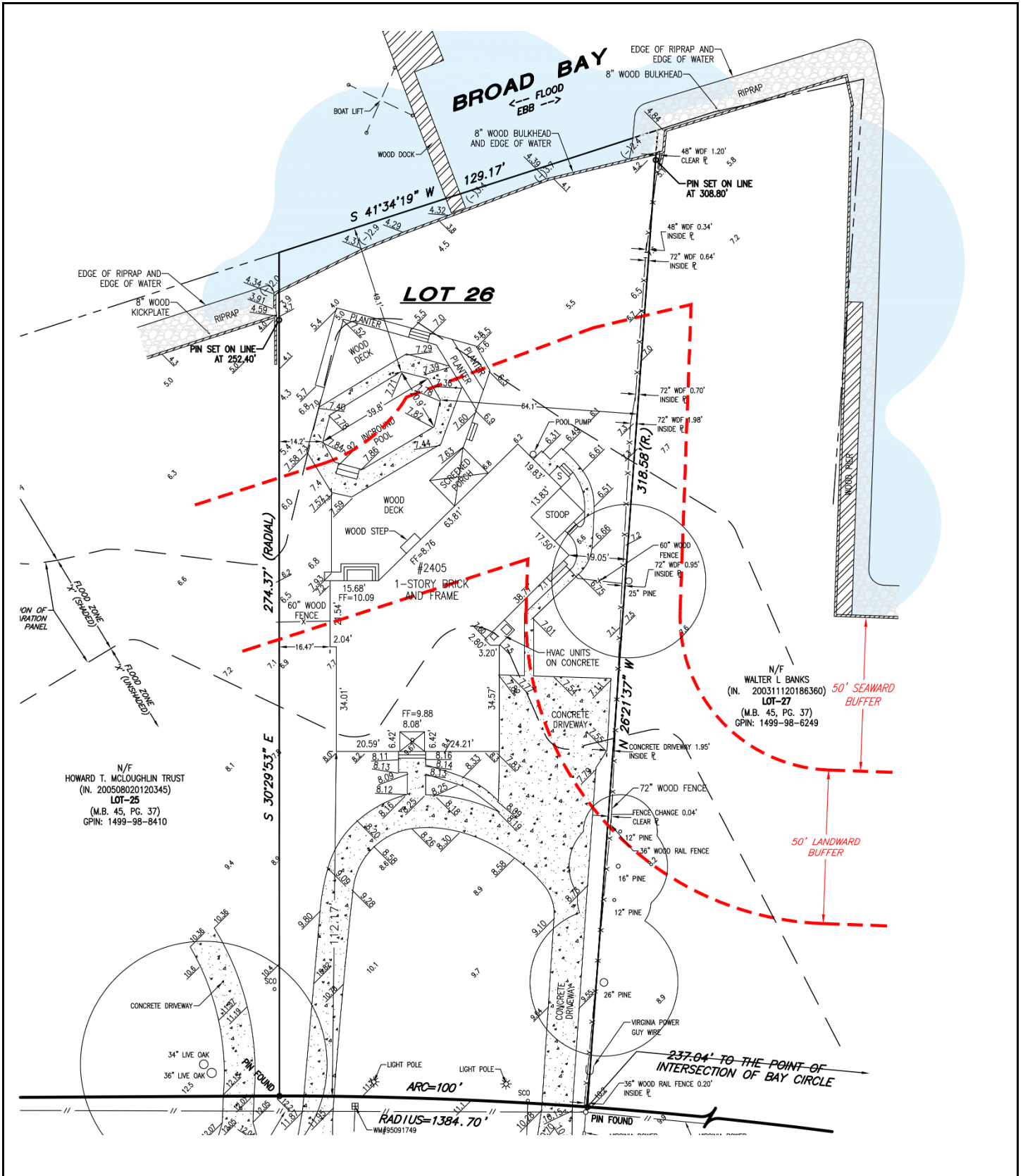
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Existing Conditions



Disclosure Statement



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

Applicant Disclosure

Applicant Name 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



Variance Request

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

Applicant's Agent

Self-Represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 60, Page 43
Recorded 06/05/1961

GPIN

1477-78-0408

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

400 square feet

Location of Proposed Impervious Cover

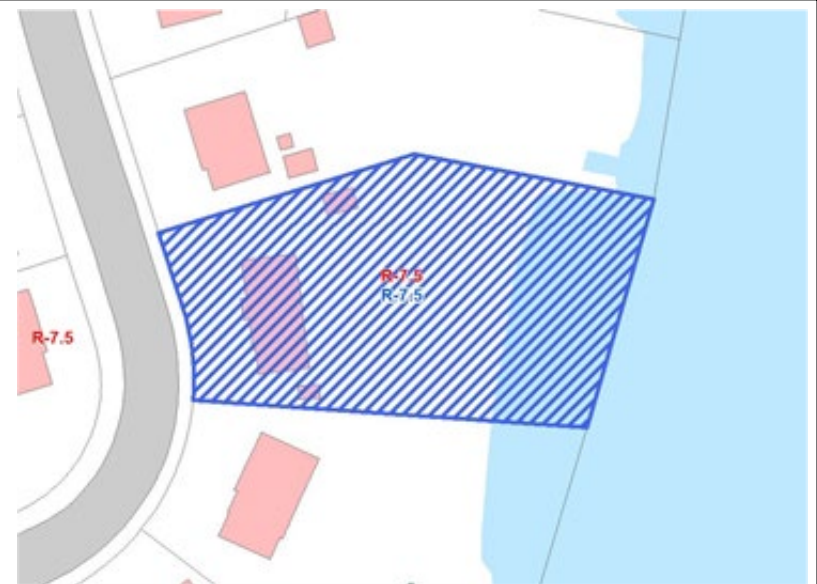
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Concrete paver patio

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a 400 square foot paver patio in the rear yard of the lot. The area where the proposed improvement will be constructed has a minimal slope with an underlying soil condition that is moderately-well drained. Staff is of the opinion that the request to encroach into the 100-foot RPA buffer as presented will not cause a substantial increase in runoff nor be a detriment to water quality in the Chesapeake Bay watershed given these environmental conditions. In addition, the amount of land disturbance associated with the proposed improvement is minimal, as it is limited to the area necessary to provide for the proposed use including excavation.

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 project is a small project that will involve the*

construction of a 400 square foot patio. This will be far less intrusive to the RPA than other larger requests.”
Staff concurs.

- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“this variance is only required due to my property being located in the Chesapeake Bay Resource Protection Area and there is little to no room on my property for me to construct this patio without impacting the RPA.”* Staff offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s Ordinance; therefore, portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“this is a request to construct a small patio adjacent to my wood deck and is not affecting the current condition of the RPA other than the small amount of land disturbance to lay the pavers.”* Staff is of the opinion that the proposed improvements, situated in the rear yard, and entirely within the landward buffer, provides merit towards the variance being the minimum necessary to afford relief given the location of the proposed improvements directly adjacent to the existing single-family residence.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the small amount of land disturbance will not be a substantial detriment to water quality of the Chesapeake Bay or the public welfare.”* Staff concurs.
- 5) *“The proposed improvements will incorporate buffer restoration for the 400 square feet of new cover in the RPA.”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following 4 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 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.**
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **400 square feet x 200 percent = 800 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

4. No perimeter fill is authorized outboard or seaward of the proposed improvements.

** 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.

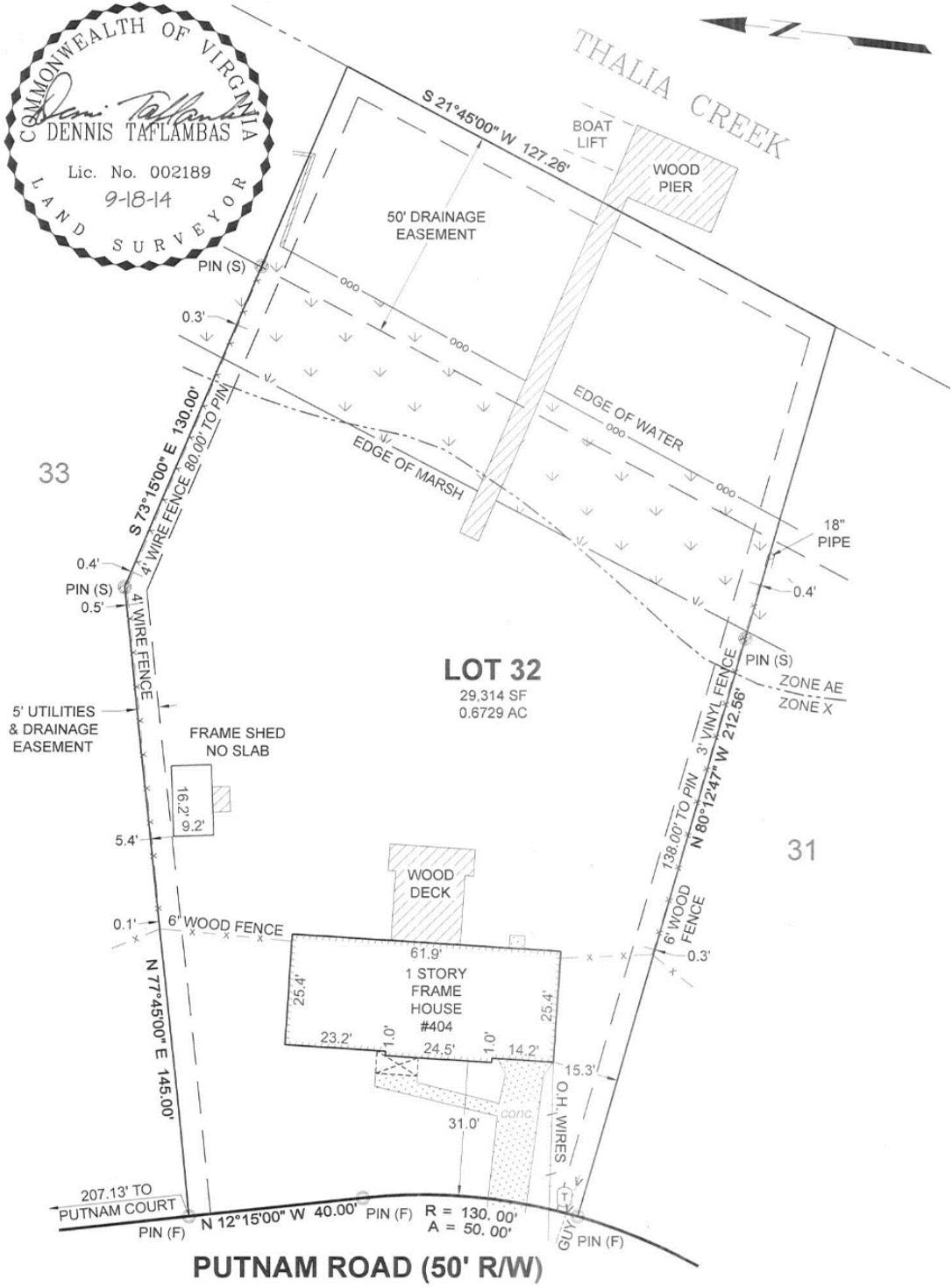
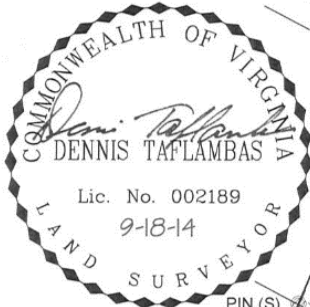
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial

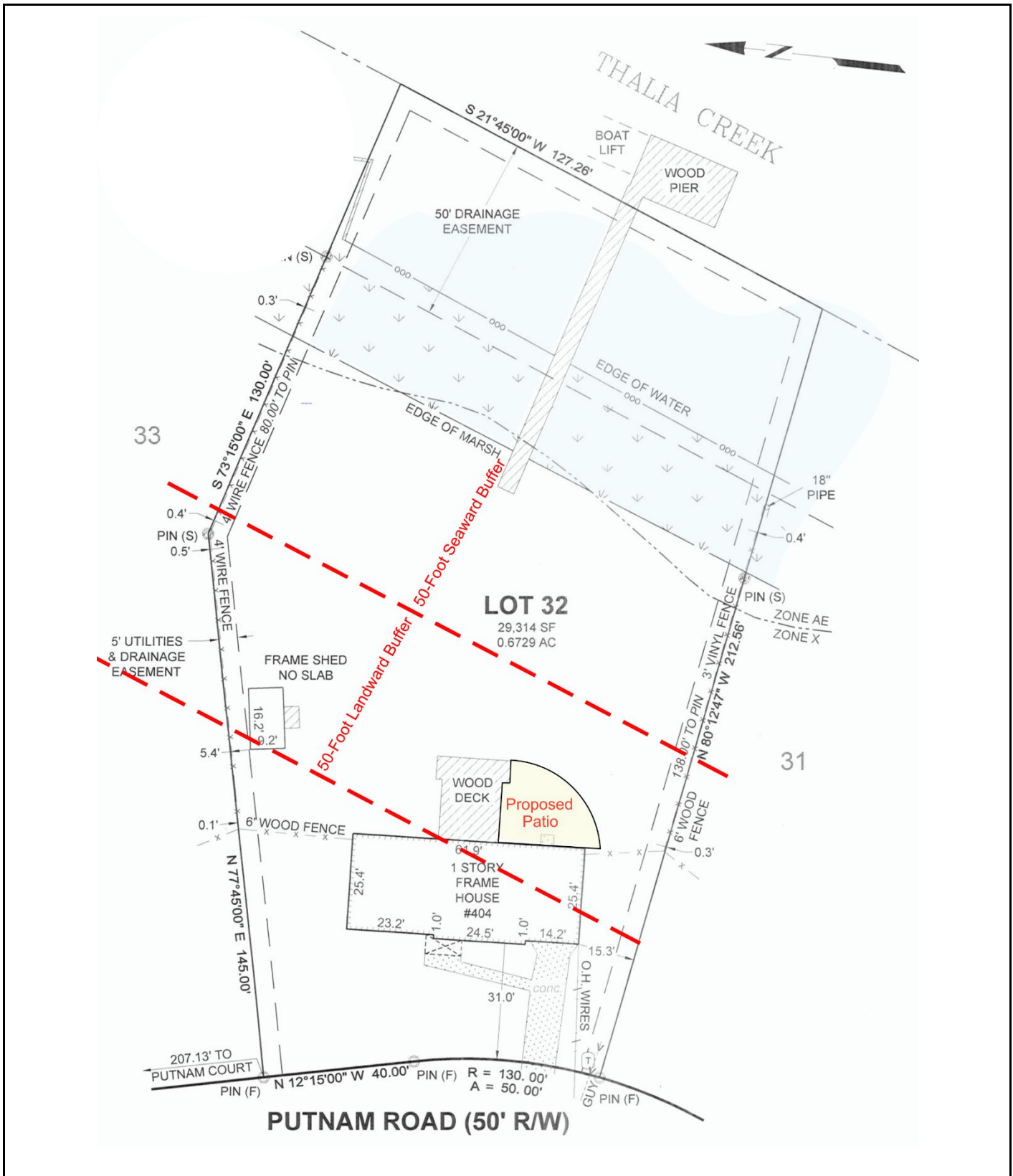


CBPA Exhibit – Existing Conditions

1. THIS IS TO CERTIFY THAT I, ON SEPTEMBER 18, 2014, SURVEYED THE PROPERTY SHOWN ON THIS PLAT. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. THE ONLY EASEMENTS APPEARING ON THIS SURVEY ARE THOSE WHICH WERE SHOWN ON THE RECORDED SUBDIVISION PLAT UNLESS OTHERWISE NOTED.
2. THIS PROPERTY APPEARS TO FALL IN FLOOD ZONE(S) X & AE AS SHOWN ON THE N.F.I.P. MAP FOR THE CITY OF VIRGINIA BEACH, MAP/PANEL 515531-0082F, DATED 5-4-09. BASE FLOOD ELEV = 6.8 FINISHED FLOOR ELEV = N/A



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 Christopher Sevilla

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.

Wells Fargo

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

Christopher Sevilla

Applicant Signature

Christopher Sevilla, Homeowner

Print Name and Title

12/3/2021

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



Applicant & Property Owner **Brendan & Rosemarie Dougherty**
 Address **4413 Paul Jones Lane**
 Public Hearing **January 3, 2022**
 City Council District **Lynnhaven**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to remove 17 Loblolly Pines (Pinus taeda) trees on the lot.

Applicant's Agent

Sel-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 60, Page 43
 Recorded 12/02/1963

GPIN

1477-67-6316

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

0 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- 17 Loblolly Pines (*Pinus taeda*) trees.

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 17
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant provides the following comments relative to this variance request as merit towards the request not being injurious to the neighborhood or a detriment to water quality 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 not seeking to construct anything and tree removal is a necessary part of home maintenance."* Staff acknowledges the statement provided by the applicant and notes that Staff routinely works with property owners to manage riparian resources on their property.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the trees have been growing for many years and*

posed a hazard for some time. A previous owner applied for and was approved for a permit to remove the trees in 2011-2012 but did not continue with the removal. Staff offers that the value of a riparian ecosystem is becoming better appreciated as a viable best management practice and that tree removal requests in the RPA should be managed based off the health of the trees being request for removal, the hazard that existing trees may pose, and proximately to existing structures when evaluating substantial requests for tree removal within the RPA buffer.

- 3) The applicant provides that the variance is the minimum necessary to afford relief given *“the trees requested for removal are only the ones in proximity to damage the house with five trees further away being retained on the property.”* Staff offers the recommended condition below requiring mitigation for those trees being removed towards reestablishing a riparian shoreline ecosystem on a lot that current has turf extending from the rear of the residence to the tidal waterway.
- 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 applicant has stated in the Water Quality Impact Assessment (WQIA) that mitigation will be provided and that *“the trees pose a hazard to the neighboring houses in the neighborhood and substantial plant life remains to maintain water quality.”* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant intends to *“we intend to plant smaller trees and shrubs to assist in erosion control and to ensure that there is no increase in pollution.”* Staff concurs.

Complete riparian buffers consist of canopy trees, understory vegetation and a forested floor of leaf litter that provide hydrological and ecological benefits between tidal waterways and developed upland areas. These transitional zones of established vegetation provide multifunctional best management practices that manage rainwater infiltration and stormwater runoff for water quality benefits, erosion and sediment control, nutrient and chemical control, and terrestrial habitat. Staff offers that to maintain the functional value of the buffer area, existing vegetation may be removed to provide for general woodland management and to reestablish a functional riparian shoreline ecosystem where past upland development has removed the resource. Staff is of the opinion that attempts should be made to retain forested buffer areas that mimic an undisturbed natural forest and that open unvegetated areas should be considered for replanting. These replanted areas should mimic existing native forests and reestablish tidal shorelines into functional best management facilities. As such, Staff provides the recommended conditions below for the Board’s deliberation regarding the specifics of this variance request as a means towards mitigating for tree removal in the RPA buffer and reestablishing a functional shoreline riparian ecosystem.

Given the above comments, Staff recommends the following 4 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. No trees shall be removed from within 60 feet from the edge of water.
2. Exclusive of the trees being authorized for removal within the RPA, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, shall be left in a natural state.

3. 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 with a Landscape Plan shall be submitted to the Development Services Center for review and approval. Once approved, a permit shall be obtained from Permits & Inspections Division for the issuance of a utility/right of way permit for tree removal in the RPA.
4. Mitigation for trees to be removed shall be installed as defined below.
 - 17 canopy trees (matures to a height greater than 35') at a 1 – 2" caliper at time of planting.
 - 17 understory trees (matures to a height of 12' to 30') at a ¾" to 1 ½" caliper at time of planting
 - OR-
 - 11 canopy trees (matures to a height greater than 35') at a 1 – 2" caliper at time of planting.
 - 11 understory trees (matures to a height of 12' to 30') at a ¾" to 1 ½" caliper at time of planting.
 - 22 large shrubs (matures to a height of 5' to 8').

The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

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

Site Aerial

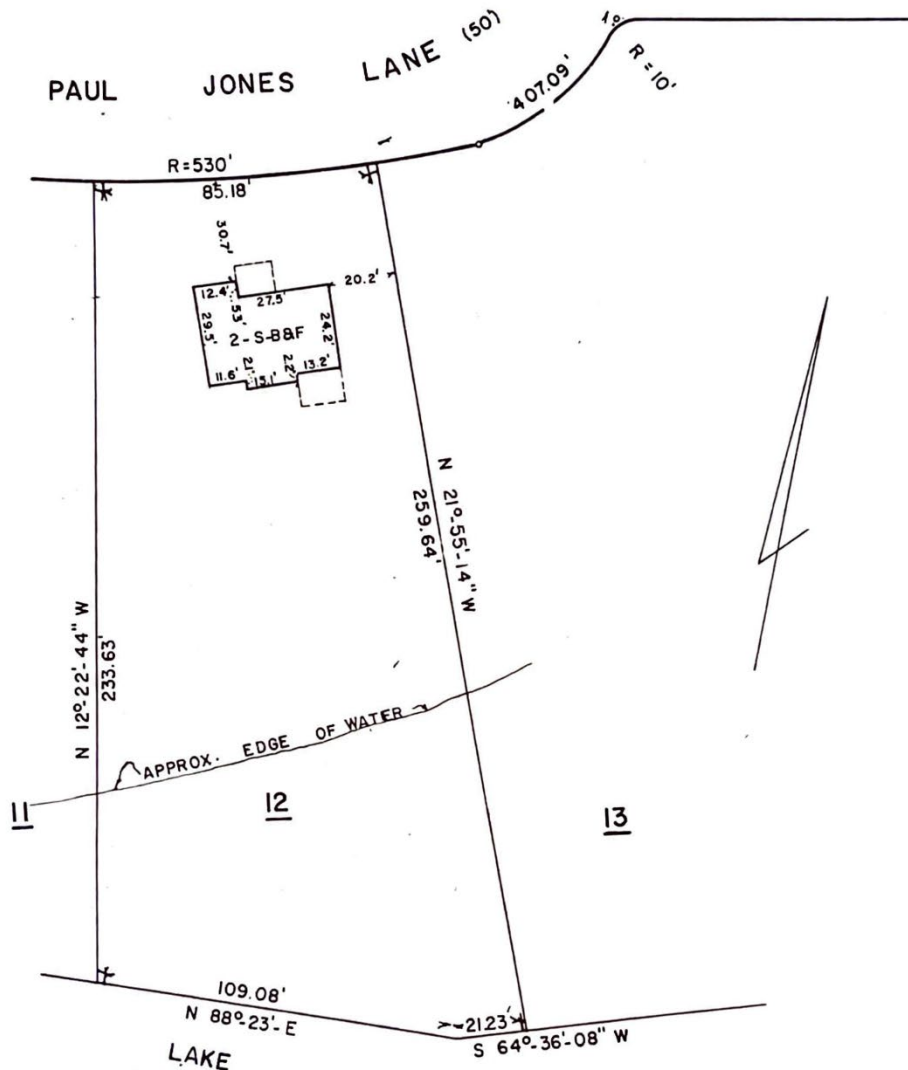


CBPA Exhibit – Existing Conditions

THIS IS TO CERTIFY THAT I, ON SEPT. 7, 1965 SURVEYED
 THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE
 BUILDINGS ARE AS SHOWN ON THIS PLAT.
 THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO
 ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

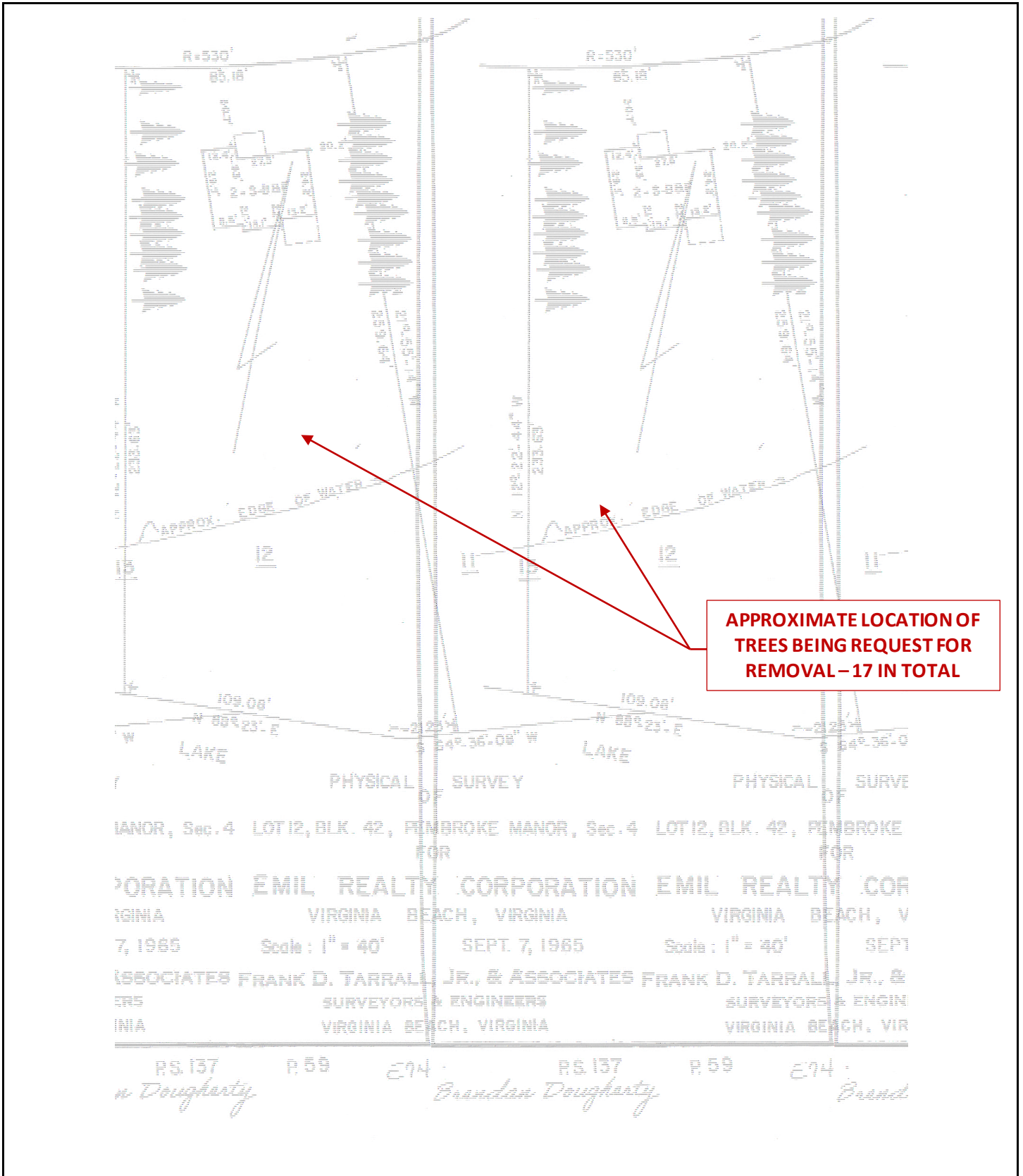
SIGNED *John E. Sirine*

GENERAL GAGE COURT (50')



PHYSICAL SURVEY
 OF
 LOT 12, BLK. 42, PEMBROKE MANOR, Sec. 4
 FOR
EMIL REALTY CORPORATION
 VIRGINIA BEACH, VIRGINIA
 Scale: 1" = 40' SEPT. 7, 1965
FRANK D. TARRALL, JR., & ASSOCIATES
 SURVEYORS & ENGINEERS
 VIRGINIA BEACH, VIRGINIA

CBPA Exhibit – Tree Removal Request



APPROXIMATE LOCATION OF TREES BEING REQUEST FOR REMOVAL – 17 IN TOTAL

CBPA Exhibit – Aerial Analysis, Approximate Location of Tree Removal Request



CBPA Exhibit – Site Photo, Trees 1 through 9



CBPA Exhibit – Site Photo, Trees 10 through 17



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 Brendan & Rosemarie Dougherty

Does the applicant have a representative? Yes No

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

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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.

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

Brendan Dougherty

Print Name and Title

Brendan Dougherty

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