

Chesapeake Bay Preservation Area Board Agenda

November 7, 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, November 7, 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 **November 7, 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.

ADMINISTRATIVE BUSINESS

1. Chesapeake Bay Preservation Area Board

Amendment to the Policies and Rules of Procedures

A. Motion to Proceed with the Show Cause

- Process for substitute motions

B. Motion to the Restoration Hearing

- Process for After-the-Fact CBPA variance requests submitted with Restoration Order

Staff Report – page 9

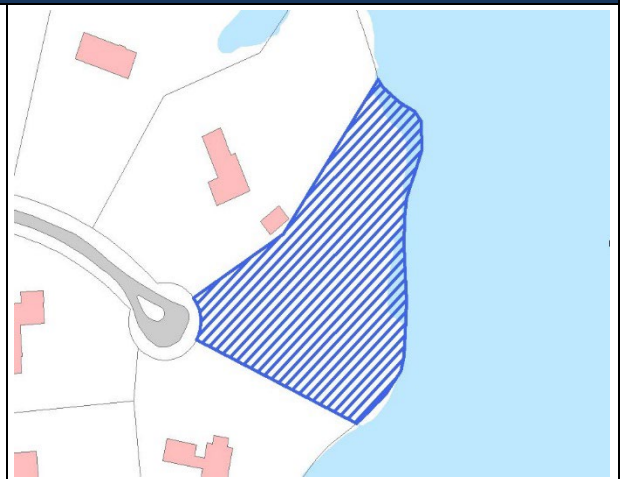
OLD BUSINESS AGENDA ITEMS

2. 1600 Arnold Circle, LLC [Applicant & Property Owner]

1600 Arnold Circle
GPIN 2409-82-3546
City Council District: District 6, formerly Lynnhaven
Accela Record: 2022-CBPA-00047

Variance Request – Encroachment into the RPA to construct an artificial turf area.

Staff Planner – Cole Fisher
Staff Report – page 11



OLD BUSINESS AGENDA ITEMS (CONTINUED)

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

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

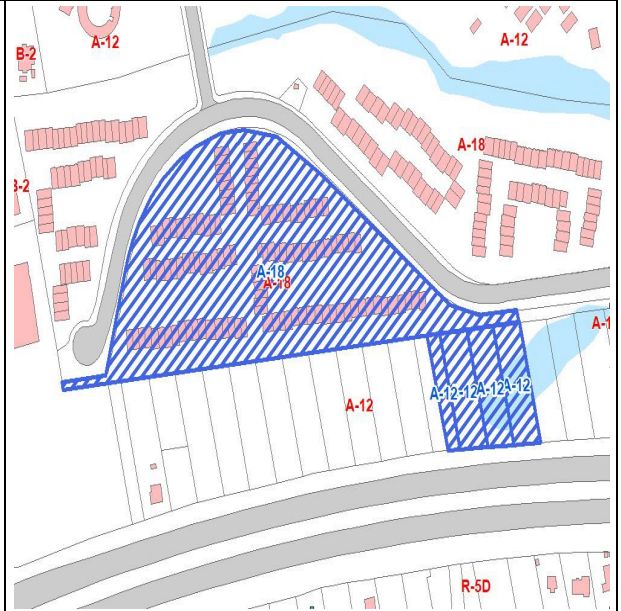
GPINs 2417-08-3383, 2417-17-3946, 2417-17-4910, 2417-17-4976 & 2417-17-5942

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

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

Staff Planner – Cole Fisher

Staff Report – page 23



NEW BUSINESS AGENDA ITEMS

4. Lawrence J. Goldrich Marital Trust [Applicants & Property Owners]

1325 Kingfisher Court

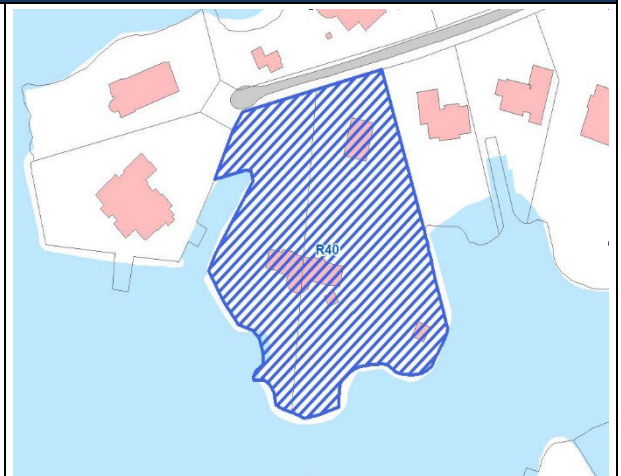
GPIN 2418-12-7693

City Council District: District 6, formerly Lynnhaven
Accela Record: 2022-CBPA-00056

Variance Request – Encroachment into the RPA to remove 50 trees and redevelop driveway.

Staff Planner – Cole Fisher

Staff Report – page 25



5. Christopher Wright [Applicants & Property Owners]

2104 W. Kendall Circle

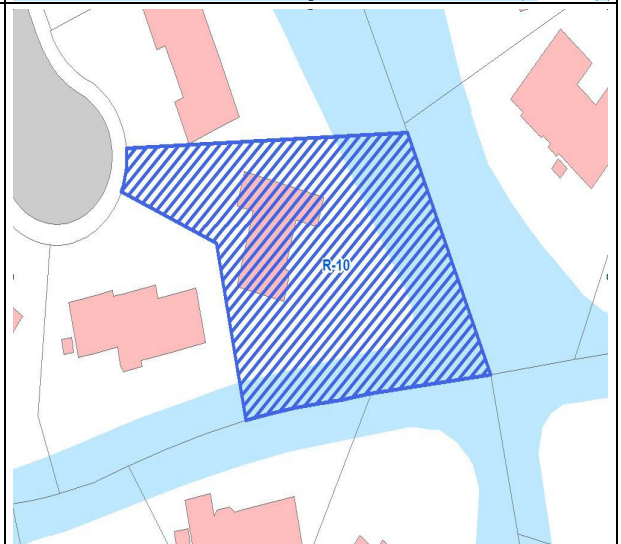
GPIN 1499-79-3790

City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00057

Variance Request – Encroachment into the RPA to construct a swimming pool with paver patio surround, deck, and cabana, shed, and driveway expansion.

Staff Planner – Cole Fisher

Staff Report – page 47



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Abrams Living Trust

[Applicants & Property Owners]

844 St. Martin Drive

GPIN 1478-83-9502

City Council District: District 8, formerly Bayside

Accela Record: 2022-CBPA-00058

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

Staff Planner – Cole Fisher

Staff Report – page 59



7. Johnathan Schreiber & Elizabeth Kulas

[Applicants & Property Owners]

416 Goodspeed Road

GPIN 2419-60-3857

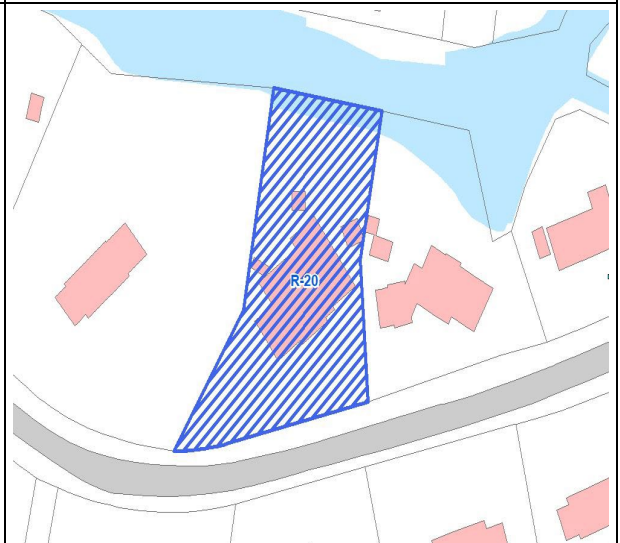
City Council District: District 6, formerly Lynnhaven

Accela Record: 2022-CBPA-00059

Variance Request – Encroachment into the RPA to construct retaining walls with associated fill material and steps, spa/outdoor shower area and shed.

Staff Planner – Cole Fisher

Staff Report – page 69



8. Peer & Pernille Bjerring

[Applicants & Property Owners]

2204 Kendall Street

GPIN 1590-70-1632

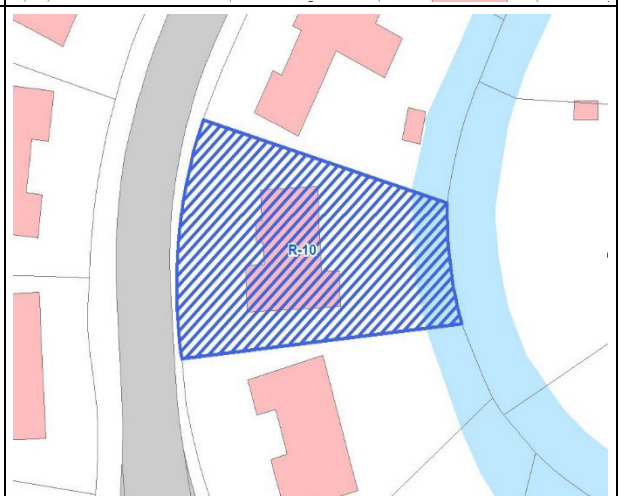
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00060

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

Staff Planner – Cole Fisher

Staff Report – page 83



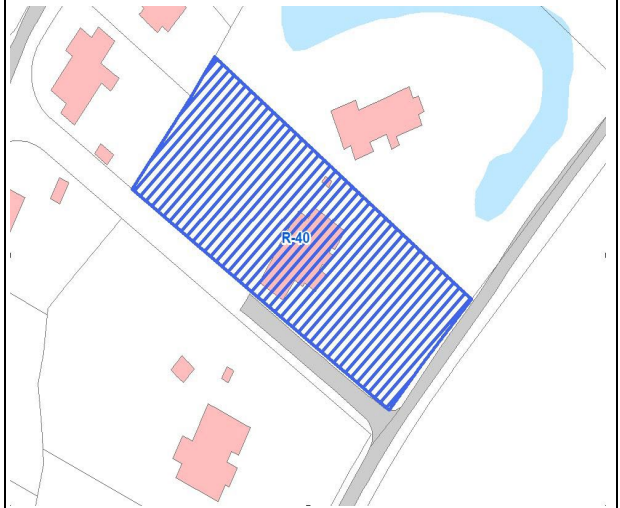
NEW BUSINESS AGENDA ITEMS (CONTINUED)

9. Joshua & Sarah Haggerty
[Applicants & Property Owners]

1133 Ivy Drive
GPIN 2418-77-0280
City Council District: District 6, formerly Lynnhaven
Accela Record: 2022-CBPA-00061

Variance Request – Encroachment into the RPA to construct a swimming pool, walkway, retaining wall, and shed.

Staff Planner – Cole Fisher
Staff Report – page 93

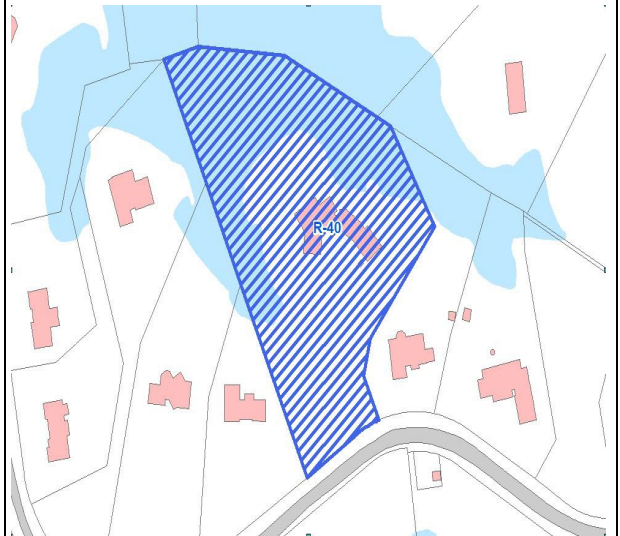


10. Joseph & Judith Harvey
[Applicants & Property Owners]

2804 River Road
GPIN 1499-51-2768
City Council District: District 8, formerly Lynnhaven
Accela Record: 2022-CBPA-00062

Variance Request – Encroachment into the RPA to construct driveway expansions, parking pad, covered car port, retaining wall and deck, and walkways.

Staff Planner – Cole Fisher
Staff Report – page 107

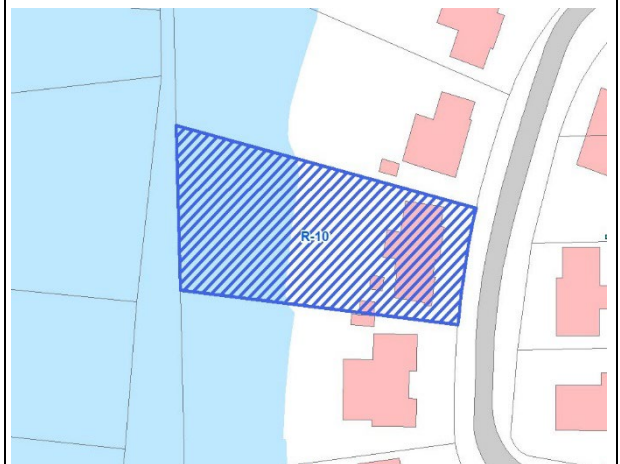


11. Doan Van Nguyen
[Applicants & Property Owners]

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 121



TENTATIVE 2023 CBPA BOARD PUBLIC HEARING DATES

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

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

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The policies and procedures are adopted by the Chesapeake Bay Preservation Area Board of the City of Virginia Beach, to facilitate the performance of its duties and the exercise of its powers as set forth in the City's Chesapeake Bay Preservation Area Ordinance (Appendix F). Authority for the adoption and or modification of these policies and procedures is specifically set forth in Section 110(G) of the Chesapeake Bay Preservation Area Ordinance.

Revised Policies and Rules of Procedures of the Chesapeake Bay Preservation Area Board

- A. Motion to Proceed with the Show Cause
 - Process for substitute motions

- B. Motion to the Restoration Hearing
 - Process for After-the-Fact CBPA variance requests submitted with Restoration Order

- C. Chesapeake Bay Preservation Area Board Meeting

Date of Adoption

Adopted	November 22, 1999
Amended	June 28, 2004
Amended	January 23, 2006
Amended	March 26, 2007
Amended	August 27, 2007
Amended	September 22, 2014
Amended	August 3, 2020

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Applicant & Property Owner **1600 Arnold Circle, LLC**
 Address **1600 Arnold Circle**
 Public Hearing **November 7, 2022**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct an synthetic (artificial) turf area.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 34, Page 43
 Recorded 1/9/1953

GPIN

2409-82-3546

SITE AREA

84,900 square feet or 1.949 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

62,600 square feet or 1.437 acres

EXISTING IMPERVIOUS COVER OF SITE

19,256 square feet or 30.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

19,256 square feet or 30.8 percent of site

**Increase in proposed impervious cover of site calculated off area of synthetic turf as area of new development in RPA*

**28,056 square feet or 44.8 percent of site*

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

*8,800 square feet – area of synthetic turf

Location of Proposed Impervious Cover

50-foot Seaward Buffer

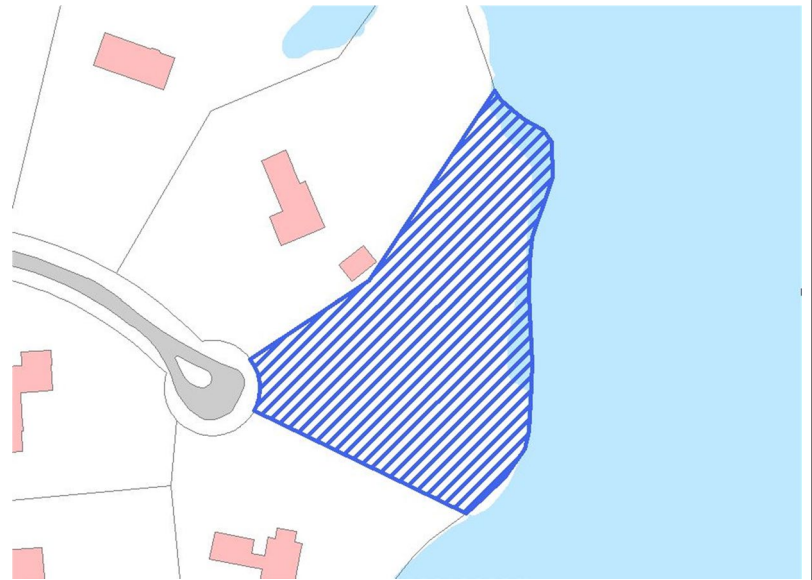
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Synthetic turf area

CBPA Ordinance Variance History

This variance request was deferred at the following Chesapeake Bay Preservation Area (CBPA) Public Hearing.

- September 8, 2022 CBPA Board Public Hearing

September 24, 2018 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a new single-family residence and associated accessory structures with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.*
5. *Construction limits 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.*
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
8. *A 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.*
9. *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.*
10. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 15,452 square feet x 200 percent = 30,904 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 to the greatest extent practicable.

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.

11. *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.*
12. *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.*
13. ***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 \$3,541.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
14. *The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by WPL, signed September 7, 2018 by Eric 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.*
15. *This variance supersedes the previous CBPA Board variance dated September 24, 2007.*

The September 24, 2018 CBPA Board granted variance has been acted upon and the associated improvements are in the process of being constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Bojac Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is hardened with 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 applicant's agent provided a cross-section of the synthetic turf that specifies a 4-inch stone base, geotextile fabric liner, flat panel drain underlayment, and 8-inch perforated HDPE pipe at the base of the proposed synthetic turf area for drainage purposes as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The Chesapeake Bay Preservation Area (CBPA) Board granted a variance for the redevelopment of this lot with a single-family residence in 2018 which is currently under construction. The same applicant desires to install synthetic turf within to 100-foot Resource Protection Area (RPA) buffer in conjunction with the required buffer restoration conditioned with the 2018 CBPA variance. The area of synthetic turf as shown on the CBPA Exhibit does not impact existing vegetation, is located within the limits of construction, and does not reduce the amount of required buffer restoration.

To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the performance standards of the CBPA Ordinance and believes that the installation of the synthetic turf will not be injurious to the neighborhood or of substantial detriment to water quality.

- 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 redevelopment of this lot is consistent with other redeveloped lots within the neighborhood that have either constructed new or have expanded existing residences. Specific to this lot, approximately 30,000 square feet of buffer restoration which will be installed seaward of the proposed syntenic turf area."* Staff offers that the conditions of the 2018 CBPA Variance with regards to buffer restoration will not be infringed upon with the installation of the synthetic turf and Staff has provided recommended conditions below, specifically recommended condition 3 that the synthetic turf shall not be calculated towards the stormwater management requirements associated with the April 11, 2019 approved site plan. In addition, the location of the synthetic turf will not require the removal of any existing mature canopy trees or other wood vegetation on the 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 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.
- 3) The variance is the minimum necessary to afford relief because *"the applicant is not asking for any additional improvements associated with the primary and accessory structures granted with the 2018 CBPA Variance. The applicant simply wants to minimize maintenance requirements for the property, decrease water use by not irrigating sod, and infiltrate rainwater to the best of the lot's ability."* Staff offers that approximately 43,344 square feet of the lot is pervious. Conditioned with the 2018 CBPA variance 30,904 square feet of buffer restoration is required leaving approximately 12,440 square feet of pervious area on the lot of which the applicant desires to install 8,800 square feet of synthetic turf. Although the "minimum necessary to afford relief" is subject to individual judgement, the applicant has shown a desired area for the synthetic turf that is mindful to previous CBPA variance conditions and does not utilize all the remaining pervious area on the site not devoted to buffer restoration.

- 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 synthetic turf will have an undrain system for the collection, storage and infiltration of runoff from the improvements on the lot.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that the location of the synthetic turf will not be injurious to the neighborhood and offers merit towards not be of substantial detriment to water quality based off the following information provided in the soils report for the lot and the Green Building & LEED credentialing for the product.
 - *“The borings encountered 6 inches of topsoil and up to 4 ft. of fill soils overlying Coastal Plain Sediments. The fill soils consist of loose to medium compact silty sands. The underlying sediments consist of medium stiff to very stiff sandy clays and medium compact clayey sands overlying medium compact to compact silty sands to the maximum depth of exploration, 21 ft. below existing grade. At the time of our exploration, water level measurements indicated groundwater to be approximately 8 feet below existing grade.”*
 - *“it takes approximately 685 gallons of water to apply 1-inch of water over 1,000 square feet of lawn annually.” (Green Building & LEED Credits – SYNLawN)*
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“all conditions associated with the 2018 CBPA Variance will be adhered to with regard to stormwater and buffer restoration, and the proposed synthetic turf will have a gravel base and undrain system to further promote collection, storage and infiltration of runoff from the improvements on the lot.”* Staff concurs.

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

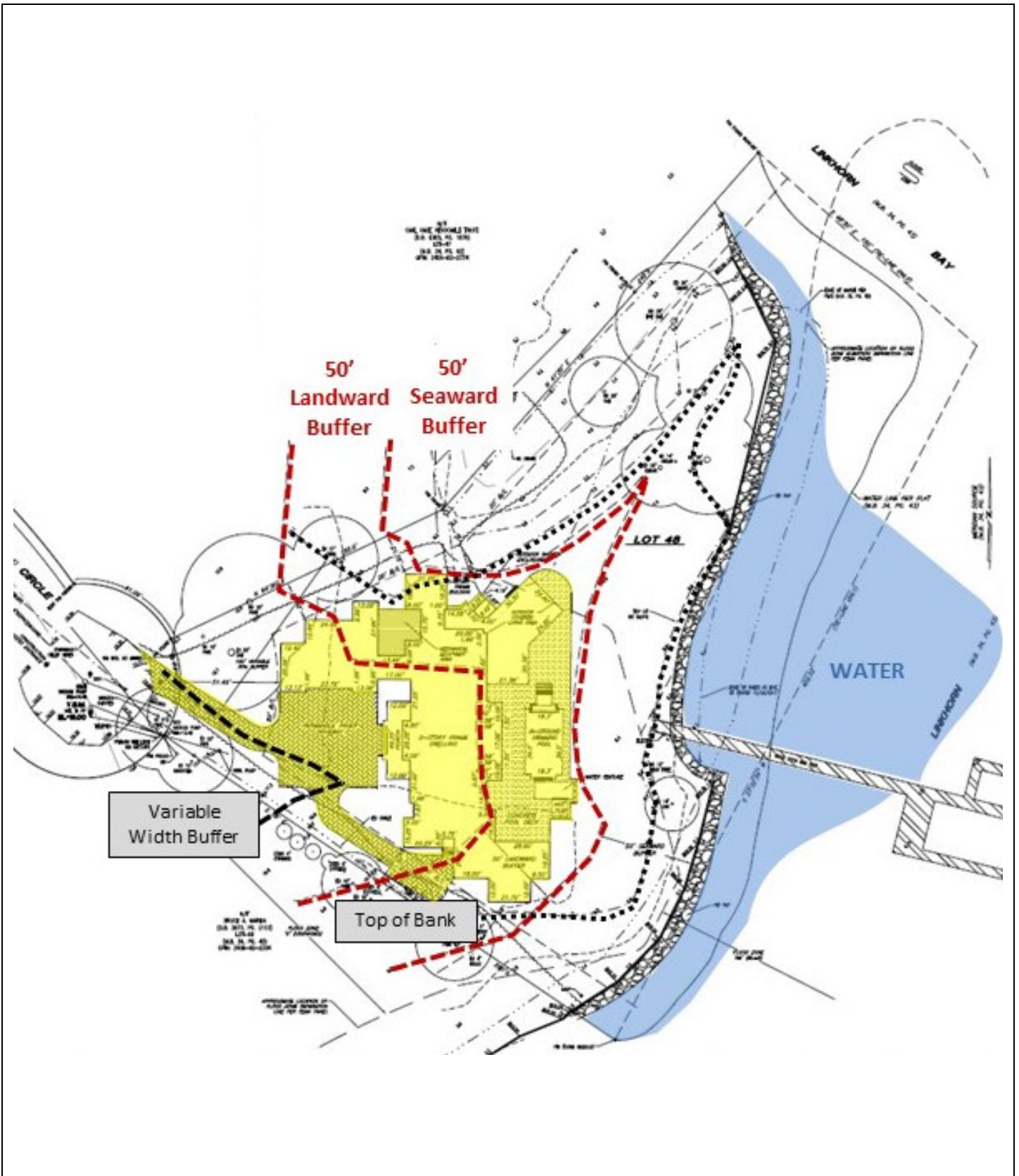
Recommended Conditions

- 1) The synthetic turf area shall not exceed 8,800 square feet as shown on the submitted CBPA Exhibit.
- 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 and submitted as a field change to the Development Services Center for recordation.
- 3) The area of synthetic turf shall not be calculated towards the stormwater management requirements associated with the April 11, 2019 approved site plan. All approved stormwater management facilities shall remain in place and functional as designed with the area of synthetic turf considered as additional stormwater treatment not associated with the approved site plan.
- 4) This variance and associated conditions **in addition to** the conditions of the CBPA Board variance granted September 24, 2018.
- 5) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2022, prepared by WPL, titled CBPA Exhibit. 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.

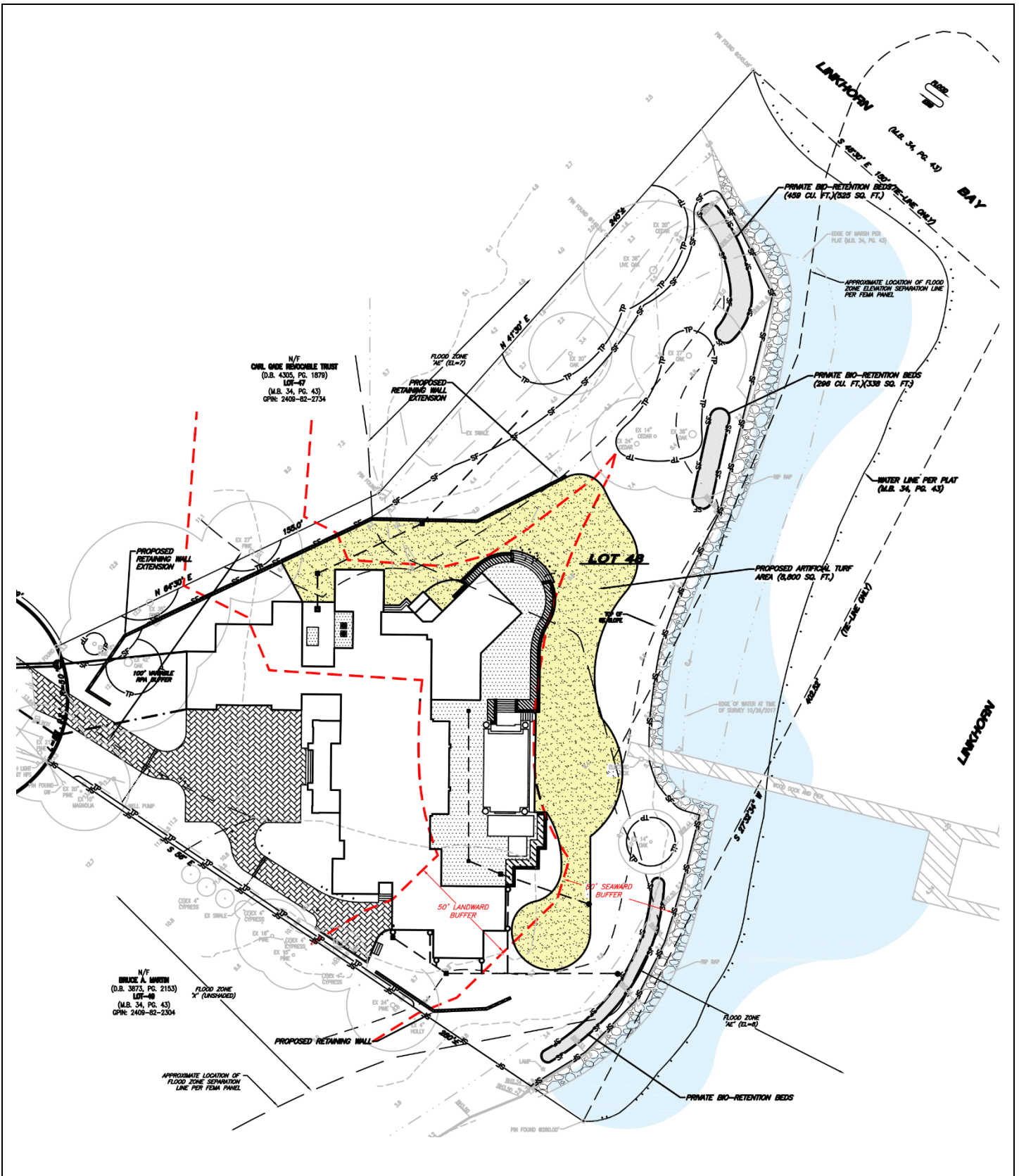
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

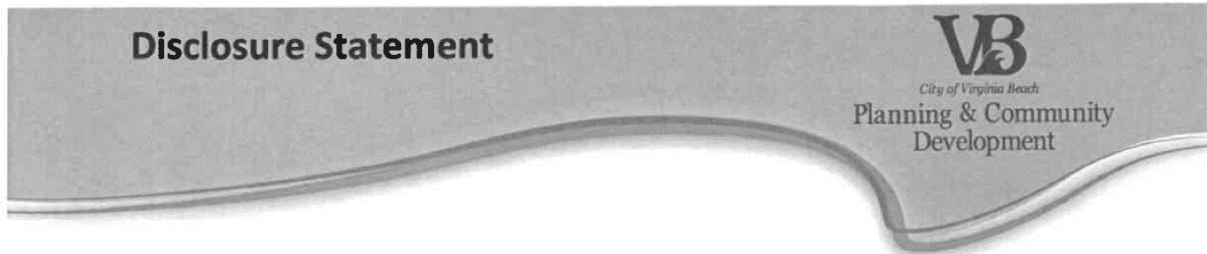




CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name 1600 Arnold Circle, LLC

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)

Brad Peterson, Joanna Peterson

- 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.

Becker Morgan Group, WPL , & Ann Stokes Landscape Architects

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

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

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.

Jackson Andrews Building + Design

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

Brad Peterson, 1600 Arnold Circe, LLC

Print Name and Title

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



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 **November 7, 2022**
 City Council District **District 6**, formerly Beach

Agenda Item
3

The variance request is being deferred to the Monday, December 5, 2022 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to allow additional time to address Staff's concerns.

Variance Request

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

Applicant's Agent

Evan Waagen
 MSA, P.C.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 67, Page 49

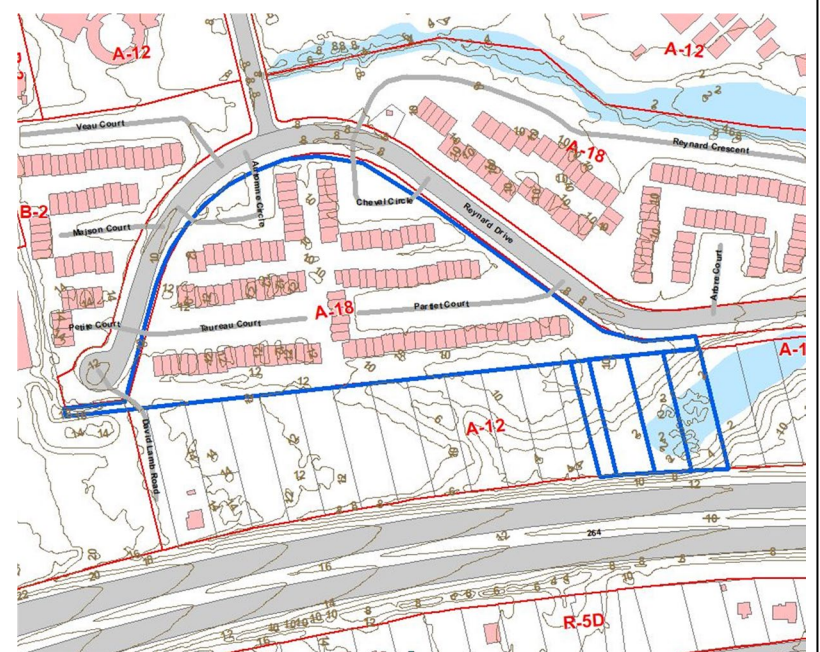
GPIN

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

CBPA Variance Request History

This variance request was deferred at the following Chesapeake Bay Preservation Area (CBPA) Public Hearing.

- October 3, 2022 CBPA Board Public Hearing



Site Aerial





Applicant & Property Owner **Lawrence J. Goldrich Marital Trust**
 Address **1325 Kingfisher Court**
 Public Hearing **November 7, 2022**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to remove 50 trees and construct driveway expansion.

Applicant’s Agent

Gerald F. Martin
 Martin & Martin Architecture, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 7, Page 193
 Recorded 7/30/1926

GPIN

2418-12-7693

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

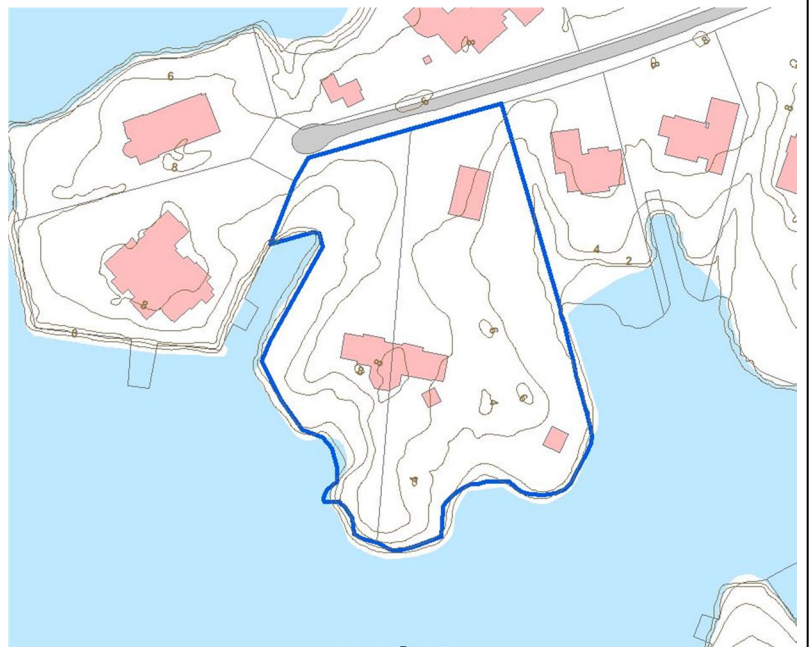
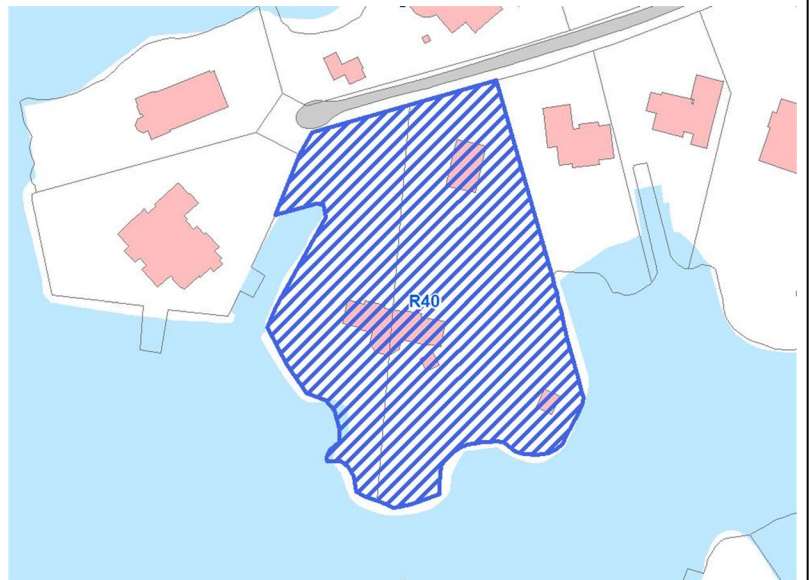
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Remove 50 trees on the lot.

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Yeopim Series (deep and moderately well-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: 50
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 44 as stated by the applicant in the Water Quality Impact Assessment (WQIA).

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 heavily wooded peninsula shaped lot within the Birdneck Point subdivision. The Chesapeake Bay Preservation Area (CBPA) exhibit provided with this variance request indicates that 44 of the 50 trees proposed for removal with this request are dead, diseased, or dying trees on the lot, ascribed to both biotic factors, such as borer beetles and disease, and abiotic factors, such as limb drop due to environmental conditions. Staff offers that the riparian buffer is a living resource that needs to be managed over time to preserve the function of the riparian ecosystem. Given the urban development of our shorelines, natural succession within the riparian buffer ecosystem is fragmented, causing a change in species composition and structure. Small saplings are developing into the next generation of trees as older canopy trees are exposed to wind throw, storm events, and long-term construction impacts that accelerate dieback and decline.

In addition, environmental stress factors such as lightning strikes, storm damage, excessive heat stress, and freeze damage can weaken tree species and lead to poor growth, failure to thrive, and further predispose them to disease and insect problems. While these effects are a part of the natural process of a riparian buffer, the monitoring and maintenance to assure the health of the buffer composition is needed in an urban setting. Therefore, reasonable activities for riparian buffer management should occur to ensure that the buffer is performing to its capability. An additional six trees have been identified by the applicant's agent as hazardous to the residence and will impact future plans the applicant has for the lot.

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.

While Staff has concern with the extent of this request, recommended condition – specifically recommended conditions 1 and 2 below will ensure the opportunity to provide age diversity with regard to canopy tree species on this lot that was developed in the late 1930s. Mitigation will result in a mix of species age that will in turn offer merit towards extending the function and productivity of this riparian ecosystem through diversity beyond species selection alone.

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 removal of these trees is due to hazards to the structures on the property or them being dead/diseased/dying."* 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 *"natural integrity of dead or decaying trees specified in request are due to environmental conditions which cannot be attributed to the applicant. Natural decay/death is a part of the ecosystem's life cycle."* Staff concurs.
- 3) Staff offers that the variance is the minimum necessary to afford relief given the applicant's preservation of the remaining canopy trees on the lot coupled with Staff's recommended condition below requiring mitigation for those trees being removed.
- 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 removal of dead/decaying trees will improve the property and not harm the integrity of the neighborhood or nearby water sources. This removal is in harmony with the purpose of this ordinance."* Staff concurs and offers that the mitigation conditioned below will add to the age and species diversity of the riparian buffer on the lot.
- 5) *"Post removal of request trees will amount in replacement canopy and underbrush trees, which would result in a net decrease in nonpoint source pollution"* 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 6 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Landscape 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 landscape plan shall detail location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape 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) The following trees or tree clusters as described on the CBPA Exhibit shall be preserved.
 - Tree(s) numbered 9, 14, 15, 16, 24, 25, 27, 29 and 31
- 4) Mitigation options for the trees requested to be removed due to being hazardous or impacting future driveway redevelopment as described on the CBPA Exhibit by a red dot shall be required as follow.
 - 3:1 ratio (18 new canopy trees to be planted)
 - or-
 - 9 canopy trees and 18 understory trees

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.

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

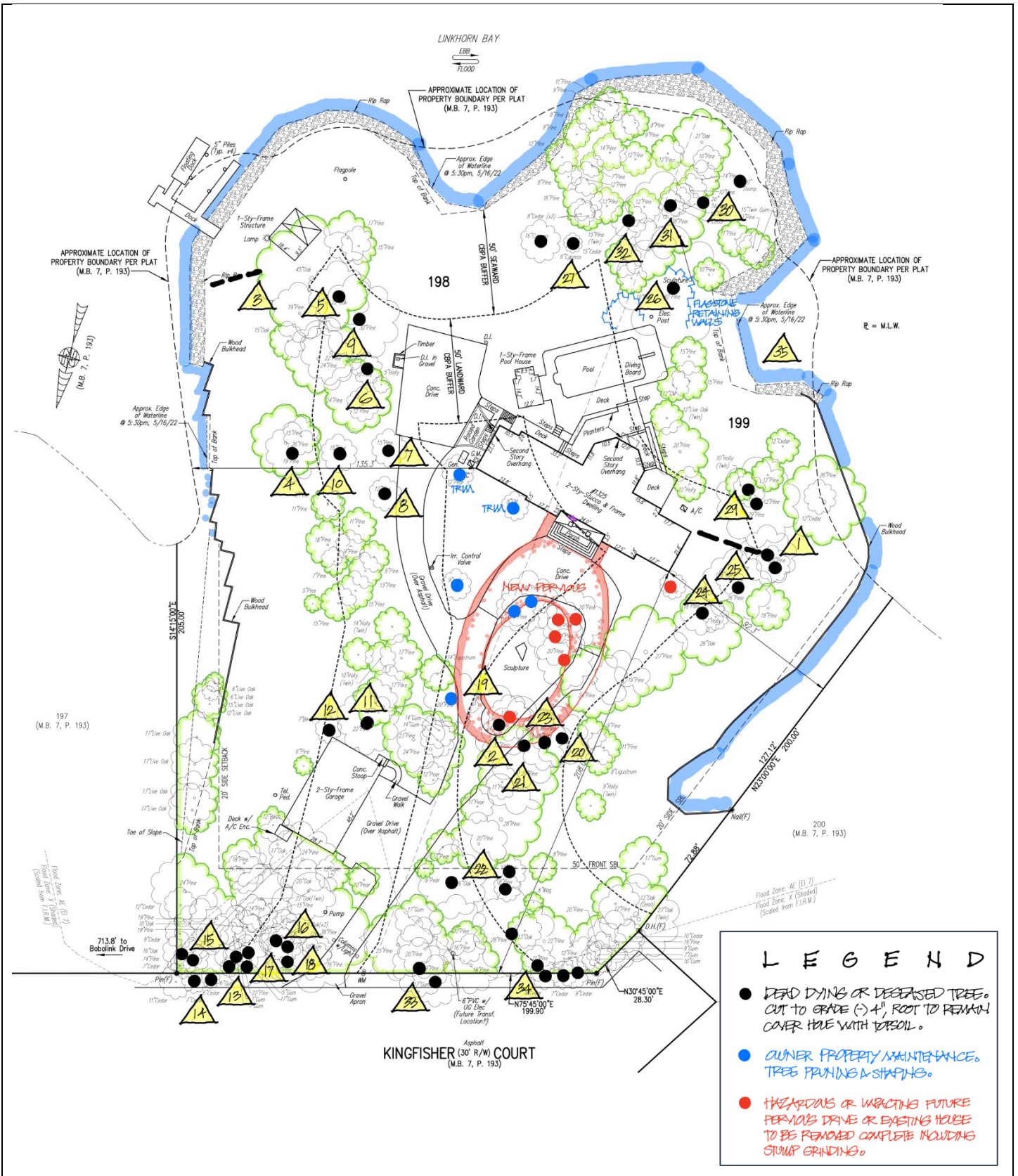
- Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper at time of installation.
 - Understory TREE (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.
- 5) For the 9 trees located in the public right-of-way (ROW) the required mitigation options are as follow.
 - 3:1 ratio (27 new canopy trees to be planted on the lot)
 - or-
 - Payment to Landscape Management Division in the amount of \$7,695.00 (\$855.00 per tree to be removed). Payment will be accepted at the approval of the landscape plan and prior to the release of the landscape plan by the DSC for issuance of a building permit.
 - 6) A pre-construction meeting shall be held with the CBPA Inspector prior to tree removal. All trees approved for removal shall be marked in the field prior to the preconstruction meeting.

***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.

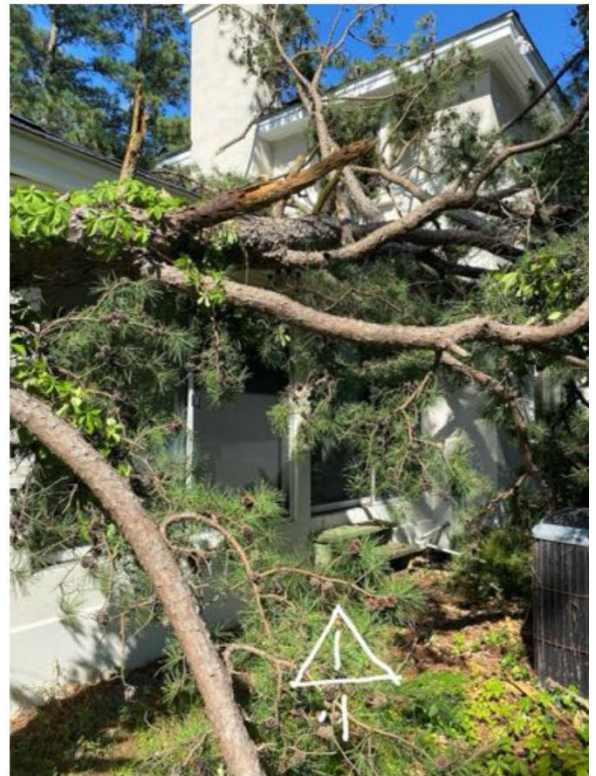
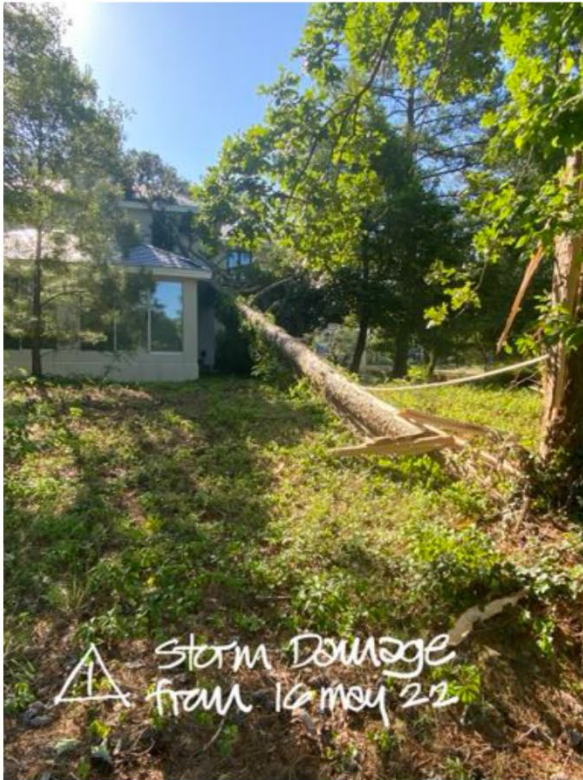
Site Aerial



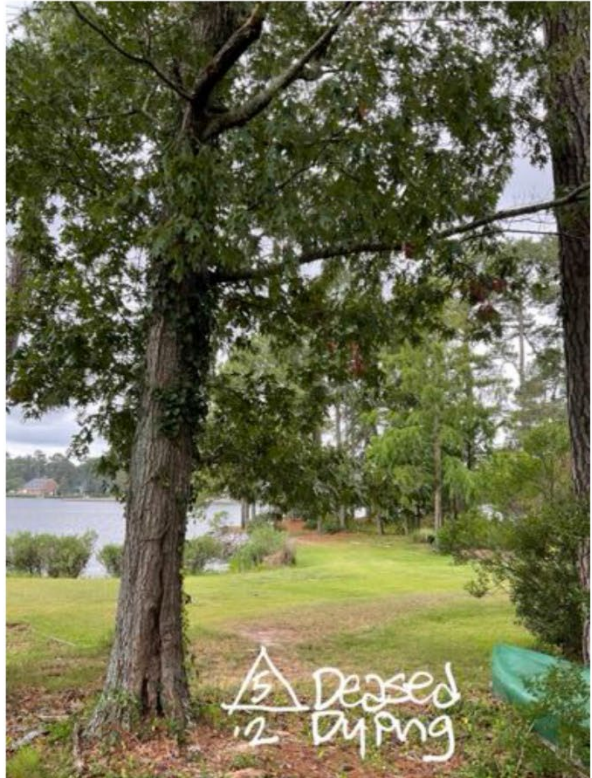
CBPA Exhibit – Proposed Tree Removal



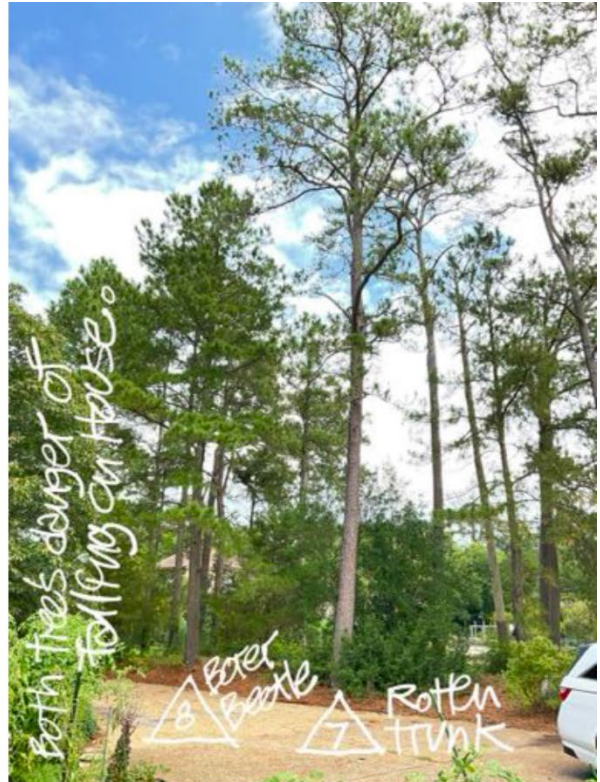
CBPA Exhibit – Site Photos, Trees 1 and 2



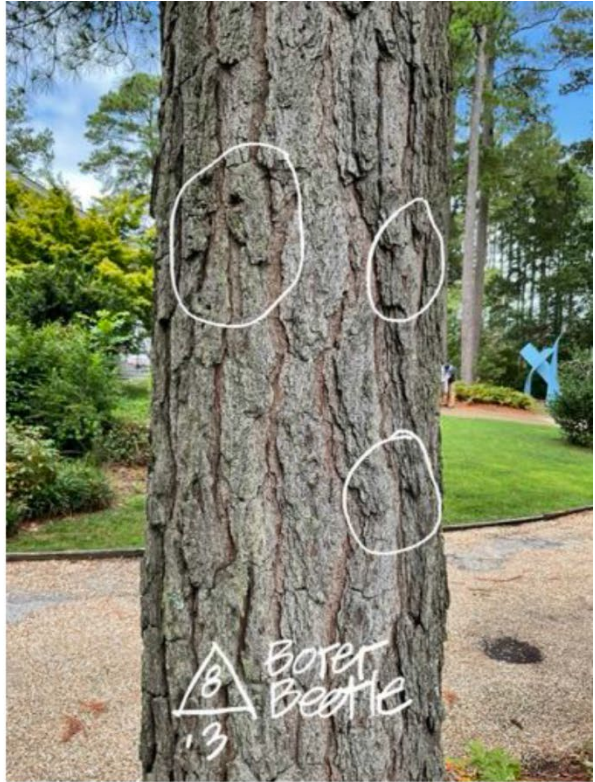
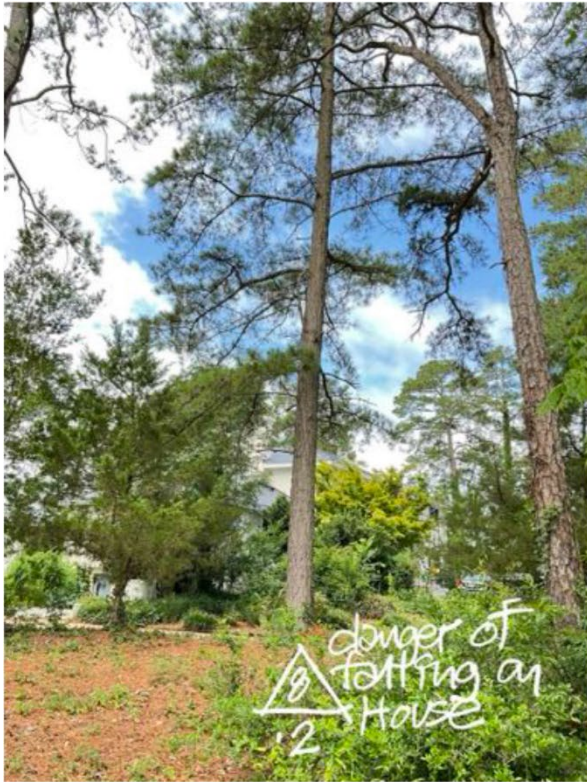
CBPA Exhibit – Site Photos, Trees 3 through 5



CBPA Exhibit – Site Photos, Trees 6 through 8



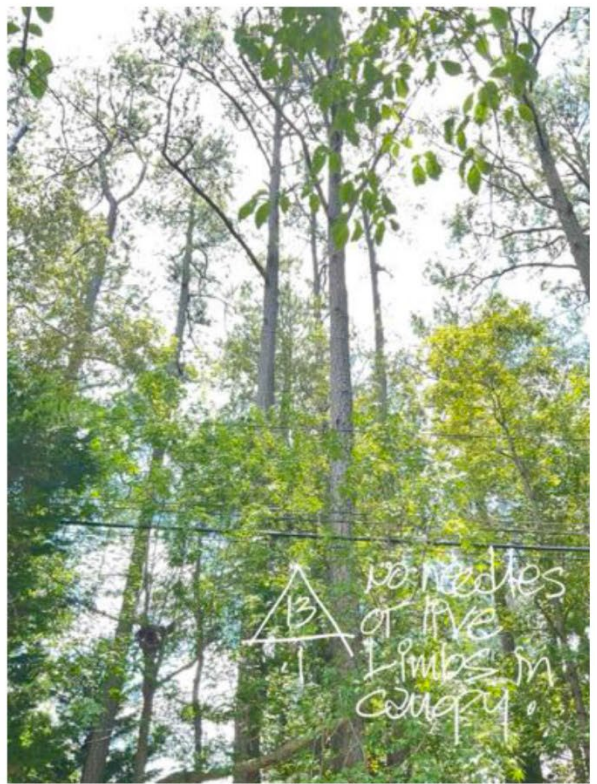
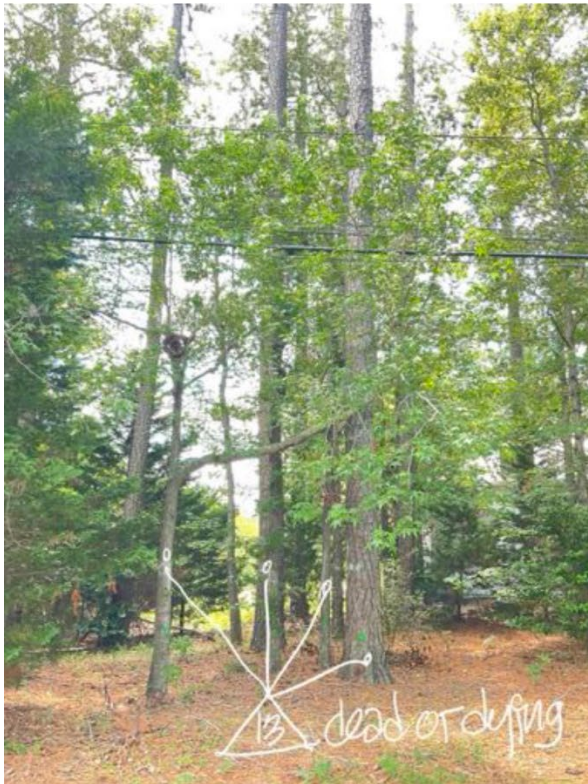
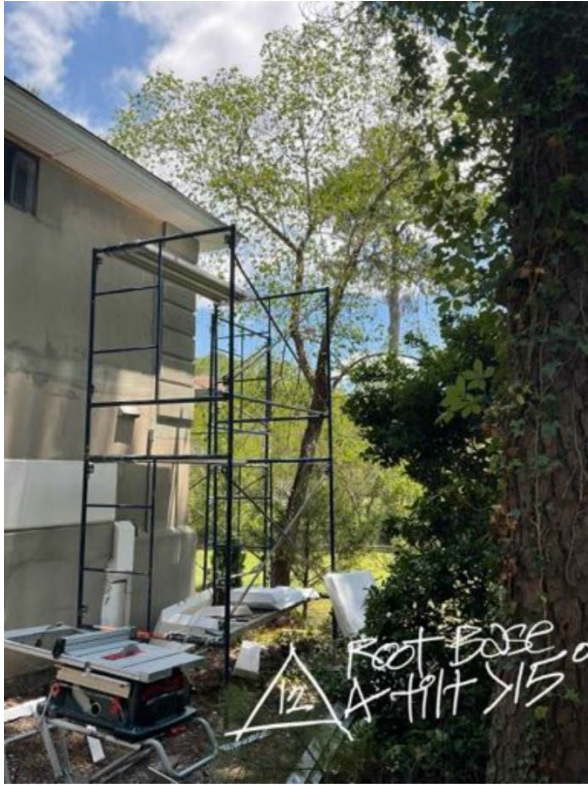
CBPA Exhibit – Site Photos, Trees 8 and 9



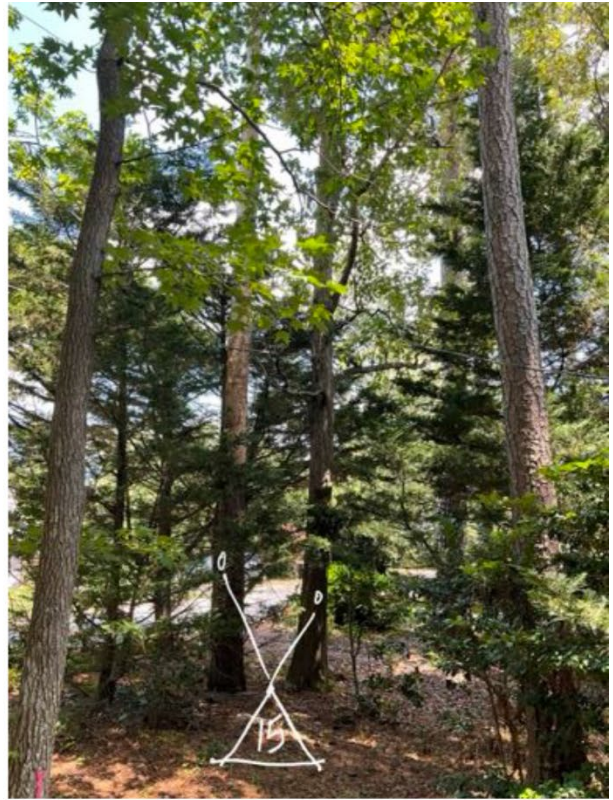
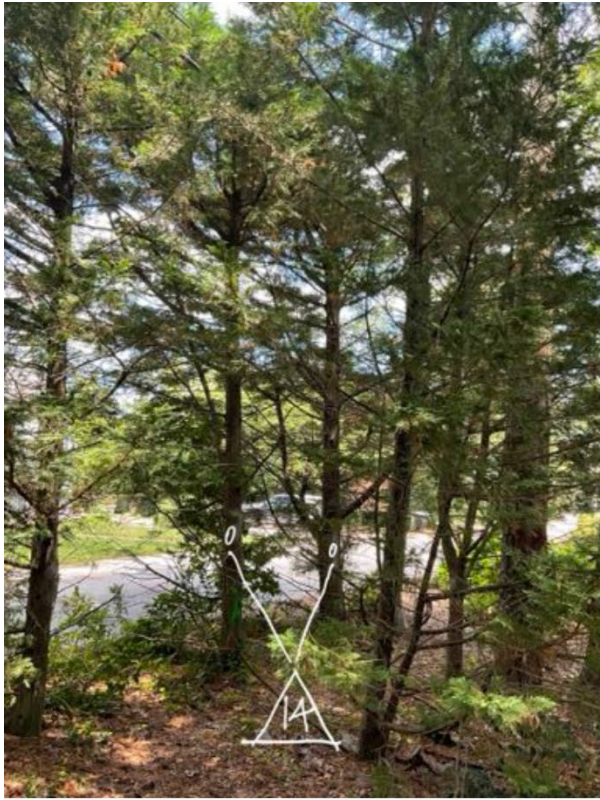
CBPA Exhibit – Site Photos, Trees 9 through 11



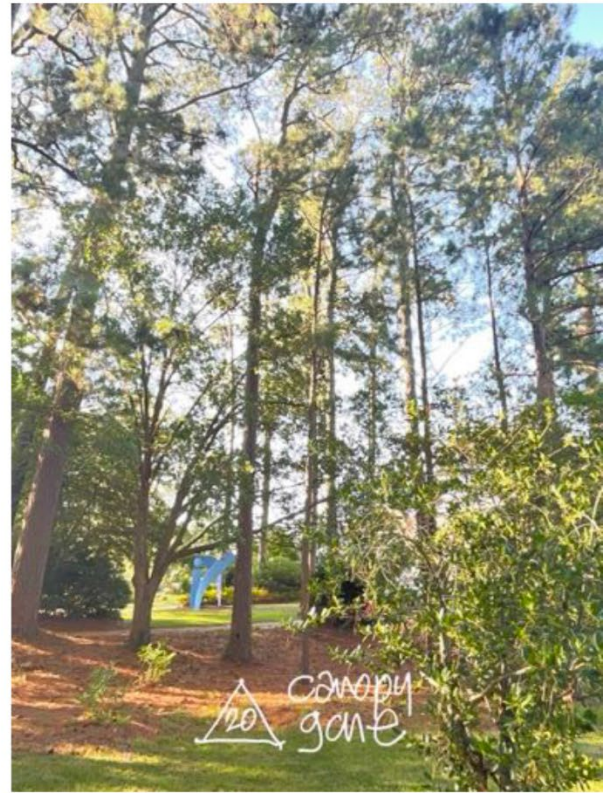
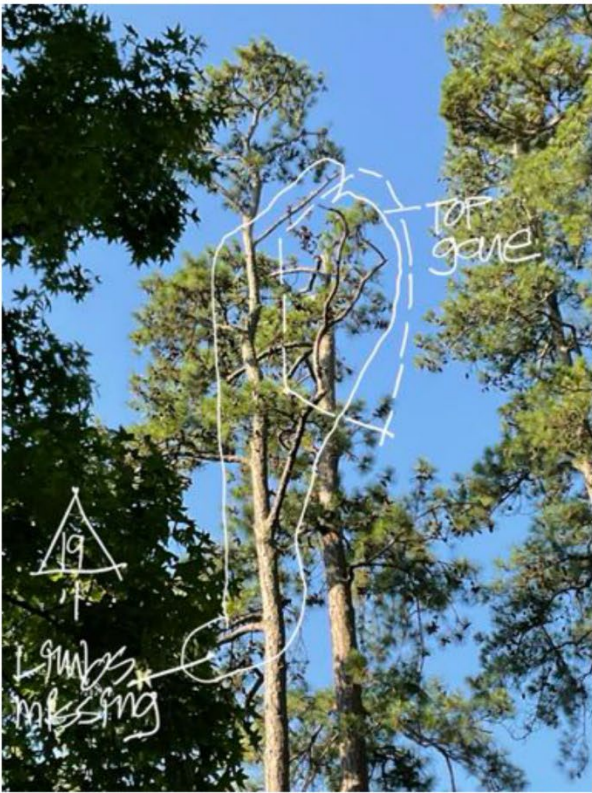
CBPA Exhibit – Site Photos, Trees 12 and 13



CBPA Exhibit – Site Photos, Trees 14 through 17



CBPA Exhibit – Site Photos, Trees 18 through 20



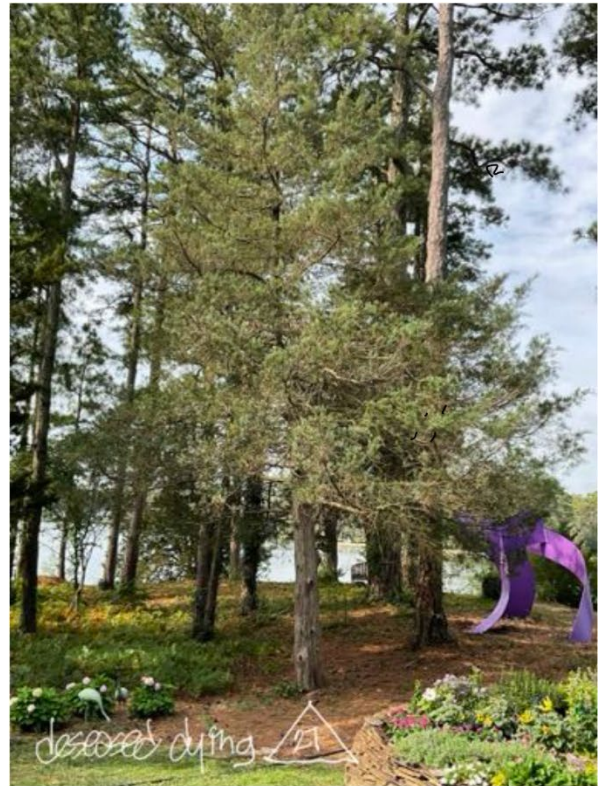
CBPA Exhibit – Site Photos, Trees 20 through 22



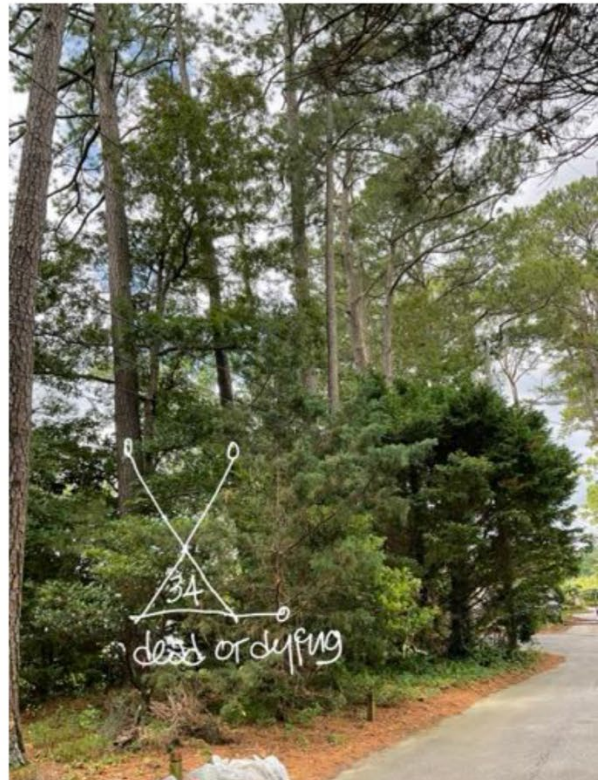
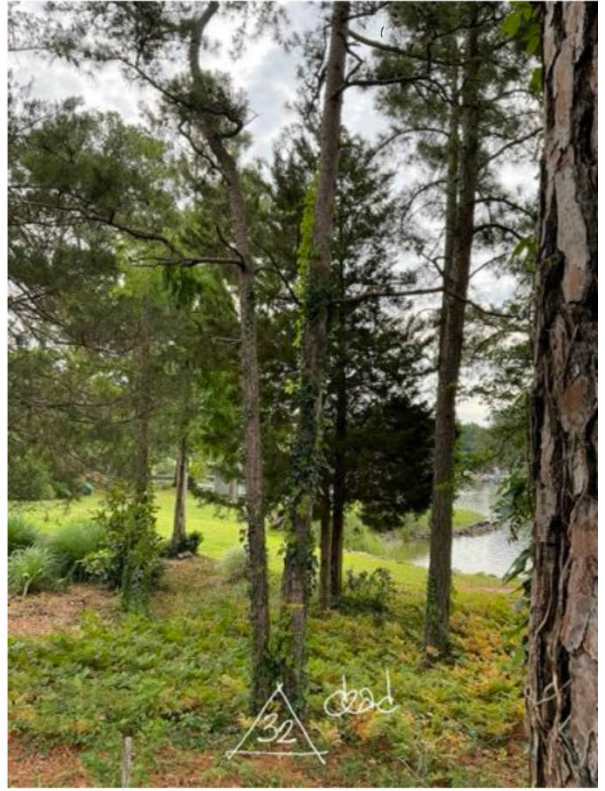
CBPA Exhibit – Site Photos, Trees 22 and 24



CBPA Exhibit – Site Photos, Trees 26 through 30



CBPA Exhibit – Site Photos, Trees 31 through 34



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 Janice T. Goldrich

Does the applicant have a representative? Yes No

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

Gerald F. Martin, Architect

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

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

- If **yes**, list the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

Martin snd Martin Architecture Inc

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.

CM2 Construction 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.

Hayden Frye and Associates Inc Land Surveyors

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

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

Janice T. Goldrich

Applicant Signature

Janice T. Goldrich, owner

Print Name and Title

8/31/22

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Christopher Wright**
 Address **2104 W. Kendall Circle**
 Public Hearing **November 7, 2022**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with paver patio surround, deck and cabana, shed, and driveway expansion.

Applicant’s Agent

Robert Simon, Waterfront Consulting, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 67, Page 18
 Recorded 11/29/1965

GPIN

1499-79-3790

SITE AREA

27,443 square feet or 0.63 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

17,387 square feet or 0.40 acres

EXISTING IMPERVIOUS COVER OF SITE

4,165 square feet or 24 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,956 square feet or 40 percent of site

Area of Redevelopment in RPA

840 square feet

Area of New Development in RPA

2,792 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

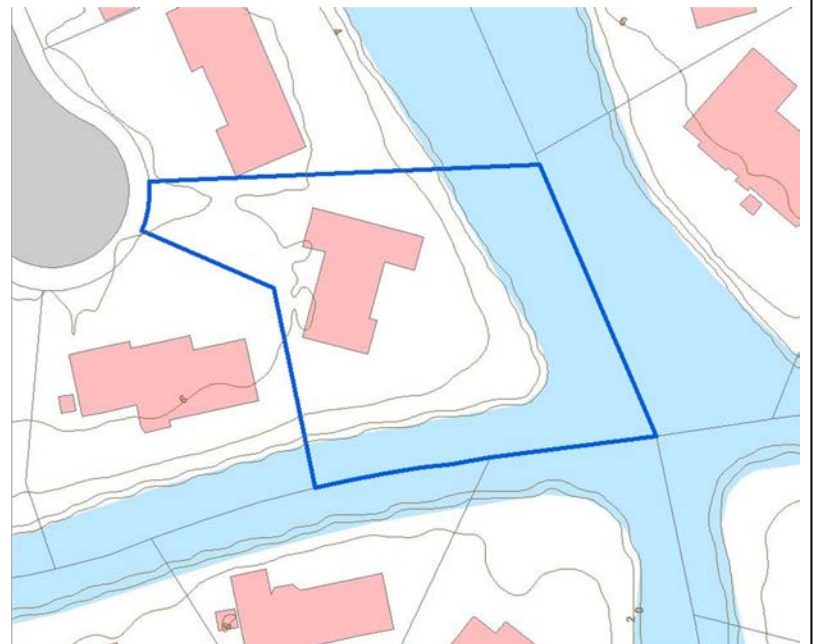
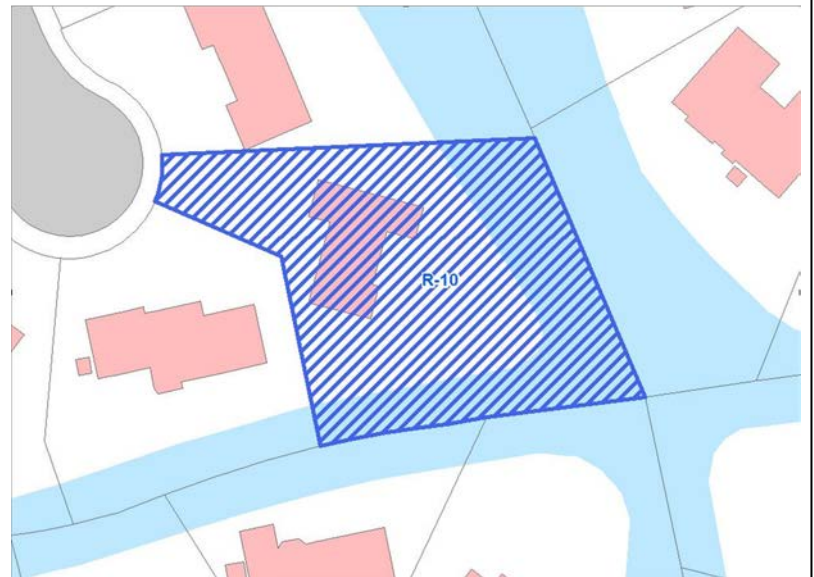
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish and redevelop the existing driveway and associated walkway

Construction Details

- Driveway replacement with expansion and associated walkway
- Covered front porch
- Swimming pool and paver patio surround
- Wood deck addition with cabana
- Storage shed

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is currently stabilized by a bulkhead.

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 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

Approximately 89 percent of the existing peninsula shaped lot above water and wetlands is encumbered by the 100-foot Resource Protection Area (RPA) buffer. With this variance request, the applicant is proposing to construct a swimming pool with a paver patio surround and cabana adjacent to the existing wood deck directly off the rear of the residence. In addition, an expansion to the existing deck is proposed to the south of the existing accessory structure. These proposed improvements are primarily within the 50-foot seaward buffer of the Chesapeake Bay Preservation Area (CBPA). The

applicant also desires to construct a new front porch and expand the existing driveway through the redevelopment of the driveway and front walkway to accommodate for more off-street parking.

As submitted, this variance request increases the overall impervious cover of the lot from 4,165 square feet to 6,956 square feet or from 24 percent to 38 percent of the lot area above water and wetlands. Approximately 2,355 square feet of the 2,792 square feet of the new impervious cover is within the 50-foot seaward buffer on the lot. Staff offers that these encroachments into the RPA are unavoidable due to the shape and size of the lot. As such, these circumstances result in significant challenges towards any redevelopment potential and the proposed layout of the desired improvements are respectful of these existing environmental conditions, as the pool is located landward to the greatest extent practicable on the lot. Staff is of the opinion that the dimensions of the proposed pool are minimally greater than the average residential swimming pool (16 feet by 32 feet) and the layout of the proposed paver pool surround does not reflect the minimal necessary to afford relief. To address the increase in impervious cover, Staff offers the recommended conditions below, specifically recommended condition 2 that reduces the amount of new impervious cover in the RPA. In addition, Staff is of the opinion that the required buffer restoration associated with this increase in new impervious cover will greatly benefit this lot given that the lot currently offers minimal benefit to water quality improvement given the lack of canopy cover within the riparian buffer.

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 improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs offers that approximately 9 CBPA variances have been granted for other owners of property within this manmade canal for similar encroachments within the 50-foot seaward buffer. Given the size of these residential lots, Staff is of the opinion that encroachment into the 50-foot seaward buffer is unavoidable when redeveloping these lots that were platted prior to the adoption of the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed improvements are in keeping with prior approved variances in the neighborhood and allow BMPs and buffer restoration to mitigate water before entering the bay."* Staff concurs and offers that the overall impervious cover on lots within this neighborhood ranges from approximately 22 percent to 45 percent of the lot above water and wetland. The improvements associated with this increase in impervious cover vary from additions to primary structures, driveway expansions and accessory structures.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality."* Staff adds that the riparian buffer on the lot currently is offering no water quality benefits to the watershed due to the lack of canopy cover. If approved, the required buffer restoration would further enhance the riparian buffer, therefore aiding in rainwater interception and infiltration towards water quality benefits.

- 5) *“Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the provided best management practices and buffer restoration 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 **13** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The proposed new impervious cover within the 50-foot seaward buffer shall be reduced by 5 percent.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,792 square feet x 200 percent = 5,584 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: **14 canopy trees, 14 understory trees, 28 large shrubs, and 42 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. Trees shall not be planted within 15 feet of the shoreline where such planting would interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

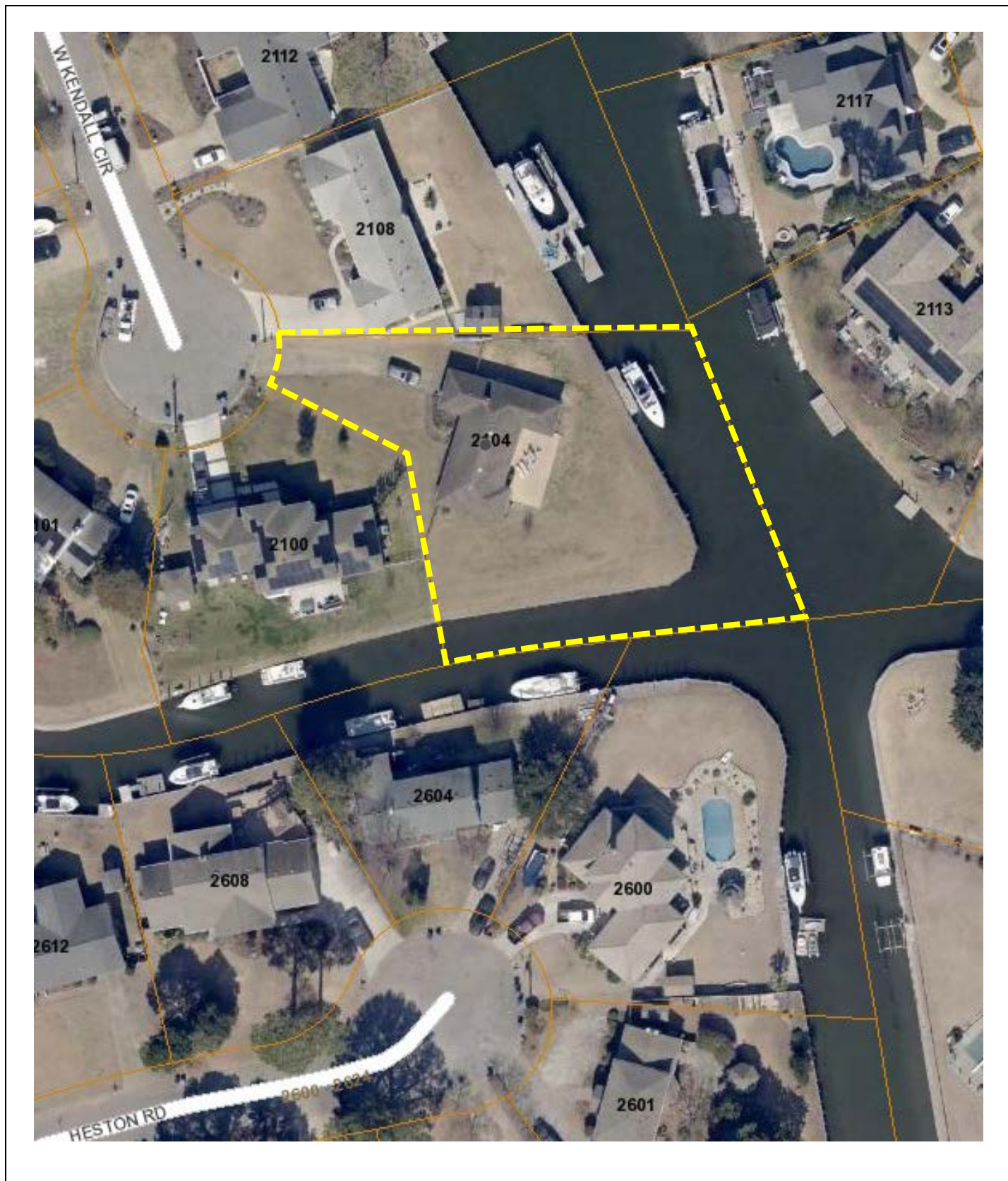
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited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

- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) 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.
- 11) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 12) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,613.75 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.
- 13) The conditions and approval associated with this variance are based on the exhibit plan dated August 27, 2022, prepared by Waterfront Consulting, Inc. and Align Surveying & Design, P.C., signed August 27, 2022 by Robert Simon. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

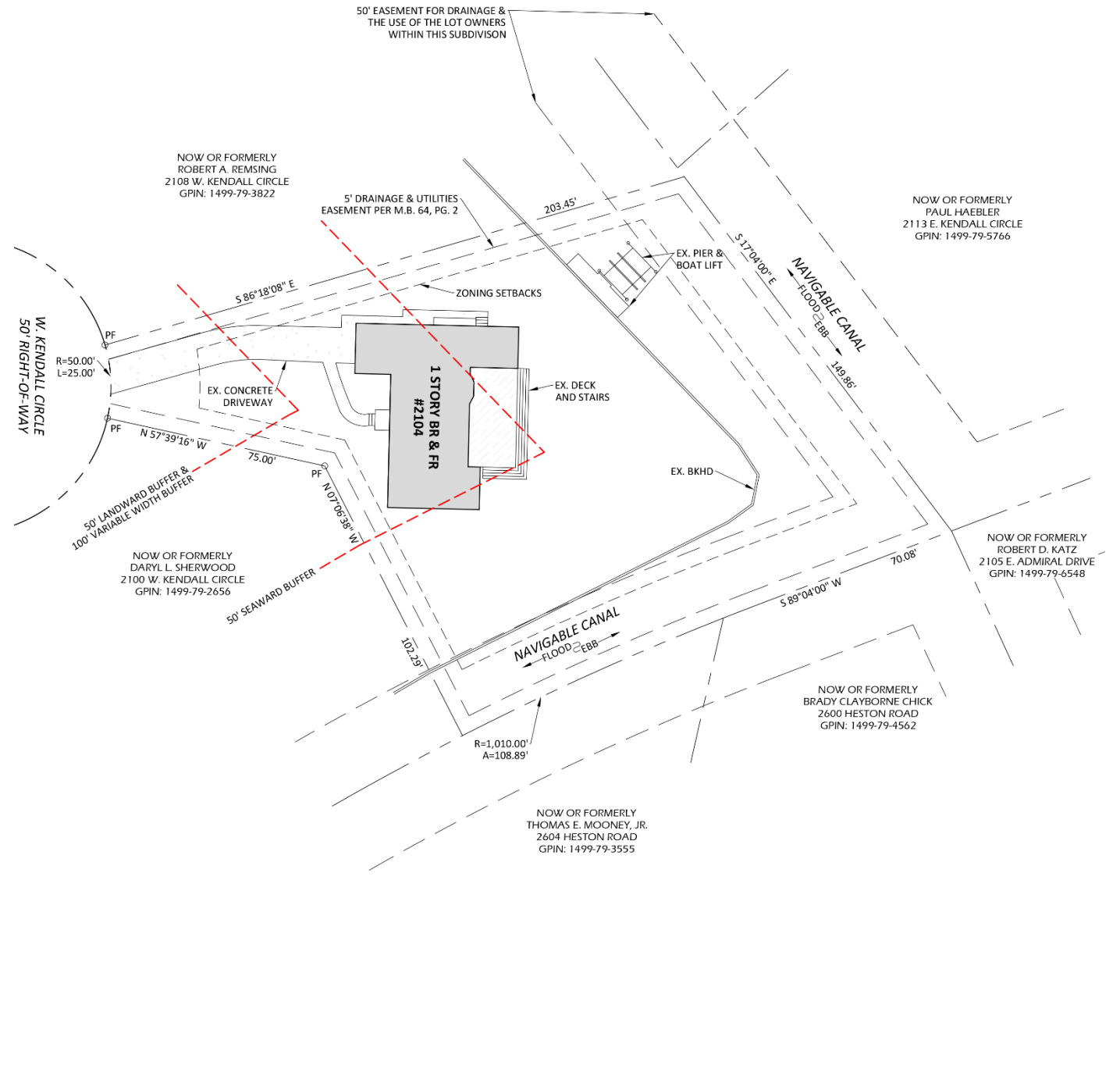
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

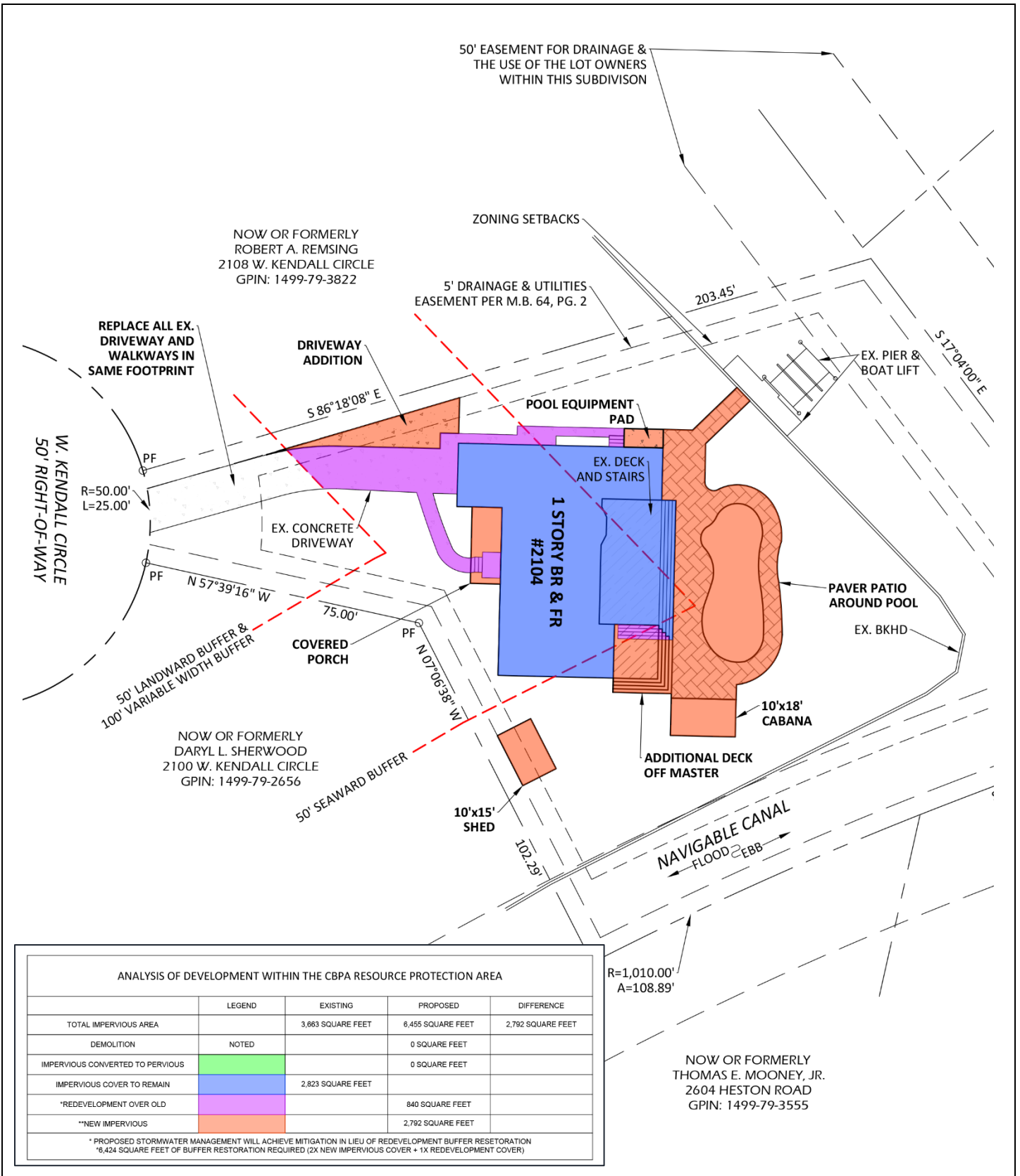
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements, Color Exhibit



Disclosure Statement

DocuSign Envelope ID: 1F2022A0-5364-44F4-8503-E01C6E69FE31

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 Wright

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

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

Robert E. Simon, Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

N/A

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.

N/A

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

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

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

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

Disclosure Statement



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

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

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

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

Waterfront Consulting, Inc. and Align Surveying & Design, P.C.

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.**

DocuSigned by:
Christopher Wright

20D4B8382D79447
Applicant Signature

Christopher Wright, Applicant/Owner

Print Name and Title

8/31/2022

Date

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

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

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

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



Applicant & Property Owner **Abrams Living Trust**
 Address **844 St. Martin Drive**
 Public Hearing **November 7, 2022**
 City Council District **District 8**, formerly Bayside

Agenda Item

6

Variance Request

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

Applicant’s Agent

A Build Above, LLC

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 84, Page 53
 Recorded 09/13/1970

GPIN

1478-83-9502

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

70 square feet

Area of New Development in RPA

186 square feet

Location of Proposed Impervious Cover

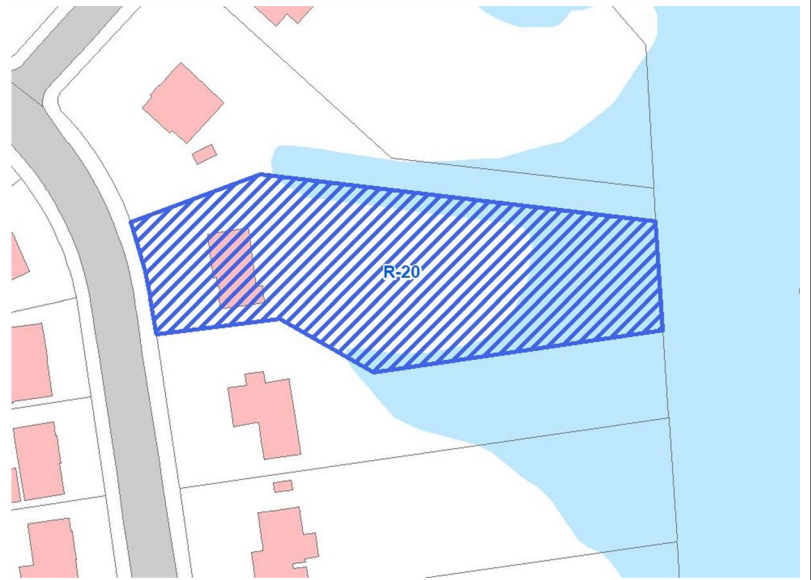
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Wood deck addition

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): 8

Soil Type(s)

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

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

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

Shoreline

The shoreline is stabilized by a rip rap revetment.

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 wood deck addition off the existing wood deck in the rear yard of the lot. This request will add approximately 608 square feet of new impervious cover in the 50-foot landward buffer of the Resource Protection Area (RPA). Staff is of the opinion that the increased impervious cover will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay. The applicant will not be disturbing or removing any of the existing tree canopy or underbrush within the riparian buffer with this request. Given the minimal land disturbance associated with this request, Staff supports the variance request as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the neighborhood was developed prior to the Bay Act and all waterfront property owners are impacted when the RPA falls within the property.”* Staff concurs and offers that the request to expand the existing wood deck is similar to other improvements on adjacent lots that are encumbered by the 100-foot Resource Protection Area (RPA).
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“the house was existing when the buffer zones were implemented therefore could not have been foreseen when placed on the lot.”* Staff concurs and provides that the encroachment into the RPA on this lot 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 property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the proposed deck will be off of the existing deck and will not encroach within the seaward buffer.”* Staff concurs and offers that the applicant has provided a layout that is cognitive of the existing confined conditions of the lot, zoning setbacks, and delineated RPA feature within the neighborhood, which appears to be consistent with the findings of the Chesapeake Bay Preservation Area (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 *“we are looking to provide my client with more deck for them to enjoy the beauty of the area and at the same time installing a ground level deck that will have permeable soil under the deck.”* Staff concurs and offers that the conditioned buffer restoration associated with the proposed improvements, under deck treatment, and retention of existing vegetation of the lot provide merit towards water quality benefits.
- 5) *“We will install silt fence around the area we are excavating and will be digging 10 12x24 footers, hauling away the removed material the same day as well as pouring the footers that same day”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that the land disturbance is minimal with this request.

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

Recommended Conditions

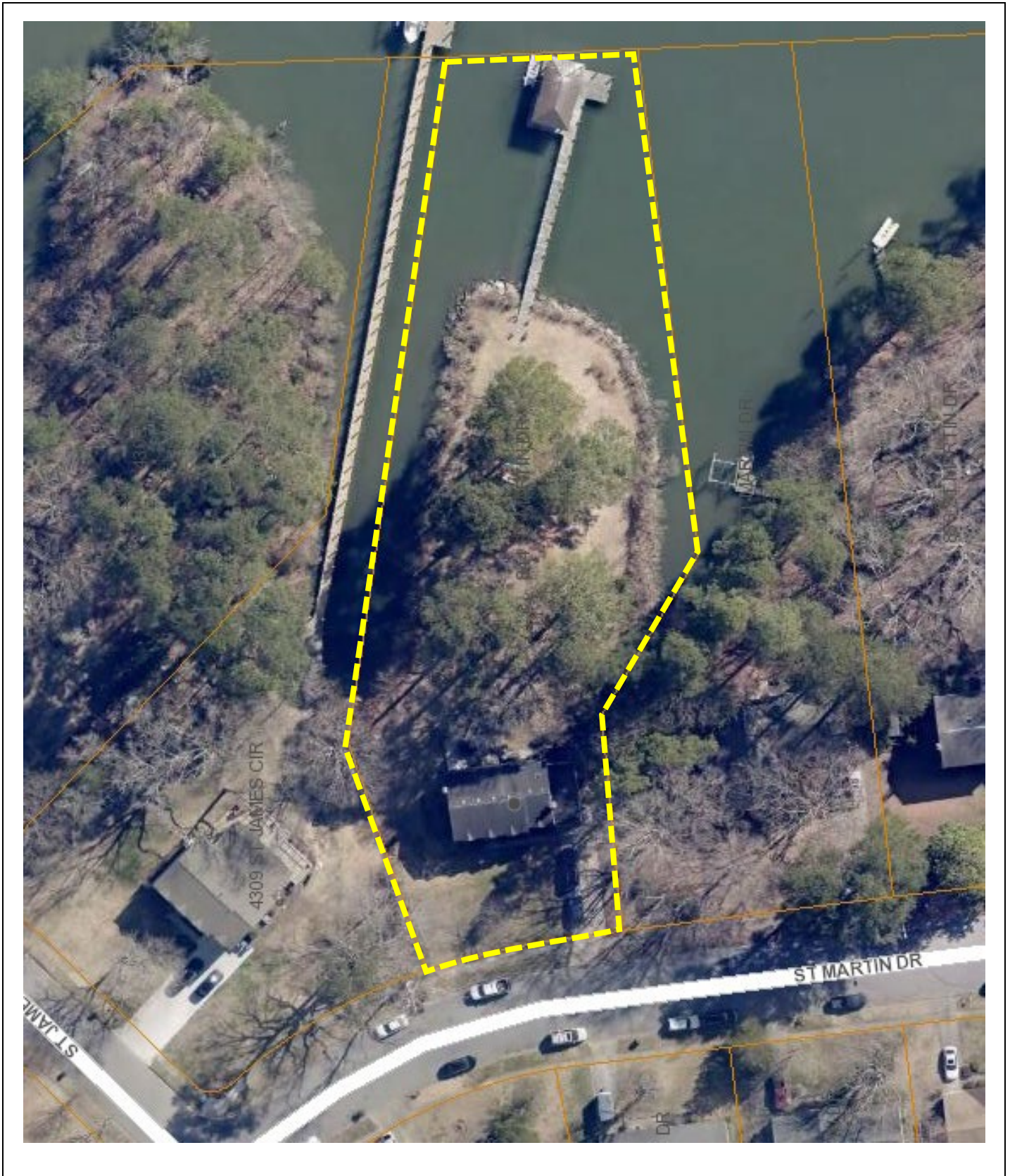
1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 400 square feet of buffer restoration shall be within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**

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

3. A pre-construction meeting shall be held with the Chesapeake Bay Preservation Area (CBPA) Inspector prior to any land disturbance, including demolition.
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. Under deck treatment of sand and gravel shall be installed under 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



Disclosure Statement

Authentisign ID: 55E92AF9-7746-ED11-A27C-14CB655B2CA7

Disclosure Statement



Owner Disclosure

Owner Name James Abrams

Applicant Name A Build Above LLC

Is the Owner 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)

James Abrams, trustee & Elizabeth Abrams, trustee

- If **yes**, list the businesses that have a parent-subsiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

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?

³ "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.

⁴ "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



Owner Services Disclosure

1. Does the Owner 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 Owner 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 Owner 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 Owner 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.

6. Does the Owner 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.

A Build Above LLC

7. Does the Owner 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.

Disclosure Statement



8. Is the Owner 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 legal the service.

Owner 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.**

 *Jim Abrams*

10/07/22

Owner Signature

James Abrams Homeowner

Print Name and Title

08/28/2022

Date

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Applicant & Property Owner **Johnathan Schrieber & Elizabeth Kulas**
Address **416 Goodspeed Road**
Public Hearing **November 7, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct retaining walls with associated fill material and steps, spa/outdoor shower area, and shed.

Applicant's Agent

Jason Thomas
Painted Fern Landscape Architects

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 41, Page 2
Recorded 07/26/2005

GPIN

2419-60-3857

SITE AREA

26,950 square feet or 0.619 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

24,153 square feet or 0.554 acres

EXISTING IMPERVIOUS COVER OF SITE

12,071 square feet or 50 percent of the site

PROPOSED IMPERVIOUS COVER OF SITE

11,905 square feet or 49.3 percent of the site

Area of Redevelopment in RPA

2,892 square feet

Area of New Development in RPA

993 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

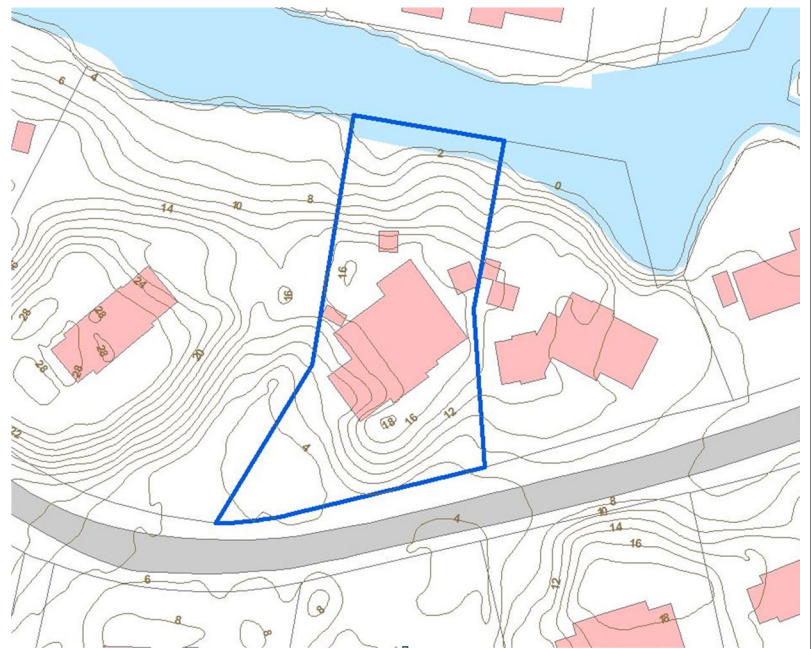
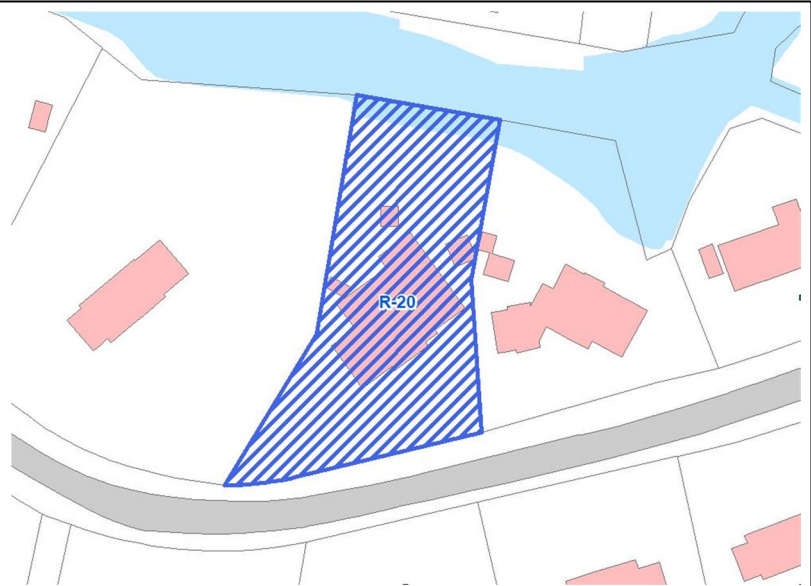
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Retaining walls with steps and associated backfill
- Spa with outdoor shower area and new shed

CBPA Ordinance Variance History

On July 25, 2006, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a garage addition, pool equipment addition, generator and HVAC pads, and pool with associated concrete decking and retaining wall:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *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 15' 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 existing and proposed impervious cover shall be conveyed to stormwater management facilities. The BMP shown located parallel to the right-of-way shall be eliminated.*
7. *If and when the shoreline is re-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. *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 residential additions.*
10. ***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 \$407.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 444 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
11. *Buffer restoration shall be installed within the remaining pervious area with a maximum of 20% that may be devoted to turf. Said restoration shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. In addition to the aforementioned buffer restoration area, a minimum of eighteen 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 final building inspection. Said condition shall be so noted on the site plan.

12. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.

13. The conditions and approval associated with this variance are based on the site plan dated April 7, 2005 with a last revision date of 5-31-06 and sealed on June 7, 2006, prepared by Gallup Surveyors and Engineers Ltd.

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 July 25, 2006 CBPA Board 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)

Fripp Series (deep, excessively drained sandy marine and eolian sediment 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 applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that gravel downspout intercepts, infiltration beds and sand/gravel underdeck treatment will be provided as a best management practices for stormwater run-off mitigation.

Evaluation and Recommendation

This property is characterized by steep slopes within both the front and rear yards of the lot. Topographic elevation on the lot ranges from approximately 4 feet above sea level adjacent to the existing rip rap shoreline to approximately 16 feet above sea level adjacent to the existing single-family residence. Given these existing topographic elevations on the lot and the sandy underlying soil, the applicant desires to stabilize and facilitate positive drainage away from the usable area of the lot, adjacent to the single-family residence, by redeveloping most of the existing improvements with this variance request. To do this, the applicant's agent proposes to construct approximately 160 linear feet of retaining walls along the northern portion of the lot with approximately 1,100 square feet area of backfill material. Landward of the

proposed retaining wall, the existing patio will be removed and replaced with pavers and a new spa, outdoor shower area, and pool equipment areas. The existing shed will be relocated on the lot to meet zoning setbacks.

As stated above, the primary purpose of this variance request is to stabilize and prevent erosion from the steep elevation change in the rear yard of this lot. Staff is of the opinion that this request and the proposed improvements associated are reasonable towards the redevelopment of this lot. Overall, this request provides a retreat of impervious cover, utilizes the redevelopment of existing impervious cover to the greatest extent practicable and covers existing impervious areas within the riparian buffer to pervious areas. In harmony with the performance standards of the 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. As such, Staff is in support of the request as conditioned below.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"similar improvements have been afforded to other property owners within the CBPA overlay district in this area."* 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 *"proposed improvements provide an overall retreat within the 50' Seaward Buffer. The placement of improvements is due to the proximity of their home within the RPA. While proposed improvements increase the overall impervious surface in the RPA, all occur in areas currently dedicated to lawn, overgrown shrubbery or existing impervious cover. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot."* 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 and the proposed improvements 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 RPA buffer on this lot is comprised of turf grass, canopy trees, and impervious cover within the 50' Seaward Buffer. All proposed improvements inside the 50' Seaward Buffer show an overall retreat and proposed impervious areas are sited adjacent to the existing residence and/or impervious surfaces. This request will benefit water quality by reducing erosion and promoting infiltration through the installation of retaining walls and buffer plantings. This proposal requires establishment of additional vegetation within the buffer to help address any runoff from 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 concurs and offers that this lot has a mature tree canopy cover, and the applicant's agent has taken measures to minimize impacts in the RPA by keeping the main improvements in the landward portion of the buffer. The applicant also proposed 2,555 square feet of buffer restoration, which is above the required buffer restoration amount based off of the new impervious cover amount.

- 5) *“Although there is a net decrease of impervious surface on the lot, landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. Additional landscape beds along with retaining walls, will 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 proposed buffer restoration measures coupled with the proposed best management practices (BMPs) will contribute to the goal of a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following **18** 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) **2,555 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 restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

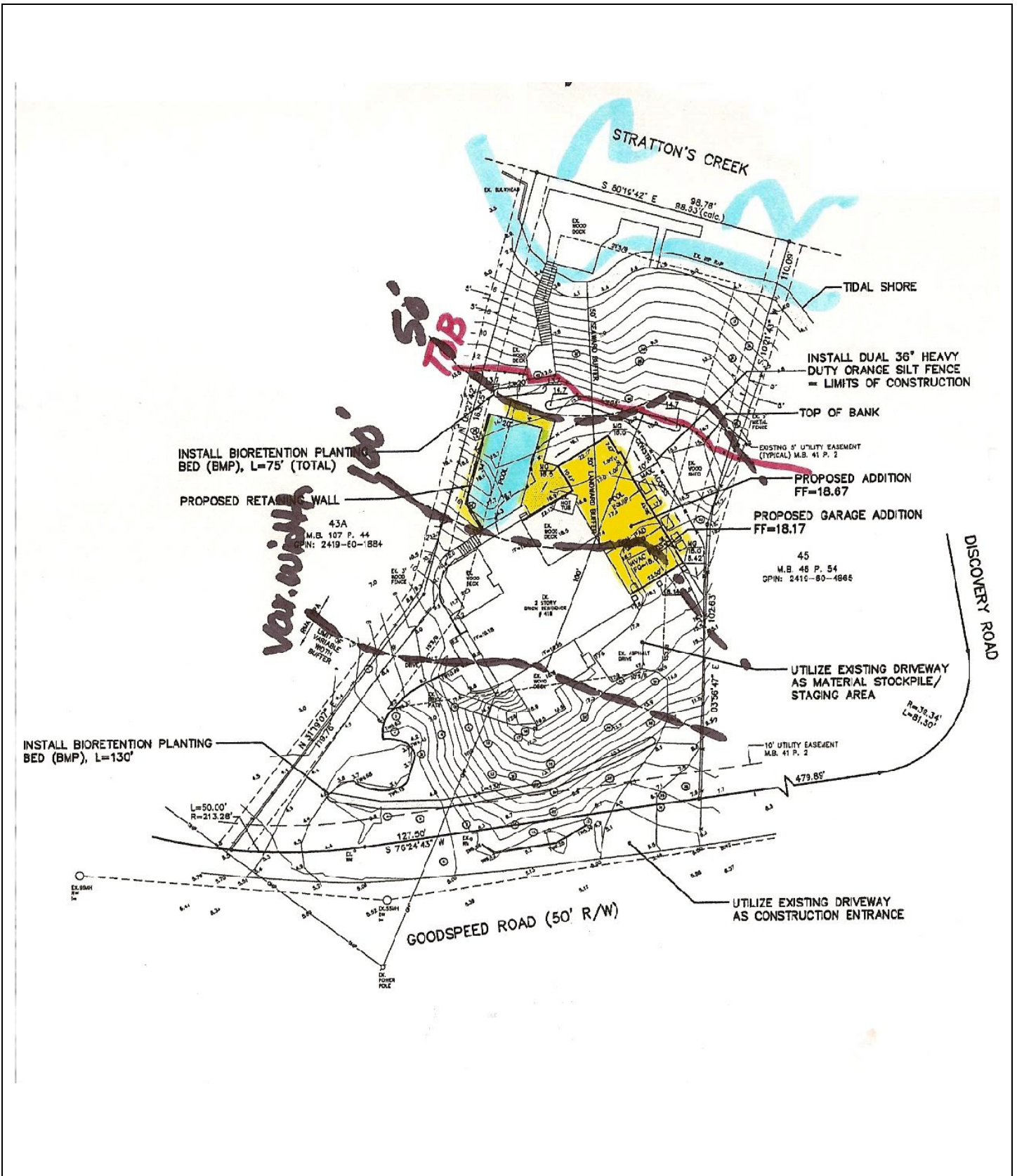
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited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

- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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) 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.
- 17) This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted July 25, 2006.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated September 29, 2022, prepared by Painted Fern Landscape Architecture, signed September 29, 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 applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial





Disclosure Statement

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 Elizabeth Kulas and Jonathan Schreiber

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Garrington, Governemntal Permitting Consultants

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

Towne Bank

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

Yes **No**

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

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

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

Commonwealth Tax, Karl Klinger

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.

Painted Fern, Jessica Nelson

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.

Excel Builders

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 produced the survey

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

Elizabeth Kulas or Jonathan Schreiber

Print Name and Title

9/28/2022

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

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Applicant & Property Owner **Peer & Pernille Bjerring**
Address **2204 Kendall Street**
Public Hearing **November 7, 2022**
City Council District **District 8**, formerly Lynnhaven

Agenda Item

8

Variance Request

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

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 64, Page 1
Recorded 08/03/1964

GPIN

1590-70-1632

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

596 square feet

Location of Proposed Impervious Cover

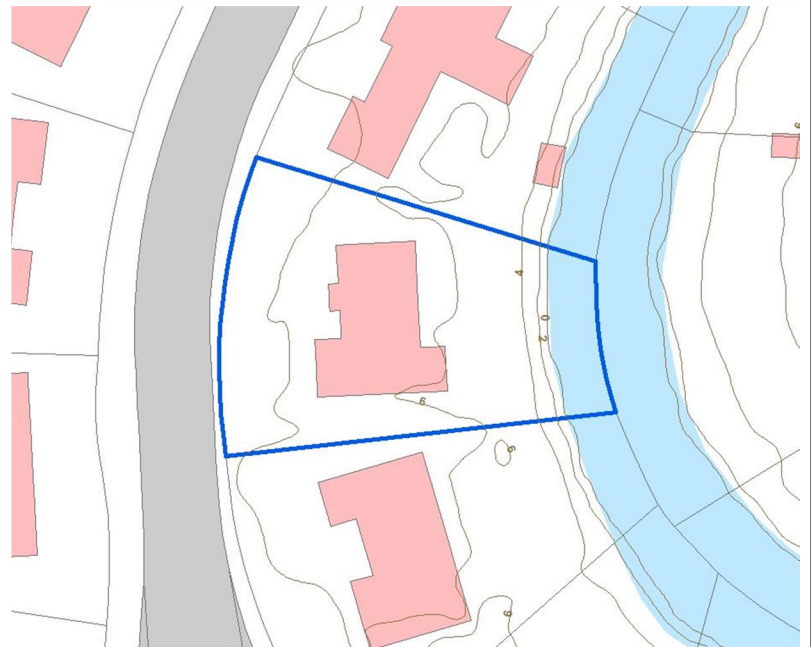
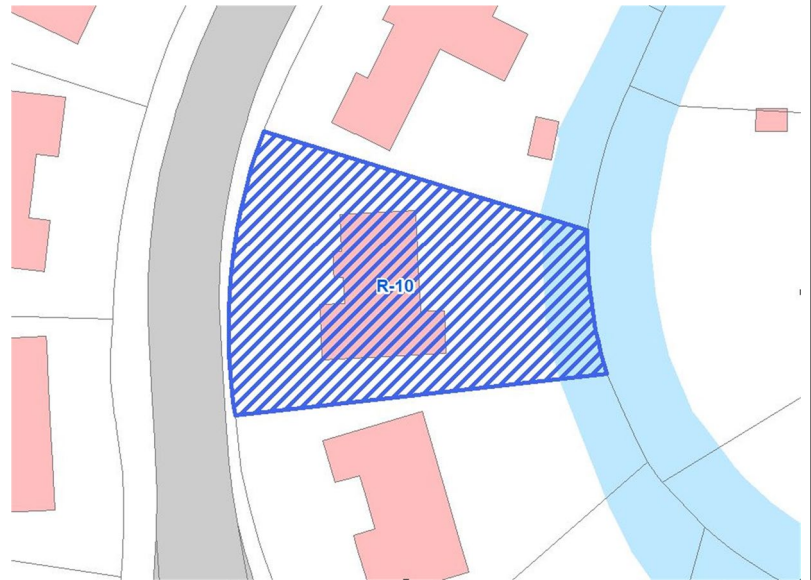
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- In-ground swimming pool with associated pool surround

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a bulkhead.

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

The applicant is proposing to construct an in-ground swimming pool with associated pool surround, approximately 596 square feet of new impervious cover, within the seaward buffer of the Resource Protection Area (RPA). The existing residential lot, platted prior to the adoption of the Chesapeake Bay Preservation Area (CBPA) Ordinance is completely encumbered by the RPA buffer. Staff is of the opinion that these circumstances pose challenges to any redevelopment of the lot given the size of the lot and the 50-foot seaward buffer encumbering the entirety of the rear yard.

As proposed, Staff is of the opinion the dimensions of the proposed swimming pool – approximately 10 feet in width by 23 feet in length are smaller than the average residential swimming pool (16 feet in length by 32 feet in length) coupled with a minimal pool surround. Given the circumstances of the lot and environmental conditions, Staff offers that the layout of the proposed improvements reflects the minimum necessary to afford relief. In addition, the lot currently has little to no tree canopy cover and the buffer restoration associated with the increased impervious cover will enhance the remaining areas of the rear yard that are currently devoted to turf.

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 *"several neighbors with equal conditions already have in-ground pools, including our immediate neighbors."* Staff concurs and offers that the redevelopment of lots within this neighborhood are challenged by the dimensions of these residential lots, typically averaging a depth of 150 feet along the manmade canal.
- 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 *"as stated, we have chosen a small pool with a smaller footprint and have placed it on the property as it is possible given the placement of the existing house/structure."* The proposed swimming pool is smaller than the average size of a residential swimming pool and is placed in the most reasonable location on the lot given the fact that the seaward buffer takes up the entirety of the rear yard.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"we are not removing any vegetation (other than grass) and we will fully comply with requirements set by the CBPA, including planting according to buffer restoration specifics. The project is small, will be handled through a single entrance, and will not come near the actual water line."* Staff is of the opinion that the proposed improvements provide merit towards being the minimal necessary to afford relief coupled with land disturbance being less than 2,500 square feet.
- 5) *"In addition to the proposed addition of vegetation, the house is equipped with gutters and we're setting up rainwater harvesting"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that the added rainwater harvesting as a best management practice towards stormwater management 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 **7** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. A Landscape 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. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. The landscape plan shall detail location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape 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: **596 square feet x 200 percent = 1,192 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 small shrubs.**

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

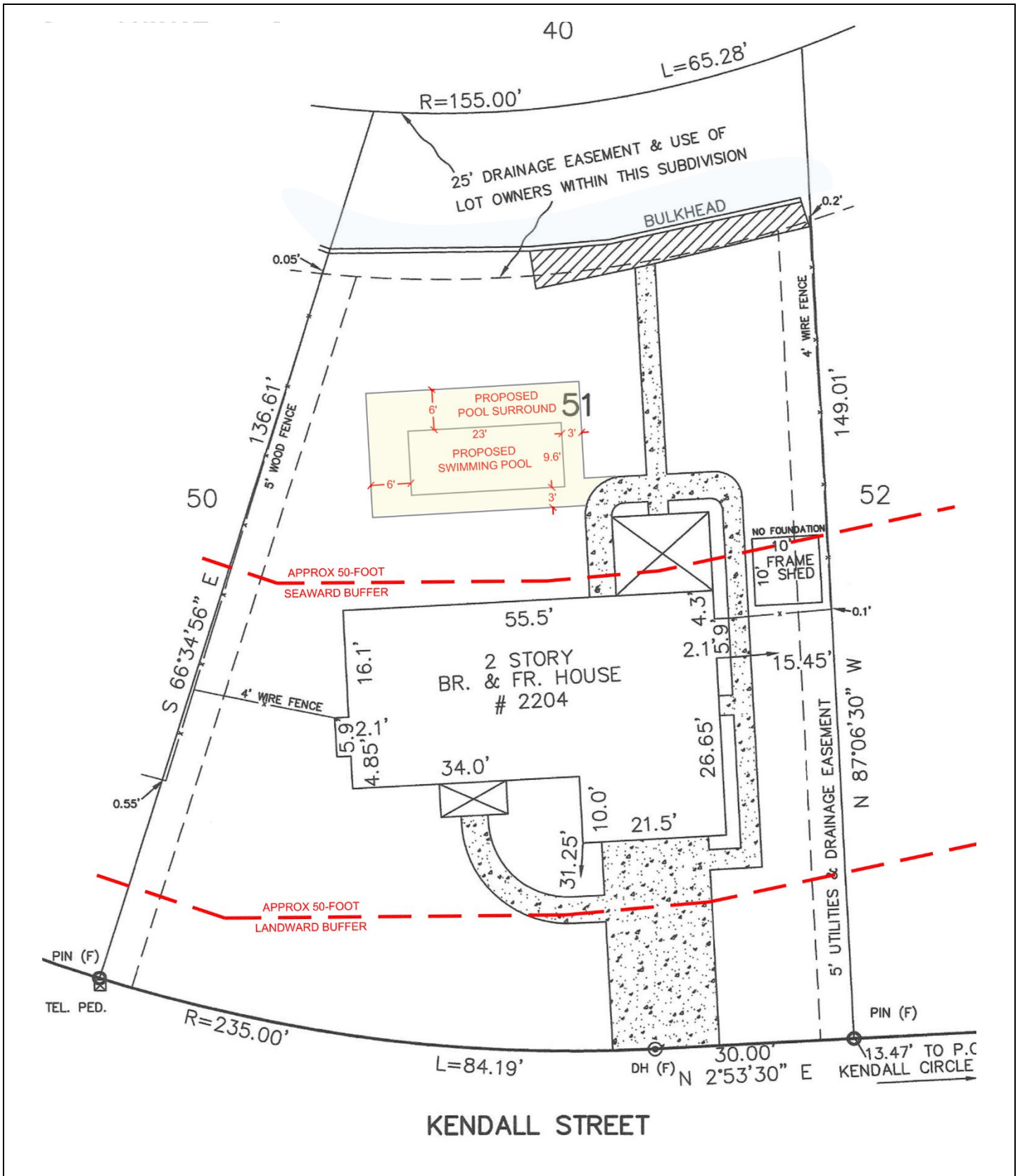
4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and 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.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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

Site Aerial



CBPA Exhibit – Proposed Improvements



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 Pernille Bjerring

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.
-

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.

White, Anderson, and Associates PC (Chad White) of Virginia Beach do our tax returns, including for the property in question

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.

East Coast Leisure Pools

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

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

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

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

Applicant Signature

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

Applicant Signature

Pernille Bjerring

Print Name and Title

10/1/2022

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Joshua & Sarah Haggerty**
Address **1133 Ivy Drive**
Public Hearing **November 7, 2022**
City Council District **District 6**, formerly Lynnhaven

Agenda Item

9

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, walkway, retaining wall, and shed.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 32, Page 14
Recorded 07/09/1952

GPIN

2418-77-0280

SITE AREA

50,448 square feet or 1.158 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

47,288 square feet or 1.086 acres

EXISTING IMPERVIOUS COVER OF SITE

4,589 square feet or 10 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,313 square feet or 13 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,760 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

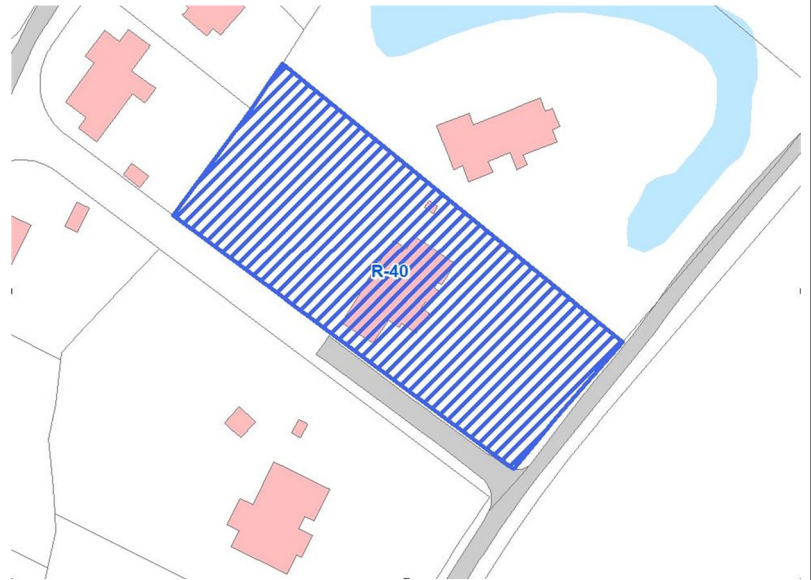
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Retaining wall (block wall)
- Relocate HVAC unit

Construction Details

- Swimming pool with associated pool patio surround and concrete mechanical pad
- Retaining wall
- Shed and steppingstone walkways

CBPA Ordinance Variance History

On February 24, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, concrete parking area, pool and associated concrete decking with the following conditions:

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
3. *Construction limits shall lie a maximum of 15' seaward of improvements.*
4. *The construction access way shall be noted on the site plan, as well as the stockpile staging area. The staging area shall be relocated to the interior portion of the circular asphalt driveway (that portion adjacent to Golf Lane (Unimproved)).*
5. *All stormwater from all impervious cover shall be conveyed to structural stormwater management facilities*
6. *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.*
7. *Pool decking shall be a maximum of 4' in width along northern and western limits. In addition, the pool and associated decking, shall be relocated no less than 15' closer to the residence.*
8. ***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 \$2,153.00 and is based on 25% of the existing and proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,348 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
9. *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.*

10. *Buffer restoration shall be in substantial compliance with that which is shown on the site plan dated 01-09-03, prepared by WPL, 5,450 sq. ft. Said restoration shall be installed prior to the issuance of the certificate of occupancy.*
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. *Tree compensation shall be at a 3:1 ratio.*
13. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The February 24, 2003 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank
Rumford Series (deep, 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: 0
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

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

Evaluation and Recommendation

The lot is adjacent to a tidal marsh contiguous to the Lynnhaven River by an existing 36-inch culvert under Bay Colony Drive, located north of the property. Given the topography of this area and presence of the tidal march area this lot is encumbered by the Resource Protection Area (RPA) buffer in both the front and rear yards of the lot.

The applicant is proposing to construct an in-ground swimming pool with a standard pool surround and associated concrete mechanical pad for associated pool equipment. Given the layout of the swimming pool and proximity to the top of slope, the applicant has also proposed an approximate 96 linear foot long retaining wall to reinforce the buildable area of the lot and to slow runoff. In addition, the applicant proposes a stepping-stone walkway to connect the swimming pool area to a proposed shed in the backyard.

Overall, the request increases the impervious cover of the lot from 4,589 square feet or 10 percent of the site above water or wetlands to 6,313 square feet or 13 percent of the site above water or wetlands. All new development in the Resource Protection Area (RPA) is proposed within the 50-foot landward buffer and variable width buffer portions, with no encroachment within the seaward buffer. Additionally, the applicant has situated the proposed swimming pool off the side of the residence to limit impacts to the more sensible portion of the lot given the existing topography and location of the top of bank feature off the rear of the residence. Staff is of the opinion that the layout proposed improvements reflects the minimum necessary to afford relief given that the lot is entirely encumbered by the RPA and the applicant has taken efforts to minimize encroachment in the most environmentally sensitive portions of the riparian buffer by utilizing the minimum lawn space available on the lot without contributing to a larger amount of land disturbance.

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 1952 decades prior to the Chesapeake Bay Preservation Act. The home on this heavily treed lot is now located in the RPA Buffer and the applicants are simply making modifications to the previously approved pool layout to fit the new owners family and lifestyle."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over the prior approved pool location to the greatest extent practicable to minimize site impacts and avoid development in the 50' seaward portion of the site."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed layout of the improvements. Staff offers that the location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be increased and installed between the improvements and the bay as well as enhancements to the existing natural buffer."* As mentioned above, Staff is of the opinion that the proposed changes with this variance request is not of substantial detriment to water quality. As provided by the applicant's agent in the WQIA, this request is reasonable given that the entire lot is encumbered by the Resource Protection Area (RPA) and the slope making it difficult to redevelop the lot without additional land disturbance.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed behind the new pool to capture and achieve the stormwater management requirements prior to discharging into the creek/ditch along the rear portion of the site"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant's approach to ensure a no net increase in nonpoint source pollution is acceptable. These

management techniques include bioretention stormwater bed plantings within the riparian buffer to slow and treat the on-site stormwater runoff before entering the river.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,760 square feet x 200 percent = 3,520 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 to the greatest extent practicable.

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. 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 10 feet from improvements.

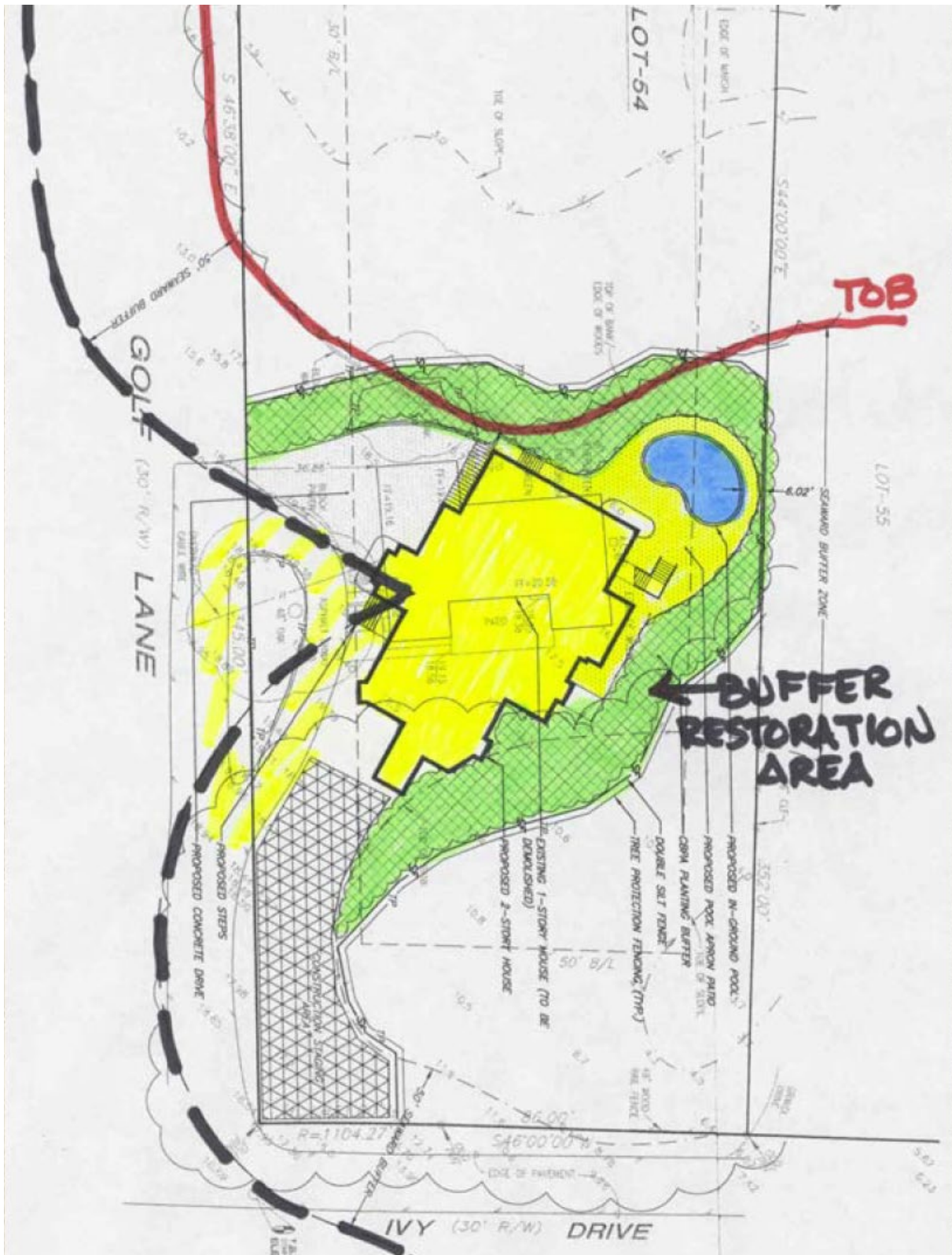
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 11 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent 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 \$403.33 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated August 25, 2022, prepared by WPL Landscape Architecture, signed September 30, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

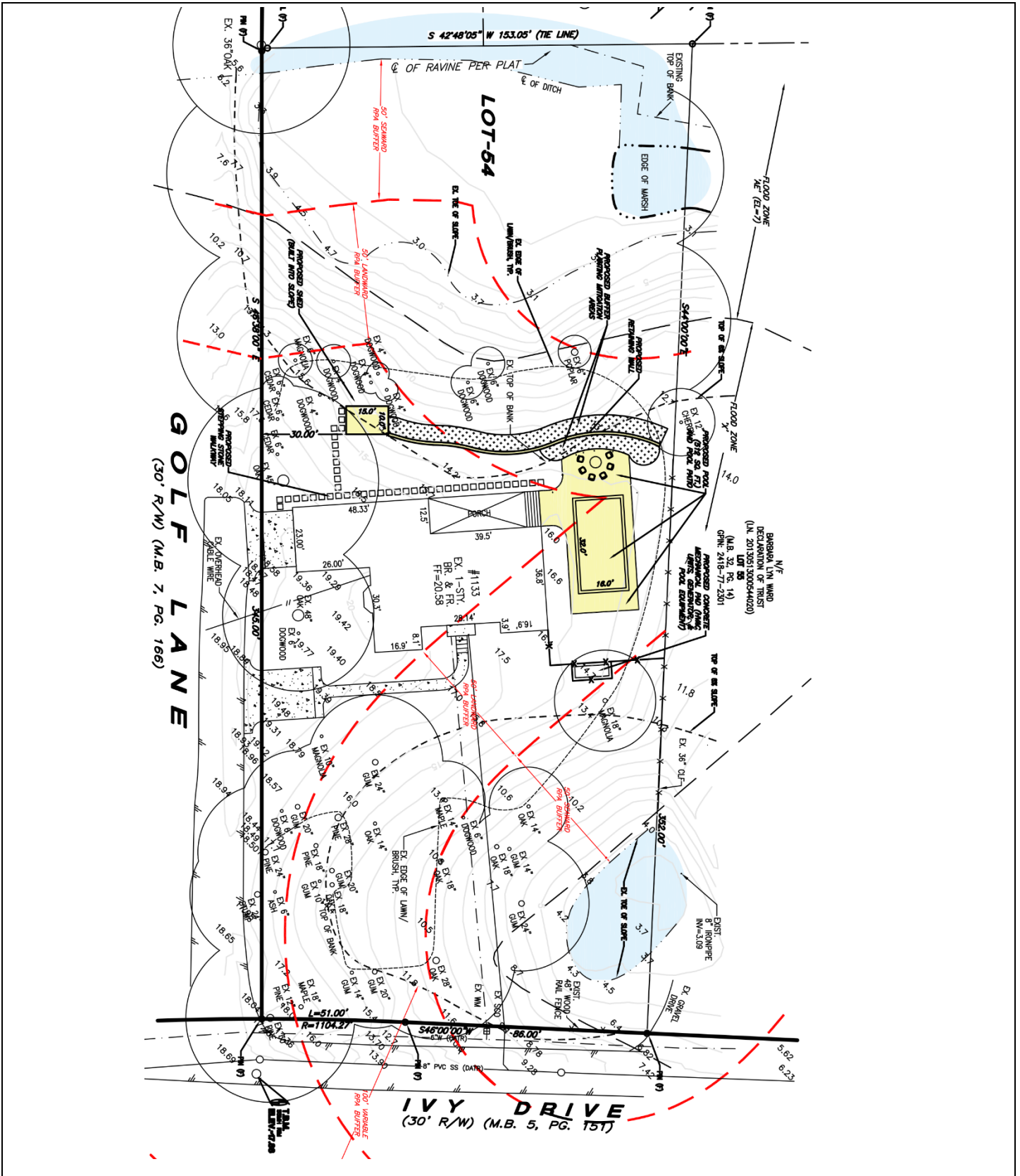
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – 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 Joshua L Haggerty & Sarah J Haggerty

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.

New American Funding

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

Yes No

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Joshua L Haggerty and Sarah J Haggerty

Applicant Signature

Joshua L Haggerty & Sarah J Haggerty

Print Name and Title

October 13, 2022

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct driveway expansions, parking pad, covered car port, retaining wall and deck, and walkways.

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 300, Page 60

Recorded 11/14/2001

GPIN

1499-51-2768

SITE AREA

161,691 square feet or 3.712 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

89,587 square feet or 2.057 acres

EXISTING IMPERVIOUS COVER OF SITE

16,258 square feet or 18 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

20,860 square feet or 23 percent of site

Area of Redevelopment in RPA

6,901 square feet

Area of New Development in RPA

4,602 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

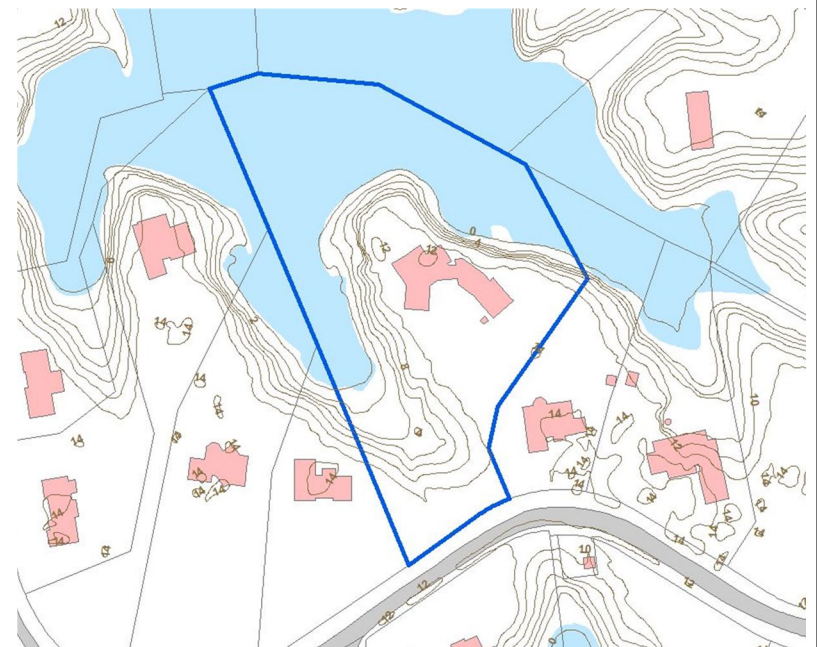
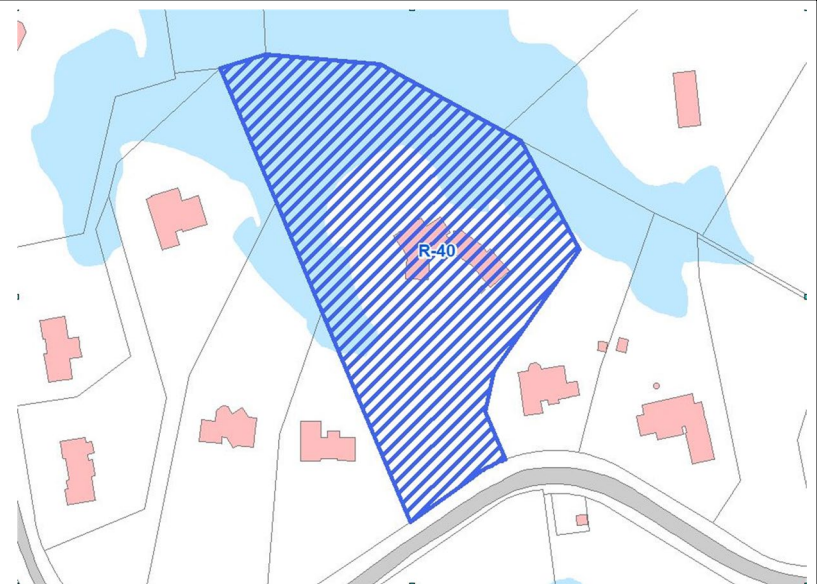
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of existing driveway and front entry to residence

Construction Details

- Redevelop existing asphalt driveway with gravel driveway
- Covered RV car port
- Reconfigure and expand front entry area to residence
- Replace pool decking in existing footprint
- Gravel-pave parking pad
- Retaining wall and wood deck

CBPA Ordinance Variance History

On August 27, 2001 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of a single parcel into two residential lots and construct a driveway and new single-family home on lot 5-B with the following conditions:

1. *Under deck treatment with timber ties shall be installed for the existing 16' x 16' deck/gazebo.*
2. *All portions of Lot 5B, seaward of construction limits, shall remain in a natural state, to include leaf litter left intact. Said condition shall be noted on the site plans and final subdivision plat.*
3. *All portions of highly erodible soils on Lot 5A shall be stabilized with vegetative cover prior to any site plan approval.*
4. *Tree compensation shall be at a 1:1 ratio.*
5. *The disturbed portion of the natural ravine on Lot 5A shall be stabilized with vegetative cover prior to any site plan approval.*
6. *All stormwater runoff from impervious cover associated with the residence on Lot 5A, and stormwater runoff associated with all impervious cover on Lot 5B shall be conveyed to structural stormwater management facilities.*
7. *A 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 for construction activity on proposed Lot 5B.*
8. *A site plan shall be submitted to the Department of Planning, Development Services Center for review and approval for Lot 5-A prior to the issuance of a building permit.*

Conditions #9-#12 are conditions of approval for the variance granted on August 27, 2001 in addition to the previous 8 listed above:

9. *No seaward perimeter fill shall be permitted for the construction of the new driveway proposed for Lot 5-A. Driveway installation shall occur above the top-of-bank.*
10. *Said driveway section shall be of a more permeable nature, e.g. gravel, oyster, shell, pavers, etc.*

11. Tree compensation for the driveway shall be at a 3:1 ratio.

12. Dual erosion and sedimentation control measures shall be installed adjacent to the driveway and shall be maintained until such time as the disturbed areas are stabilized.

The August 27, 2001 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): 8

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Sections of the shoreline are stabilized by a rip rap revetment, but the majority is left in a natural state. Moderate maintenance should be performed to limb up low hanging branches shading existing tidal marsh and to remove invasive plant species.

Riparian Buffer

Heavily 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 limits of construction and within the footprint of the proposed improvements with this variance request.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant proposes to replace and expand the existing asphalt driveway with a new gravel driveway and construct two wood decks and a covered car port. There is currently one driveway on the lot leading up to the existing residence and another cleared area to the south that serves as an overflow parking area for guests, which connects to the residence by a natural trail through the wooded area in the front yard of the lot. The applicant desires to expand portions of the main driveway and create a circular layout at the front of the residence for better traffic flow and redevelop the designated overflow area with a GravelPave driveway and parking area. Adjacent to the residence, the applicant is proposing a covered car port in the open lawn area to park and store their recreational vehicle. In the rear yard of the lot within the seaward buffer of the Resource Protection Area (RPA), the applicant is proposing a wood deck off the residence and approximately 10 linear feet of retaining wall to stabilize portions of the lot adjacent to the existing swimming pool.

Although this request increases the impervious cover on the lot by 4,602 square feet, only 2,206 square feet falls within the 100-foot RPA buffer with most of that amount situated within the 50-foot landward buffer. The only increase in the 50-foot seaward buffer is due to the small retaining wall to help stabilize portions of the lot and the small wood deck off the rear of the residence.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the existing home was built in 1950 and the site was originally platted from a portion of the Seay Property in 1976. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and offers that home was built in the 1950s and the conditions of the existing improvements warrants redevelopment. As proposed the encroachments into the 100-foot RPA offers merit towards the applicant's ability to redevelop the lot without being given any special privileges given the location of the proposed improvements and minimal expansion of new impervious cover within areas of the lot that are not environmental sensitive.
- 2) Staff offers that the encroachment into the RPA on this lot is challenged based of the existing residence being constructed prior to the adoption of the City's Chesapeake Bay Preservation Area (CBPA) Ordinance and the existing residence being retained with this variance request.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the proposed improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff adds that this request does include 7,547 square feet of redevelopment over existing impervious cover and the majority of the new impervious cover with this variance request falls within the variable width buffer and resource management area (RMA) of the Chesapeake Bay watershed.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation except for the portion of the site that has existing wooded riparian buffers. However, if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay as well as enhancements to the existing natural buffer."* Staff concurs and adds that in addition to the required buffer restoration, the existing canopy trees along the shoreline shall be maintained to help promote further growth of the existing living shoreline vegetation. Staff is of the opinion that the applicant has brought forth a request that has limited the amount of new impervious cover introduced within the 100-foot buffer to the greatest extent practicable.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers that the conceptual planting plan, redevelopment of the existing impervious covers with structural best management practices,

and general woodlot management of the existing canopy cover offers merit towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following **18** 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 in substantial compliance with the Conceptual Planting Plan submitted with this variance request prepared by WPL. 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. 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) Turf shall be limited to 4,200 square feet on the lot, specific to the areas of turf shown on the Conceptual Planting Plan.
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) 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.

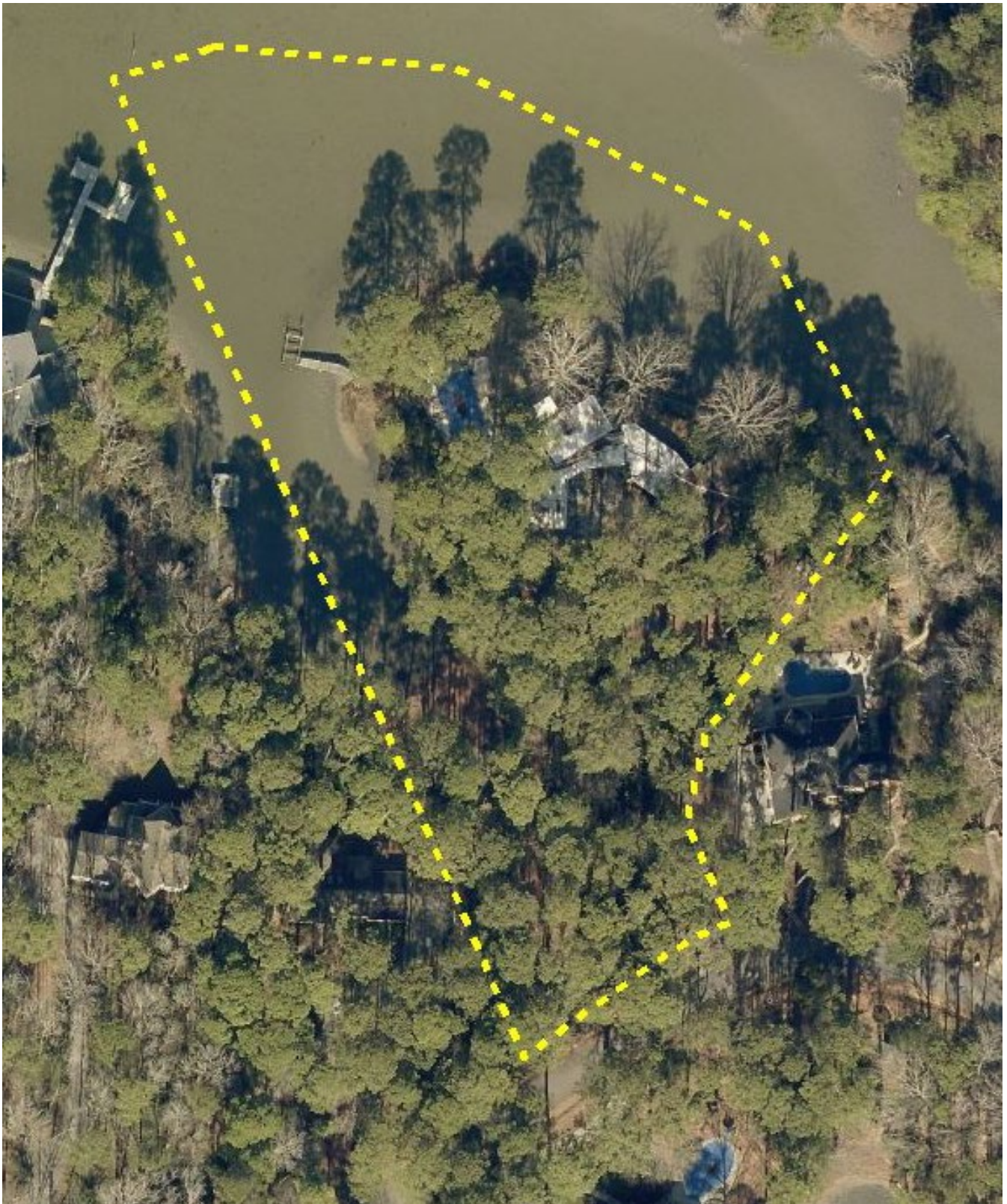
These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$1,054.62 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) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated May 11, 2022, prepared by WPL Landscape Architecture, signed September 30, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

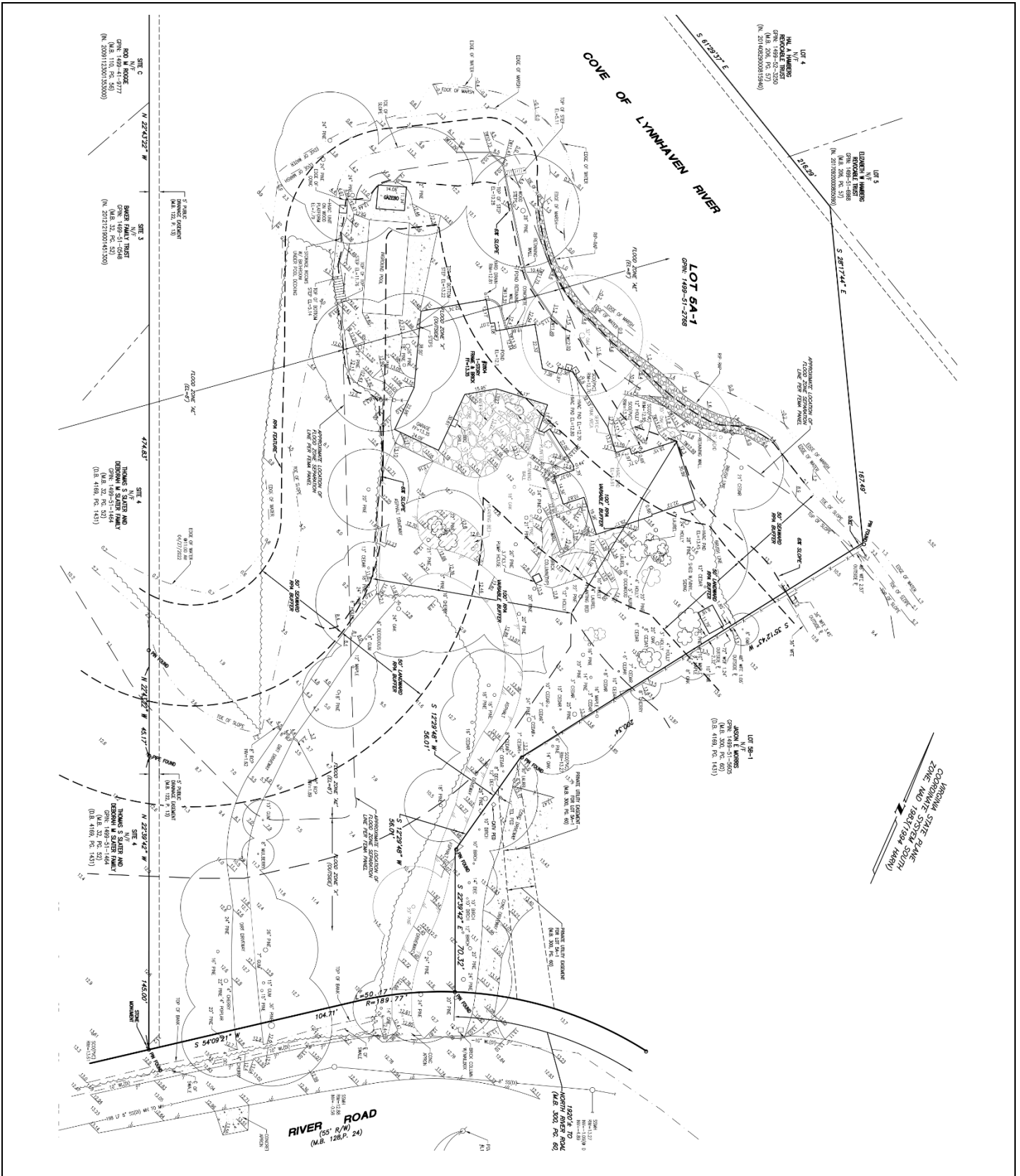
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Conceptual Planting Exhibit



- LEGEND**
- (A) SCREENING PLANTING OVER OLD DRIVE
 - (B) SUPPLEMENTAL SCREENING PLANTING
 - (C) BUFFER RESTORATION AREA
 - (D) TURF
 - (E) ORNAMENTAL SHRUBS
 - (F) ORNAMENTAL PLANT ISLAND
 - (G) SCREENING PLANTING
 - (H) LARGE JAPANESE MAPLE TREE
 - (I) ORNAMENTAL TREE AND SHRUBS
 - (J) NATIVE PLANTS FOR BANK STABILIZATION

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 Joseph P Harvey & Judith M Harvey

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.

Towne Bank

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

Yes No

- If **yes**, identify the 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 & Covington Hendrix Anderson Architects

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

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

Disclosure Statement



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

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

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

Applicant Signature

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

Applicant Signature

Joseph P Harvey & Judith M Harvey

Print Name and Title

Date

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

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

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

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



Applicant & Property Owner **Doan Van Nguyen**
Address **3525 N Crestline Drive**
Public Hearing **November 7, 2022**
City Council District **District 1**, formerly Kempsville

Agenda Item

11

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

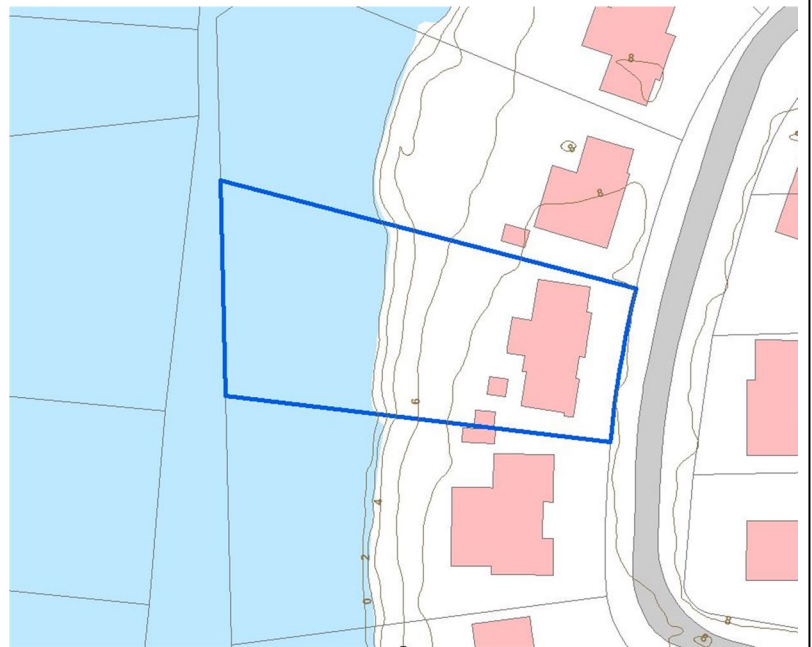
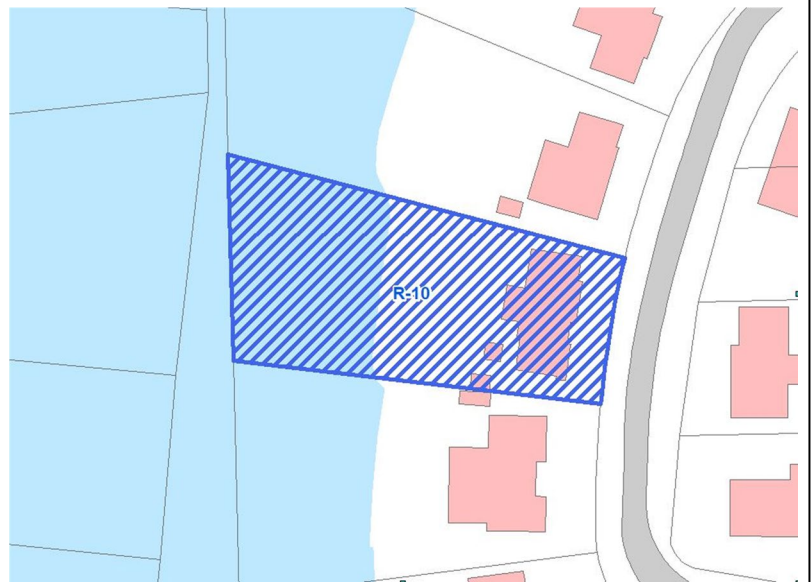
50-foot Seaward Buffer

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.

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.

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.

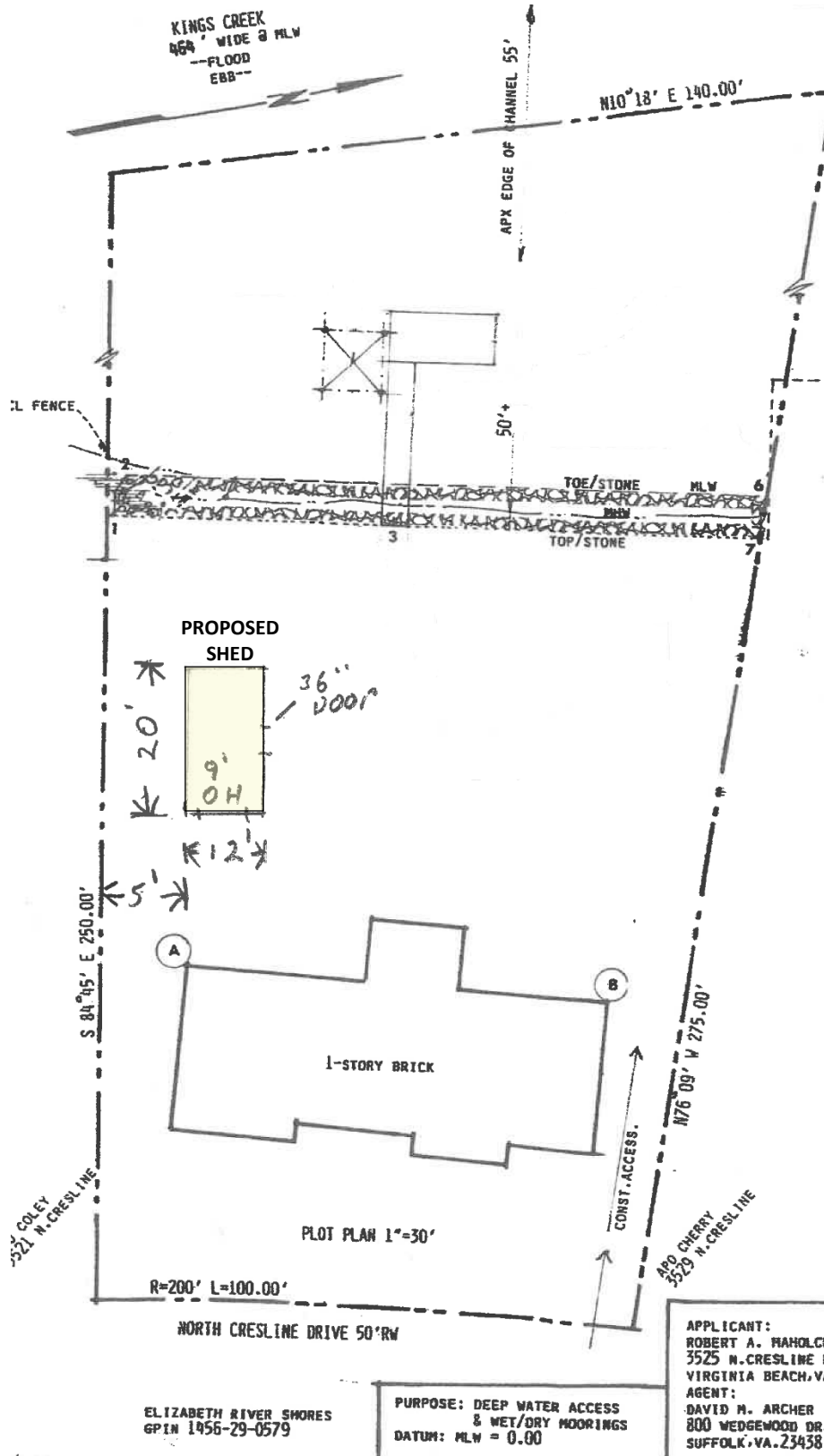
4. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized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

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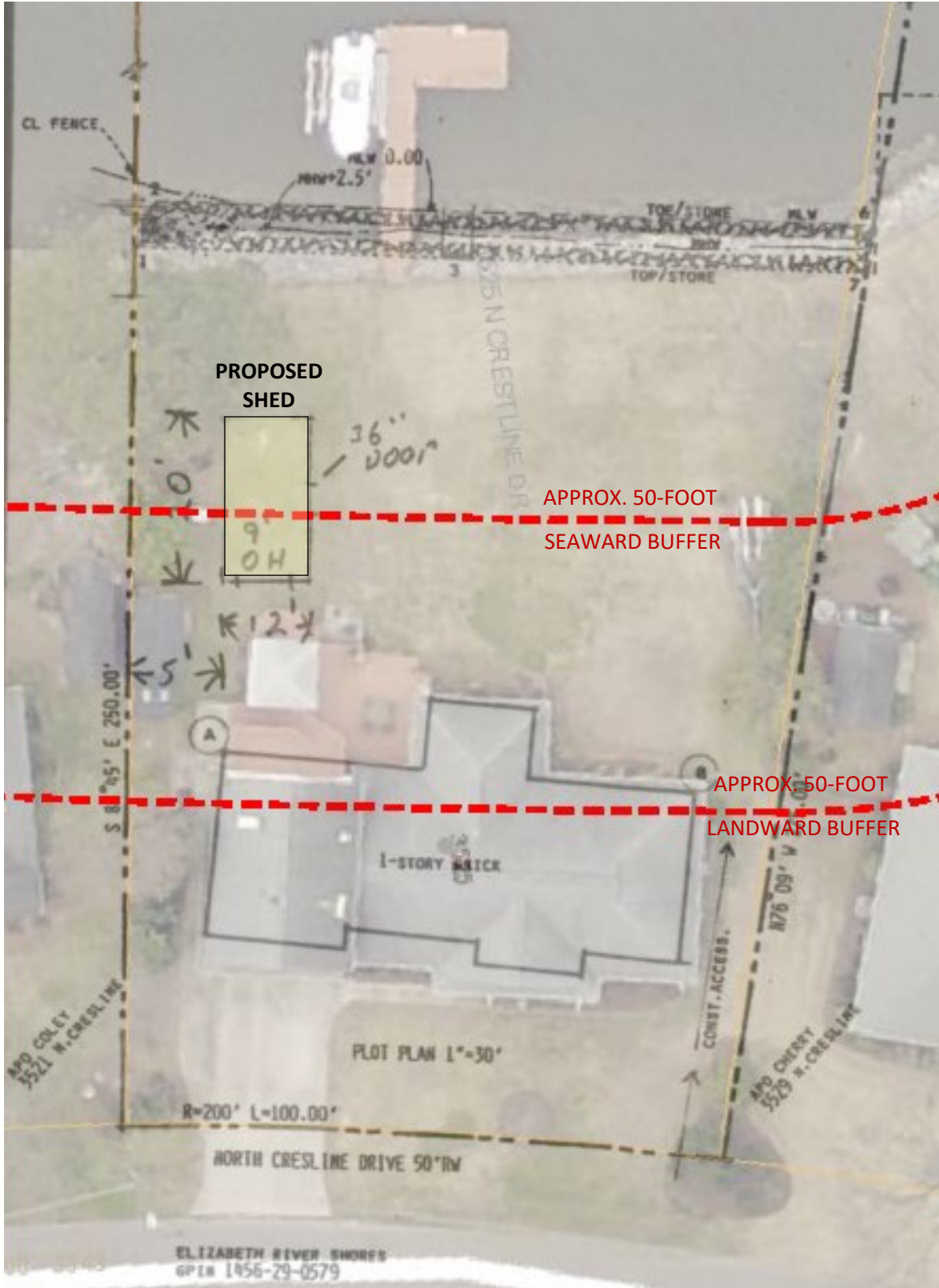
Site Aerial



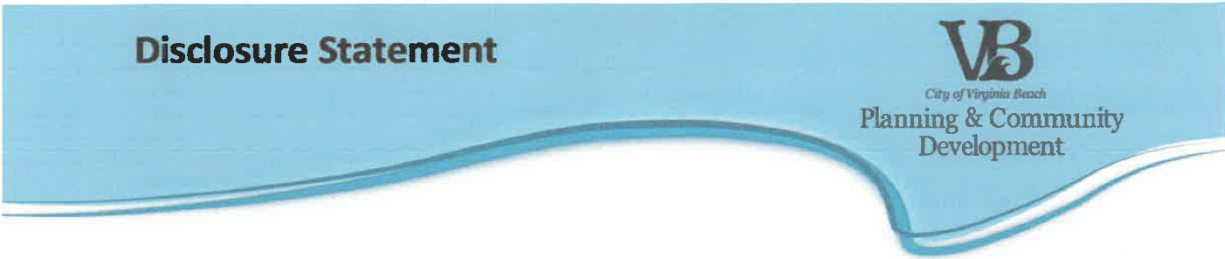
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Proposed Improvements, Aerial Overlay



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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)

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-

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- 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



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Applicant Signature

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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.

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