

# Chesapeake Bay Preservation Area Board Agenda

July 24, 2023



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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, July 24, 2023** 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 [virginiabeach.gov/cbpa](http://virginiabeach.gov/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](mailto: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.



# CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **July 24, 2023**

**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 [virginiabeach.gov/cbpa](http://virginiabeach.gov/cbpa). For information call (757) 385-4621.

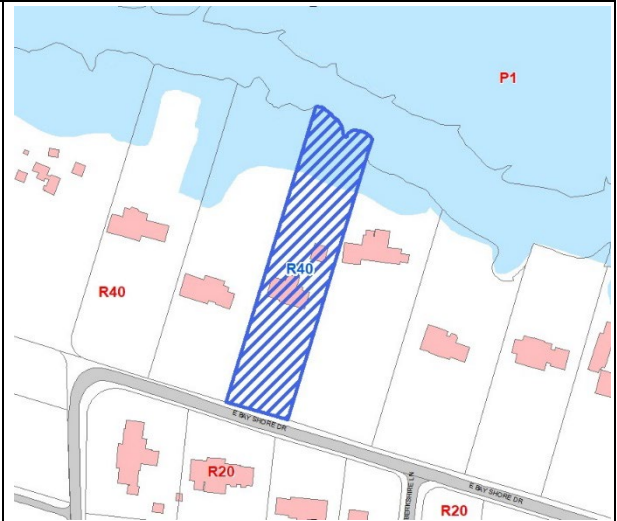
## NEW BUSINESS AGENDA ITEMS

**1. Marjorie & James Cromwell**  
[Applicants & Property Owners]

**1528 E. Bay Shore Drive**  
GPIN 2419-21-1286  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2023-CBPA-00034

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 7

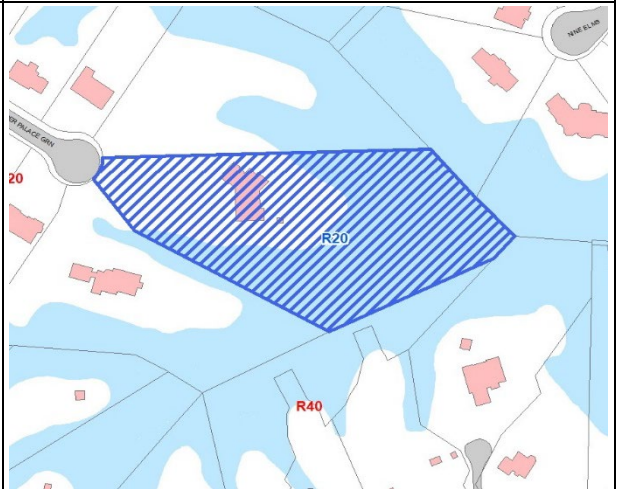


**2. Tristine R. Barton Revocable Trust**  
[Applicant & Property Owner]

**3300 Upper Palace Green**  
GPIN 1498-15-1390  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2023-CBPA-00035

**Variance Request** – Encroachment into the RPA to construct a driveway expansion.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 21



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 3. Jason Andrew & Colby Kight Murphy Revocable Trust

[Applicant & Property Owner]

#### 1301 Mockingbird Place

GPIN 2418-24-0473

City Council District: District 6, formerly Lynnhaven

Accela Record: 2023-CBPA-00036

**Variance Request** – Encroachment into the RPA to construct a swimming pool, paver patio, artificial turf area, and retaining wall.

**Staff Planner** – Cole Fisher

**Staff Report** – page 31



### 4. Justin & Marcia Wheeler

[Applicants & Property Owners]

#### 2228 Windward Shore Drive

GPIN 2409-19-2203

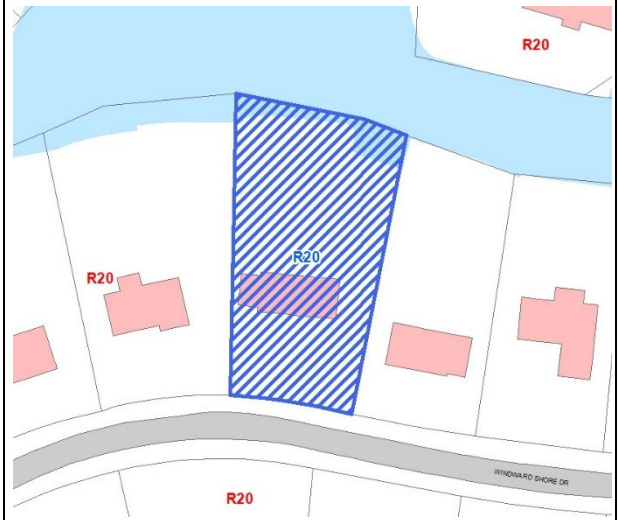
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00038

**Variance Request** – Encroachment into the RPA to construct a patio expansion and pool house and replace pool surround.

**Staff Planner** – Cole Fisher

**Staff Report** – page 47



### 5. Gordon T. Roughton Jr.

[Applicant & Property Owner]

#### 2300 Leeward Shore Drive

GPIN 2500-10-2076

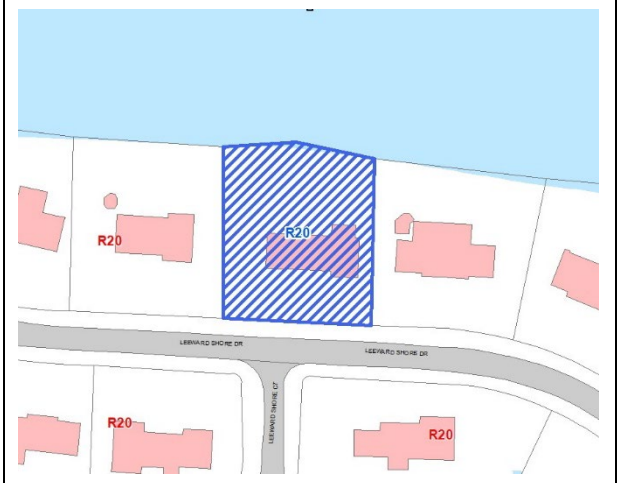
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00039

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 57



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 6. Tidewater Land Management, LLC [Applicant & Property Owner]

#### 3105 Newbern Lane

GPIN 1489-98-7158

City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00037

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 67



## SHOW CAUSE AGENDA ITEMS

### 7. Christina Minton [Applicant & Property Owner]

#### 2212 Leeward Shore Drive

GPIN 2409-29-0640

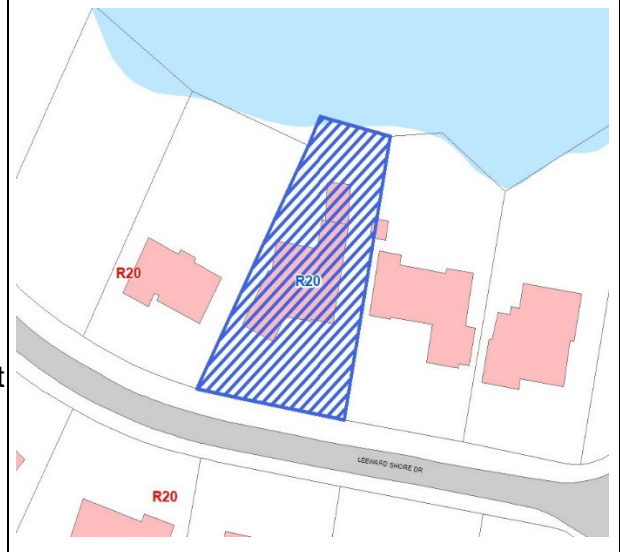
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPV-00003 and  
2022-CBPV-00005

**Statement of Noncompliance** – Unauthorized development within the RPA with the redevelopment and expansion of accessory structures.

**Staff Planner** – Cole Fisher

**Staff Report** – page 79



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Applicant & Property Owner **Marjorie & James Cromwell**  
 Address **1528 E. Bay Shore Drive**  
 Public Hearing **July 24, 2023**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**1**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultants

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 45, Page 52  
 Recorded 10/21/1958

**GPIN**

2419-21-1286

**SITE AREA**

62,106 square feet or 1.426 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

46,124 square feet or 1.059 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,271 square feet or 16 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

12,127 square feet or 27 percent of site

**Area of Redevelopment in RPA,**  
 526 square feet

**Area of New Development in RPA**  
 3,569 square feet

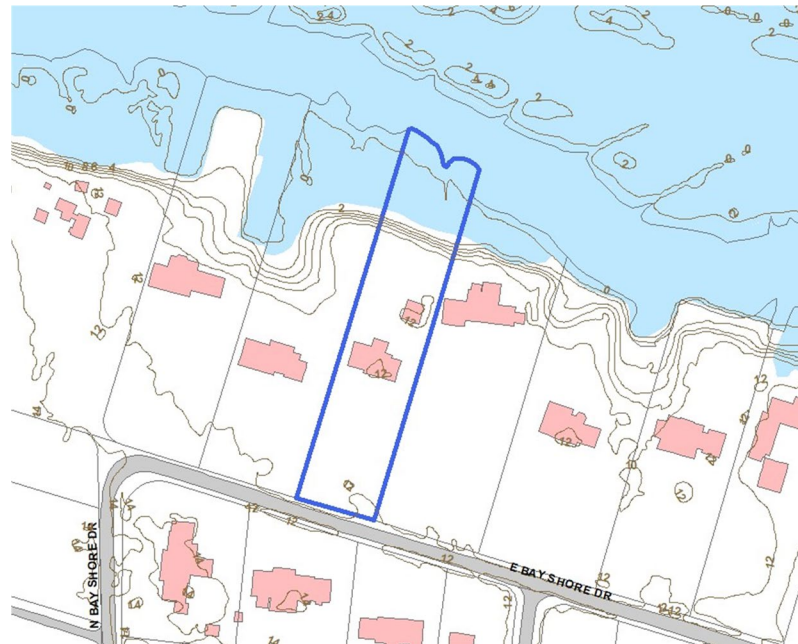
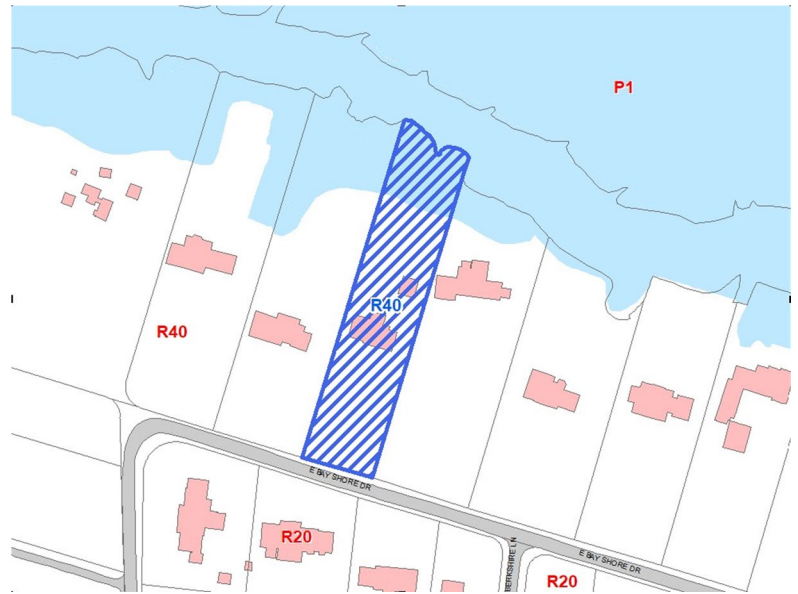
**Location of Proposed Impervious Cover**  
 50-foot Landward Buffer  
 100-foot Variable Width Buffer  
 Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Complete demolition of existing single-family residence with associated accessory structures

### Construction Details

- Two-story single-family residence with covered deck
- Gravel/concrete driveway with concrete entry court adjacent to residence
- Swimming pool with pool patio and associated walkways
- Detached pool house and shed

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

State Series (deep, well-drained soils) located above the top of bank  
Udorthents Series (moderately well-drained soils altered by excavation)

### Shoreline

The shoreline is in a natural state with a pronounced bank, ranging from 5 to 11 feet in elevation along the northern portion of this lot. The applicant proposes to remove six trees, grade back portions of the existing bank and install 115 linear feet of rip rap revetment along the toe of the existing bank. The graded bank will be planted with native vegetation. The primary purpose of this project is to reduce erosion along the shoreline while providing access to the waterway. The initial Joint Permit Application (JPA) impacted approximately 397 square feet of non-vegetated wetlands and the applicant proposed to mitigate on-site with 397 square feet of non-vegetated rock habitat. During the site visit, city Staff and Virginia Marine Resource Commission (VMRC) Staff observed pockets of emergent vegetated wetlands growing at the toe of the existing bank. Due to the amount of anticipated impacts to vegetated wetlands, approximately 115 square feet, the applicant's agent submitted a revised Joint Permit Application (JPA) relocating the rip rap revetment landward and above the Wetlands Board jurisdiction.

### Riparian Buffer

Moderately to sparsely wooded lot

- **Number of existing canopy trees requested for removal within the RPA:** 19 trees in total of which 12 are within the limits of construction associated with the proposed improvements.
- **Number of dead, diseased or dying existing canopy trees requested for removal within the RPA:** 5 of the 19 trees being requested for removal within the Resource Protection Area (RPA).
- **Evaluation of existing canopy tree removal request:** The applicant's agent has submitted an arborist report to verify the health of the trees to be removed with this request. Staff is of the opinion that removal of the trees is warranted given the future shoreline stabilization project, redevelopment of the lot, and the submitted landscape plan indicates replacement with healthier canopy trees.

## 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 existing residence and all associated accessory structures will be demolished for the construction of a new two-story single residence with an attached garage and concrete driveway. The proposed improvements are primarily located within the Resource Management Area (RMA) and City's variable width buffer of the Resource Protection Area (RPA) with encroachment of new impervious cover into the 50-foot landward buffer of the RPA for the construction of a swimming pool, pool house, and shed. Of the proposed 12,127 square feet of impervious cover on the lot approximately 17 percent is located within the 50-foot landward buffer, 13 percent within the City's variable width buffer, and the remaining 70 percent of impervious cover within the RMA. No impervious cover is proposed within the 50-foot seaward buffer with the redevelopment of this lot. Given the extent of redevelopment occurring on this lot the applicant's agent has provided a landscape plan showing buffer restoration as required with the increase in new impervious cover and the proposed area of grading along the existing bank.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas (CBPA) who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements are in keeping with similar redevelopment projects in the Bay Colony Subdivision."* Staff acknowledges the statement provided by the applicant's agent and offers the CBPA Variance requests along East Bay Shore typically redevelop lots within the RPA to alleviate improvements from being adjacent to the existing top of bank.
- 2) Staff offers the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been located on the site to minimize site impacts, and to avoid new impervious area in the 50' seaward portion of the site."* Staff offers the terms "minimum necessary to afford relief" is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. When considering the minimum necessary to afford relief, things such as the size of the structure, the types of proposed structures, and the placement of the structures in relation to the size, layout and location of the lot are important considerations. Specific to this request, Staff acknowledges the placement of the proposed improvements limits encroachments to the landward and variable width buffers while utilizing the redevelopment of existing impervious cover on the site. However, the overall new impervious cover of the lot has increased therefore Staff offers the recommended conditions below as a means towards the variance being the minimum necessary.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay.”* Staff acknowledges the statement provided by the applicant’s agent and offers the average increase in impervious cover for redeveloped lots within this neighborhood ranges from approximately 10 to 12 percent. Specific to this variance request the overall impervious cover of the lot increases from 16 percent impervious cover to 27 percent impervious cover, of which approximately 70 percent of the new impervious cover is located within the RMA of the Chesapeake Bay watershed. In addition, Staff is of the opinion the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality given that the lot currently does not provide best management practices towards water quality.
  
- 5) *“The existing planting beds will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs the enhanced bioretention beds and buffer restoration on the lot will provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.

Given the above comments, Staff recommends the following **16** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
  
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
  
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,569 square feet x 200 percent = 7,138 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **10 canopy trees, 24 understory trees, 36 large shrubs, and 54 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline

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

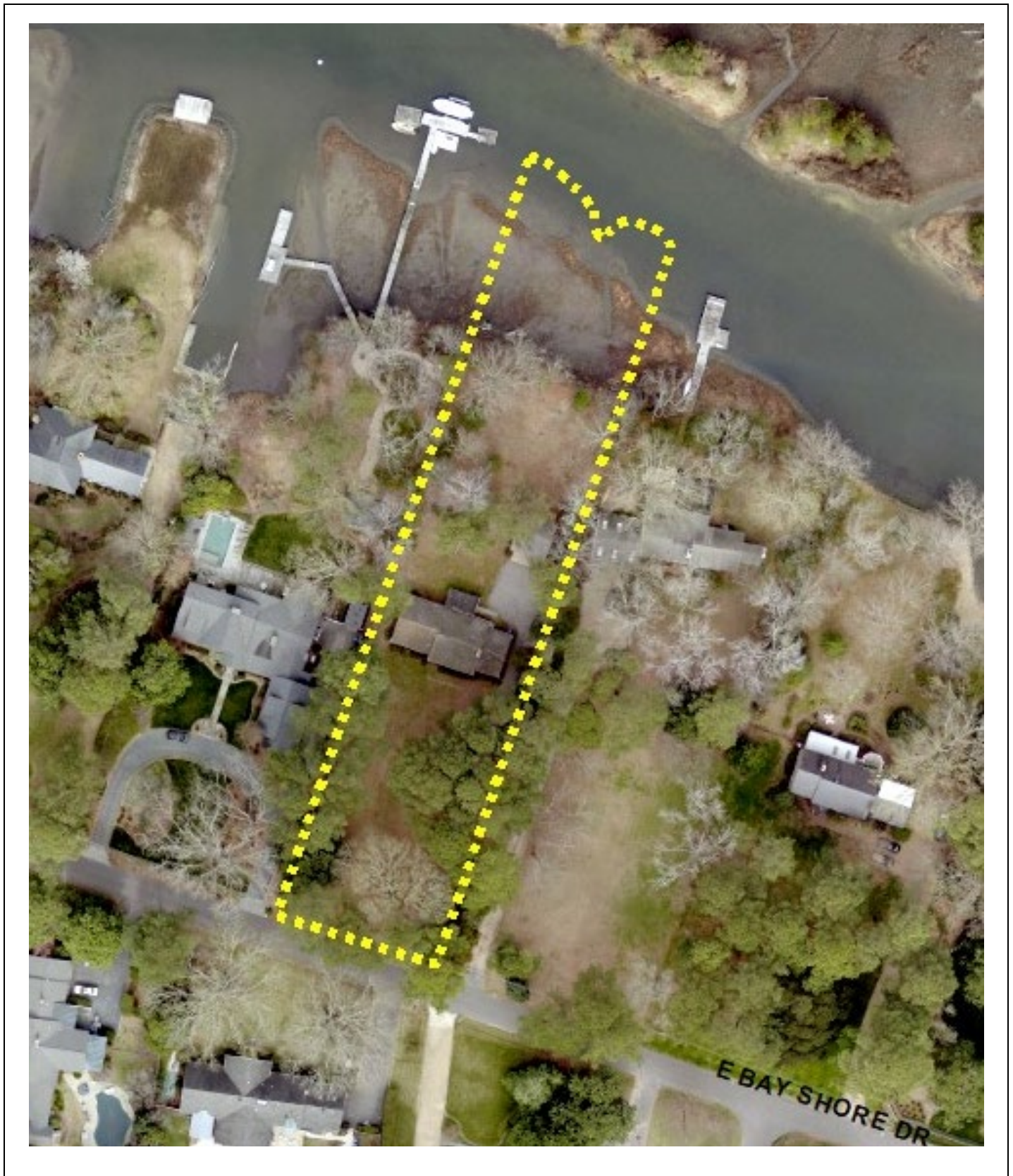
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) 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.
- 15) **\*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$817.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**

16) The conditions and approval associated with this variance are based on the exhibit plan dated April 17, 2023, prepared by WPL, signed May 31, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

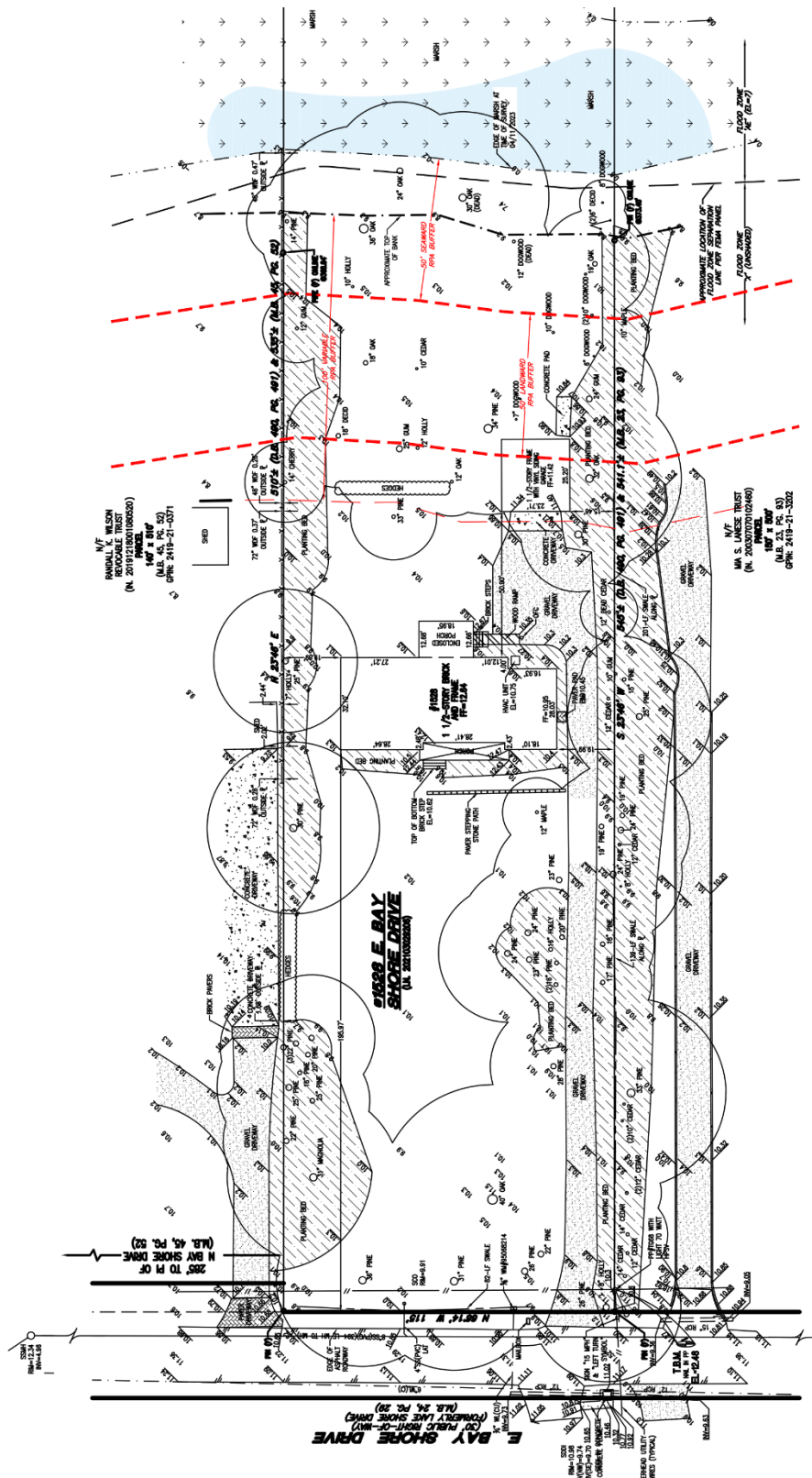
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial

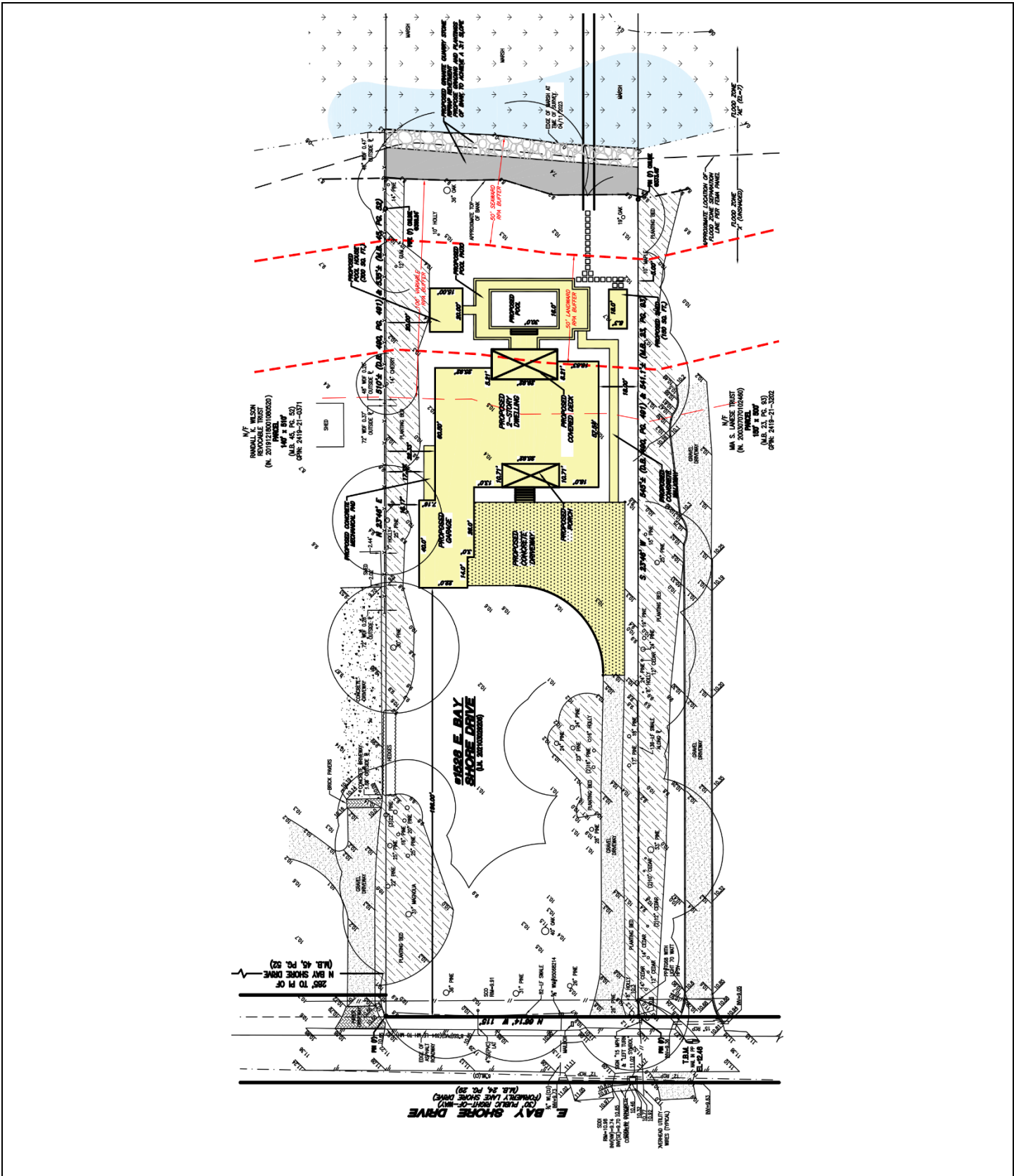


**CBPA Exhibit – Existing Conditions**












# CBPA Exhibit – Proposed Improvements



# Proposed Landscape Plan

## PLANT SCHEDULE

	CANOPY TREE	10
	UNDERSTORY TREE	24
	TRANSPLANT	1
	LARGE SHRUB	36
	SMALL SHRUB	54
	BUFFER RESTORATION	6,872 SF
	NATURAL SUCCESSION	1,523 SF

## PLANTING REQUIREMENTS

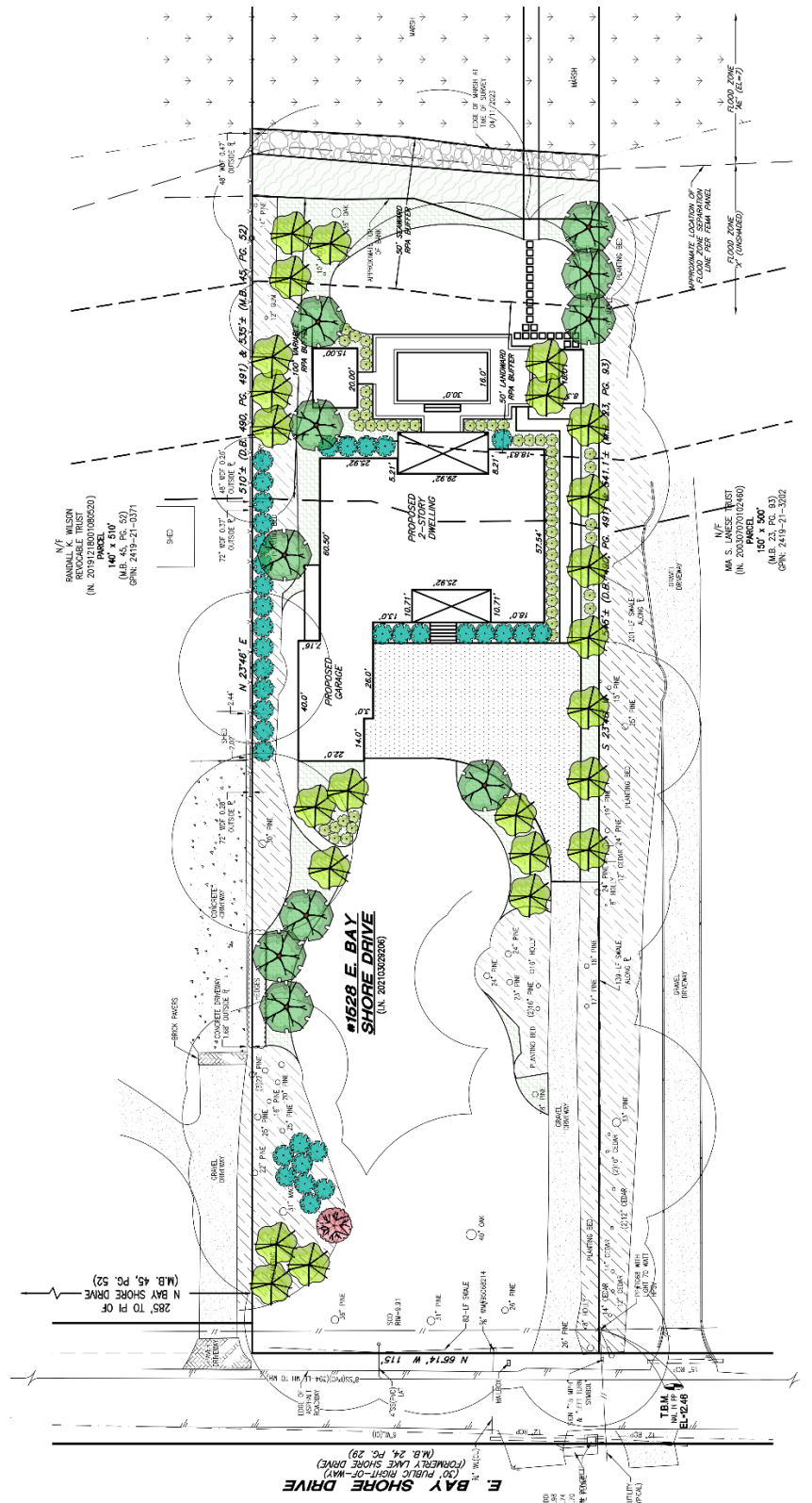
**BUFFER RESTORATION BEDS REQUIRED:**  
 -NEW IMPERVIOUS AREA WITHIN RPA: 7,136 SQ. FT.

**BUFFER RESTORATION BEDS TO BE PROVIDED:**  
 -BUFFER RESTORATION BED AREA: 8,395 SQ. FT.

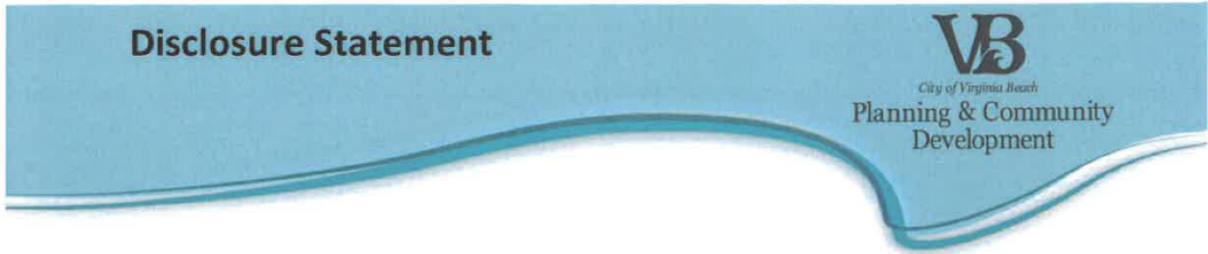
**BUFFER AREA UNITS REQUIRED:**  
 • 10 CANOPY TREES AND APPROVED EQUAL,  
 • 24 UNDERSTORY TREES  
 • 36 LARGE SHRUBS  
 • 54 SMALL SHRUBS  
 (TREES TO BE 60% EVERGREEN AND 40% DECIDUOUS SPECIES)

**BUFFER AREA UNITS PROVIDED:**  
 • 10 CANOPY TREES AND APPROVED EQUAL,  
 • 24 UNDERSTORY TREES  
 • 36 LARGE SHRUBS  
 • 54 SMALL SHRUBS  
 (TREES TO BE 60% EVERGREEN AND 40% DECIDUOUS SPECIES)

**CBPA BIORETENTION PLANTING BED REQUIRED:** TBD CU. FT.  
**CBPA BIORETENTION PLANTING BED PROVIDED:** TBD CU. FT.



# 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** Marjorie L Cromwell & James M Cromwell

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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

<sup>2</sup> "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

## 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?

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### **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.

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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.

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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.

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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.

Battaglia Design (Greg Battaglia) & WPL

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

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

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# Disclosure Statement



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

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

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

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

WPL

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

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

**Applicant Signature**

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

*James M Cromwell*

Applicant Signature  
James M Cromwell

Print Name and Title  
05/26/2023

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 **Tristine R. Barton Revocable Trust**

Agenda Item

Address **3300 Upper Palace Green**

Public Hearing **July 24, 2023**

City Council District **District 8**, formerly Lynnhaven

**2**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington  
Governmental Permitting Consultant

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 136, Page 38-39  
Recorded 3/27/1952

**GPIN**

1498-15-1390

**SMALL PROJECT IN THE RPA**

**SITE AREA**

153,146 square feet or 3.516 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

60,809 square feet or 1.396 acres

**EXISTING IMPERVIOUS COVER OF SITE**

14,014 square feet or 23 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

15,321 square feet or 25.2 percent of site

**Area of Redevelopment in RPA,**

9,325 square feet

**Area of New Development in RPA**

1,380 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

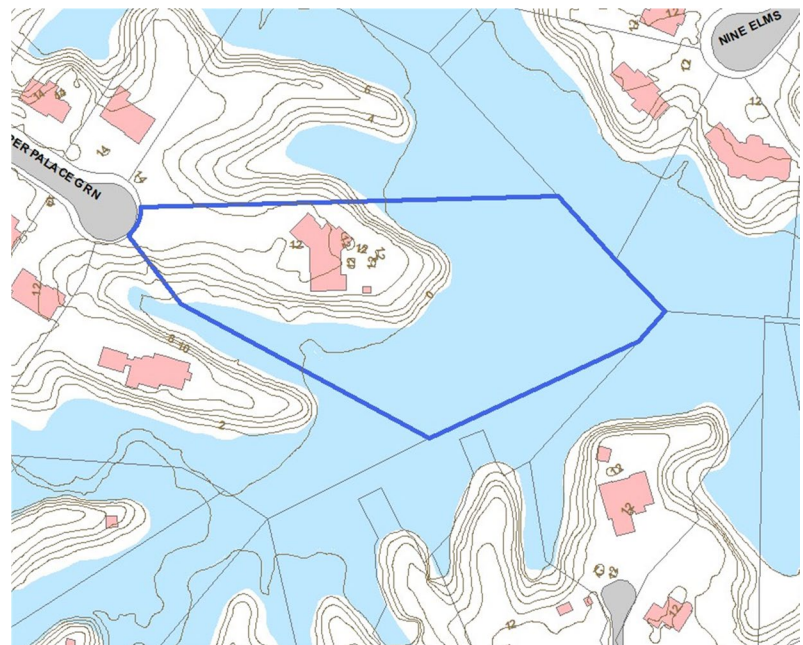
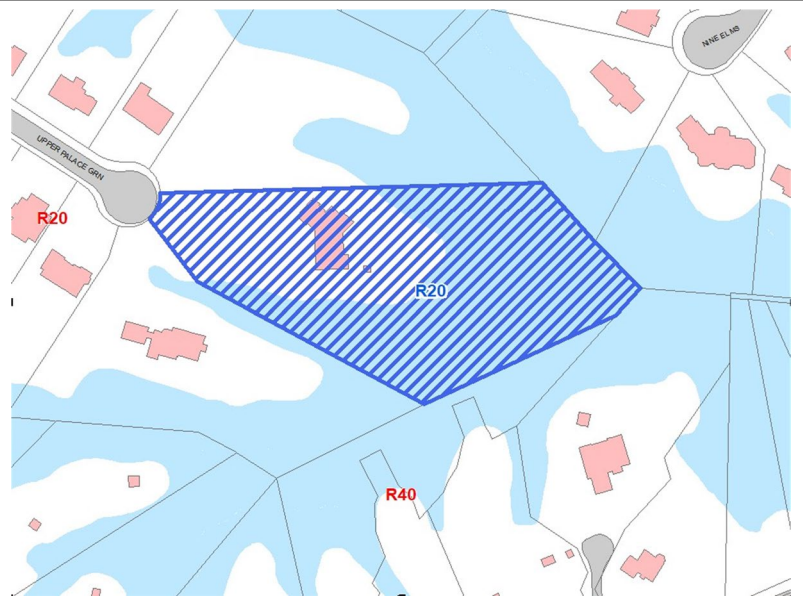
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Swimming pool and pool surround
- Driveway with associated walkway alongside of residence

### Construction Details

- Swimming pool with associated pool surround – replace in same footprint
- Replace and expand existing concrete driveway

## 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)

Rumford Series (highly erodible soils) located below the top of bank  
Yeopim Series (deep and moderately well-drained soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 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 redevelop and expand portions of the existing circular concrete driveway to include a new parking area and slight expansions to the existing footprint for functional purposes. In addition, the existing swimming pool and associated concrete pool patio will be replaced within the same footprint. Regarding the impervious cover, this request utilizes 9,325 square feet of redevelopment over existing impervious cover with 1,380 square feet of new impervious cover within the 50-foot landward and variable width buffers of the Chesapeake Bay Resource Protection Area (RPA). Staff is of the opinion the request is acceptable given the utilization of redevelopment on the lot and limiting the new impervious cover to avoid any encroachment within the 50-foot seaward buffer on the lot.



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 1979 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) 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 encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffer covers 100% of the lot."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the proposed improvements over the existing concrete driveway and patio to the greatest extent practicable to minimize site impacts in the RPA buffer areas."* Staff is of the opinion the proposed improvements utilize redevelopment over existing impervious cover and the expansions to the existing driveway have been situated furthest away from the 50-foot seaward buffer and are acceptable for the functionality of the circular drive.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offer stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be added to facilitate treatment from the new improvement for the betterment of the bay."* Staff is of the opinion the proposed improvements have been situated to avoid encroachment within the 50-foot seaward buffer and will not be a detriment to water quality.
- 5) *"The proposed buffer mitigation will enhance and compliment the site. Bioretention beds will be installed along the driveway to meet the stormwater management regulations and will be placed to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. The lot is heavily wooded and no existing vegetation is proposed for removal with this request.

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

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated July 1, 2023, prepared by WPL, signed July 1, 2023 by Eric Garner. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal 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. 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: **1,380 square feet x 200 percent = 2,760 square feet.**

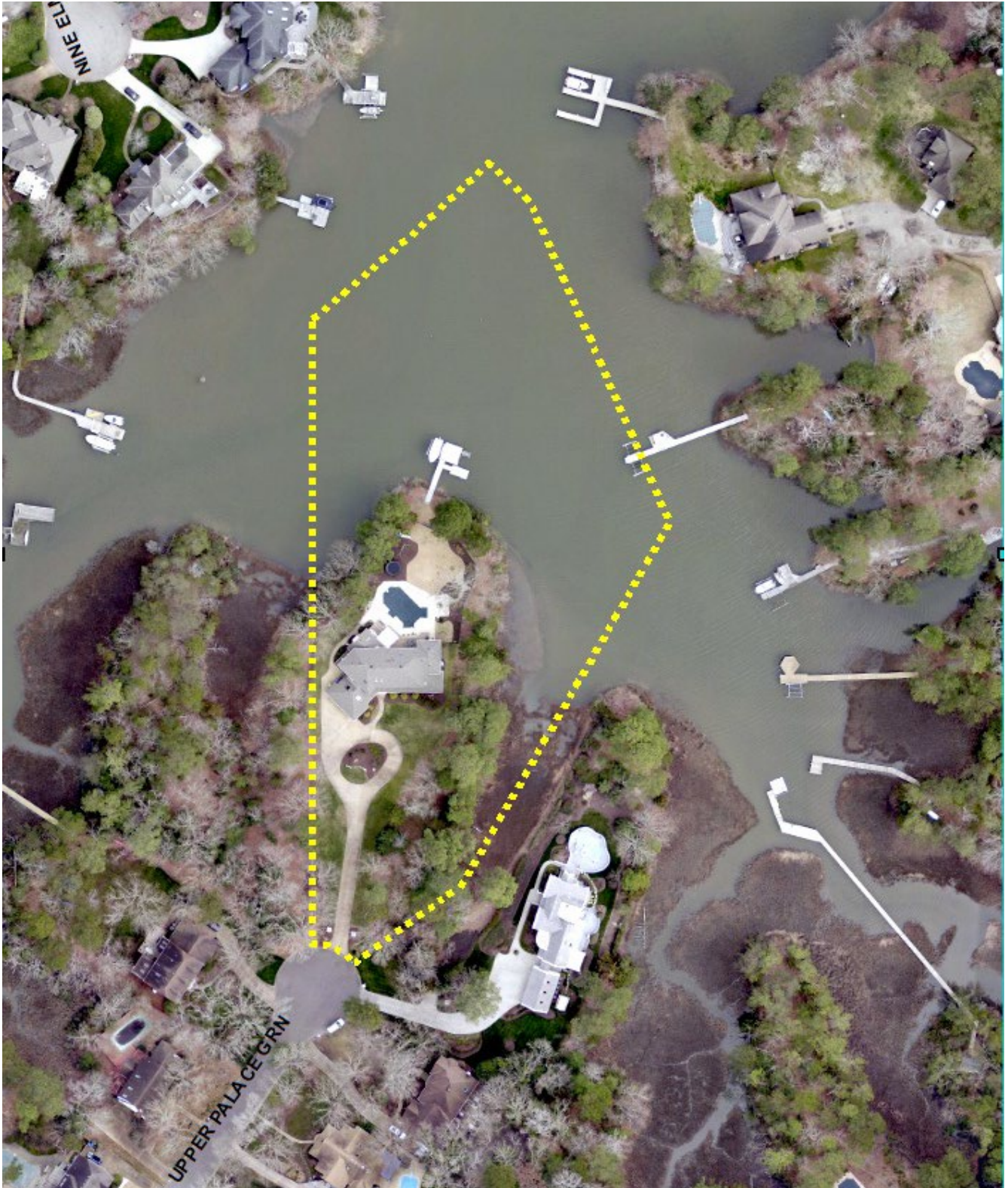
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 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 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. 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. 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.
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.

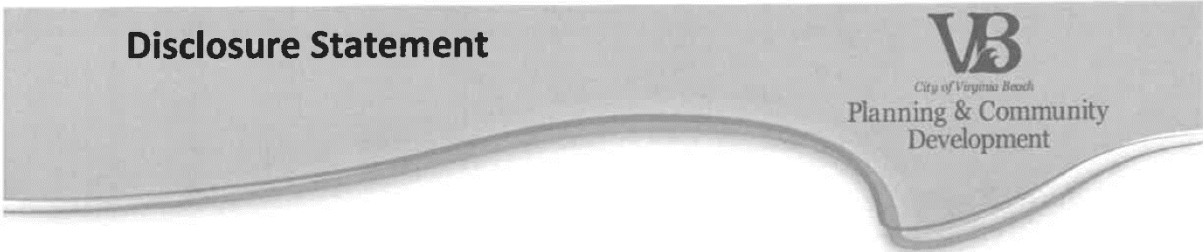
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





# 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** Tristine R Barton Revocable Trust

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-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> "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.

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

**Yes**  **No**

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

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

**Yes**  **No**

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

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

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

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

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

WPL

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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.

JM Froehler Construction

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

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

WPL

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

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

### Applicant Signature

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

*Tristine R. Barton*

Applicant Signature

Tristine R Barton

Print Name and Title

6/17/2023

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 **Jason Andrew & Colby Kight**  
**Murphy Revocable Trust**  
 Address **1301 Mockingbird Place**  
 Public Hearing **July 24, 2023**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**3**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, paver patio, artificial turf area, and retaining wall.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

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

**GPIN**

2418-24-0473

**SITE AREA**

59,649 square feet or 1.37 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

44,446 square feet or 1.02 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,489 square feet or 16.8 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

9,716 square feet or 21.8 percent of site

**Area of Redevelopment in RPA**

145 square feet

**Area of New Development in RPA**

2,315 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

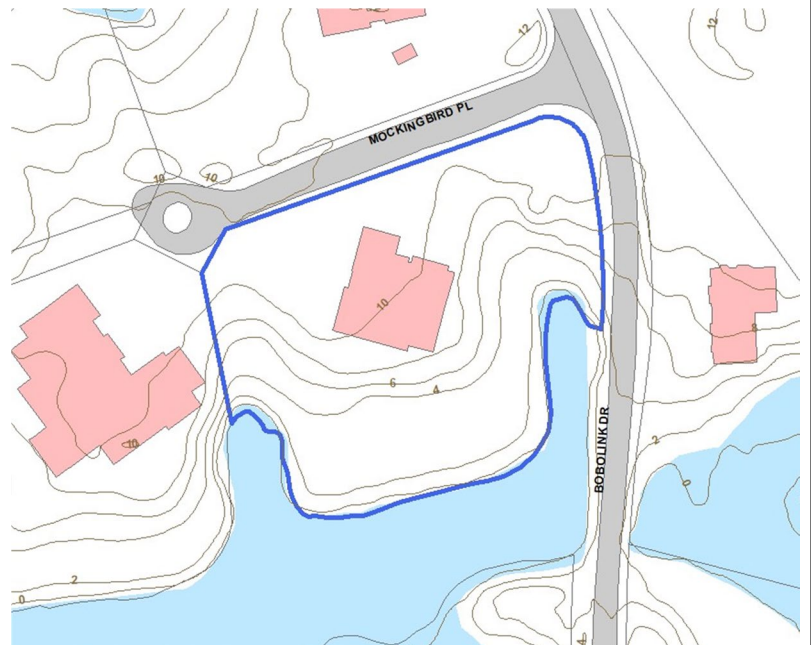
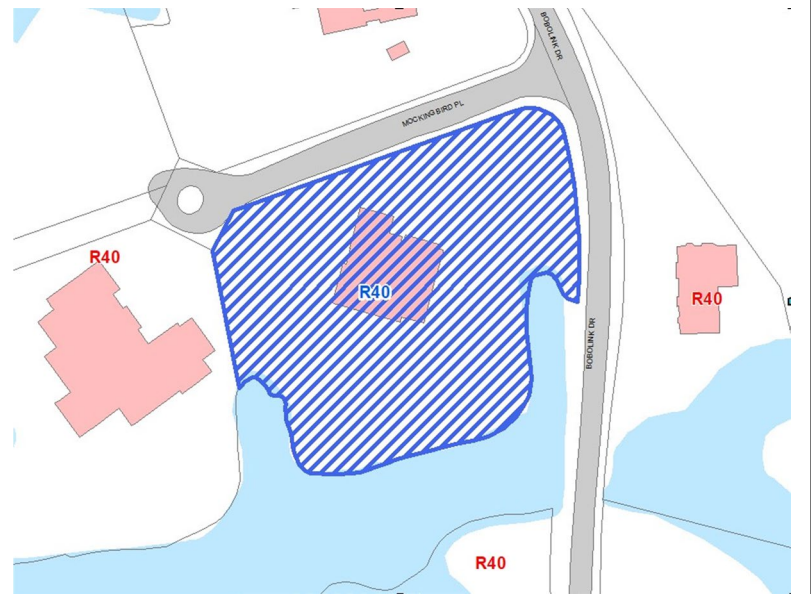
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with new paver patio and outdoor kitchen area
- Steppingstone pathway

## CBPA Ordinance Variance History

**November 17, 1992, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a retaining wall with fill with the following conditions:**

1. *Acceptable erosion and sediment control measures must be included on the submitted site plan.*
2. *A revised plan meeting the above condition shall be submitted to the Planning Department for abbreviated review and approval prior to the issuance of a building permit.*

The November 17, 1992 Board granted variance has been acted upon and the associated improvements constructed.

**October 27, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story residence, wood deck, fill, gravel driveway, pool, and covered veranda 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 wetlands bench associated with the future riprap revetment shall average a minimum of 7' in width. Approximately 5' of the bench shall be devoted to cordgrass (lower reach) and 2' devoted to salt meadow hay (upper reach). Amend the cross section on the site plan. The revetment and wetlands bench shall be constructed prior to or concurrent with the residence.*
5. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area.*
6. *Under deck treatment of sand and gravel shall be installed for the wood deck.*
7. *\*\*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 \$ 1,978 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 2,158 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*

8. *Tree compensation shall be at a 3:1 ratio. The site plan shall reflect those trees to be removed attributable to fill.*
9. *Buffer restoration shall be provided in accordance with the site plan dated October 15, 2003, prepared by MSA, P.C.*
10. *Four to six inches of mulch shall be applied to the ground surface beneath the drip line of those trees to remain within the limits of construction. This condition applies to those areas in which the applicant envisions persistent heavy construction equipment / traffic. Said condition shall be so noted on the site plan.*
11. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities.*
12. *Eliminate the note on the site plan entitled, "Depressed areas to be filled in order to promote positive drainage."*
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 October 27, 2003 Board granted variance was not acted upon.

**July 23, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, concrete driveway, concrete walkways, utility pads, swimming pool and associated pool decking, retaining wall, and grading with the following conditions:**

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *Wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 15 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*
6. *Construction limits shall lie a maximum of 15' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*

8. *The pool shape, size, and location shall be as shown on the submitted plan.*
9. *Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
10. *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.*
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. The landscape plan shall clearly delineate existing naturalized (trees, landscaping and mulched organic surfaces) areas, planting beds, and turf zones.*
12. *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.*
13. *The conditions and approval associated with this variance are based on the site plan prepared by Marine Engineering dated July 23, 2012 and sealed June 4, 2012 by David Kledzik.*
14. *The denuded areas along the eastern portion of the site adjacent to Bobolink Drive shall be addressed on the required buffer restoration landscape plan. Specifically what measures will be employed, beyond the introduction of organic/ plant material, to abate erosion until such time that the area is stabilized with vegetated cover.*
15. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
16. *Buffer restoration shall be installed consistent with the submitted site plan date July 23, 2012 (sealed by Davis Kledzik PE, June 4th, 2012) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
17. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (5,055 sq. ft. x 100% = 5,055 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located within the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of*

*the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.*

18. *The site plan shall identify the impact to existing vegetation upon grading of the two designated low areas (mature trees, scope of land disturbance, and how area will be re-stabilized with vegetative cover).*

The July 23, 2012 Board granted variance has been acted upon and portions of the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

### Shoreline

Shoreline is stabilized by a living shoreline.

### 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

The applicant desires to modify the layout of the swimming pool and pool surround conditioned by the July 2012 Chesapeake Bay Preservation Area (CBPA) variance that required *"the pool shape, size, and location shall be as shown on the submitted plan."* As submitted, approximately 2,315 square feet of new impervious cover is proposed within the Resource Protection Area (RPA) which is approximately 800 square feet more than the layout of the swimming pool and pool surround of the 2012 CBPA Variance. This increase in impervious cover is partially due to the outdoor kitchen area and additional seating area adjacent to the existing residence. In addition, the previous variance situated the swimming pool approximately 4 feet from the rear steps of the residence and this variance request situates the swimming pool approximately 8 feet from the said steps. For the Board's knowledge, Staff provides the current homeowners are not associated with the previous CBPA variances and wish to deviate slightly from the 2012 approval to accommodate for their family size and needs.

The applicant's design team provides the improvements are situated immediately adjacent to the residence and primarily within the 50-foot landward buffer on a lot that is primarily encumbered by the 50-foot seaward buffer for

much of the rear yard. As a means to provide that the variance request is in harmony with the findings of the CBPA Ordinance, the applicant's design team submitted a conceptual landscape and buffer restoration plan that offers approximately 5,445 square feet of native trees, shrubs, and grasses that are effective in deterring runoff, preventing erosion, and filtering non-point source pollution throughout the RPA on the lot. Staff is of the opinion given the extent of design development provided with this variance request that the applicant has brought forth a proposed plan that is in harmony with the purpose and intent of the CBPA Ordinance. As such, Staff supports the encroachment 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 property was platted in 1946 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and adds the improvements are similar to other improvements in the neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvements over the 2012 approved pool design to the greatest extent practicable to minimize site impacts. The proposed designs offers additional stormwater management as well as additional areas for buffer restoration."* Staff concurs and adds this variance request is cognizant of the environmental buffers on the lot by keeping the majority of the proposed improvements immediately adjacent to the existing residence and situating buffer restoration planting beds within the lot to address areas of concentrated stormwater run-off from both the impervious cover on the lot and adjacent roadways that drain through the lot into the Lynnhaven River.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site offers minimum stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be increased to facilitate treatment from the new improvement and part of the City street improvements."* Staff is of the opinion that the request is in harmony with the purpose and intent of the ordinance and with the slight increase in impervious cover, additional buffer restoration will be planted throughout the seaward buffer on the lot.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention will be installed between the improvements and the waterway to achieve stormwater management requirements and will be placed to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the best management techniques of bioretention planting beds seaward of the proposed improvements, coupled with the required buffer restoration, manages a no net increase in nonpoint source pollution load with this request.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) **5,445 square feet** of buffer restoration shall be installed within the RPA on the lot in substantial compliance with the CBPA Exhibit conceptual plant schedule and layout as follows: **12 canopy trees, 12 understory trees, 6 transplanted trees (transplanted to avoid future shading of the reestablished tidal marsh), 24 large shrubs, 36 small shrubs, and the necessary ornamental grass coverage to establish the planting area adjacent to the rip rap revetment.**

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 15 feet from improvements.

- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 23, 2012.

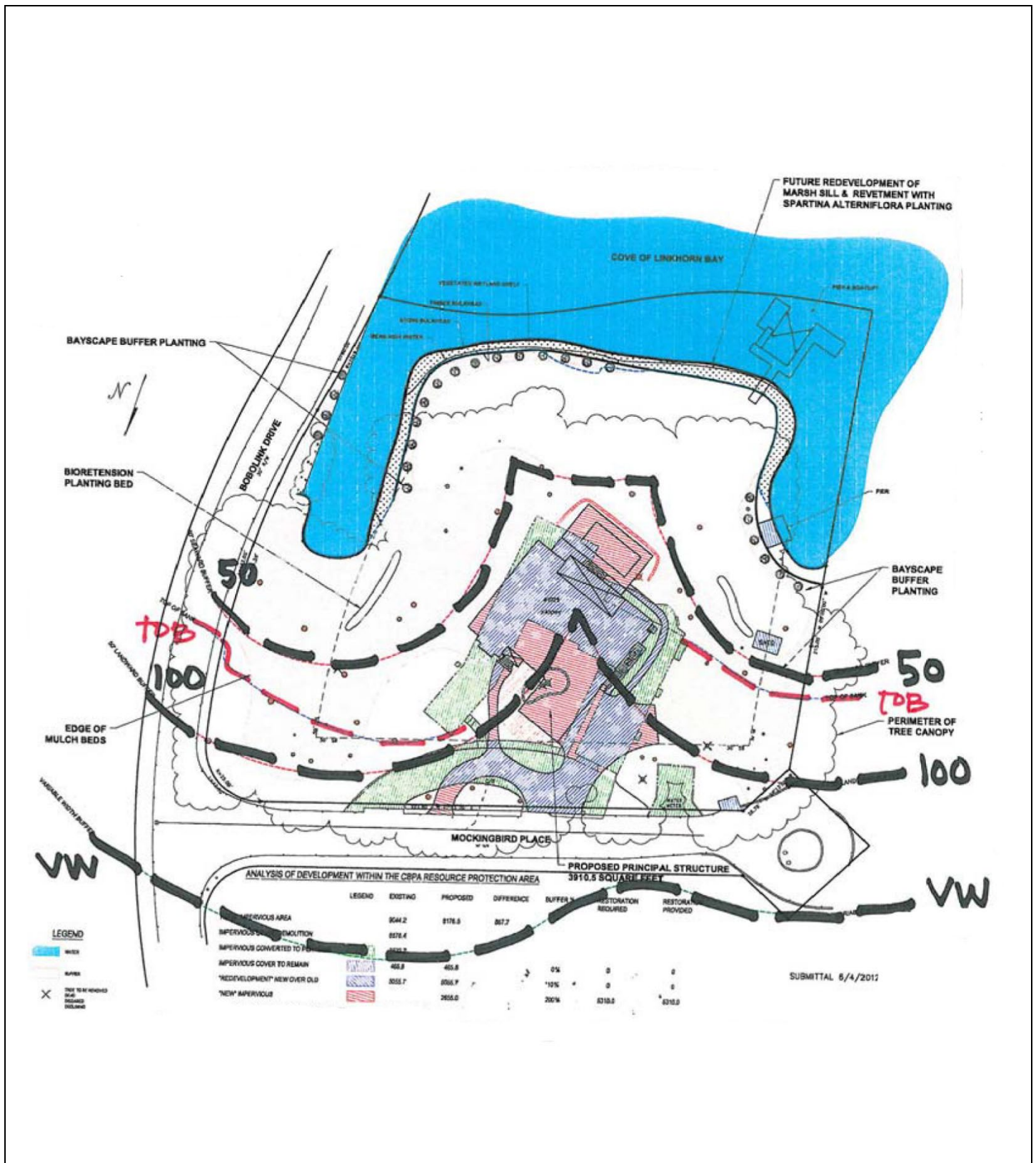
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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



Site Aerial

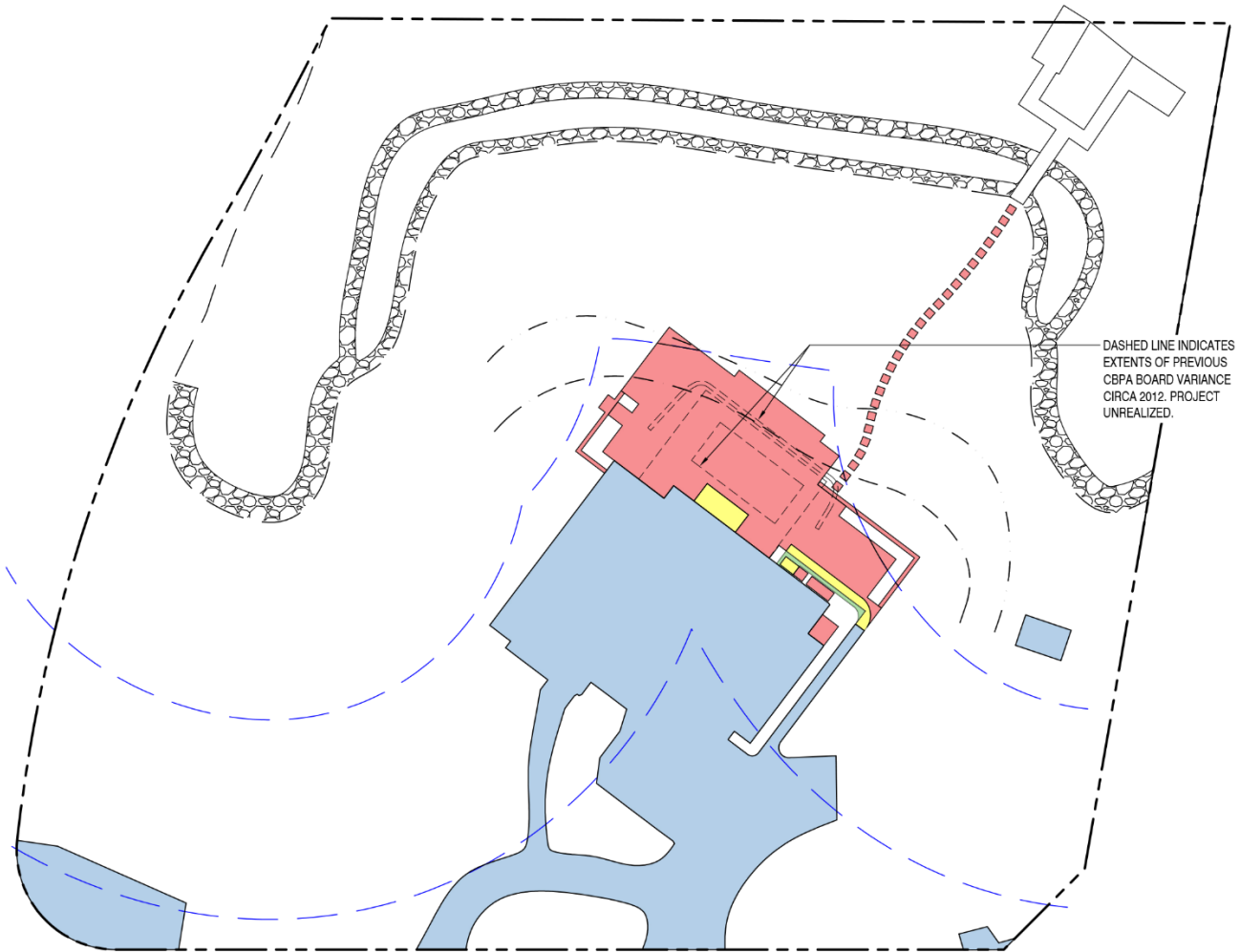


# 2012 CBPA Variance Exhibit



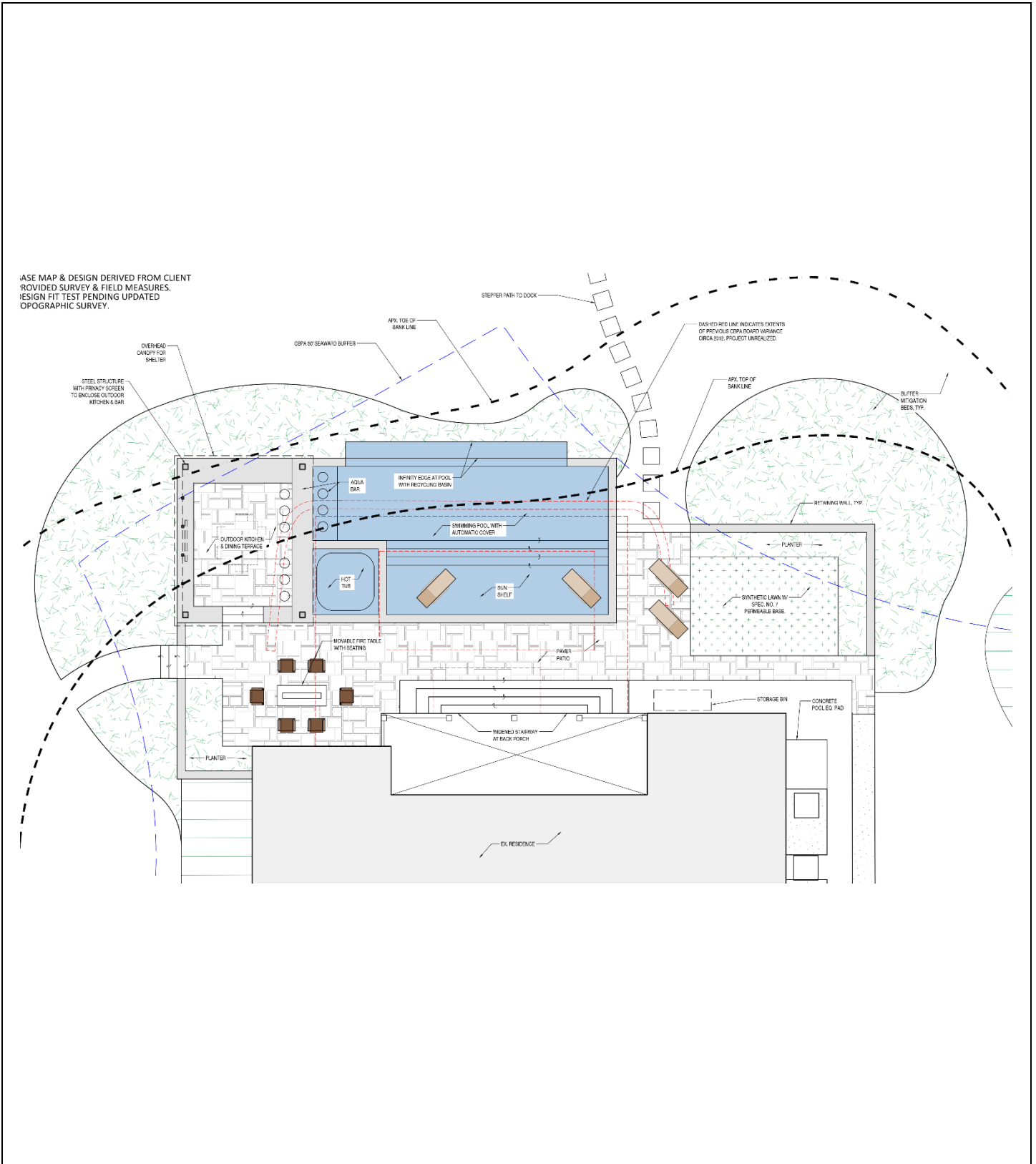
# CBPA Exhibit – Color Analysis

- TOTAL LOT AREA**  
**59,649 SQ. FT.**
- TOTAL LOT AREA OUTSIDE OF WATER, MARSH, WETLAND & REVETMENT**  
**44,446 SQ. FT. (100.0%)**
- TOTAL IMPERVIOUS PRE-DEVELOPMENT**  
**7,489 SQ. FT. (16.8%)**
- TOTAL IMPERVIOUS POST-DEVELOPMENT**  
**9,716 SQ. FT. (21.8%)**
- EX. IMPERVIOUS**  
**7,314 SQ. FT. (16.4%)**
- REDEVELOPMENT**  
**145 SQ. FT. (0.3%)**
- NEW DEVELOPMENT INSIDE RPA**  
**2,315 SQ. FT. (5.2%)**
- REMOVED IMPERVIOUS**  
**30 SQ. FT. (0.06%)**



DASHED LINE INDICATES EXTENTS OF PREVIOUS CBPA BOARD VARIANCE CIRCA 2012. PROJECT UNREALIZED.

# CBPA Exhibit – Proposed Improvements, Enlarged Site Plan









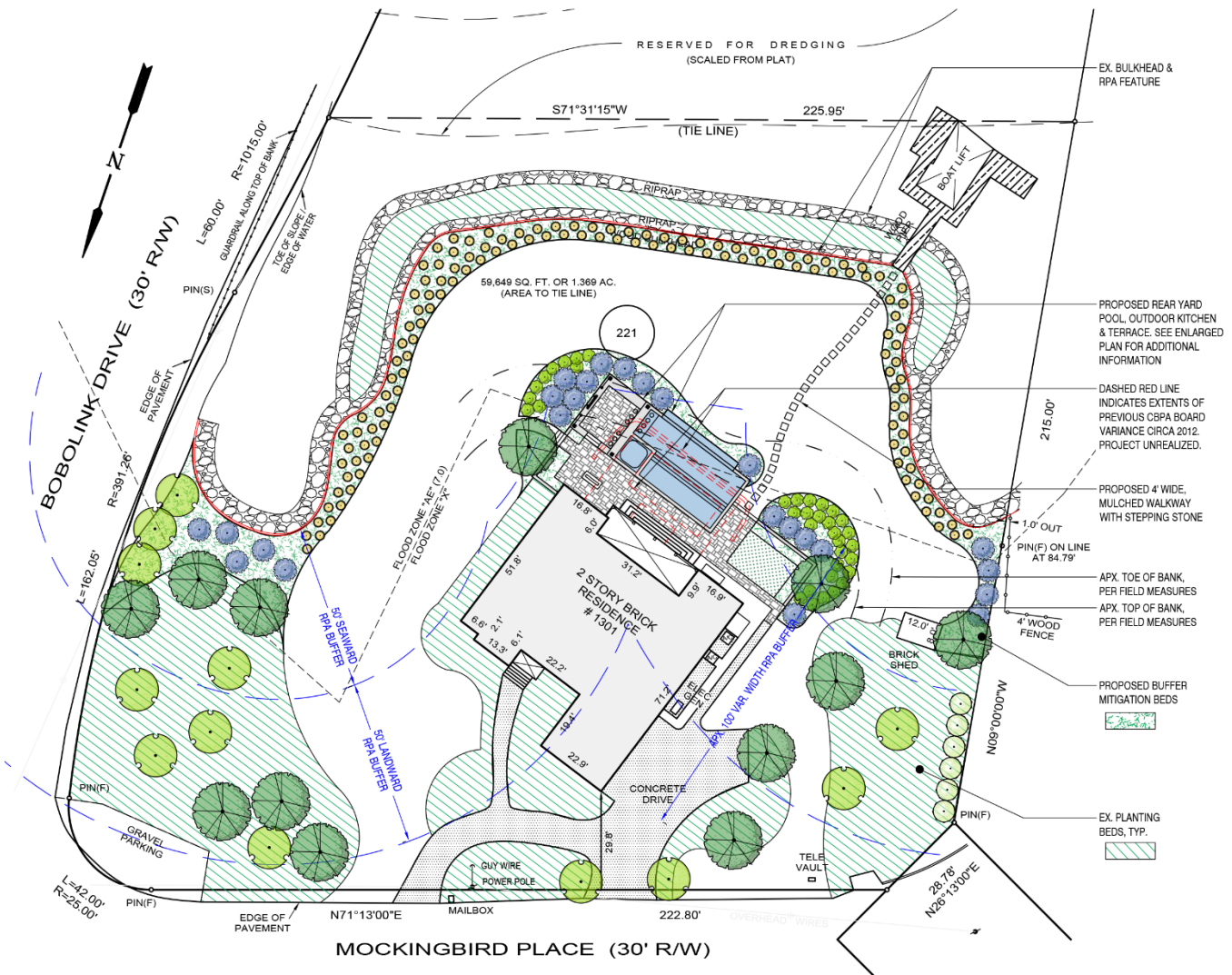
# CBPA Exhibit – Buffer Restoration

NOTE: BASE MAP & DESIGN DERIVED FROM CLIENT PROVIDED SURVEY & FIELD MEASURES. DESIGN FIT TEST PENDING UPDATED TOPOGRAPHIC SURVEY.

**PROVIDED BUFFER RESTORATION**  
 MIN. 4,630 SQ. FT.  
 APX. 5,445 SQ. FT. SHOWN  
 12 PLANTING UNITS DIAGRAMMED

## CONCEPT PLANT SCHEDULE

	CANOPY TREE	12		LARGE SHRUB	24
	UNDERSTORY TREE	12		SMALL SHRUB	36
	TRANSPLANTED TREE	6		GRASSES	TBD



# 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** Jason Andrew And Colby Kight Murphy Revocable Living Trust

**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)

Colby Kight Murphy, Trustee & Jason Andrew Murphy, Trustee

- If **yes**, list the businesses that have a parent-subsidary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

<sup>1</sup> "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.

<sup>2</sup> "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.
- 

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

**Yes**  **No**

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

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

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

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

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

WPL

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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.

WPI

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

Jason Andrew Murphy, Trustee of the Jason Andrew And Colby Kight Murphy Revocable Living Trust

Print Name and Title

5/31/23

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 **Justin & Marcia Wheeler**  
 Address **2228 Windward Shore Drive**  
 Public Hearing **July 24, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**4**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a patio expansion and pool house and replace pool surround.

**Applicant's Agent**

Self-represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 29, Page 48  
 Recorded 3/27/1952

**GPIN**

1499-78-2845

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

1,162 square feet

**Area of New Development in RPA**

715 square feet

**Location of Proposed Impervious Cover**

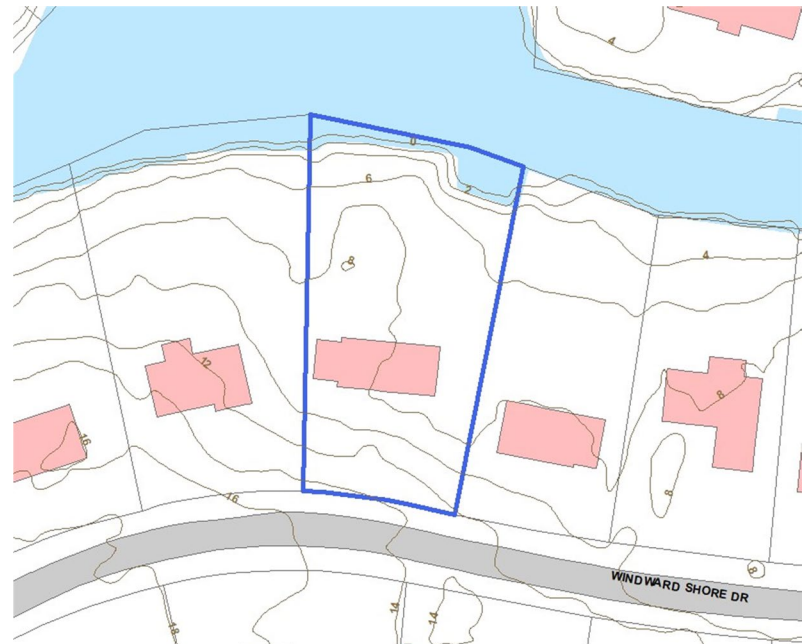
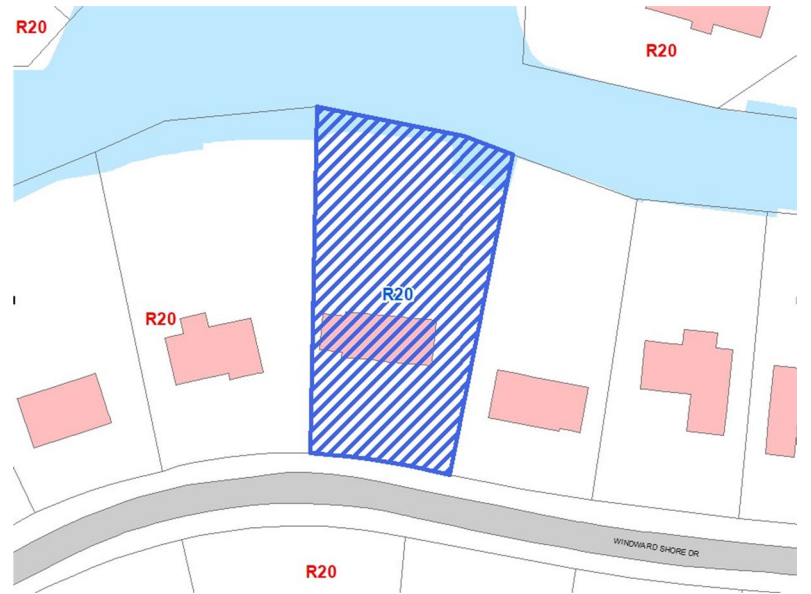
50-foot Landward Buffer  
 Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Redevelop existing pool surround in the same footprint
- Paver patio expansion off rear of residence
- Pool equipment room and storage areas (partially constructed)

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

### Shoreline

Shoreline is hardened 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

The applicant desires to construct a shed/storage structure and expand portions of the swimming pool surround adjacent to the existing swimming pool as depicted on the Chesapeake Bay Preservation Area (CBPA) Exhibit below. Staff provides that the applicant did seek over-the-counter approval for the proposed improvements and due to an error regarding the RPA buffer delineation, approval was given. As such, portions of the proposed structure have been constructed. The applicant did stop construction when the error was determined and has been working with Staff through the variance process for the Board's consideration to grant the encroachment into the Resource Protection Area (RPA) buffer.

As submitted, all proposed new development is located within the upper reaches of the 50-foot landward buffer of the Resource Protection Area (RPA) and the Resource Management Area (RMA) with the overall size of the proposed

structure being approximately 140 square feet. In addition, the applicant proposes a sunshade that is connected to the storage shed structure.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"similarly situated homeowners with existing swimming pools are permitted to maintain those pools, and locate equipment and accessories in a logical location considering pool operation, enjoyment, and the impact to adjacent waterways."* 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 request includes work that will permit the continued enjoyment of a backyard pool area, including necessary updates to aging walking surfaces and the relocation of filtration equipment to a more logical location (as building footing replacement was required in the equipment's previous location)."* Staff concurs with the applicant and adds this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot fall within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the location proposed for the relocation and protection of the pool filtration equipment was selected to be as far from the waterway as possible, and still provide logical enjoyment of the area. The addition of impermeable surfaces is proposed for the areas with the most anticipated foot traffic, while maintaining all of the permeable established vegetation between the pool area and the waterway."* The proposed improvements are situated in the upper reaches of the 50-foot landward buffer and include no encroachment seaward of the existing 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 use of the space is intended to be as it has been since its establishment in 1966: a backyard with a balance of turf, trees, a swimming pool and associated walkways, access to the waterway, and erosion control features. This appears to be the general intent for all properties in this all-residential neighborhood. This project seeks only to maintain and improve on the elements of this site."* Staff is of the opinion that the proposed changes with this variance request is not of substantial detriment to water quality. As stated in the WQIA, the applicant has taken means to minimize impacts in the RPA, including keeping all improvements above the top of bank, no proposed tree removals, and enhanced buffer plantings to aid in the capture of runoff.
- 5) *"Most of the proposed impervious walking surfaces (those between the pool and the house) are to be sloped towards dedicated trench drains, where runoff will be collected and routed to dedicated dry wells. Impervious walking surfaces that cannot be sloped are limited in size and have at least 50 ft of established turf between them and the waterway"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff shall work with the applicant regarding the required buffer restoration accompanied with this request.

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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team 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. A planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the City CBPA staff prior to the issuance of a building permit. 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: **715 square feet x 200 percent = 1,430 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: **4 canopy trees, 4 understory trees, 8 large shrubs, and 16 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 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.

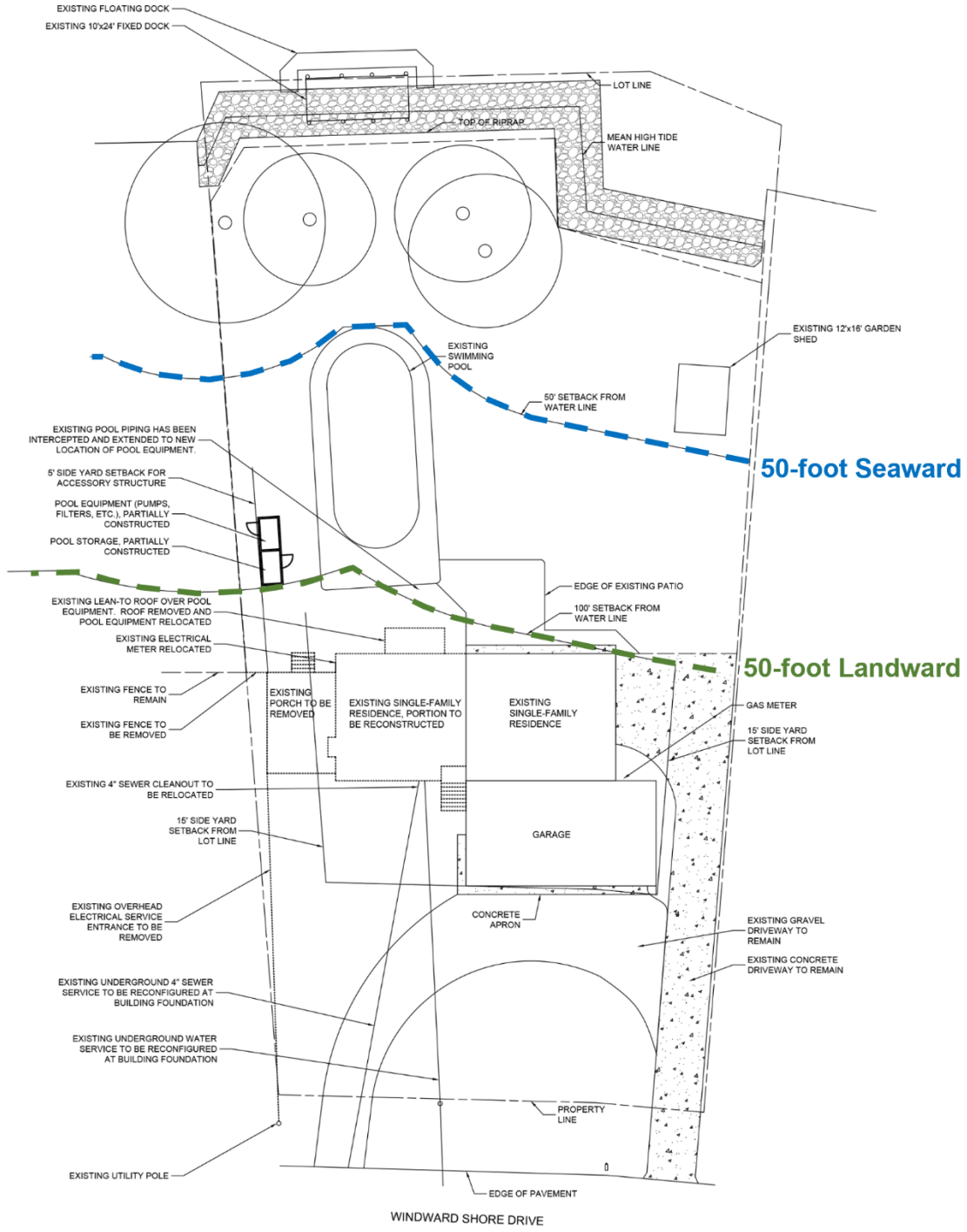
4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of **10** feet seaward of improvements.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
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

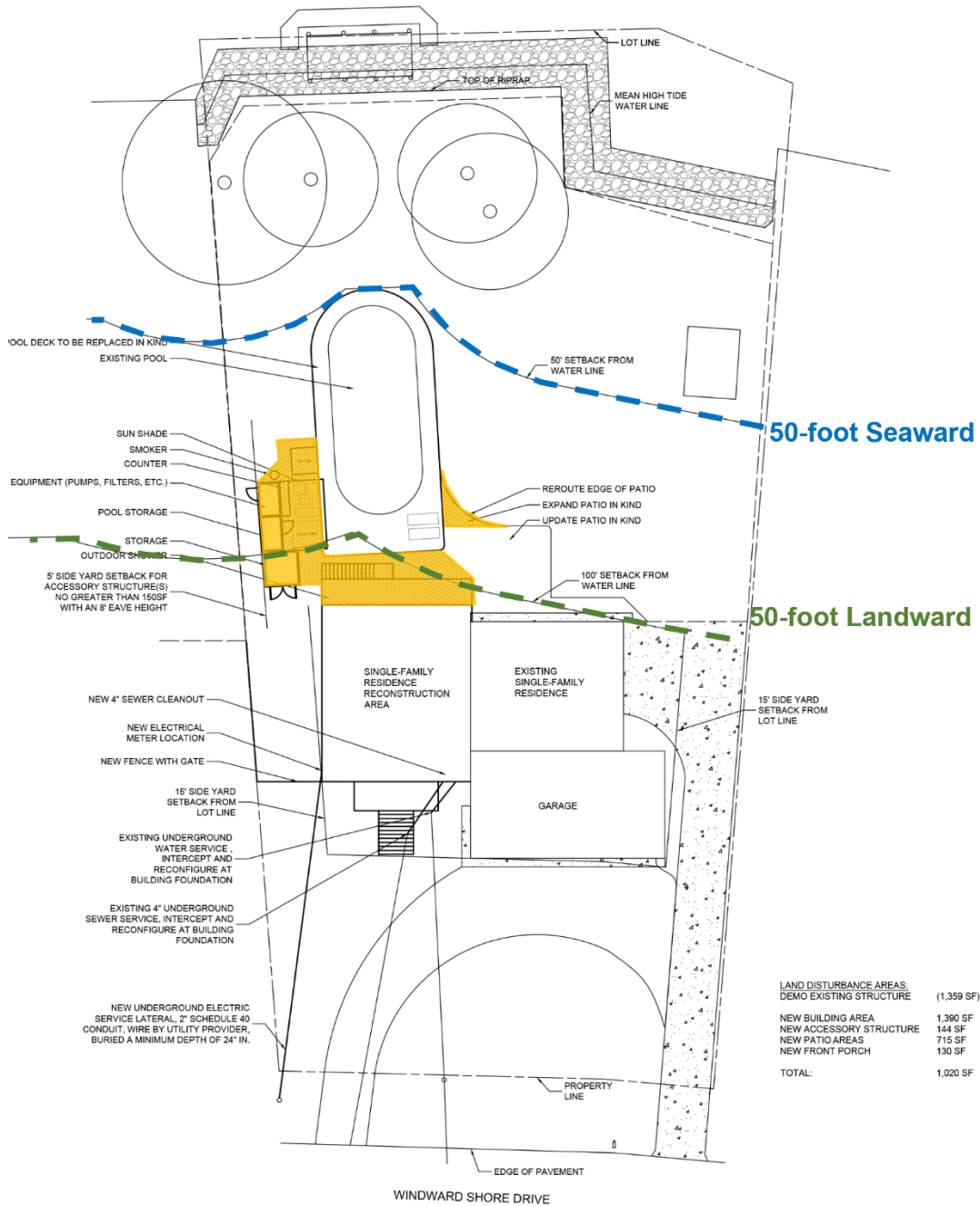


# CBPA Exhibit – Existing Conditions



**SITE PLAN - EXISTING CONDITIONS**

# CBPA Exhibit – Proposed Improvements



**SITE PLAN - PROPOSED NEW WORK**



# Disclosure Statement

## Disclosure Statement



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### Applicant Disclosure

Applicant Name Justin C. Wheeler

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-subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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

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# 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.

Mortgage with RoundPoint Mortgage Servicing LLC

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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.

Justin C. Wheeler

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# Disclosure Statement



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

### Applicant Signature

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

*Justin C. Wheeler*

### Applicant Signature

Justin C. Wheeler, homeowner

### Print Name and Title

06/01/2023

### 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 **Gordon T. Roughton Jr.**  
 Address **2300 Leeward Shore Drive**  
 Public Hearing **July 24, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**5**

**Variance Request**

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

**Applicant’s Agent**

Self-represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 48, Page 15  
 Recorded 10/06/1959

**GPIN**

1499-78-2845

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

1,200 square feet

**Location of Proposed Impervious Cover**

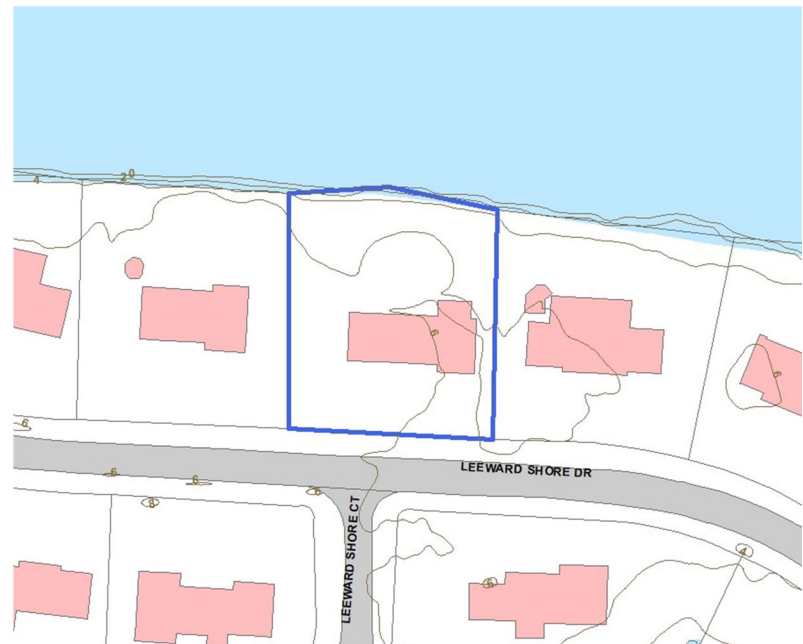
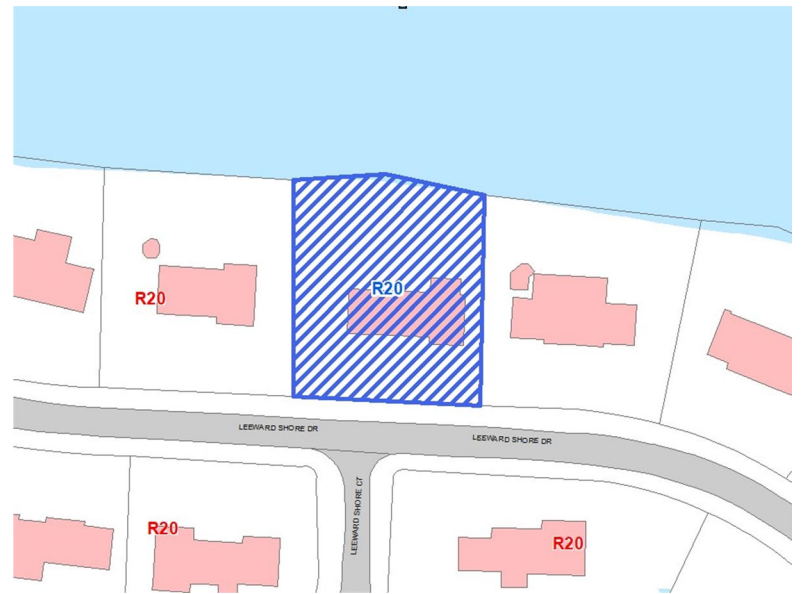
50-foot Seaward Buffer  
 50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Wood deck

## 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): 7

### Soil Type(s)

Lakehurst Series (deep, moderately drained sandy marine and eolian sediment soils)

### Shoreline

Shoreline is stabilized by a timber bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 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 new wood deck off the rear of the existing residence. This request will add 1,200 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 request as submitted, given the size of the proposed improvements, is not the minimum necessary to afford relief. Staff has provided recommended conditions below, specifically condition 3 and 10 to address this concern. In addition, should the Board desire granting this variance request as conditioned, 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 *"other neighbors have made similar improvements to their lots."* Staff acknowledges the statement provided by the applicant and offers that while a request of

this type is common for the neighborhood, the overall size of the proposed deck challenges the merits of the Chesapeake Bay Preservation Area (CBPA) Ordinance findings.

- 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 *“our residence was constructed prior the RPA existence.”* Staff adds that the 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 *“improvements are located between the existing residence and existing swimming pool.”* Staff adds the proposed deck is situated immediately adjacent to the existing residence with no encroachment within the 50-foot seaward buffer on the lot, however, as mentioned above, Staff has concern with the overall size of the proposed structure, approximately 1,200 square feet, and is of the opinion that the size of the structure could be reduced and still accommodate the needs of the property owner.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the deck is a similar request seen throughout the CBPA and will not cause adverse effects to the water quality.”* Staff is of the opinion that the request, as conditioned, will not be detrimental to the water quality of the Chesapeake Bay and is in harmony with the purpose and intent of the ordinance.
- 5) *“New vegetation and plants will be planted in the backyard of the lot”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff will work with the applicant to devise a sufficient landscape and buffer restoration plan for the lot.

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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal 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 proposed deck shall be reduced in size to 750 square feet.
3. A planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the City CBPA staff prior to the issuance of a building permit. 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: **750 square feet x 200 percent = 1,500 square feet.**

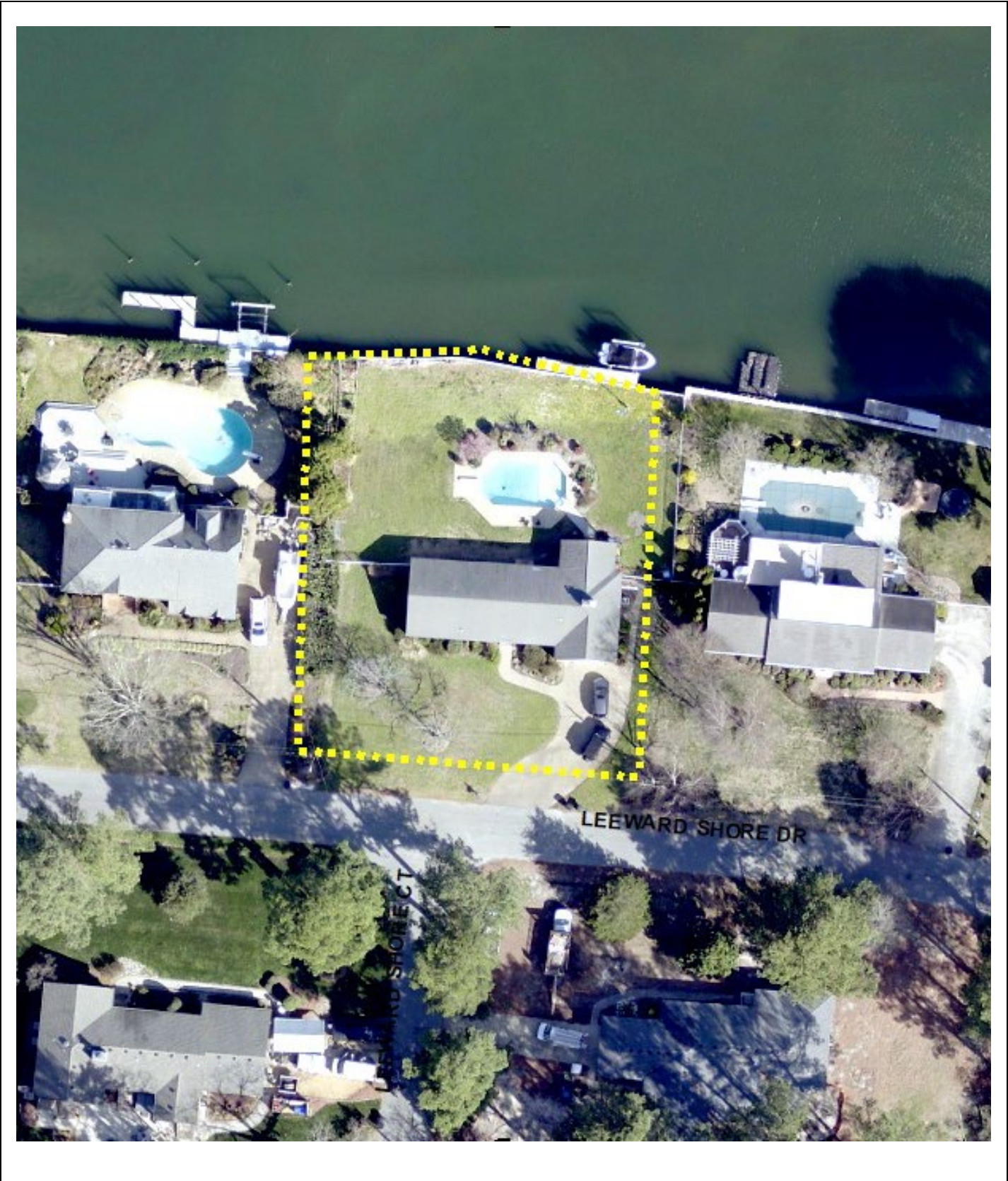
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 8 large shrubs, and 16 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 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.

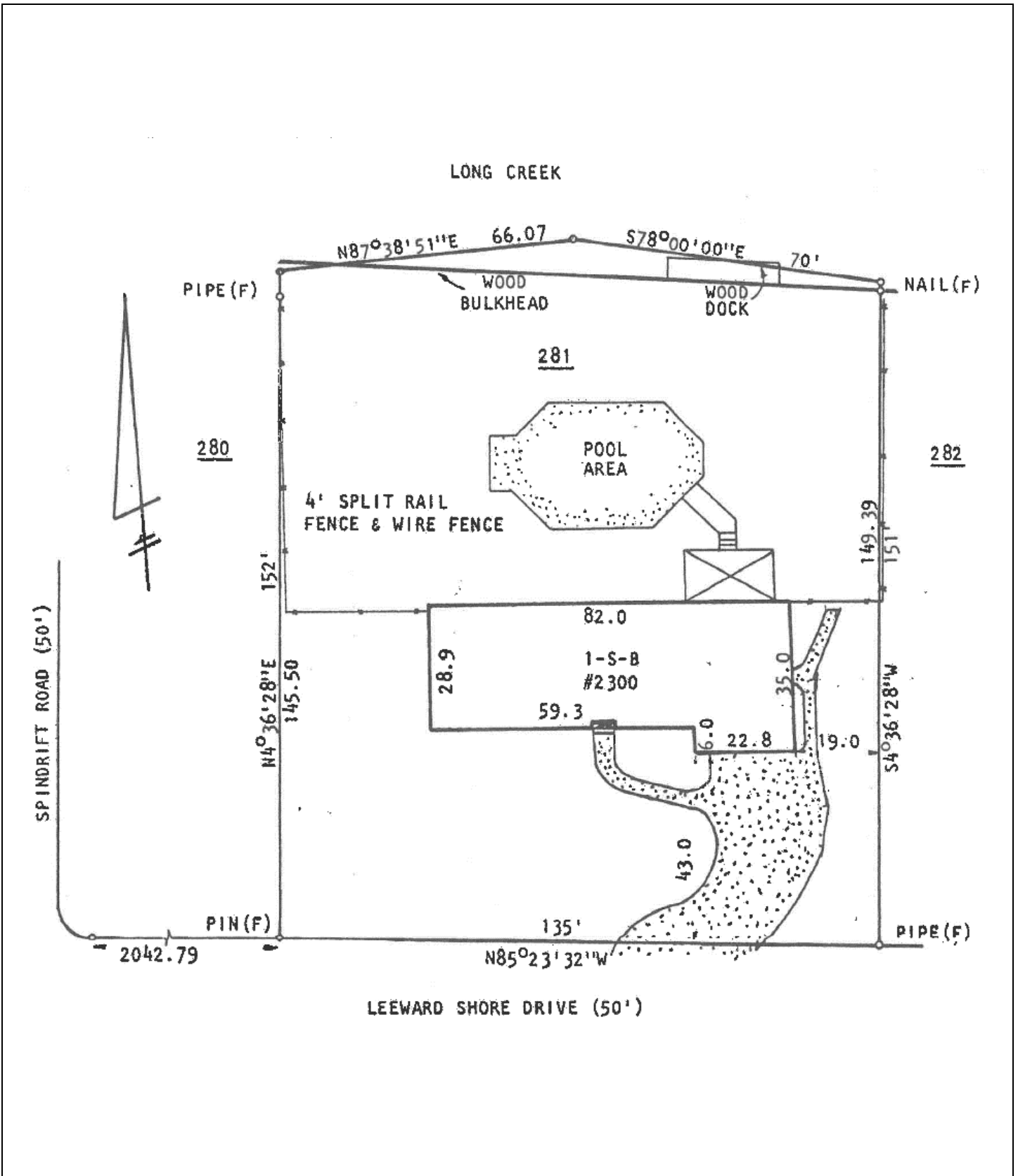
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
7. No perimeter fill is authorized outboard or seaward of the 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

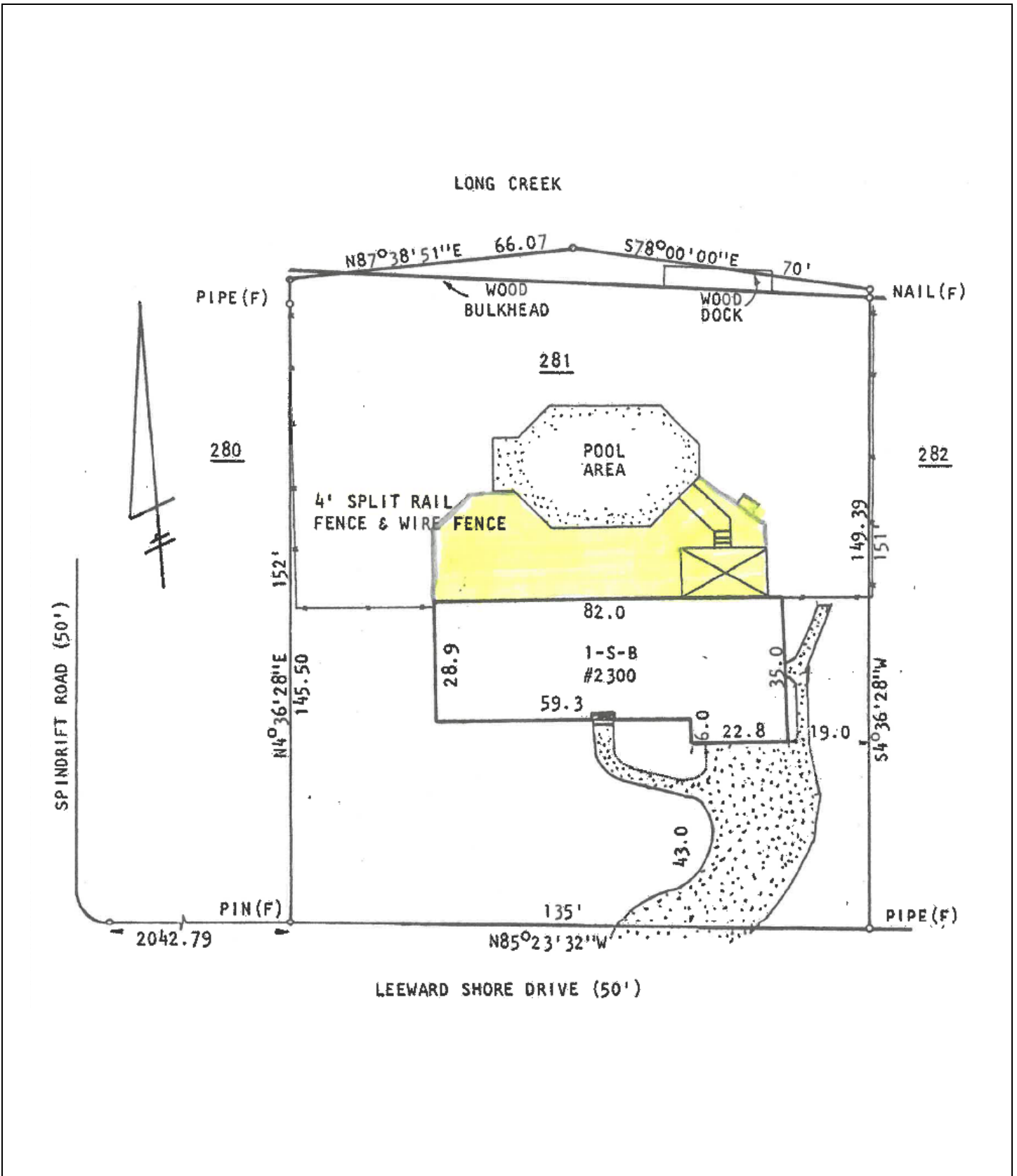


**CBPA Exhibit – Existing Conditions**





**CBPA Exhibit – Proposed Improvements**



# Disclosure Statement

## Disclosure Statement



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

### Applicant Disclosure

Applicant Name Gordon Roughton

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

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

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

- If yes, list the businesses that have a parent-sub subsidiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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

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

## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

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

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

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

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

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

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

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

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

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

## Disclosure Statement



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

### Applicant Signature

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

Applicant Signature *G. T. Roughton Jr*  
 Print Name and Title Gordon T Roughton Jr HOME OWNER  
 Date 6-13-2023

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

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



**Variance Request**

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

**Applicant's Agent**

Eddie Bourdon  
Sykes, Bourdon, Ahern, Levy PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 41, Page 44  
Recorded 06/1956

**GPIN**

1489-98-7158

**SITE AREA**

15,811 square feet or 0.363 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

13,271 square feet or 0.305 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,670 square feet or 35 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

4,730 square feet or 37 percent of site

**Area of Redevelopment in RPA**

3,413 square feet

**Area of New Development in RPA**

1,317 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

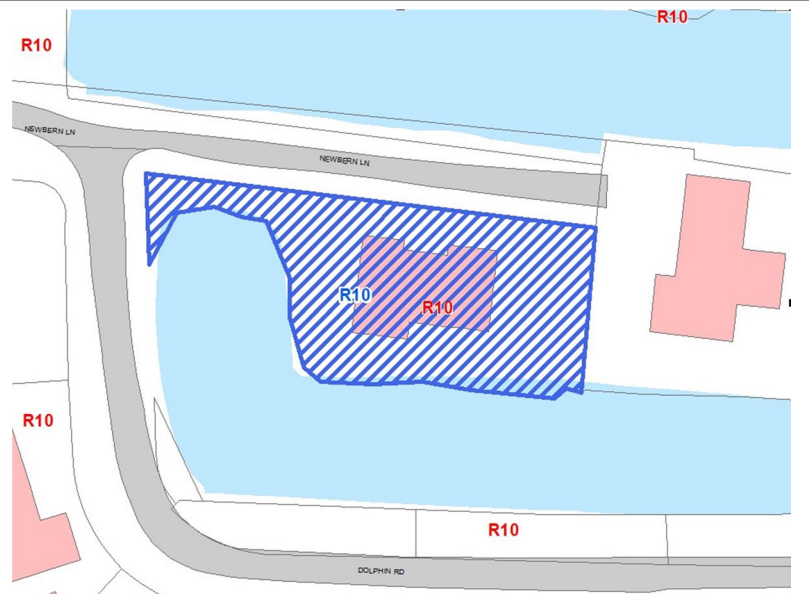
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approve as conditioned



## Summary of Proposal

### Demolition Details

- Concrete driveway

### Construction Details

- Two-story single-family residence with associated concrete driveway and paver/steppingstone walkways
- Swimming pool and associated patio and pool house
- Covered Deck
- 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 stabilized by a timber bulkhead and wharf.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 9
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the tree removals with this request are necessary given the layout of the submitted conceptual landscape plan submitted by the applicant's agent.

## 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 sand/gravel underdeck treatment will be provided as a best management practice for stormwater run-off mitigation.

## Evaluation and Recommendation

The residential lot is completely encumbered by the Resource Protection Area (RPA) with the seaward buffer encompassing most of the buildable area of the lot. The existing single-family home was demolished in 2014 and the new property owners wish to construct a new two-story single-family residence with associated accessory structures

Tidewater Land Management, LLC

Agenda Item 6

Page 68

including a swimming pool and concrete pool patio, pool house, covered deck, new concrete driveway, steppingstone walkways, and shed. The applicant's agent has situated most of the proposed improvements over the footprint of the residence previously demolished and is proposing to revert 806 square feet of existing impervious cover back to pervious. Approximately 1,317 square feet of new impervious cover is proposed with this request due to an expanded driveway area, building footprint, and the associated walkways and shed at the eastern portion of the lot.

The applicant is also proposing extensive buffer restoration with this request with the lot currently having sparse tree canopy cover with minimal understory vegetation, offering little benefit to the Chesapeake Bay. The applicant is proposing to plant 4,322 square feet of buffer restoration on the lot, which is approximately double the amount required with the new impervious cover proposed. Staff is of the opinion that the applicant has brought forth a request that has utilized redevelopment to the greatest extent practicable and a plan that is cognizant of the sensitive environmental conditions on the lot. Currently, the lot offers little to no stormwater mitigation for the bay and the redevelopment of the lot will ensure a more robust and beneficial 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 dwelling and associated improvements are in keeping with the necessary redevelopment in this impacted area of Lynnhaven Colony which, in addition to the Bay Act, has been impacted by sea level rise causing it to be essential to redevelop at a higher finished floor elevation."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have placed the proposed home and improvements over the 2014 home footprint to minimize the impact to the Chesapeake Bay."* Staff is of the opinion that the nature of the request is reasonable given the environmental constraints on this lot and the applicant had demonstrated an understanding and purpose of the CBPA Ordinance.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed dwelling and improvements are in keeping with the redevelopment of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal."* The 50-foot seaward buffer encompasses the entire lot, and the applicant has utilized the redevelopment for approximately 3,413 square feet of the proposed improvements. With removal and slight additions of new impervious cover on the lot, the applicant is also offering extensive buffer restoration to enhance the riparian buffer.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the canal"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the request will not increase nonpoint source pollution loads and the current state of the riparian buffer offers little to no benefit to water quality. Much of the

remaining portions of the site will be devoted to buffer restoration and shall include a variety of trees and shrubs to offer a more beneficial buffer area.

Given the above comments, Staff recommends the following **16** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) **4,322 square feet** of buffer restoration shall be installed on the lot.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 5 understory trees, 25 large shrubs, and 60 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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 10 feet seaward of improvements.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) The proposed driveway and associated walkways shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided, and a site plan submitted to the Development Services Center for review and approval.
- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$301.81 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated July 6, 2023, prepared by WPL, signed July 6, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

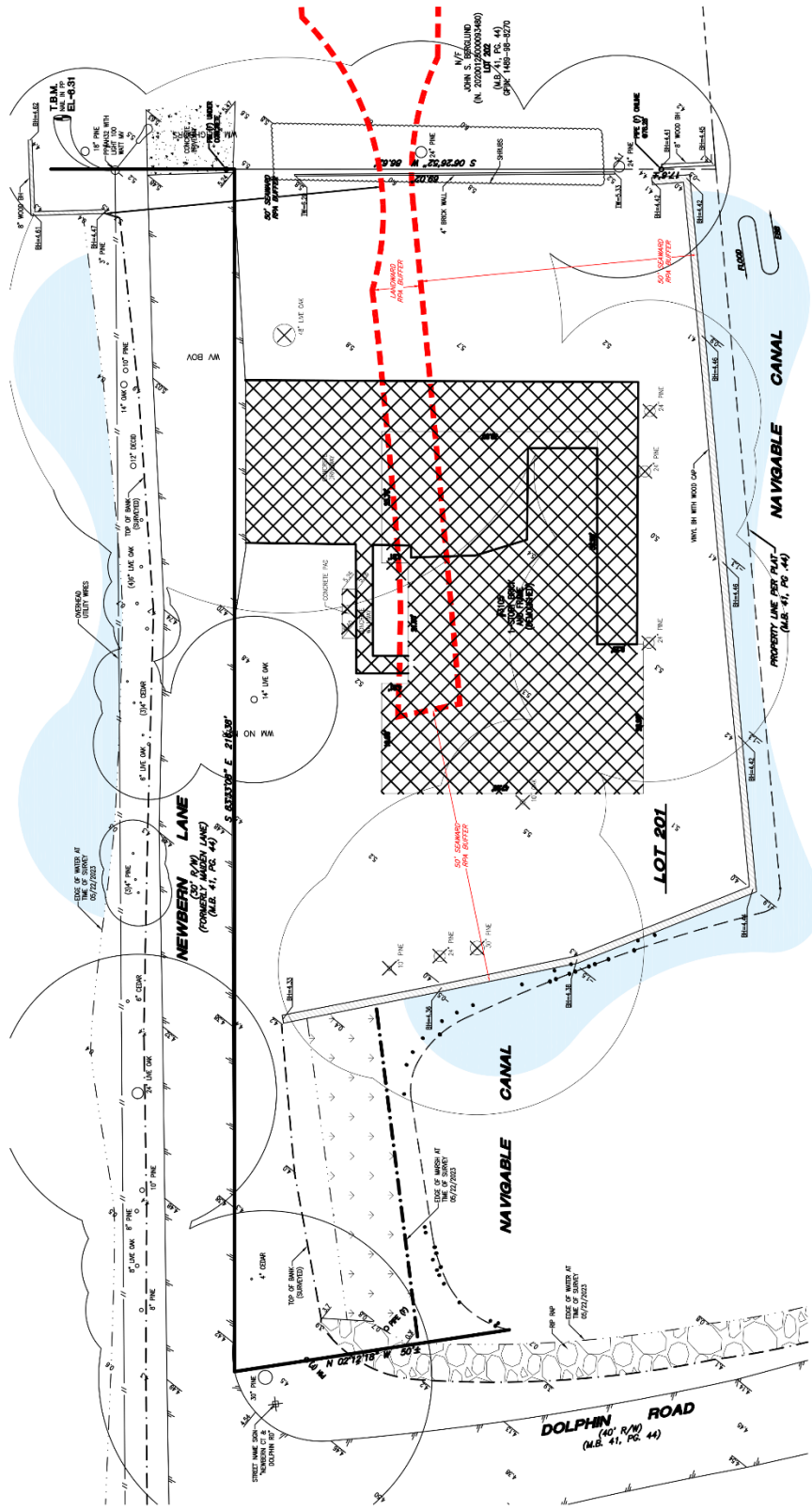
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

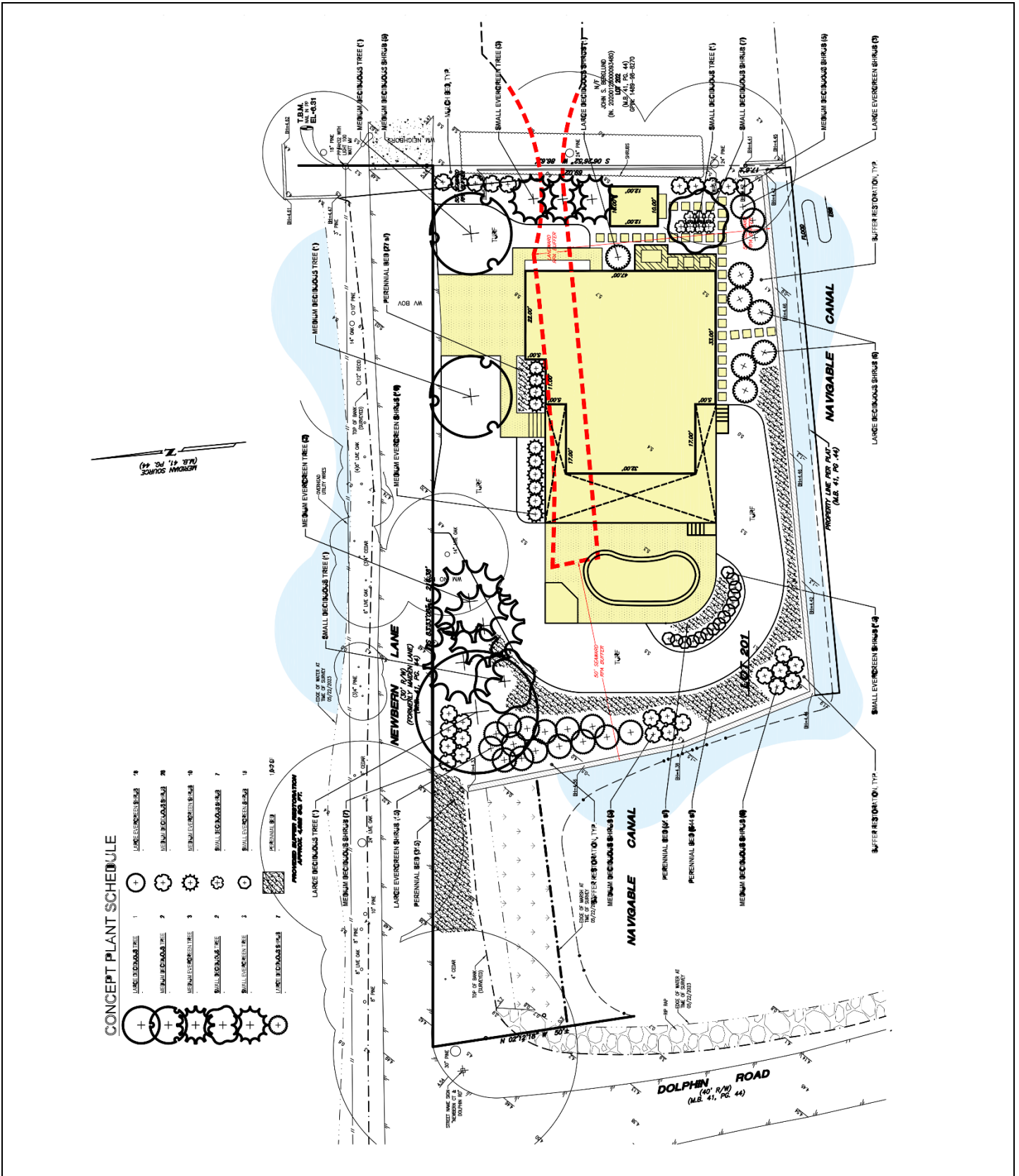
Site Aerial



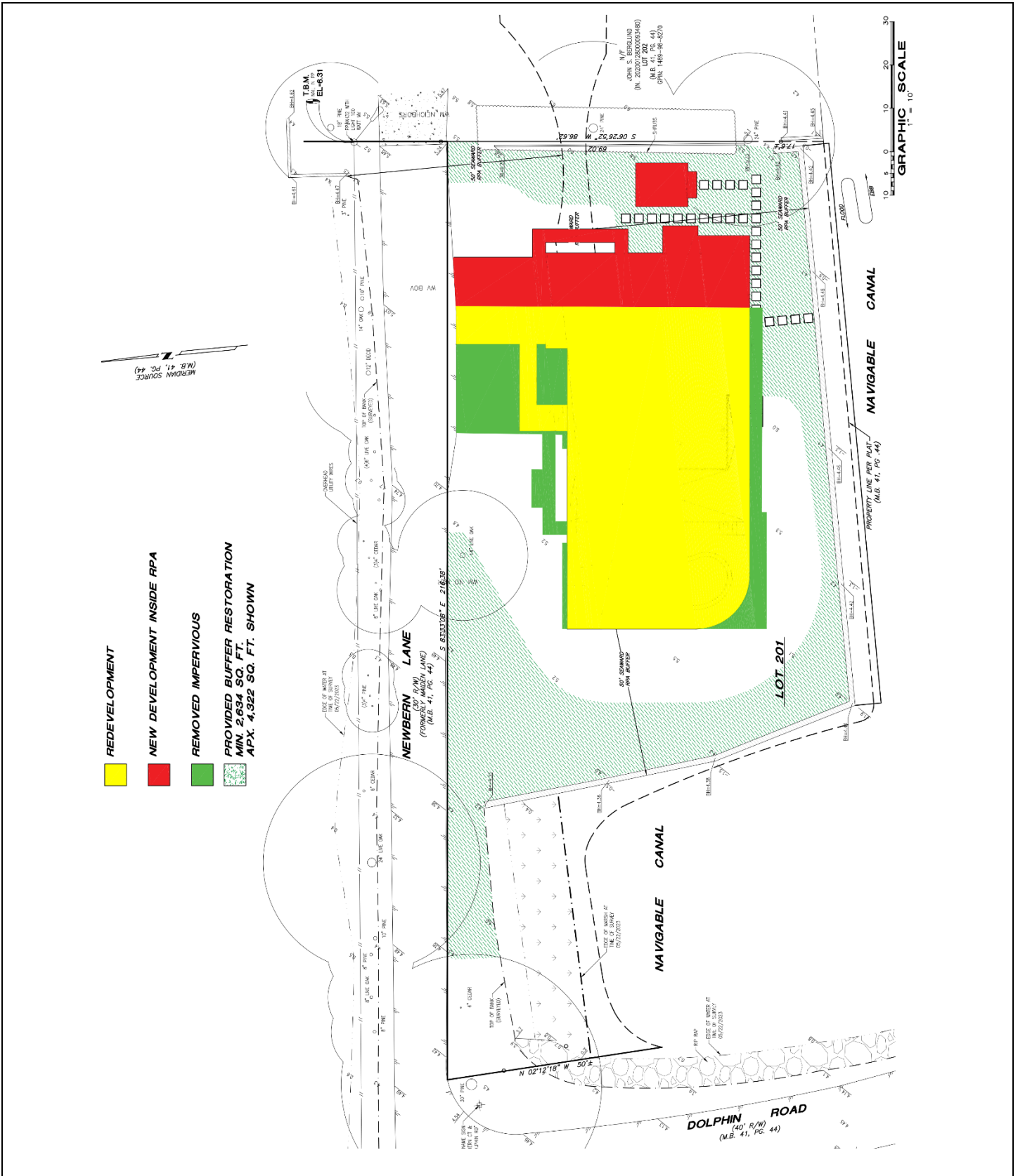
# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



Color Analysis



# 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** Tidewater Land Management, LLC

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

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

R. Edward Bourdon, Jr., Esq., Sykes, Bourdon, Ahern & Levy, P.C.

**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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- If **yes**, list the businesses that have a parent-subsiary<sup>1</sup> or affiliated business entity<sup>2</sup> relationship with the applicant. (Attach a list if necessary)

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<sup>1</sup> "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.

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

- If yes, identify the financial institutions.
- 

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

Yes  No

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

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

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

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

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

WPL & Fentress Home Design

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

### Applicant Signature

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

**Applicant Signature**

Michael P Megge, Manager of Tidewater Land Management, LLC

**Print Name and Title**

05/31/2023

**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 **Christina Minton**  
 Address **2212 Leeward Shore Drive**  
 Public Hearing **July 24, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**7**

**Property Owner’s Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 74, Page 2  
 Recorded 11/30/1967

**Lot Description**

Lot 289, Bay Island, Section 2, 2212 Leeward Shore Drive

**GPIN**

2409-29-0640

**Current Property Owner**

Christina Minton

**DESCRIPTION OF NONCOMPLIANCE**

**Unauthorized Improvements**

- Unauthorized development within the Resource Protection Area (RPA)

**Location of Unauthorized Improvements**

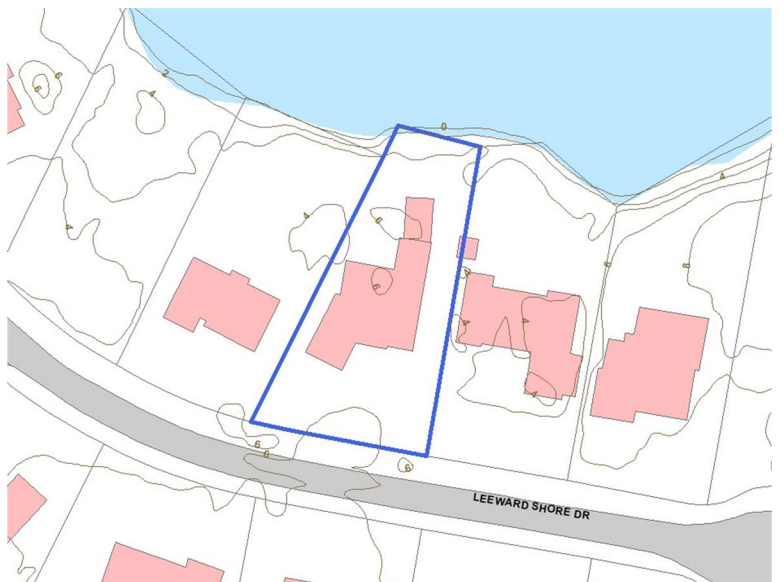
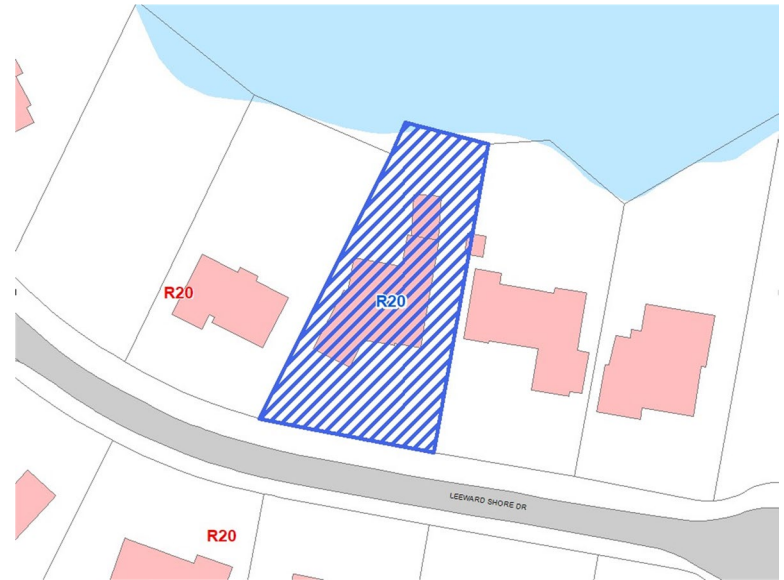
50-foot Seaward Buffer  
 50-foot Landward Buffer

**CBPA Ordinance**

- The unauthorized improvements constitute a noncompliance to Section 106 specific to permitted encroachments into the RPA buffer area and 107 specific to the plan of development process of the Chesapeake Bay Preservation Area Ordinance.

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet



## CBPA Ordinance Variance History

There is no known prior Chesapeake Bay Preservation Area (CBPA) Board variance history for this lot.

This item was deferred at the May 22, 2023 CBPA Board Public Hearing.

## History of Noncompliance

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

## Chronology of Noncompliant Event

- July 27, 2022 A Stop Work Order (SWO) was placed on the property for unauthorized work being performed without a building permit and erosion & sediment control measures installed.
- August 1, 2022 Staff received a citizen inquiry regarding construction work being performed at the property. Permits & Inspections (P&I) Staff visited the property located at 2212 Leeward Shore Drive to investigate a citizen inquiry regarding construction activity occurring on the property. At that time, no additional work had been performed.
- August 22, 2022 Staff sent a Notice to Comply letter to the property owner stating, *"this letter shall serve as written notice that you have thirty (30) days from the date of this letter to provide Staff with documentation that the unauthorized improvements do not represent an increase in impervious cover or a further encroachment within the RPA on the property."*
- August 29, 2022 Staff received an email from the property owner seeking clarity on the requirements of the Notice to Comply letter specific to the physical survey. The property owner stated in the email that no additional work has been performed. The property owner will be out of town dealing with a family matter.
- August 30, 2022 Staff replied to the property owner stating, *"your property is within the Resource Protection Area (RPA) of the Chesapeake Bay watershed and subject to the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance. If you are working within the footprint of existing improvements (i.e., patios, pool decks, etc.) then Staff may be able to review the redevelopment of those surfaces administratively. If those areas were expanded, then a variance to the CBPA Ordinance will be required. Do you have an existing physical survey of the property, in addition to the new one that your surveyor is working on?"*
- September 6, 2022 Staff met with the property owner at the Department of Planning and Community development to discuss the activity that had occurred on the property and the future desires of the property owner to redevelop the lot. The Chesapeake Bay Preservation Area (CBPA) process was discussed and the necessity for a current up-to-date physical survey to be performed to determine what, if any, encroachment into the Resource Protection Area (RPA) buffer had occurred.

- October 11, 2022 Permits & Inspections performed a site compliance check for the SWO placed July 27, 2022. No further progress or activity had occurred.
- May 4, 2023 Staff received a citizen inquiry regarding construction work being performed at the property.
- May 5, 2023 A second SWO was placed on the property for unauthorized work being performed without a building permit. At that time, it was determined by Staff that additional work had been performed post-issuance of the July 27, 2022 SWO.
- May 5, 2023 The property owner visited the Department of Planning and Community Development after the SWO was placed on the property. The purpose of the visit was to obtain a fence permit to rebuild the property fence, damaged by the tornado and sure the rear of the property which contains an inground swimming pool. Staff informed the property owner that the only work permitted on the property is for the installation of the fence, no other work is authorized, and that the property owner will be receiving a Notice to Comply letter to attend a CBPA public hearing as a Show Cause.
- May 9, 2023 A Notice to Comply letter was sent to the property owner as written notice that you are to appear before the CBPA Board at the public hearing scheduled Monday, May 22, 2023.
- May 10, 2023 Staff received an email from the property owner asking if topsoil could be placed on the lot.
- May 11, 2023 Staff replied to the property owners request to place topsoil on the lot stating, *"at this time, I would advise you not to perform any work on the lot until the Chesapeake Bay Preservation Area (CBPA) Board show cause hearing is complete."*
- May 31, 2023 Staff met with the property owner's attorney to discuss step going forward to bring the site into compliance, the deferral process, and necessary permits and approvals potentially needed based on the outcome of the Show Cause hearing.
- July 14, 2023 Staff spoke with the property owner's contractor and attorney regarding the July, 22 2023 CBPA Board public hearing and Show Cause agenda item for the subject property. The property owner's representatives inquired about the necessary steps going forward to remove the unauthorized improvements. Staff provided the following – *"Staff will need a plan showing the areas of unauthorized improvements to be removed for review and approval. Once the plan is approved a building permit may be obtained from Permits & Inspections. After obtaining the building permit the Contractor will schedule a pre-demolition meeting with Civil Inspections to go over the sequence of activities on the site. Once the improvements are removed and the areas of disturbance stabilized, E&S measure may be removed. A final inspection will be conducted, and the building permit closed.*
- Please submit the plan showing the areas of unauthorized improvements to be removed through our Accela Citizen Access (ACA) as a Preliminary Project Request (PPR) for documentation. Attached are guidance documents for the online submittal process and a PPR form."*
- Staff informed the property owner's attorney that the CBPA Board may levee a civil charge even though the property owner is progressing forward with coordinating the removal of the unauthorized improvements.

## Evaluation and Recommendation

### Relative Degree of Deviation

Staff is of the opinion that the subject activity of noncompliance, expanding existing accessory structures on the lot, specifically the existing swimming pool surround within the 100-foot Resource Protection Area (RPA), is without appropriate Staff review, approval or permitting. Said expansion of the swimming pool surround occurred along the seaward side of the existing structure and the associated land disturbance with the unauthorized improvements appears to be greater than 2,500 square feet. Expansions of accessory structures within the 100-foot RPA of the Chesapeake Bay watershed require a variance to the City's CBPA Ordinance and construction activities that disturb more than 2,500 square feet of land within a property require site plan review and approval by the Department of Planning & Community Development's, Development Services Center (DSC).

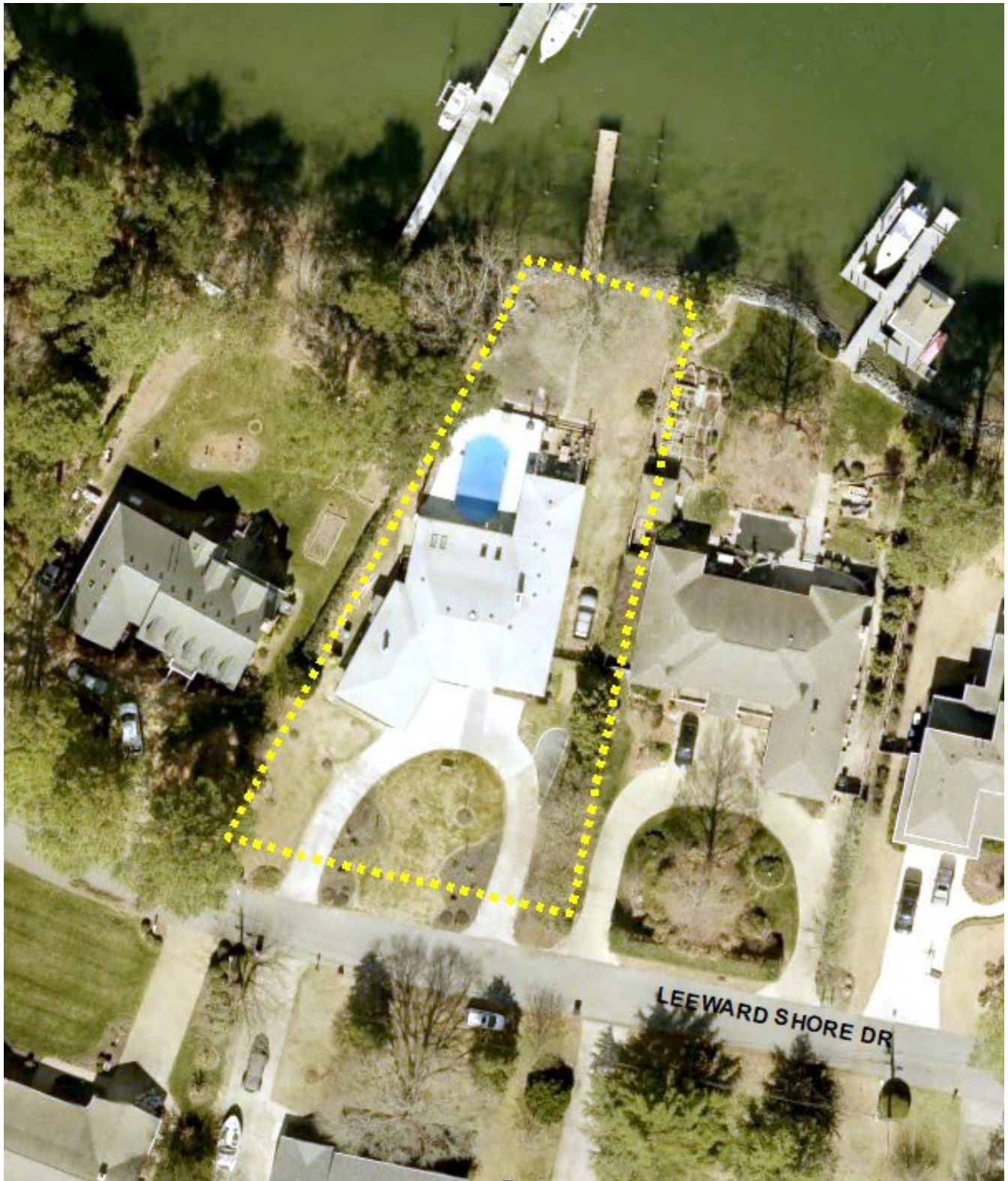
### Environmental Impact

Staff is of the opinion that the subject area of noncompliance lies within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area (CBPA) RPA adjacent to the tidal shores of the Lynnhaven River. Although there are no signs of sediment migration associated with the land disturbance on the lot into the adjacent tidal waterbody, a portion of the unauthorized improvements appear to encroach into the 50-foot seaward buffer. These encroachments may not be handled administratively by Staff and require that the property owner comply with City Code, Appendix F, Sec. 110(A) and (C) of the CBPA Ordinance.

### Recommendation

It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been high, and the environmental impact has been medium.

Circa 2021 Site Aerial



Circa 2023 Site Aerial

