

# Chesapeake Bay Preservation Area

## Board Agenda

October 23, 2023



PAGE LEFT BLANK

# CHESAPEAKE BAY PRESERVATION AREA BOARD

## NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, October 23, 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 **October 23, 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.

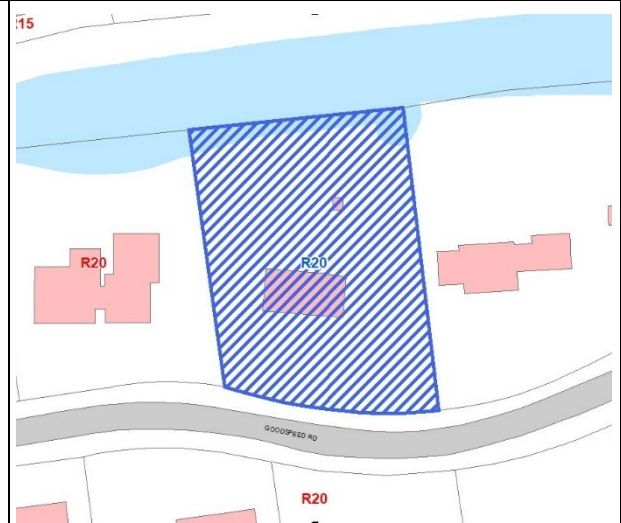
## NEW BUSINESS AGENDA ITEMS

**1. Goodspeed Residential, LLC**  
[Applicant & Property Owner]

**484 Goodspeed Road**  
GPIN 2419-41-2413  
City Council District: District 6  
Accela Record: 2023-CBPA-00040

**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

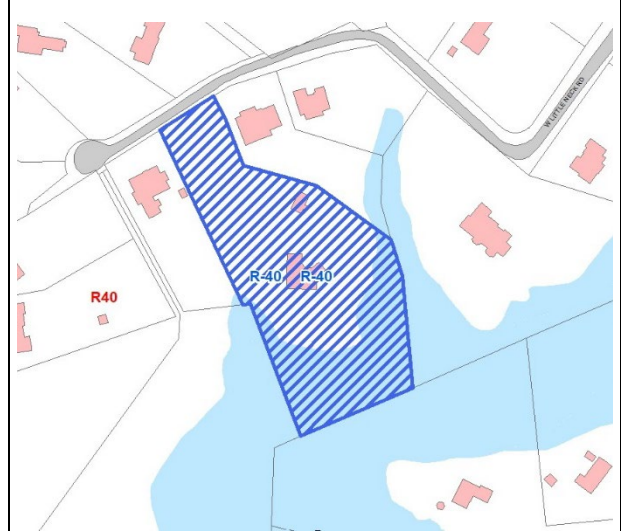


**2. Christopher & Morgan Wise**  
[Applicants & Property Owners]

**1333 W. Little Neck Road**  
GPIN 1488-37-2894  
City Council District: District 8  
Accela Record: 2023-CBPA-00043

**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 19



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**3. Paul Haebler & Kathleen Owens**  
[Applicants & Property Owners]

**2113 E. Kendall Circle**

GPIN 1499-79-5766

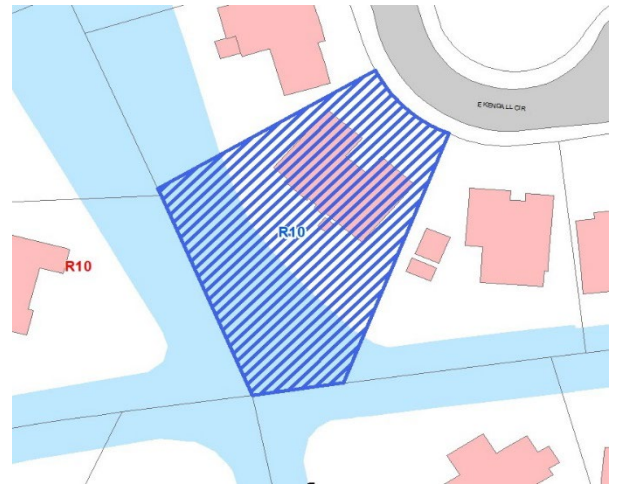
City Council District: District 8

Accela Record: 2023-CBPA-00046

**Variance Request** – Encroachment into the RPA to construct a building addition, swimming pool with associated paver patio and cabana.

**Staff Planner** – Cole Fisher

**Staff Report** – page 35



**4. Daniel & Carolyn Farris**  
[Applicants & Property Owners]

**2312 Leeward Shore Drive**

GPIN 2500-00-8183

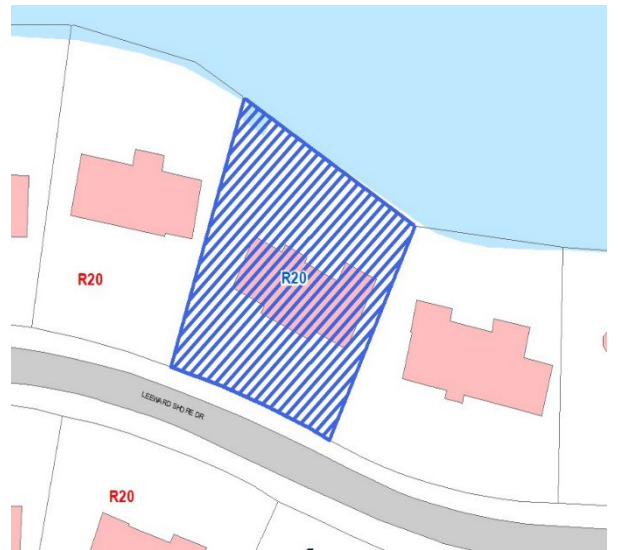
City Council District: District 6

Accela Record: 2023-CBPA-00047

**Variance Request** – Encroachment into the RPA to construct a swimming pool with associated patio, outdoor kitchen and firepit area, and walkways.

**Staff Planner** – Cole Fisher

**Staff Report** – page 49



**5. William & Diana Gardner**  
[Applicants & Property Owners]

**2637 S. Kings Road**

GPIN 1497-55-8852

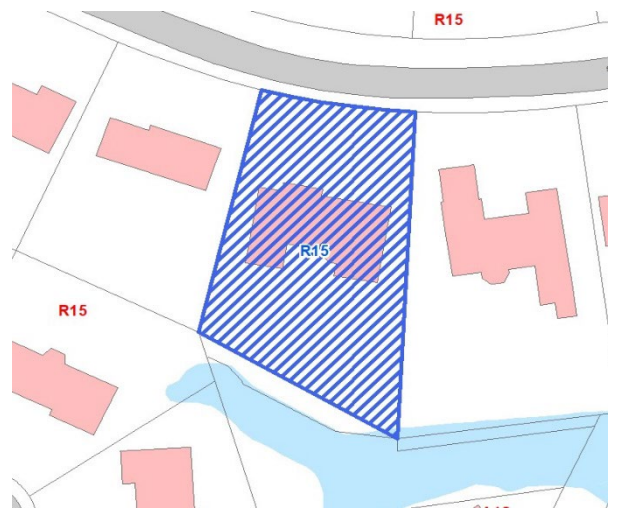
City Council District: District 8

Accela Record: 2023-CBPA-00048

**Variance Request** – Encroachment into the RPA to construct a swimming pool with associated patio & walkways and relocate existing sheds.

**Staff Planner** – Cole Fisher

**Staff Report** – page 61



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**6. Blake Callaghan & Angela Cerda**  
[Applicants & Property Owners]

**337 W. Chickasaw Road**

GPIN 1457-71-7062

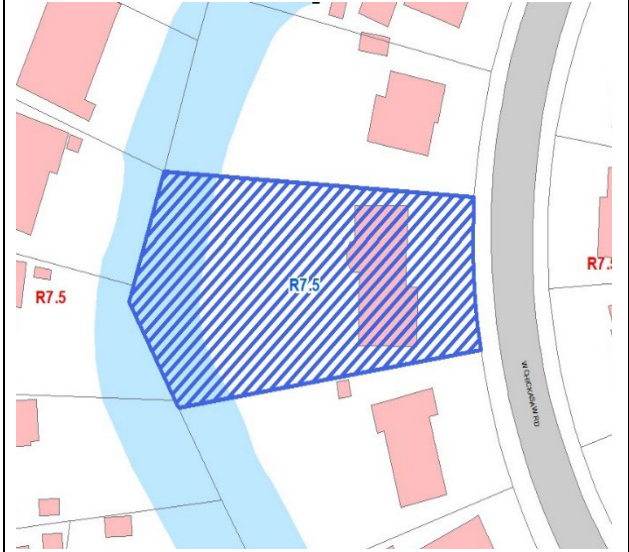
City Council District: District 1

Accela Record: 2023-CBPA-00050

**Variance Request** – Encroachment into the RPA to construct a building addition, gravel parking area, swimming pool with associated pool surround & patio area, and replace & reconfigure existing drive.

**Staff Planner** – Cole Fisher

**Staff Report** – page 73



## SHOW CAUSE AGENDA ITEMS

**7. Shane & Maria Sullivan**  
[Applicants & Property Owners]

**1508 McCullough Lane**

GPIN 2409-91-7263

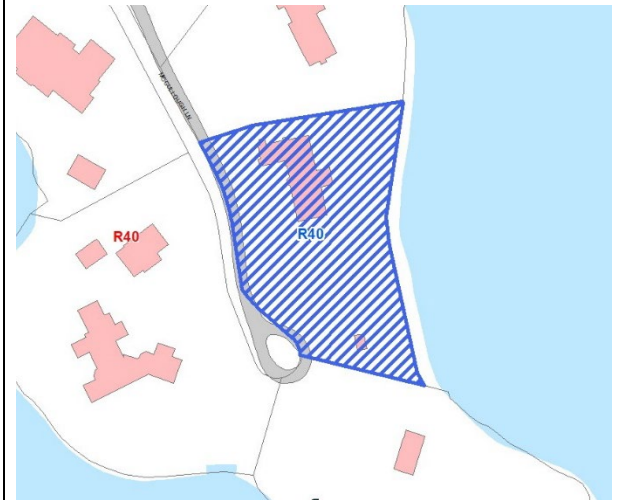
City Council District: District 6

Accela Record: 2023-CBPV-00004

**Statement of Noncompliance** – Unauthorized construction of an accessory structure (Tiki bar) with associated patio area on the property.

**Staff Planner** – Cole Fisher

**Staff Report** – page 85



**8. Nilkanth and Kalpana Patel**  
[Applicants & Property Owners]

**909 Hall Haven Drive**

GPIN 1498-42-6983

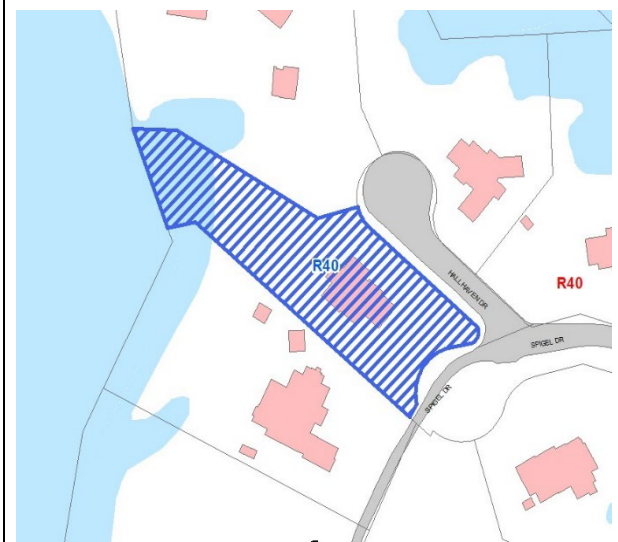
City Council District: District 8

Accela Record: 2022-CBPV-00004

**Statement of Noncompliance** – Unauthorized development within the Resource Protection Area (RPA) with the expansion of existing accessory structures.

**Staff Planner** – Cole Fisher

**Staff Report** – Page 93



## TENTATIVE 2024 CBPA BOARD PUBLIC HEARING DATES

Monday **January 22**  
Monday **February 26**  
Monday **March 25**  
Monday **April 22**  
Monday **May 30**  
Monday **June 24**

Monday **July 22**  
Monday **August 26**  
Monday **September 23**  
Monday **October 28**  
Monday **November 25**  
Thursday **December 19**





Applicant & Property Owner **Goodspeed Residential, LLC**  
 Address **484 Goodspeed Road**  
 Public Hearing **October 23, 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**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 41, Page 2  
 Recorded 03/1956

**GPIN**

2419-41-2413

**SITE AREA**

39,519 square feet or 0.907 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

36,938 square feet or 0.848 acres

**EXISTING IMPERVIOUS COVER OF SITE**

6,198 square feet or 17 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

11,225 square feet or 30 percent of site

**Area of Redevelopment in RPA**

1,643 square feet

**Area of New Development in RPA**

476 square feet

**Location of Proposed Impervious Cover**

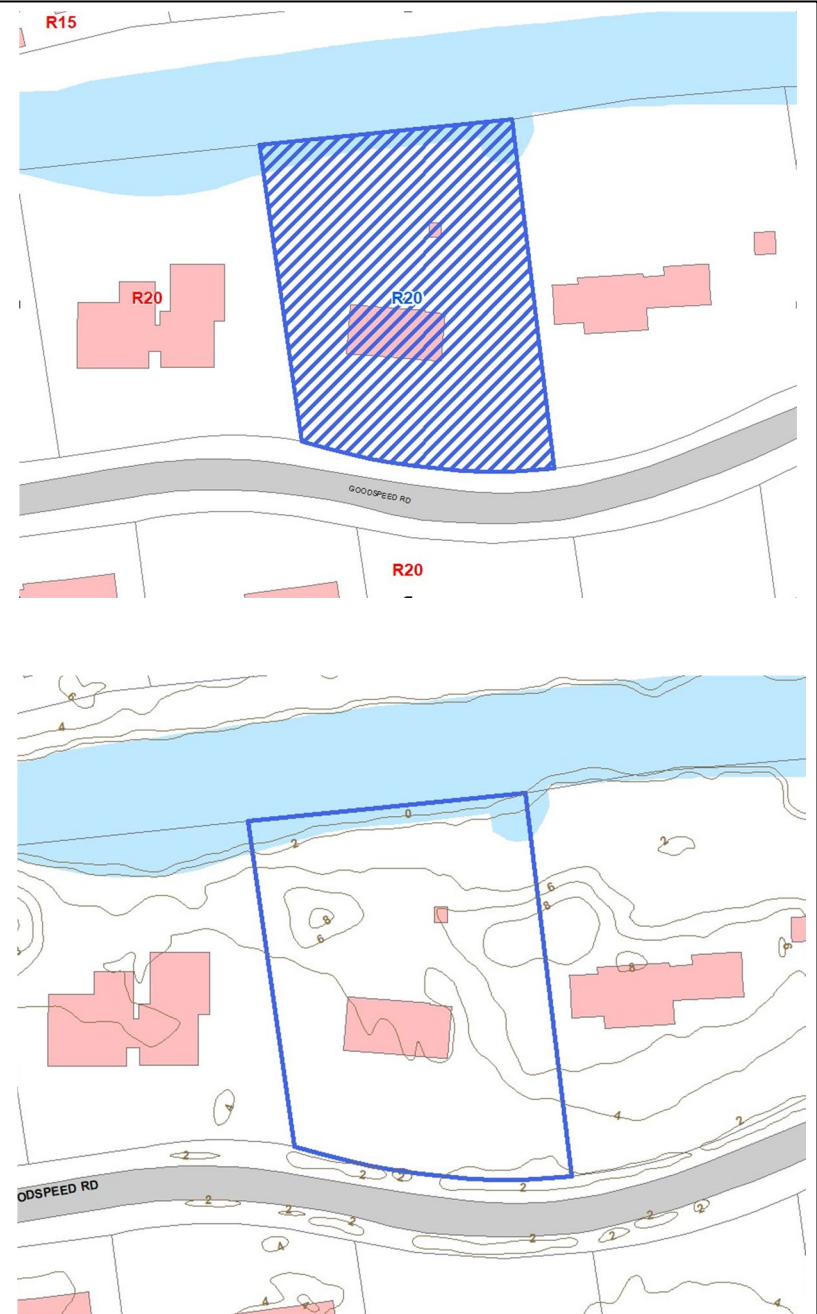
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Demolish existing single-family residence and associated accessory structures

### Construction Details

- Single family residence with associated permeable paver driveway
- Swimming pool with concrete pool patio and porch
- Shed and mulched steppingstone pathway

## 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): 6

### Soil Type(s)

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

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

### Shoreline

Shoreline is stabilized by a wood bulkhead.

### Riparian Buffer

Heavily to moderately 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: 4
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the majority of the trees proposed for removal, aside from three canopy trees, fall within the footprint of the proposed improvements with this variance request. Staff has accounted for these three trees within condition #4 of the recommended conditions.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

As shown on the Chesapeake Bay Preservation Area (CBPA exhibit), the existing residence is situated in the Resource Management Area (RMA) on the lot. The applicant proposes to demolish the existing residence and construct a new two-story single-family home with a new swimming pool and concrete pool patio. The proposed improvements are primarily within the existing footprint of impervious cover within the Resource Protection Area (RPA) on the lot. With the redevelopment of the lot, the applicant is proposing to redesign the driveway area to a circular driveway and replace the existing areas of concrete with a permeable pavement system. Outboard of the primary structure and accessory structures, a mulched steppingstone pathway is proposed to connect the accessory structures to the existing wood dock with no additional improvements proposed in the 50-foot seaward buffer.

Staff met with the applicant's agent after reviewing the initial submittal of this variance request, which included a slightly different layout that further encroached into the 100-foot RPA buffer. As a result, the applicant's agent revised the proposed improvements, shifting the layout landward and closer to the front and side yard setback to alleviate further encroachment into the buffer, resulting in approximately 1,643 square feet of redevelopment and 476 square feet of new impervious cover within the RPA. In addition, the proposed redevelopment of this lot will combine the use of structural (permeable pavers and gravel downspout intercepts) and nonstructural (bioretention planting beds) best management practices for the stormwater treatment of new impervious cover. Staff is of the opinion that this approach is in harmony with the performance standards of the CBPA Ordinance regarding land development minimizing impervious cover to promote infiltration of stormwater into the ground through the incorporation of structural or nonstructural urban best management practices [City Code, Appendix F, Sec. 106 (A)(3)].

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff is of the opinion that the CBPA exhibit provided, coupled with the use of materials and stormwater management methodology integrating best management practices on the lot, offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of the property in the neighborhood that have redeveloped lots platted prior to the adoption of the CBPA Ordinance.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay, the new home has been placed towards the front setback line and shifted around on the site to limit the impacts to the RPA by only 18% and the proposed improvements will avoid development in the 50' seaward portion of the site."* Staff acknowledges that the placement of the proposed improvements limits encroachment into the 50-foot landward buffer of the RPA and Resource Management Area (RMA) while utilizing the redevelopment of impervious cover on the lot to the greatest extent practicable.

- 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 offers that the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the retention of existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **476 square feet x 200 percent = 952 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: **5 canopy trees, 4 understory trees, 4 large shrubs, and 6 small shrubs.**

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

- 4) 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) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$109.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs,

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

- 17) The conditions and approval associated with this variance are based on the exhibit plan dated June 27, 2023, prepared by WPL, signed September 28, 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









# 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** Goodspeed Residential, 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)

Eric C Neidlinger, Managing Member

Victoria L. Neidlinger, Managing Member

- 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)

N/A

<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 & Mayfield Designs, Inc.

---

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

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

# Disclosure Statement



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

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

Atlantic East Builders

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

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

WPL

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.

*Eric Chief*  
 Applicant Signature

ERIC C. NEIDINGER, PRINCIPAL  
 Print Name and Title

7/6/2023  
 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 **Christopher & Morgan Wise**  
 Address **1333 W. Little Neck Road**  
 Public Hearing **September 25, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**2**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Instrument No. 200402270032860  
 Recorded 02/25/2004

**GPIN**

1488-37-2894

**SITE AREA**

154,936 square feet or 3.56 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

94,218 square feet or 2.16 acres

**EXISTING IMPERVIOUS COVER OF SITE**

16,063 square feet or 19 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

20,560 square feet or 23 percent of site

**Area of Redevelopment in RPA**

10,872 square feet

**Area of New Development in RPA**

4,943 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

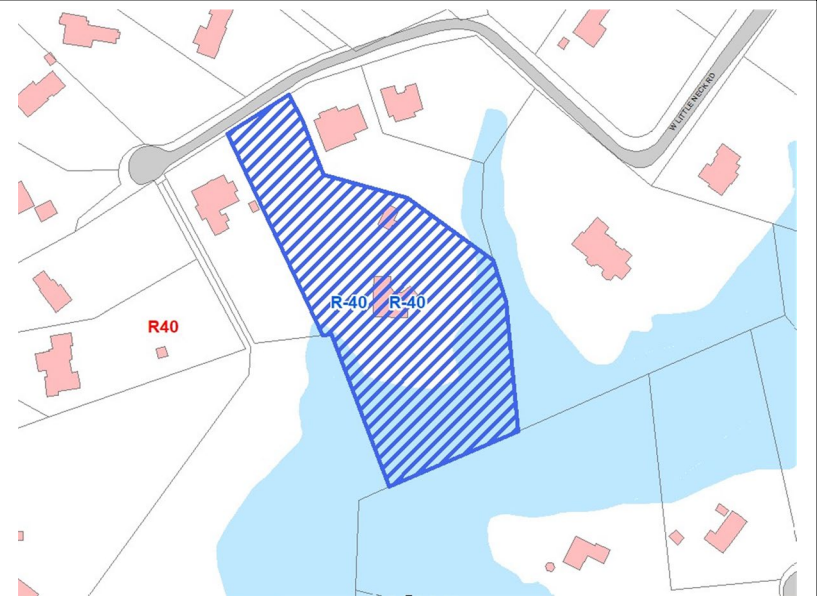
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Demolish existing single-family residence

### Construction Details

- Single family residence with attached garage
- Redevelop driveway with brick pavers and new parking area
- Additions to existing detached garage

## CBPA Ordinance Variance History

### **May 22, 1995 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a building addition with the following conditions:**

1. *Drywells should be sized properly to accept the stormwater runoff that will be collected and transported from the existing gutter and downspout system.*
2. *The applicant's request to waive the requirement to have a licensed engineer prepare the B.M.P. calculations should be approved.*
3. *A revised site plan, showing the above recommendations, shall be submitted to the Development Services Center for a full plan of development review.*

### **August 26, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of a single parcel consisting of 6.8 acres into four residential lots with the following conditions:**

1. *A metes and bounds description of the building envelopes shall be shown and shall be recorded with the final subdivision plat for this property. The metes and bounds shall describe the construction limits for each lot, as opposed to describing the building footprint.*
2. *The remainder of each lot, not identified as the construction limits within the metes and bounds description shall remain in a natural state. A note to this effect shall be added in BOLD to the site plans.*
3. *Erosion and sedimentation control measures as well as landscaping plans identifying the types and number of trees to be removed must be provided during site plan review for each individual lot. Tree compensation shall be at a 3:1 ratio. Stormwater management details must also be provided at site plan review.*
4. *Each individual lot with development within the Resource Protection Area shall submit a final site plan to the Planning Department Development Services Center for a full plan of development review prior to the issuance of a building permit.*

### **June 22, 2020 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for patio redevelopment with walk and construct a swimming pool with associated patio area with the following conditions:**

1. *A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
2. *The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required drywells associated with the 1995 CBPA Variance for stormwater management facilities shall be documented on*

*the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.*

- 3. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
- 4. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 2,693 square feet x 200 percent = 5,386 square feet. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: 7 canopy trees, 7 understory trees, 28 large shrubs, and 42 small shrubs.*

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

- 5. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
- 6. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
- 7. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
- 8. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
- 9. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.*
- 10. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
- 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.*
- 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. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*

*\*\* 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 \$617.14 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.*

14. *Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.*

15. *This variance and associated conditions are in addition to the conditions of the Board variance granted May 22, 1995 and August 26, 1996.*

16. *The conditions and approval associated with this variance are based on the exhibit plan dated May 1, 2020, prepared by Gallup Surveyors and Engineers, signed May 1, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*

The June 22, 2020 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

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

### Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed to limb up low hanging branches shading existing tidal marsh and to remove invasive plant species.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The two trees proposed for removal are within the footprint of the proposed attached garage to the proposed new two-story single-family residence. Staff is of the opinion that removal of these trees is necessary for the project.

## 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 is proposing to demolish the existing single-family residence and construct a new two-story single-family residence with an attached three-car garage. The existing gravel driveway will also be demolished and replaced in the same footprint with a brick paver driveway and concrete parking area in front of the proposed attached garage. An existing detached garage sits to the north of the existing residence and the applicant wishes to construct two building additions to slightly expand the footprint of the garage space. As situated and shown on the Chesapeake Bay Preservation Area (CBPA) exhibit, the proposed improvements and new impervious cover with this project are primarily situated within the 50-foot landward buffer with a small portion of the footprint of the new residence encroaching into the 50-foot seaward buffer. Remaining portions of new impervious cover are situated in the variable width buffer and the Resource Management Area (RMA).

Approximately 10,872 square feet of redevelopment is provided with the proposed improvements, with the majority of the new impervious cover coming from expanded footprints of the new residence, the attached garage with parking area, and the additions to the existing detached garage. Additionally, much of the driveway improvements and the larger portion of the building addition to the existing detached garage are all located outboard of the 100-foot buffer of the Resource Protection Area (RPA). Staff is of the opinion that this proposal will not be of substantial detriment to water quality and is in harmony with the purpose and intent of the CBPA Ordinance given the extent of redevelopment provided with the new improvements. The applicant is also offering significant buffer restoration with approximately 9,886 square feet of buffer restoration proposed for 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 *"all of the adjacent properties in the vicinity have recently been upgraded/enhanced in a similar fashion by the granting of CBPA variances, the lots were almost all created years before the ordinance was adopted, this home was likely built prior to the ordinance but the lot was re-subdivided in 2004 for relocation some lot lines along the front portion.* Staff is of the opinion that the extent of redevelopment provided with the proposed improvements, coupled with the use of stormwater management practices required through site plan review, offers merit towards the variance request not conferring upon the applicant any special privilege or conveniences.
- 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 State adopted the bay act after the house was originally built the buffer lines impact the major portion of the lot the new dwelling will be built in the area of the existing dwelling in order to do redevelopment to the greatest extent practicable all new impervious will be properly mitigated for."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the proposed impervious cover post construction is 21,921 sq. ft. which represents 23.3% lot coverage well below the 30% threshold we always try to stay under and that includes a rather long driveway needed to access the house which sits back from the street."* Staff acknowledges that the placement of the proposed improvements limits encroachments into the landward and variable width buffers and utilizes the redevelopment of impervious cover on the lot to the greatest extent practicable.
- 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 *"stormwater treatment for all impervious cover and extensive buffer restoration benefit the lot and*

*the bay, as well as off-site mitigation via the Lynnhaven Oyster Heritage Fund.”* Staff offers that the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the retention of the existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.

- 5) *“Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **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: **4,943 square feet x 200 percent = 9,886 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: **31 canopy trees, 50 understory trees, 50 large shrubs, and 75 small shrubs.**

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

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

- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) **\*\*** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,132.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted June 22, 2020 with the exception of condition 4 that required the following.

*"Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 2,693 square feet x 200 percent = 5,386 square feet. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: 7 canopy trees, 7 understory trees, 28 large shrubs, and 42 small shrubs.*

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

*Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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.”*

Said 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.

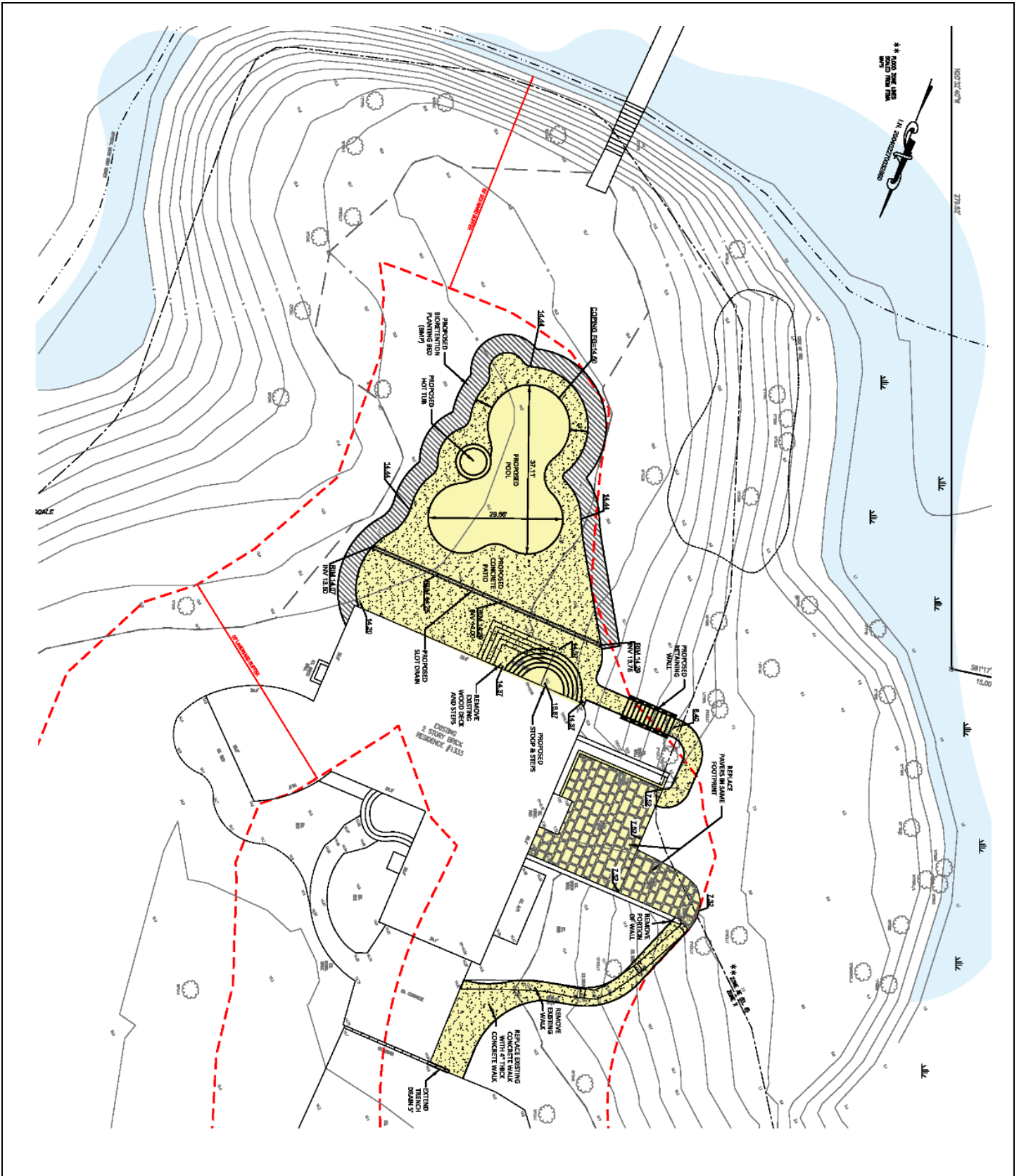
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated September 1, 2023, prepared by Gallup Surveyors & Engineers, signed September 1, 2023 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Site Aerial











# 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 William Christopher Wise

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

Billy Garrington

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

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

---

---

---

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

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

# Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

Yes  No

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

*PHH Mortgage*

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.

Gallup Engineering

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.

*Chris Wise*

Morgan Wise/

Applicant Signature

Chris Wise, Owner / Morgan Wise/owner

Print Name and Title

8/1/2023

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	

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Paul Haebler & Kathleen Owens**

Agenda Item

Address **2113 E. Kendall Circle**

Public Hearing **October 23, 2023**

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

**3**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, swimming pool with associated paver patio and cabana.

**Applicant's Agent**

Robert Simon  
Waterfront Consulting, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

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

**GPIN**

1499-79-5766

**SITE AREA**

24,936 square feet or 0.57 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

15,372 square feet or 0.35 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,547 square feet or 36 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,456 square feet or 42 percent of site

**Area of Redevelopment in RPA**

1,812 square feet

**Area of New Development in RPA**

1,023 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

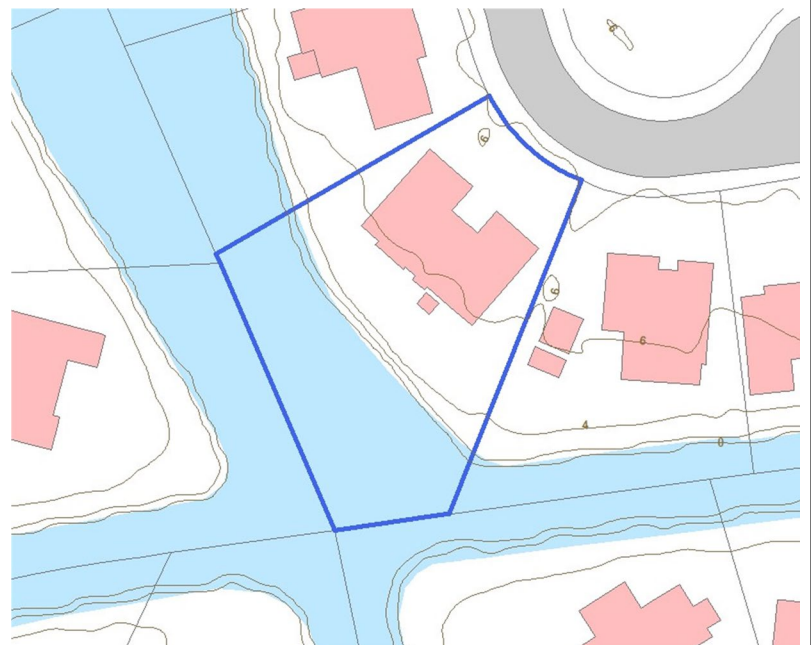
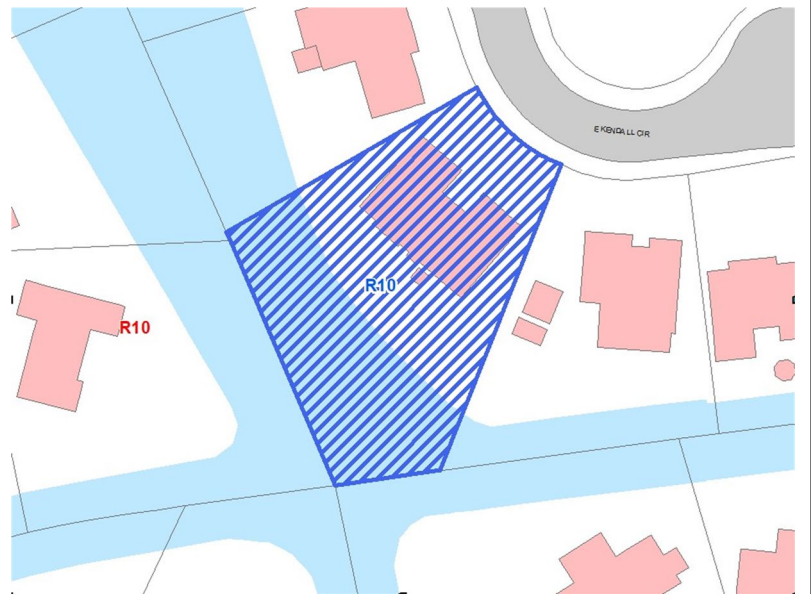
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Existing driveway, deck, and patio

### Construction Details

- Redevelop driveway in the same footprint
- Building addition to the primary structure
- Swimming pool with associated patio surround

## 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 an existing wharf.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as within the footprint of the proposed swimming pool and patio area. Staff is of the opinion that removal of the trees is warranted given the confined space on the property.

## 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 is proposing to construct a building addition, a swimming pool with a paver patio, and a cabana area within the 50-foot seaward buffer of the Resource Protection Area (RPA) and redevelop the existing driveway with pervious pavers with assistance through the Virginia Conservation Assistance Program (VCAP). The dimensions of the proposed swimming pool (15 feet by 30 feet) are smaller than the average residential swimming pool (16 feet by 32 feet) resulting in approximately 1,023 square feet of new impervious cover combined with the proposed building

addition. Due to the location of the RPA buffer on this lot, the entire buildable area falls within the 100-foot buffer with the 50-foot seaward buffer encumbering the entirety of the rear yard and portions of the existing residence. Staff is of the opinion that these circumstances pose challenges to redevelop this lot.

Given that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Area (CBPA) Ordinance, Staff is of the opinion that the layout of the proposed improvements reflects the minimum necessary to afford relief subject to the recommended conditions below. In addition, the lot currently has little to no tree canopy and Staff offers that the buffer restoration required will enhance the remaining areas in the rear yard which are currently devoted to turf and providing little to no benefit to water quality. To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or convenience not accorded to other owners of property within this neighborhood.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and the adjacent parcels."* Staff is of the opinion the proposed improvements are similar to others throughout the neighborhood and that both adjacent properties have similar accessory structures on the lot.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed development has a good portion of redevelopment with some conversion of impervious back to pervious and minimal of new impervious cover in the RPA buffer."* Staff acknowledges the applicant's statement and adds that the proposed improvements utilize redevelopment of the existing impervious cover on the lot to the greatest extent practicable and removes approximately 114 square feet from the seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and the buffer restoration and BMPs will be placed to catch runoff to improve water quality."* Staff is of the opinion that the placement of the buffer restoration, as shown on the submitted buffer restoration plan, and the limited size of the proposed improvements, will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) *"Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the buffer restoration area as shown on the proposed plans, and best management practices proposed, provide merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater potential.

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

## Recommended Conditions

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

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

- 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) 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.

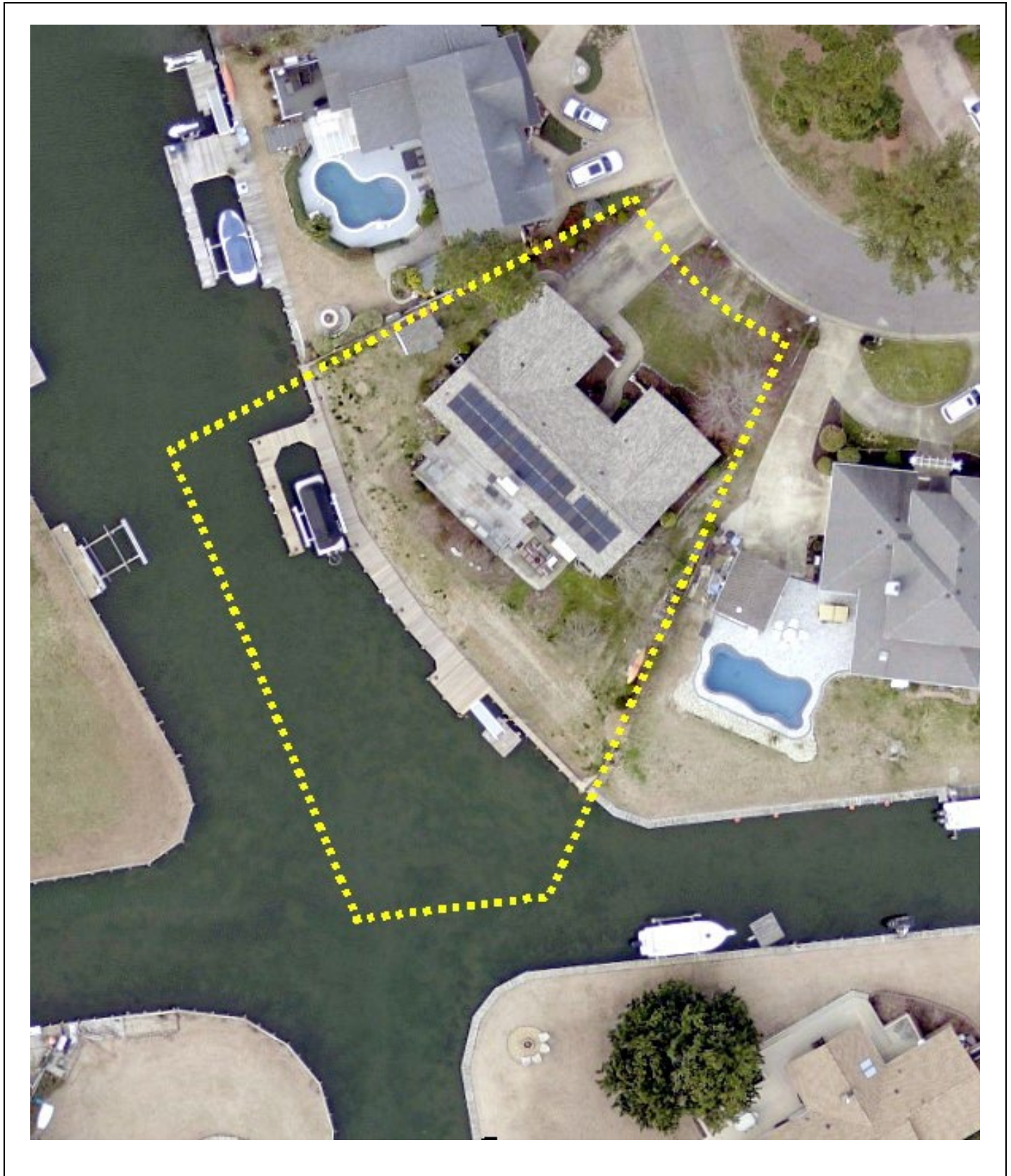


- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 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 \$234.43 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 August 25, 2023, prepared by Waterfront Consulting, Inc. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

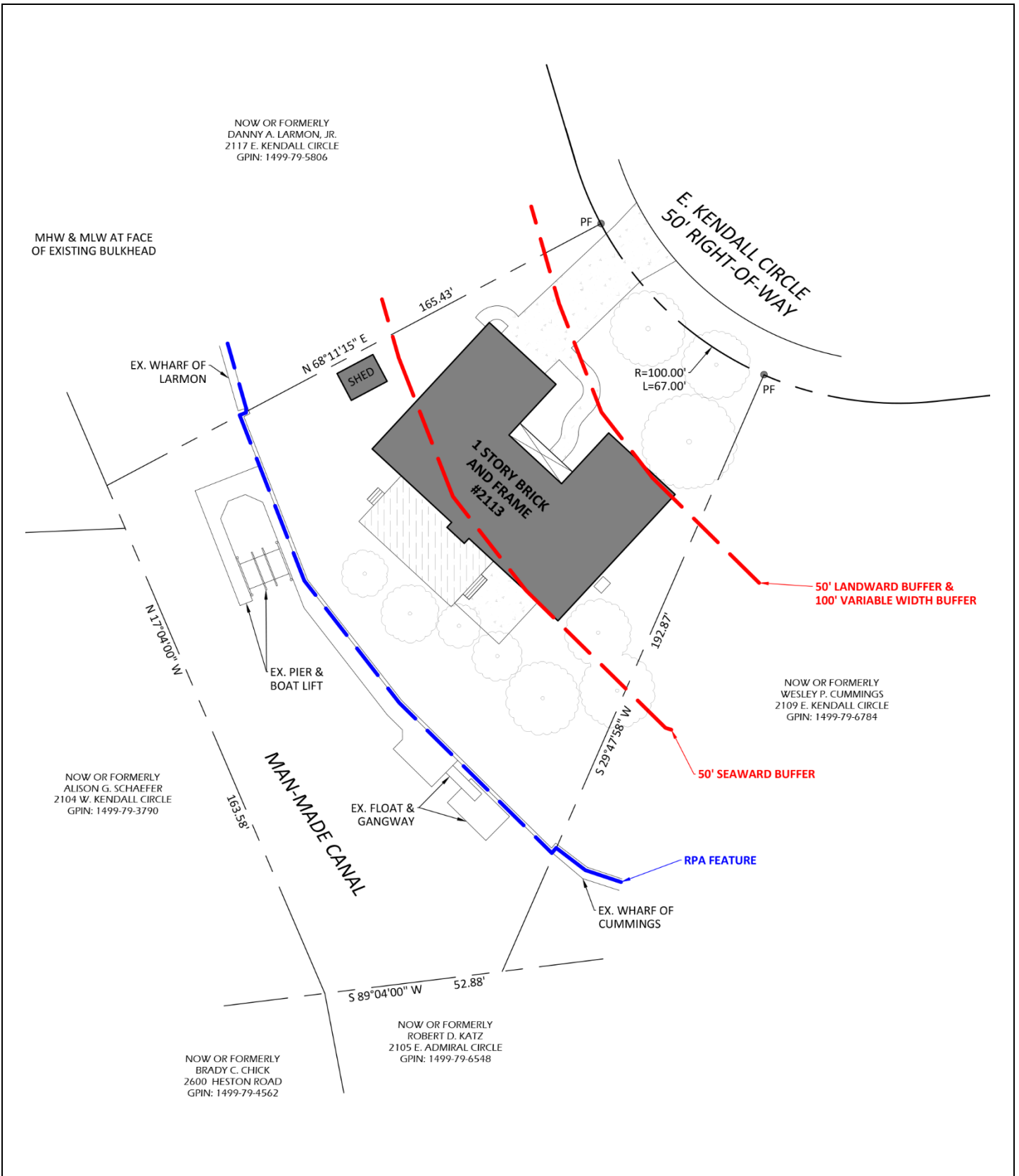
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

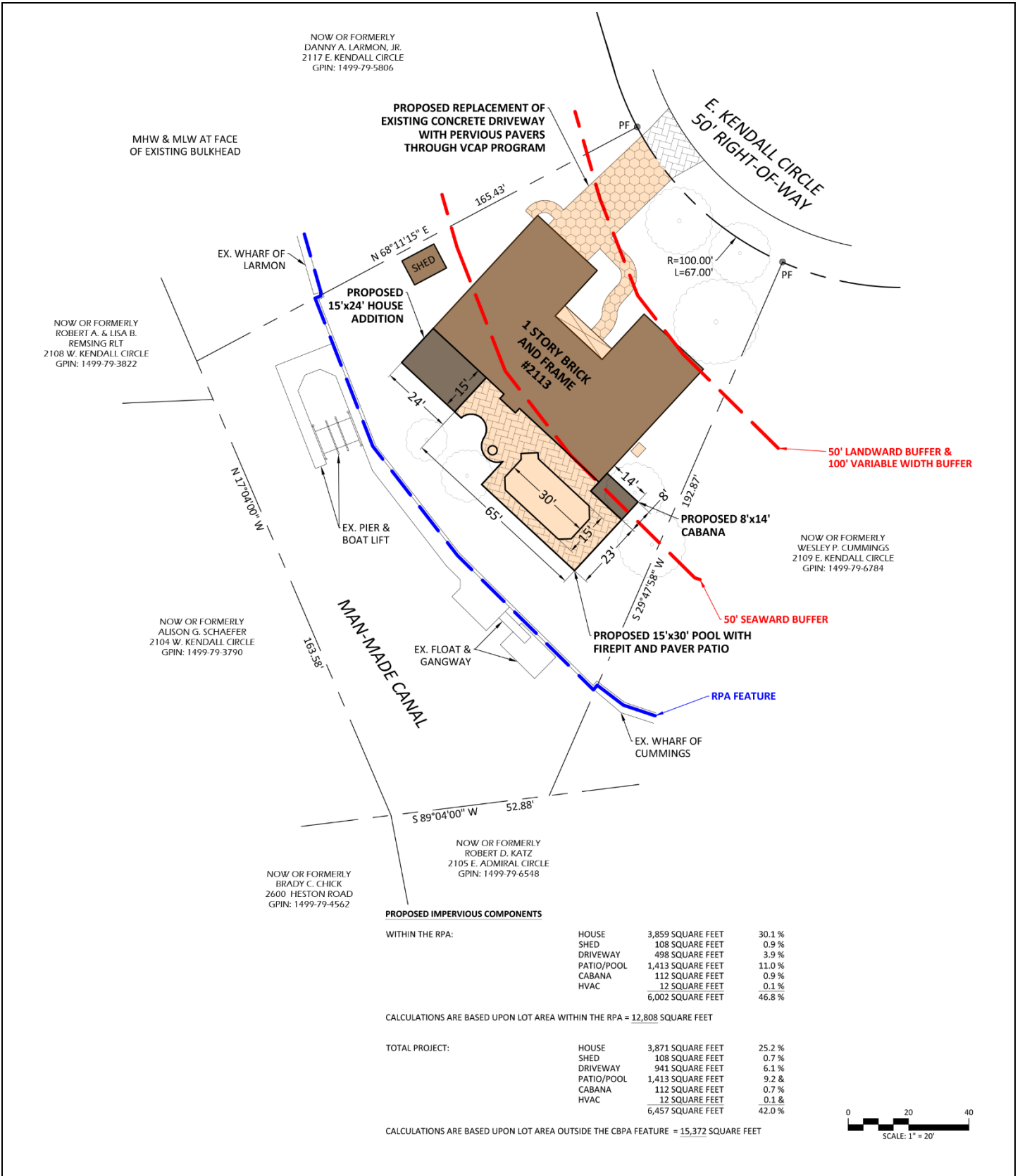
Site Aerial



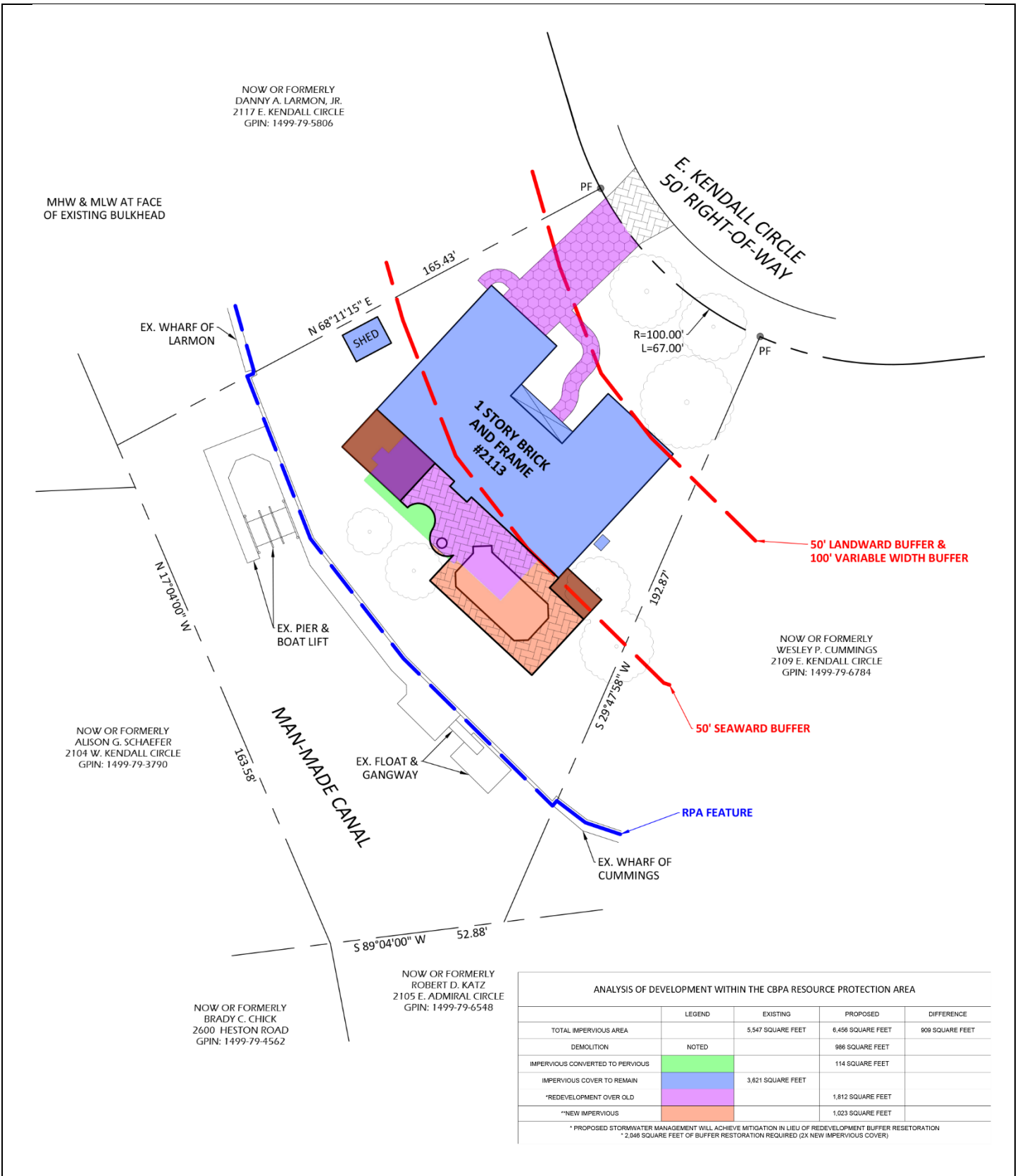
# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements

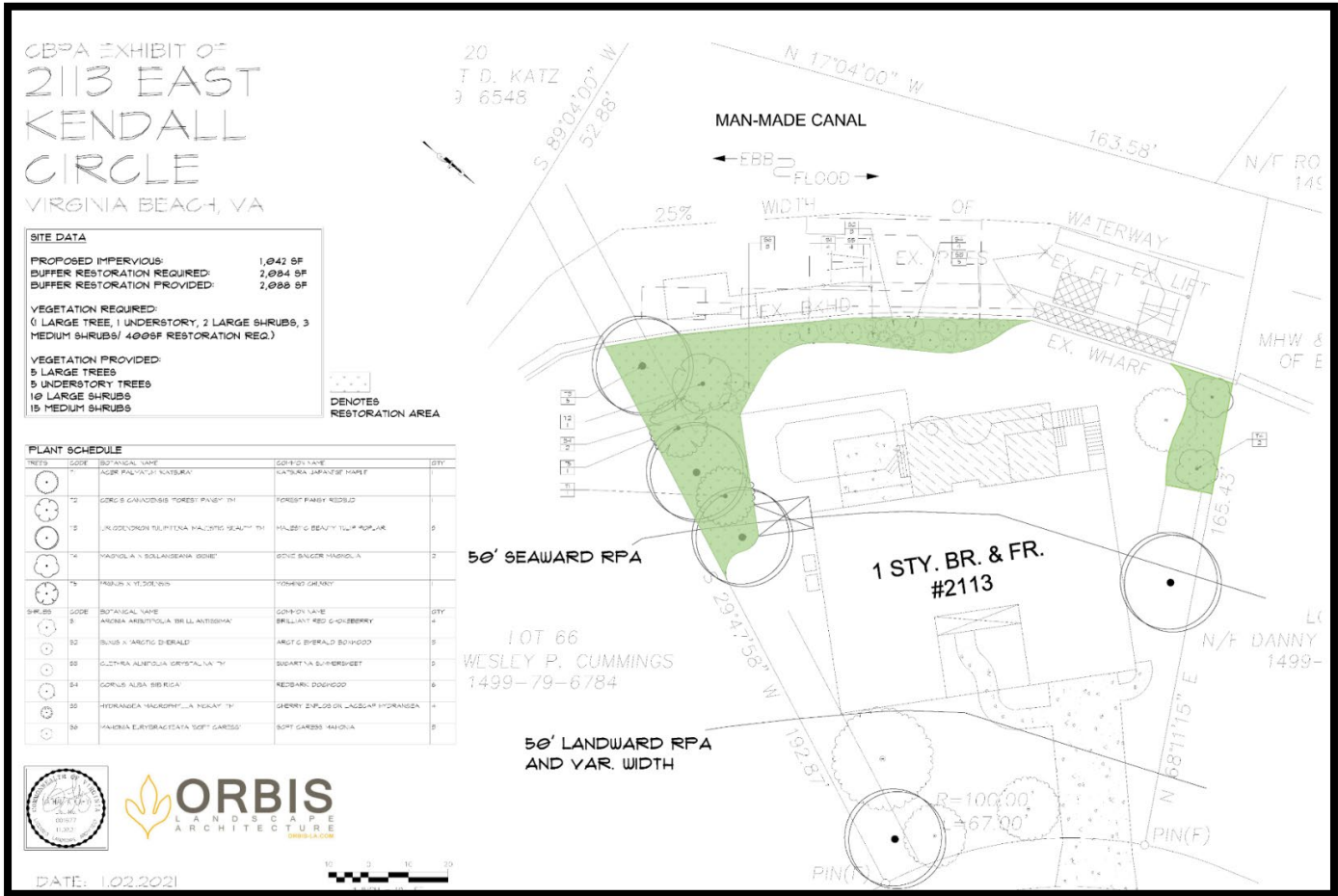


# CBPA Exhibit – Color Analysis



ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA				
	LEGEND	EXISTING	PROPOSED	DIFFERENCE
TOTAL IMPERVIOUS AREA		5,547 SQUARE FEET	6,456 SQUARE FEET	909 SQUARE FEET
DEMOLITION	NOTED		986 SQUARE FEET	
IMPERVIOUS CONVERTED TO PERVIOUS			114 SQUARE FEET	
IMPERVIOUS COVER TO REMAIN		3,621 SQUARE FEET		
*REDEVELOPMENT OVER OLD			1,812 SQUARE FEET	
**NEW IMPERVIOUS			1,023 SQUARE FEET	
* PROPOSED STORMWATER MANAGEMENT WILL ACHIEVE MITIGATION IN LIEU OF REDEVELOPMENT BUFFER RESETORATION -2,046 SQUARE FEET OF BUFFER RESTORATION REQUIRED (GX NEW IMPERVIOUS COVER)				

# Buffer Restoration Plan



# Disclosure Statement

DocuSign Envelope ID: 50D95DA2-79F3-406F-A3B6-A1971315CEC5

## 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** Paul Haebler & Kathleen P. Owens

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

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

Robert Simon - Waterfront Consulting, Inc., Billy Garrington, GPC

**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.

No

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.

No

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

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

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

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



# Disclosure Statement



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

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

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

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

Agents - Robert Simon, Waterfront Consulting, Inc. & Billy Garrington, GPC Engineer - Sean E. Green, P.E.

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

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

### Applicant Signature

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

DocuSigned by:

*Kathleen P. Owens*

48f061c720c8481

### **Applicant Signature**

Paul Haebler & Kathleen P. Owens

### **Print Name and Title**

8/19/2023

### **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	

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Daniel & Carolyn Ferris**  
 Address **2312 Leeward Shore Drive**  
 Public Hearing **October 23, 2023**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**4**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with associated patio, outdoor kitchen and firepit area, and walkways.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 48, Page 15  
 Recorded 10/6/1959

**GPIN**

2500-00-8183

**SITE AREA**

20,408 square feet or 0.408 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

19,919 square feet or 0.457 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,711 square feet or 29 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,762 square feet or 39 percent of site

**Area of Redevelopment in RPA**

682 square feet

**Area of New Development in RPA**

1,951 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

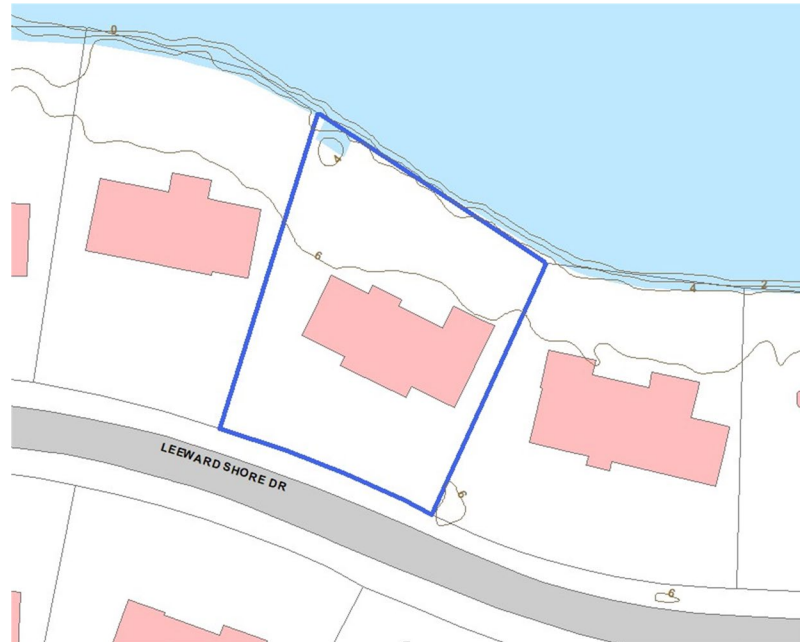
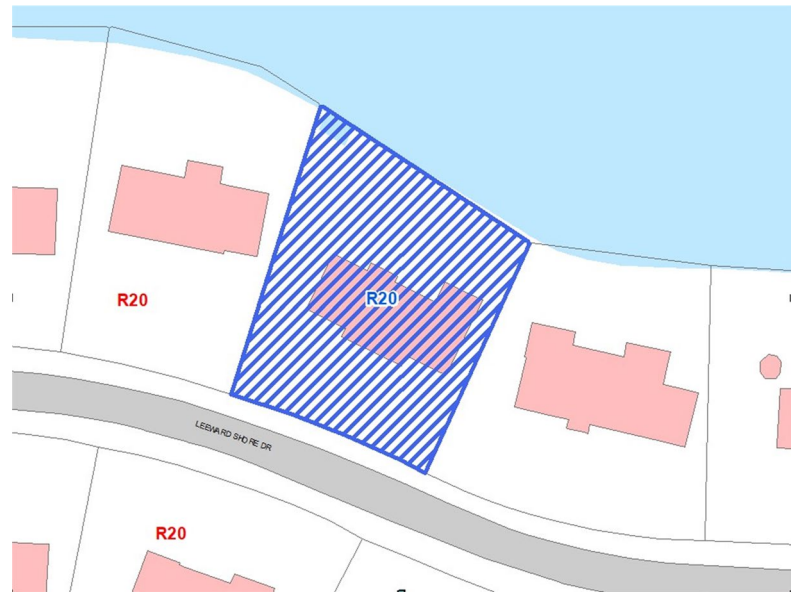
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Existing driveway with front walkway
- Shed and ramp
- Planting bed block wall

### Construction Details

- Swimming pool with associated paver patio
- Driveway redevelopment in the same footprint
- Fire pit area and steppingstone walkway

## CBPA Ordinance Variance History

No known 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 bulkhead.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Staff is of the opinion that the cedar tree proposed for removal should be preserved as it would not be impacted by any of the construction of the proposed improvements.

## 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 50-foot seaward buffer of the Resource Protection Area (RPA) encompasses the entire rear yard of the subject lot with minimal existing canopy cover present with much of that rear yard devoted to turf. The applicant desires to construct a swimming pool with associated paver patio area, outdoor kitchen, shed, and fire pit area along the rear of the existing single-family residence. Additionally, the driveway and front walkway are proposed to be redeveloped in the

Daniel & Carolyn Ferris

Agenda Item 4

Page 50

same footprint. As shown on the submitted CBPA exhibit, the proposed swimming pool and patio area are situated directly adjacent to the existing covered deck off the rear of the residence and a mulched walkway with a steppingstone path is proposed to connect the patio area to the existing wood dock.

As submitted, the request adds approximately 1,951 square feet of new impervious cover within the RPA and encroaches into both the seaward and landward portions of the RPA buffer. The dimensions of the proposed swimming pool (15 feet by 30 feet) are smaller than the average residential swimming pool (16 feet by 32 feet) and Staff is of the opinion that the proposed patio has been submitted to be modest in size to reduce the encroachment into riparian buffer. With the entire rear yard of the lot encumbered by the 50-foot seaward buffer, Staff is of the opinion that these circumstances pose challenges towards any redevelopment on the lot. As such the applicant's agent has provided a buffer restoration plan with approximately 4,226 square feet of new vegetation planted throughout the RPA on the lot, which is approximately 324 square feet more than required.

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 1971 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and adds that similar improvements are found on adjacent properties within 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 improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts."* Staff adds that while redevelopment for this project is low, given that there are few existing accessory structures on the lot, the proposed swimming pool and patio areas are proposed smaller than the standard to reduce impervious cover numbers within the RPA.
- 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 and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate treatment from the new improvement."* Staff is of the opinion that the buffer restoration offered with this request and the size of the proposed improvements will ensure the variance request will not be a substantial detriment to water quality.
- 5) *"Bioretention beds and buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) The existing 36-inch Cedar tree delineated as being removed on sheet C-2.0 of the Chesapeake Bay Preservation Area (CBPA) Exhibit shall be preserved and the necessary tree protection provided on the revised site plan. Said tree protection shall be installed prior to any land disturbance and remain in place until all improvements are installed, and the site is stabilized.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) 4,226 square feet of buffer restoration shall be installed on the lot per the conceptual buffer restoration plan provided with the CBPA Exhibit.

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: **5 canopy trees, 5 understory trees, 20 large shrubs, and 30 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits shall be contained within the limits of the wire reinforced silt fence. **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.**

- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed walkways, exclusive of the walkway to the front door, shall be constructed of organic material (mulch), and maximum of 4 feet in width, with steppingstones not to exceed 50 percent of the path area. Said walkway shall be relocated outside of the dripline of the existing cedar tree to be preserved.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$447.10 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 15, 2023, prepared by WPL, signed August 16, 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.

\*\* 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 – Color Analysis

**TOTAL LOT AREA**  
20,408 SQ. FT.

**TOTAL LOT AREA OUTSIDE OF**  
**WATER, WETLAND, MARSH, REVETMENT**  
19,919 SQ. FT.

**TOTAL IMPERVIOUS**  
**PRE-DEVELOPMENT**  
6,711 SQ. FT. (28.7%)

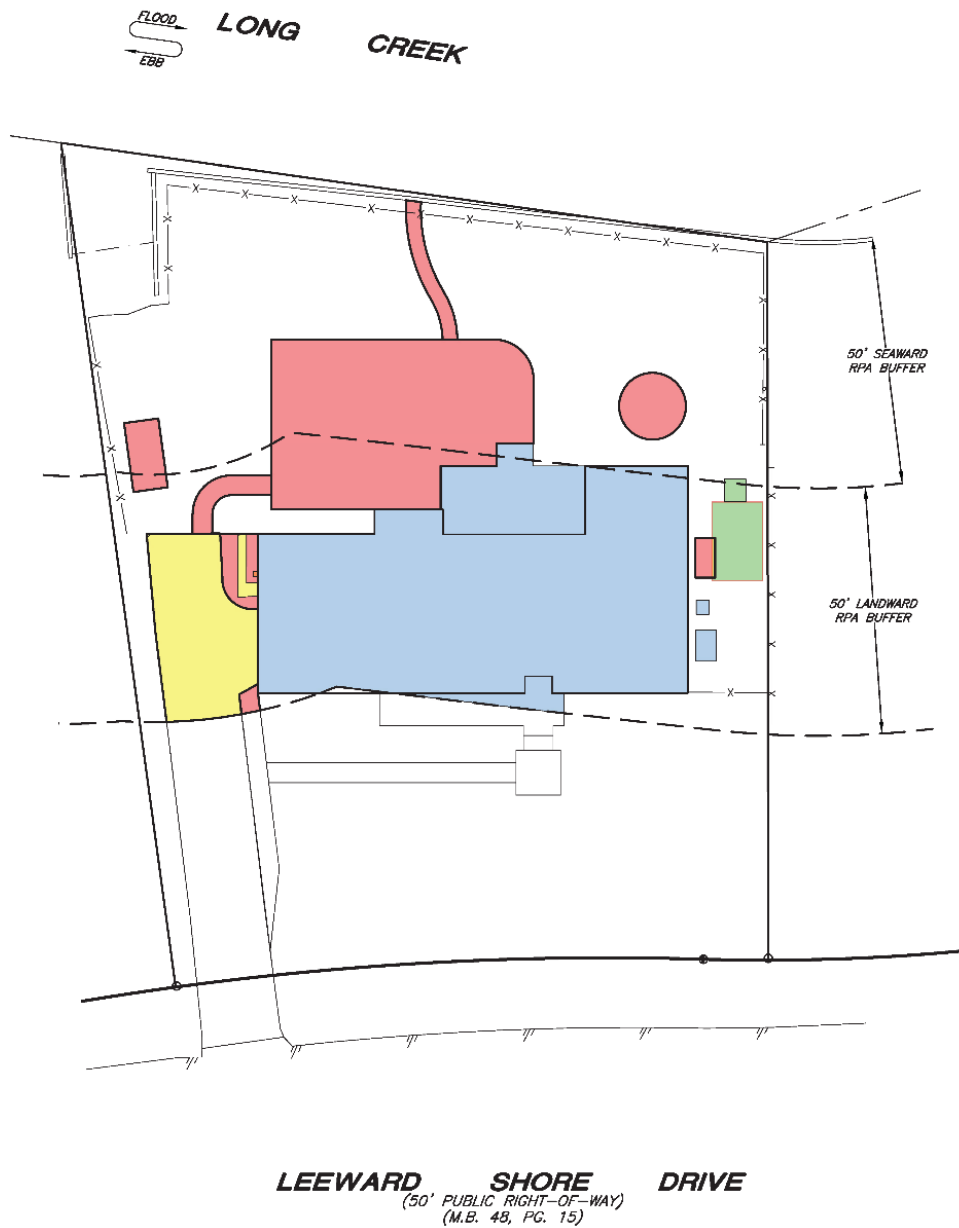
**TOTAL IMPERVIOUS**  
**POST-DEVELOPMENT**  
7,917 SQ. FT. (39.7%)

 **EX. IMPERVIOUS IN RPA**

 **REDEVELOPMENT IN RPA**  
662 SQ. FT.







 **NEW IMPERVIOUS IN RPA**  
1,951 SQ. FT.

 **REMOVED IMPERVIOUS IN RPA**  
365 SQ. FT.

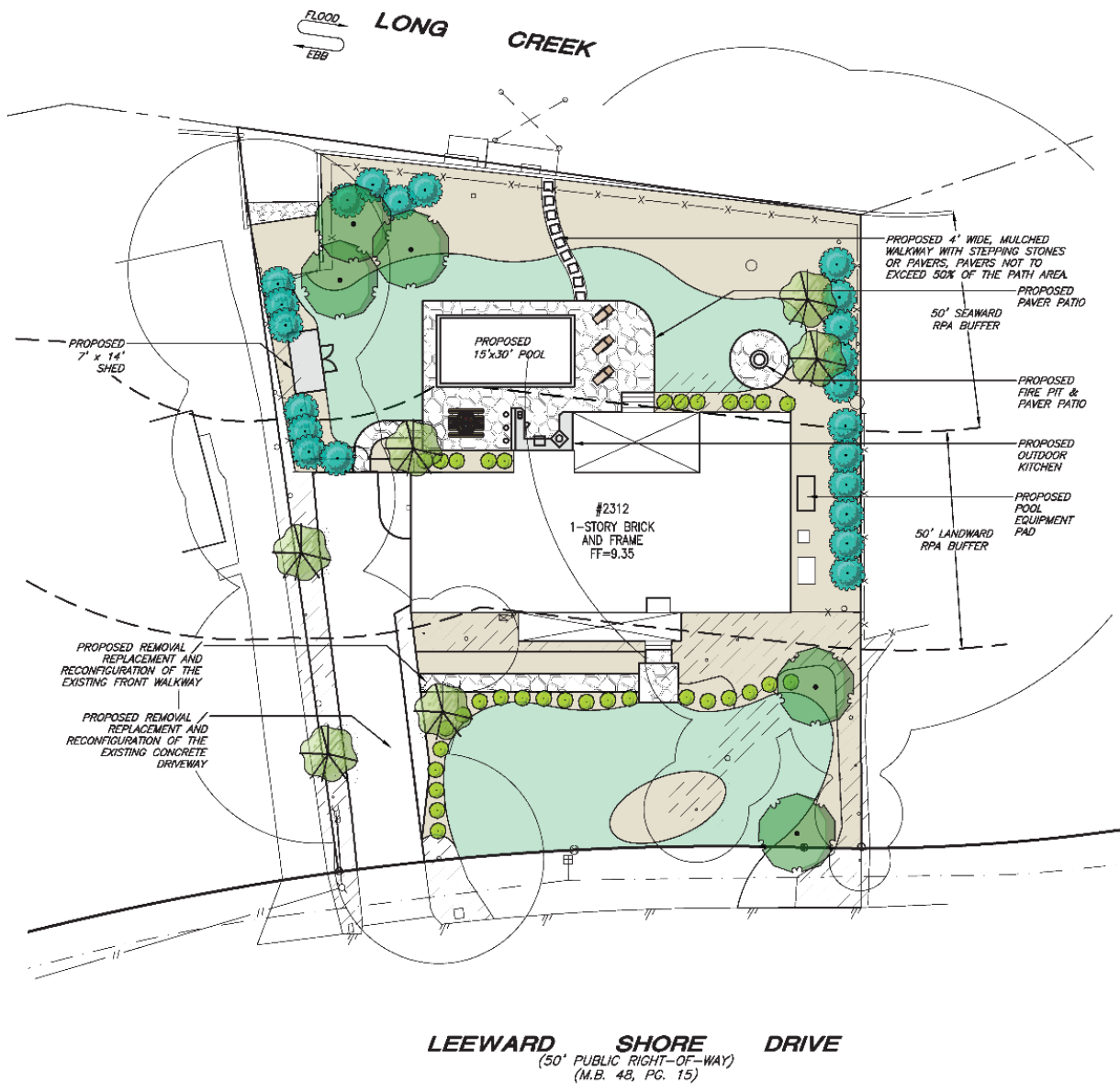


# Buffer Restoration Plan

## CONCEPT PLANT SCHEDULE

-  CANOPY TREES 5
-  UNDERSTORY 6
-  LARGE SHRUB 22
-  SMALL SHRUB 33
-  EX. PLANTING BEDS
-  PROPOSED BUFFER MITIGATION = +4,226 SF

MERIDIAN SOUTH (E)  
(M.B. 48, PG. 15)



# 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** Daniel E. Farris & Carolyn C. Farris

**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.

Atlantic Bay Mortgage Group, LLC

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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

# Disclosure Statement



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

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

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.**

*[Handwritten Signature]*

Applicant Signature

DANIEL E. FARRIS

Print Name and Title

8/31/23

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 **William & Diana Gardner**  
 Address **2637 S. Kings Road**  
 Public Hearing **October 23, 2023**  
 City Council District **District 8**, formerly Beach

Agenda Item

**5**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with associated patio & walkways and relocate existing sheds.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 46, Page 4  
 Recorded 12/3/1958

**GPIN**

1497-55-8852

**SITE AREA**

20,983 square feet or 0.482 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

20,903 square feet or 0.480 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,413 square feet or 26 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,001 square feet or 33 percent of site

**Area of Redevelopment in RPA**

85 square feet

**Area of New Development in RPA**

1,865 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

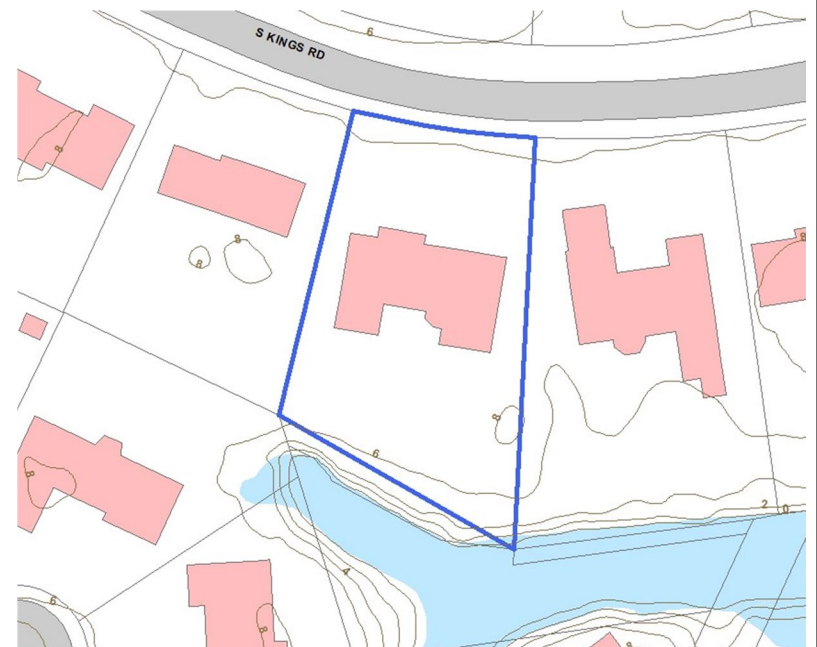
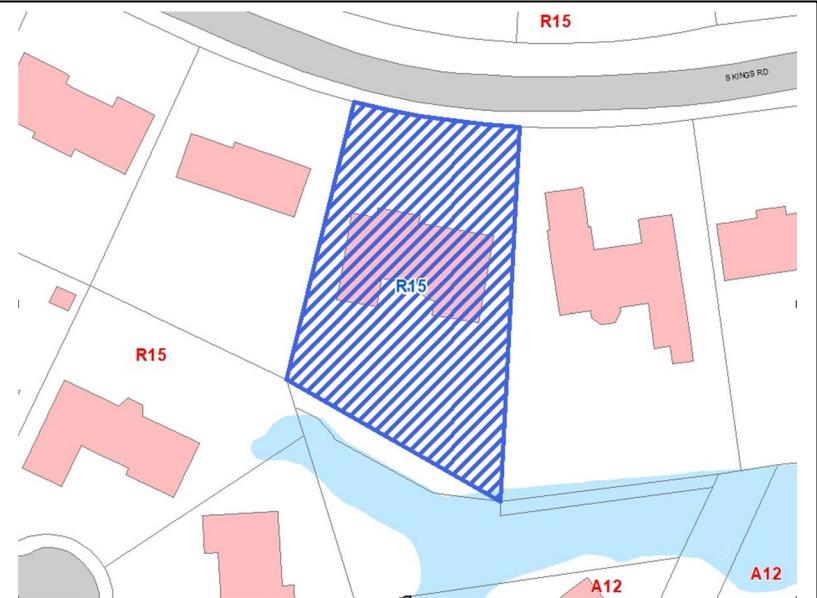
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Relocate movable shed
- Demolish plastic shed, planters, and concrete

### Construction Details

- Swimming pool and associated patio
- Concrete pad and steppingstone walkway and concrete sidewalk

## 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)

Udorthents Series (well-drained and moderately well-drained soils)

### Shoreline

Shoreline is stabilized by a wooden bulkhead.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 7
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: During the site visit, Staff performed a visual analysis of the existing canopy cover of the lot. Staff is of the opinion that several of the Pine trees within the 100-foot Resource Protection Area (RPA) buffer are reaching their life expectancy and are exhibiting signs of declining healthy growth. However, Staff is of the opinion that several of the trees proposed for removal are relatively healthy and are far enough from the limits of construction so that the critical root zones are not impacted. Therefore, Staff has included the mitigation for said trees to be accounted for in the buffer restoration calculations in recommended condition 4 of this Staff report.

## 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 is proposing to construct a swimming pool with associated concrete pool patio surround and sidewalk within the 50-foot landward buffer of the Resource Protection Area (RPA) on the lot. A mulched pathway with steppingstone walkway is proposed to provide access from the swimming pool area to the existing wood dock. In addition to the new improvements associated with this variance request, the applicant proposes to move two existing storage sheds out of the 50-foot seaward buffer and relocate them adjacent to the patio area. Although this variance request removes all existing impervious cover from the 50-foot seaward, the overall new amount of impervious cover of the lot increases from 26 percent to 34 percent. Regarding the increase in impervious cover on the lot, Staff is of the opinion that the applicant's agent has situated those improvements in the least sensitive portion of the RPA and within proximity to the existing residence limiting land disturbance. Staff recommends the variance request be approved subject to the following conditions.

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 1958 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff is of the opinion that similar improvements are found throughout the neighborhood and would not confer a special privilege to the owner given the location of the proposed improvements on the lot and the location of the 100-foot buffer.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts. The owner is also looking to relocate two (2) existing frame sheds outside of the 50' Seaward buffer."* Staff is of the opinion that the variance request is the minimum necessary to afford relief given the subject recommended conditions found in this staff report.
- 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 and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate treatment from the new improvement."* Staff is of the opinion that given the location of the proposed improvements, the retreat of impervious cover out of the 50-foot seaward buffer, and the recommended conditions in this staff report, the variance request will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) *"Bioretention beds and Buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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 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: **12 canopy trees, 9 understory trees, 26 large shrubs, and 39 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) 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 \$427.39 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 June 15, 2023, prepared by WPL, signed September 1, 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.

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

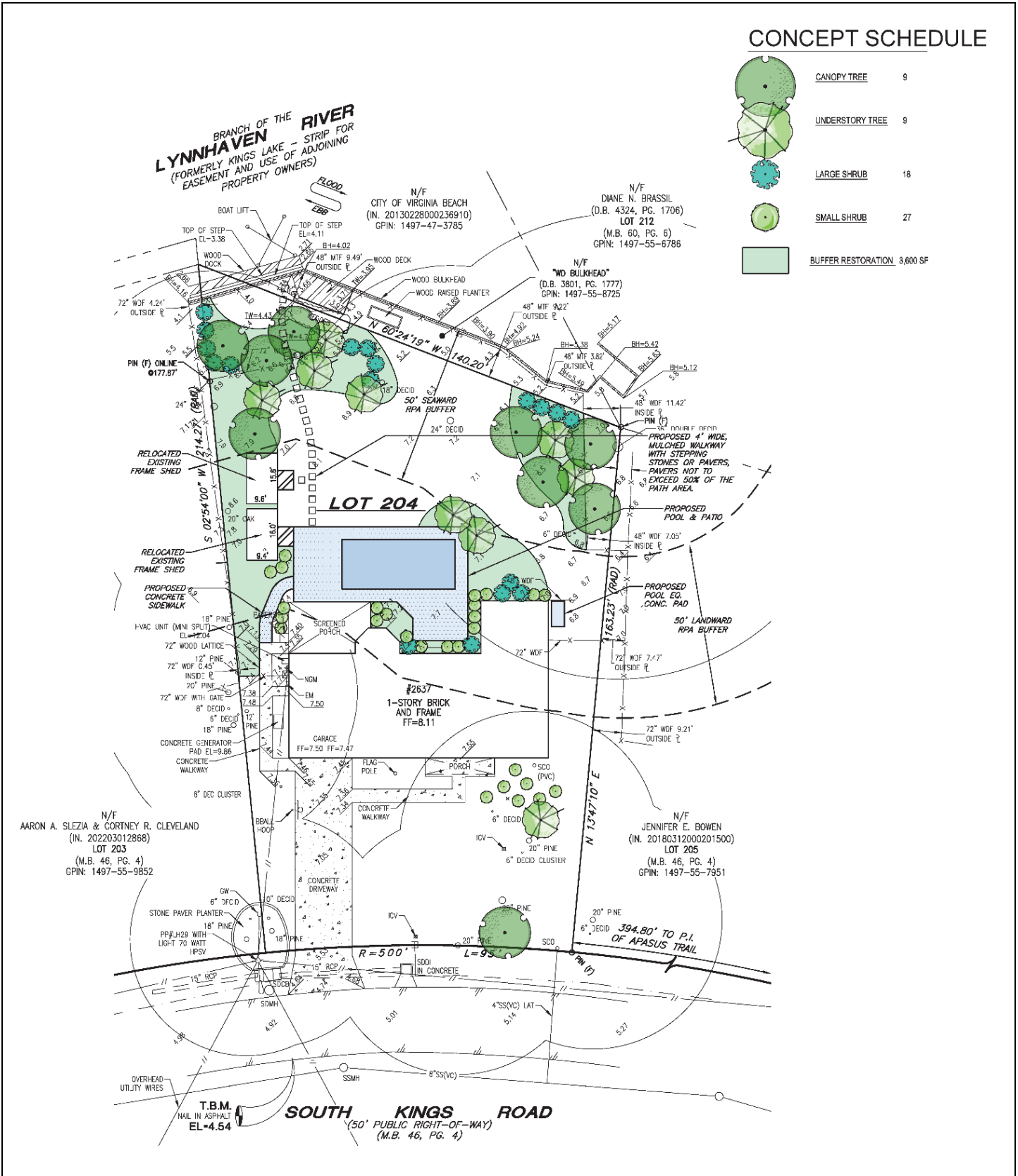
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





# CBPA Exhibit – Proposed Improvements with Landscape Plan



**CBPA Exhibit – Color Analysis**

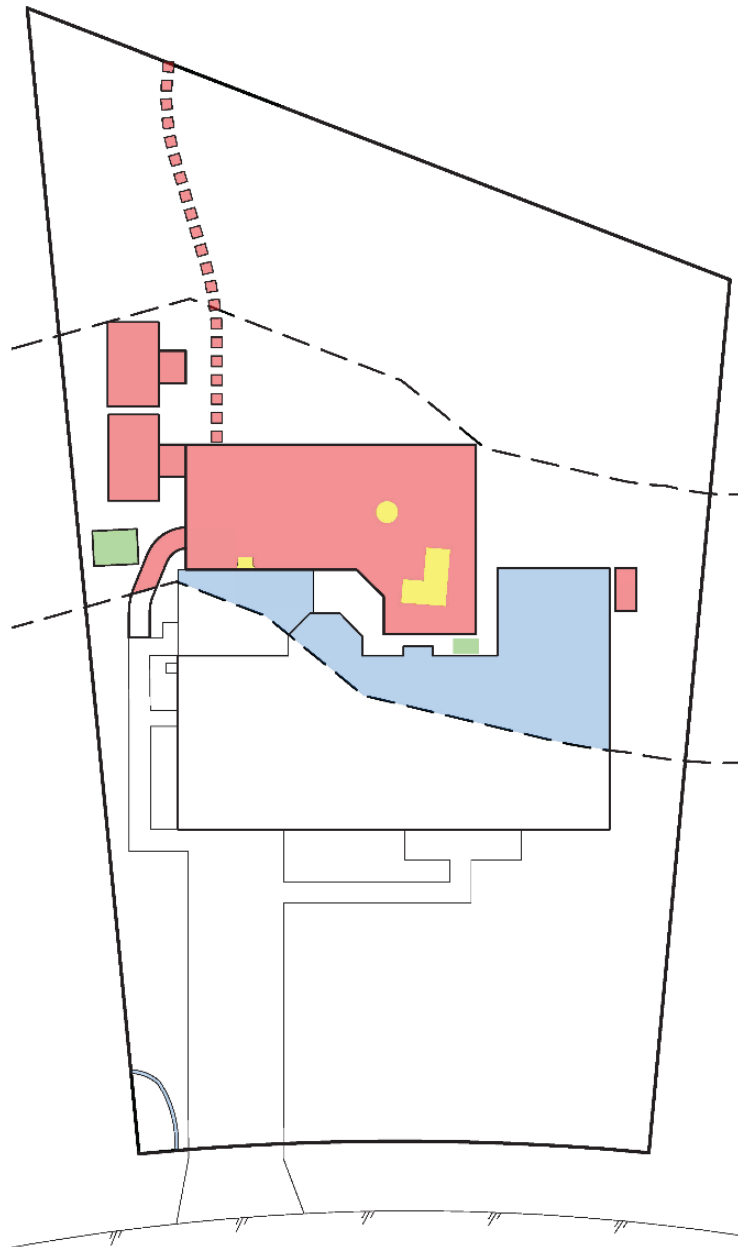
**TOTAL LOT AREA**  
20,983 SQ. FT.

**TOTAL LOT AREA OUTSIDE OF WATER,  
MARSH, WETLAND, & REVETMENT**  
20,903 SQ. FT.

**TOTAL IMPERVIOUS  
PRE-DEVELOPMENT**  
6,413 SQ. FT. (26%)

**TOTAL IMPERVIOUS  
POST-DEVELOPMENT**  
7,001 SQ. FT. (33.5%)

- EX. IMPERVIOUS IN RPA**
- REDEVELOPMENT IN RPA**  
85 SQ. FT.
- NEW IMPERVIOUS IN RPA**  
1,865 SQ. FT.
- REMOVED IMPERVIOUS IN RPA**  
87 SQ. FT.



# 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** Diana N Gardner & William W Gardner

**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.

Bank of America, NA

---

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

Yes  No

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

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

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

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

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

WPL

---

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

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

# Disclosure Statement



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

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

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

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

WPL

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

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

### Applicant Signature

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

*William V. Gardner*

Applicant Signature

*William V. Gardner*

Print Name and Title

*9/5/2023*

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



**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, gravel parking area, swimming pool with associated pool surround & patio area, and replace & reconfigure existing drive.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 60, Page 49  
 Recorded 4/9/1964

**GPIN**

1457-71-7062

**SITE AREA**

24,461 square feet or 0.562 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

19,396 square feet or 0.445 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,718 square feet or 30 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,461 square feet or 38 percent of site

**Area of Redevelopment in RPA**

301 square feet

**Area of New Development in RPA**

2,365 square feet

**Location of Proposed Impervious Cover**

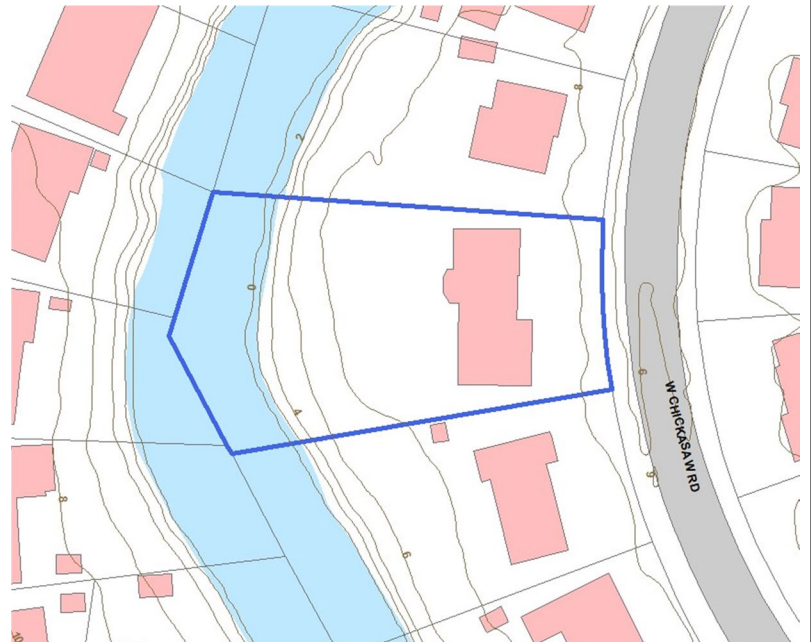
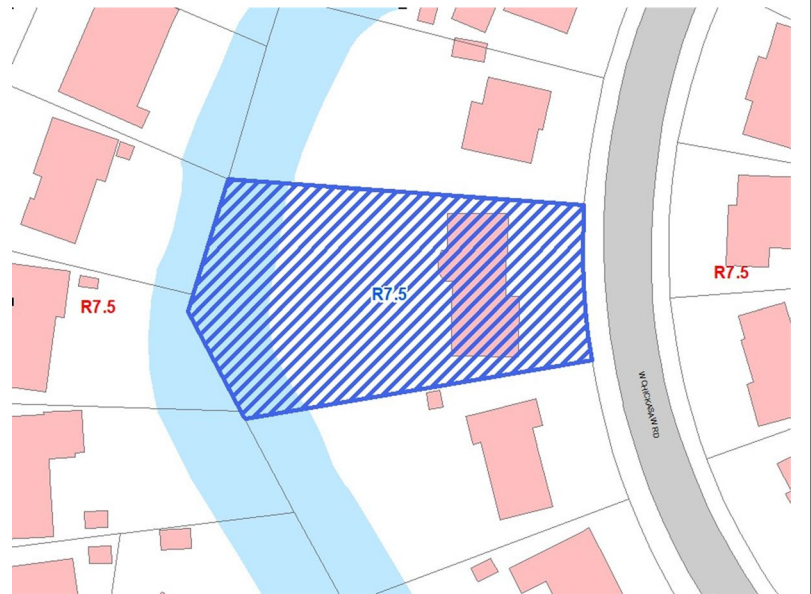
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Existing patio, koi pond, walkways, and concrete driveway

### Construction Details

- Building addition with covered porch
- Swimming pool with associated patio and pool deck and walkways
- Reconfigured circular driveway

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Chapanoke Series (deep, poorly drained soils)

Udorthents Series (well-drained and moderately well-drained soils)

### Shoreline

Shoreline is stabilized by a wood bulkhead.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The proposed tree removals falls outboard of the Resource Protection Area (RPA) and sits in the area where the circular driveway is proposed. Staff is in support of the removal of this tree.

## 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

This variance request is a proposal to construct a building addition and covered porch on the south side of the existing primary structure and a swimming pool and associated concrete pool decking off the rear of the residence. As submitted, the proposed improvements increase the overall impervious cover of the lot from 5,718 square feet to 7,461

Blake Callaghan & Angela Cerda

Agenda Item 6

Page 74

square feet (30 percent to 38 percent) of the lot area above water/wetlands. As shown on the submitted CBPA exhibit, all of the proposed new impervious cover with this request has been situated within the landward and variable width buffer portions of the Resource Protection Area (RPA).

Upon review of the proposed CBPA exhibit, Staff expressed concerns with the extent of the proposed pool decking area encroaching into the 100-foot buffer. Coordinating with the applicant's agent, the pool decking area was reduced by approximately 95 square feet at the northern portion of the lot. Although the applicant has proposed no encroachment within the environmentally sensitive 50-foot seaward buffer of the lot, given the proposed impervious cover of the site, Staff is of the opinion that the overall impervious cover of the site can be reduced to meet the minimum necessary to afford relief and offers the recommended conditions to ensure the variance request would not be of substantial detriment to the water quality of the Chesapeake Bay. Additionally, the lot has little to no canopy coverage and the applicant has proposed to provide 1,340 square feet of riparian meadow along the shoreline as well as 3,580 square feet of trees and shrubs to provide a variety of buffer restoration on the sparsely vegetated lot. Coupled with best management practices, buffer restoration, removal of 878 square feet of existing impervious cover, and the recommended conditions, 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 1964 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff is of the opinion that the proposed improvements are similar in nature to those found on surrounding properties within 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 improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts and we are using a permeable gravel system (Gravel\_Pav2) to lessen the impervious area in the RPA."* Staff is of the opinion that subject to the recommended conditions in this staff report that the variance is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate treatment from the new improvement."* Staff is of the opinion that the proposed best management practices coupled with the required buffer restoration and recommended conditions shall ensure the variance request will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) *"Bioretention beds and Buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the creek"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) The overall impervious cover of the site shall not exceed 36 percent of the lot area outside of water and wetlands.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) 3,580 square feet of buffer restoration shall be installed on the lot in substantial compliance with the Layout Plan and Concept Plant Schedule provided with the Chesapeake Bay Preservation Area (CBPA) Exhibit.

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: **5 canopy trees, 7 understory trees, 24 large shrubs, and 36 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be 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. **Canopy 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 and be a minimum of 40 feet spaced from each other to promote healthy canopy growth.** 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) The proposed driveway/driveway expansion shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) **\*\*** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$563.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated May 3, 2023, prepared by WPL, signed August 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.

**\*\* 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.

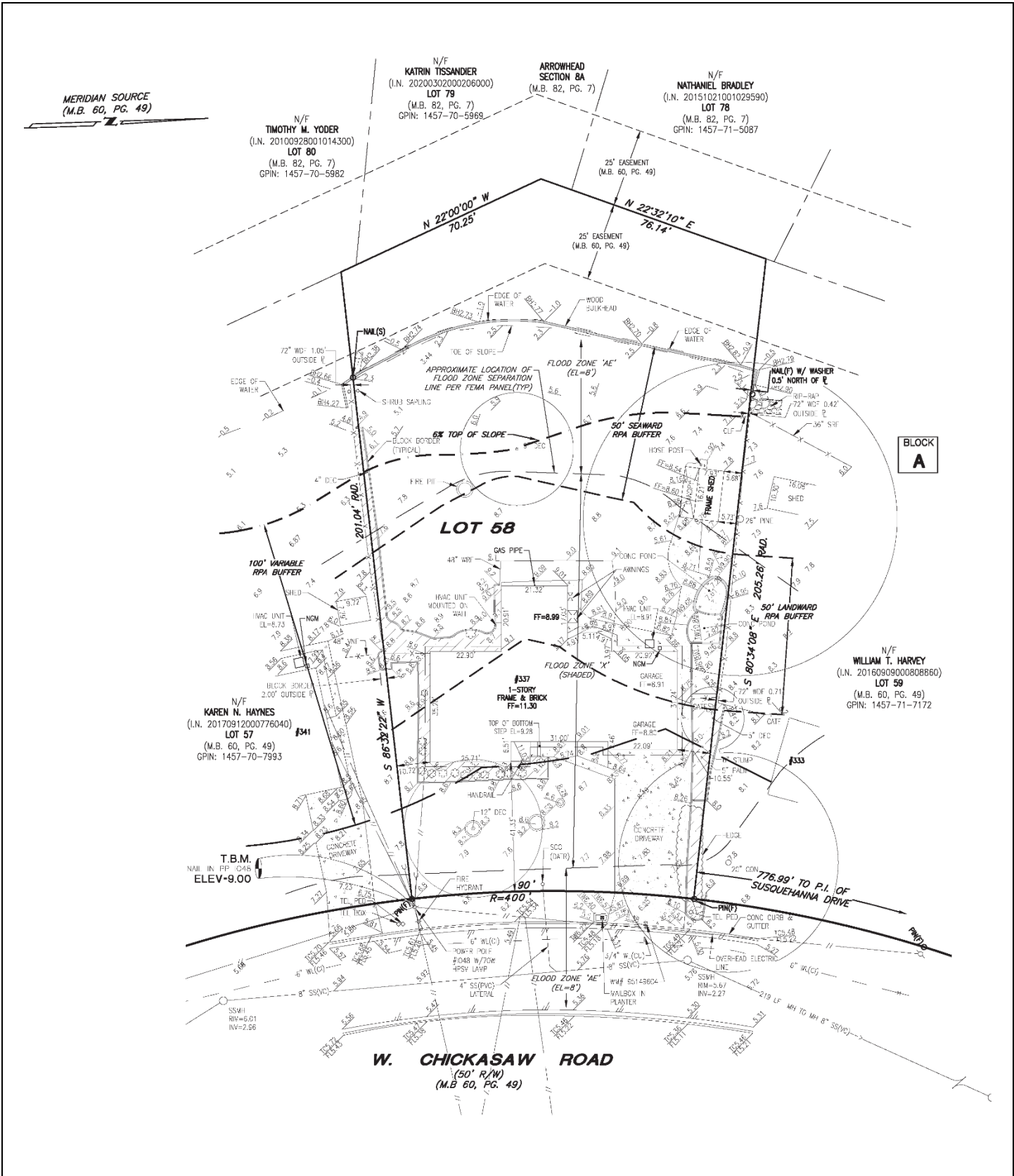
**\*\*\*NOTE:** The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation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

Site Aerial












# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements with Buffer Restoration Plan

## CONCEPT PLANT SCHEDULE

	CANOPY TREE	5
	UNDERSTORY TREE	7
	LARGE SHRUBS	24
	SMALL SHRUBS	36
	EX. PLANTING BEDS	
	RIPIARIAN MEADOW, APX. 1,340 SF	
	BUFFER MITIGATION BEDS. APX. +3,390 SF	

MERIDIAN SOURCE  
(M.B. 60, PG. 49)



# CBPA Exhibit – Color Analysis

**TOTAL LOT AREA**  
24,461 SQ. FT.

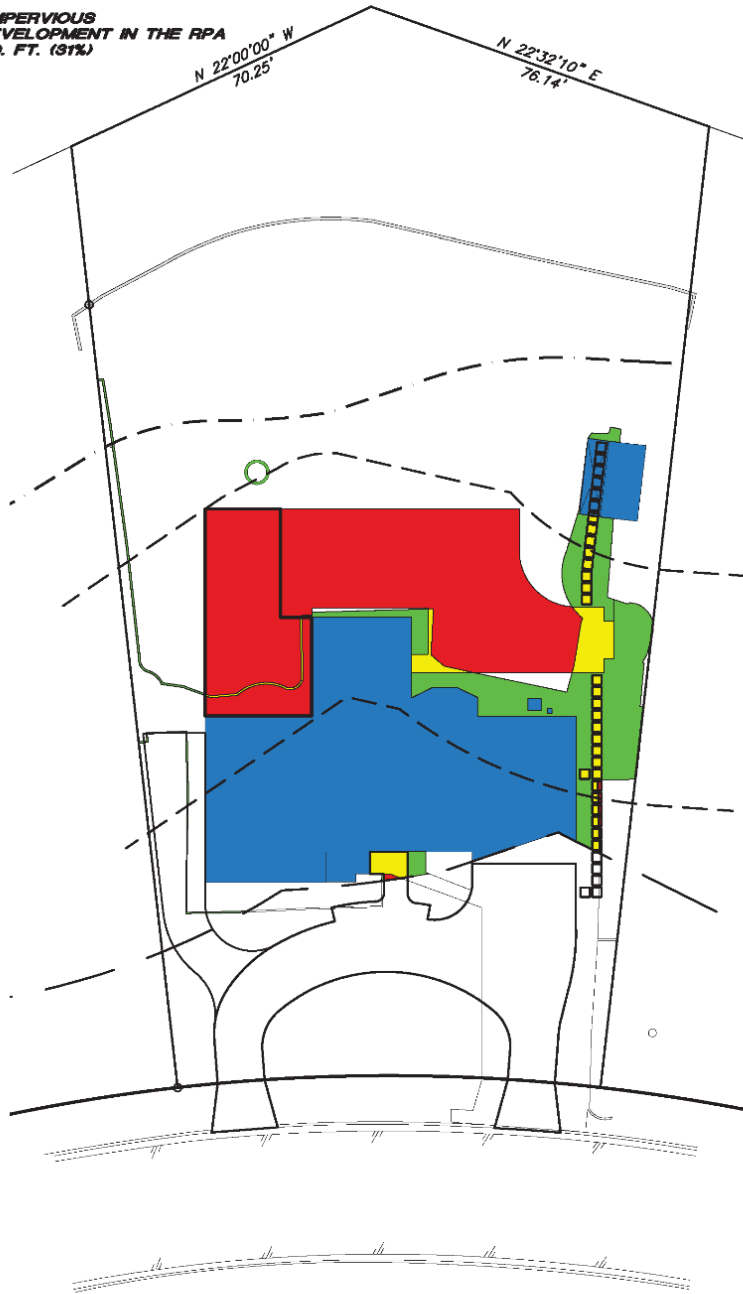
**TOTAL LOT AREA OUTSIDE OF WATER, WETLAND, MARSH, REVETMENT**  
19,399 SQ. FT.

**TOTAL IMPERVIOUS PRE-DEVELOPMENT**  
6,718 SQ. FT. (30%)

**TOTAL IMPERVIOUS POST-DEVELOPMENT**  
7,461 SQ. FT. (38%)

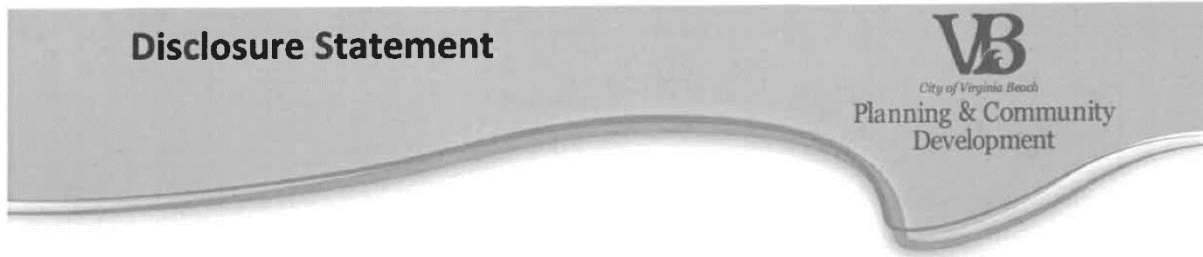
**TOTAL IMPERVIOUS POST-DEVELOPMENT IN THE RPA**  
6,095 SQ. FT. (31%)

- EX. IMPERVIOUS**
- REDEVELOPMENT**  
301 SQ. FT.
- NEW IMPERVIOUS**  
2,366 SQ. FT.
- REMOVED IMPERVIOUS**  
878 SQ. FT.



**W. CHICKASAW ROAD**  
(50' R/W)  
(M.B. 60, PG. 49)

# 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** Blake Callaghan & Angela G Cerda

**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.

Atlantic Bay Mortgage Group, LLC

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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

# Disclosure Statement



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

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

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.

*Blake T. Callaghan*

Applicant Signature

Blake T. Callaghan

Print Name and Title

8-30-23

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 **Shane & Maria Sullivan**  
 Address **1508 McCullough Lane**  
 Public Hearing **October 23, 2023**  
 City Council District **District 6**

Agenda Item

**7**

**Property Owner’s Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 126, Page 20  
 Recorded April 17, 1978

**Lot Description**

Alanton North, Lot A

**GPIN**

2409-91-7263

**Current Property Owner**

Shane & Maria Sullivan

**DESCRIPTION OF NONCOMPLIANCE**

**Unauthorized Improvements**

- Unauthorized construction of an accessory structure (Tiki bar) with associated patio area on the property.

**Location of Unauthorized Improvements**

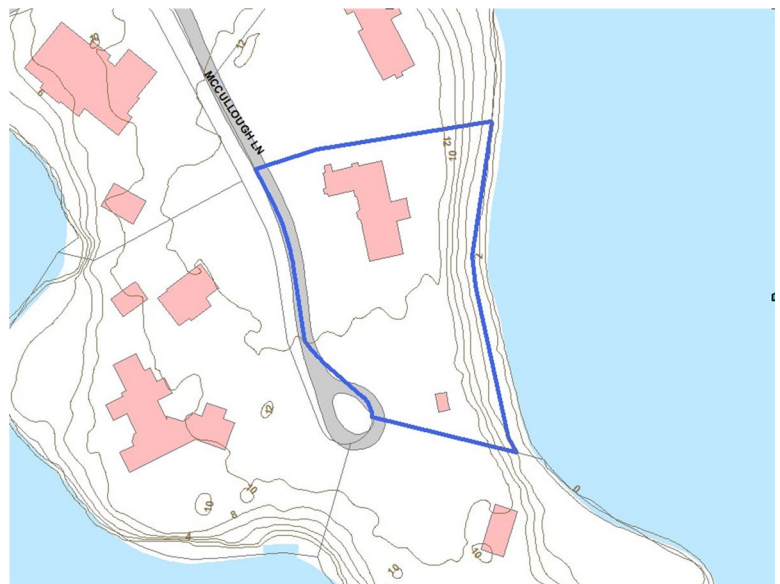
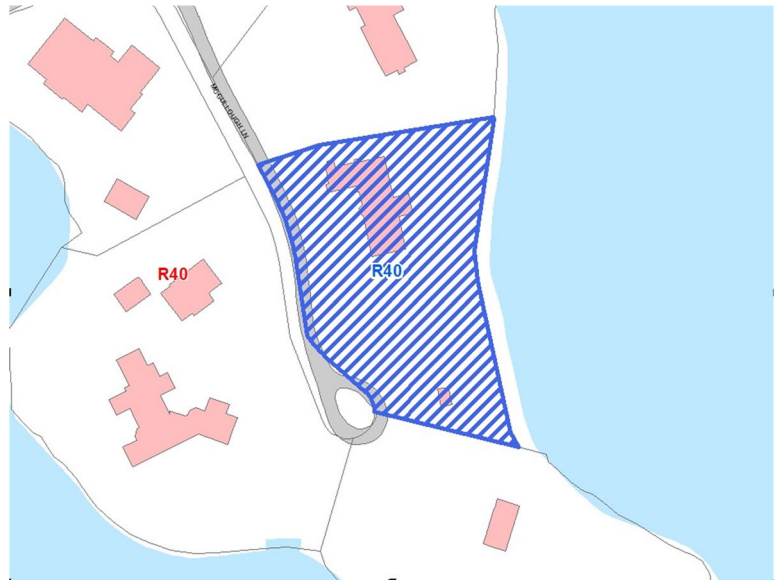
50-foot Landward Buffer

**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**

Less than 2,500 square feet



## CBPA Ordinance Variance History

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

- September 25, 2023, Board Public Hearing

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

## History of Noncompliance

To Staff's knowledge, Shane & Maria Sullivan have no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

## Chronology of Noncompliant Event

July 7, 2023	Permits & Inspections Staff observed the construction of a detached structure being performed on the property located at 1508 McCullough Lane while conducting a scheduled inspection request for an adjacent property. Field research was performed, and no permits were found filed with the Department of Planning & Community Development for the improvements on the lot. The lot was posted with a Stop Work Order.
July 7, 2023	The property owner uploaded documents through the City's Accela Citizen Access (ACA) online permitting portal to obtain a building permit for the unauthorized improvements on the lot. The application associated with the building permit submittal stated <i>"I am building a Tiki shed at my property on McCullough Lane. I was issued a stop work order and I have a wedding at my home on 7/15/23. How do I proceed so I can be ready for my son's wedding. I was not aware that I needed permits for a shed. We did decide last minute to add a toilet for and tied that into the sewer system with a grinder pump. I could really use some help here. I have over built it so far as I want it to be hurricane proof! I am very sorry. Please call me."</i>
July 20, 2023	Permits & Inspections Staff left a Notice of Violation informing property owner that the necessary compliant plans need to be submitted to the Department for review and approval with all permits obtained for the unauthorized improvements.
July 21, 2023	The property owner uploaded documents through the City's ACA online permitting portal to obtain a plumbing permit for a toilet and sink associated with the unauthorized improvements on the lot.
August 1, 2023	Permits & Inspections Staff performed a status check on the property and reported "no changes have occurred." The lot was posted with a second Stop Work Order.
August 7, 2023	Permits & Inspections Staff performed a status check on the property and reported "gave the daughter a Notice of Violation stating that the Permits & Inspections Office needs to be contacted for information regarding pending permits."
August 7, 2023	Property owner emails the Department of Planning & Community Development, Zoning Division to obtain information regarding the necessary guidance to obtain approval for the unauthorized improvements on the lot.



- August 8, 2023 Property owner sends a second email to Zoning to confirm receipt of previous email.
- August 8, 2023 Zoning responded to the property owner stating *"I hope this email finds you well! Your property is located within the RPA. I will need the Chesapeake Bay board to approve the project prior to my approval. Please contact PJ Scully or Cole Fisher at 757-385-4621. I have CC'd both on this email. Thank you for your time and patience!"*
- August 8, 2023 Property owner emailed Chesapeake Bay Preservation Area (CBPA) Staff to obtain guidance regarding CBPA approval process stating *"My wife and I need your help in navigating the RPA issue. Any chance we could meet at our home to discuss the possibility of this being approved administratively. Our home's impervious area, even with the tiki bar, has got to be only approximately 10%. When we bought the house in 2017, we decided to fix this cottage style home up, because it is so small and easy to maintain, (except the yard!, it kicks my butt every weekend. 😬🔪)"*
- August 9, 2023 CBPA Staff responded to the property owner inquiry stating that *"Given the location of the proposed improvements being within the 100-foot Resource Protection Area (RPA) buffer of the Chesapeake Bay watershed, Staff is unable to approve administratively. Encroachment into the 100-foot RPA buffer requires a variance to the city's Chesapeake Bay Preservation Area (CBPA) Ordinance which may only be granted by the CBPA Board. Typically, in these types of situations a Show Cause letter is issued to the property owner and contractor. Did your contractor obtain a building permit from Permits & Inspections or inquire with the city regarding the proposed improvements?"*
- August 14, 2023 CBPA Staff received an email from a consultant stating that they have been retained by the property owner to assist with submitting the necessary documentation to go through the CBPA Variance process for the unauthorized improvements on the lot.
- August 17, 2023 Permits & Inspections Staff performed a status check on the property and reported *"no changes have occurred."*
- August 30, 2023 CBPA Staff emailed the consultant inquiring on the unauthorized improvements and the status of document preparation. Staff was informed that a contract was signed and surveying the lot is scheduled.
- September 14, 2023 CBPA Staff sent a Show Cause letter to the property owner to serve as written notice to appear before the CBPA Board at the public hearing scheduled Monday, September 25, 2023.
- September 25, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 1508 McCullough Lane to the October 23, 2023 CBPA Board public hearing. The motion passed.

## Evaluation and Recommendation

### Relative Degree of Deviation

The subject activity of noncompliance, unauthorized construction of an accessory structure (Tiki bar) with associated patio area on the property was performed without Staff review, approval and permitting. Land disturbance associated with the unauthorized improvements is less than 2,500 square feet.

**Environmental Impact**

The subject area of noncompliance lies within the 50-foot landward buffer of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) adjacent to a tidal waterway.

The subject activity of noncompliance does not appear to have disturbed a substantial area of existing forest floor and no signs of sediment migration into the adjacent tidal feature were present when Staff visited the site.

**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 low.

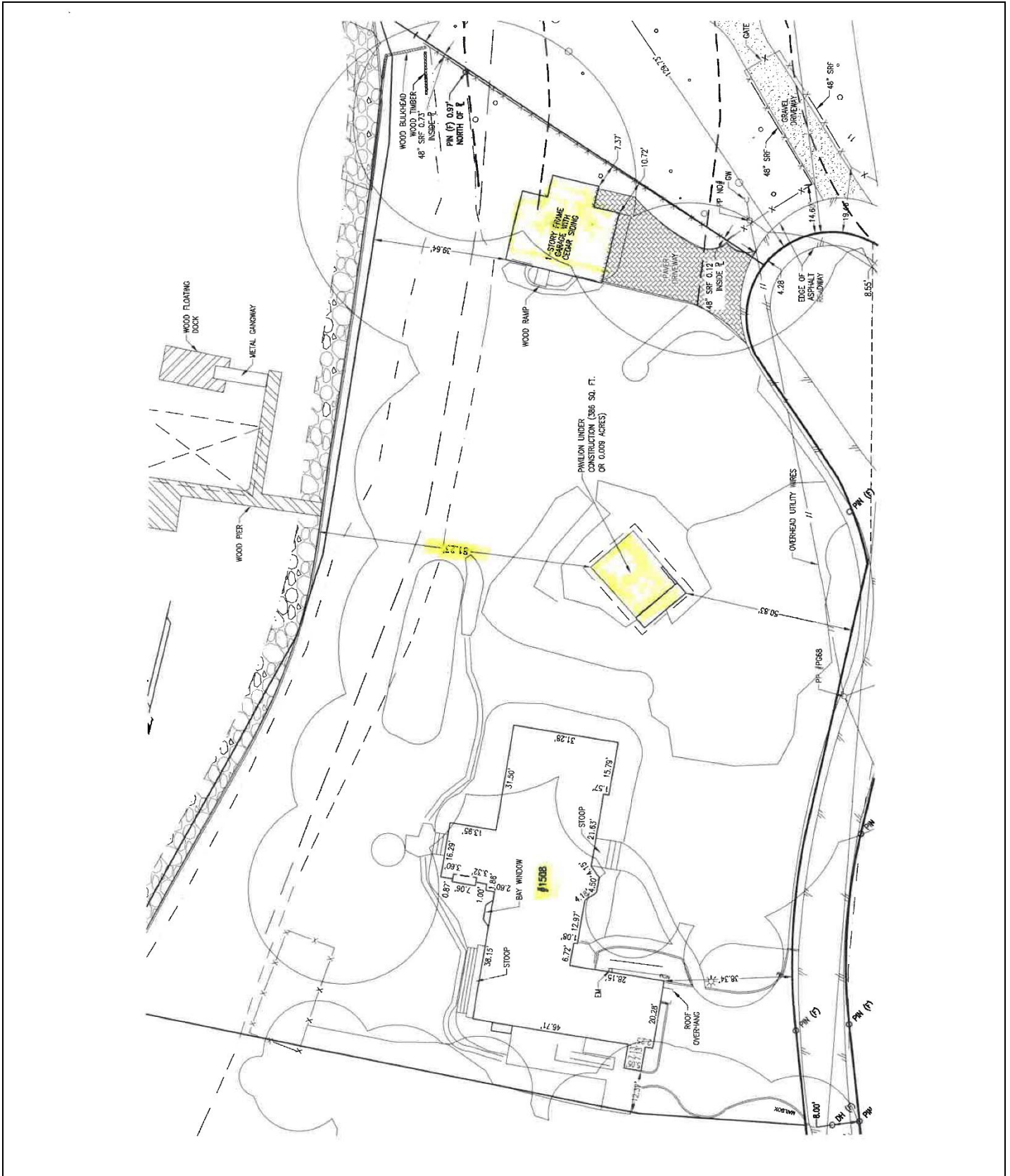
Site Aerial



**CBPA Exhibit – Approximate Area of Unauthorized Improvements**



# CBPA Exhibit – Plan Submitted with Building Permit







Applicant & Property Owner **Nilkanth and Kalpana Patel**  
 Address **909 Hall Haven Drive**  
 Public Hearing **October 23, 2023**  
 City Council District: **District 8**

Agenda Item

**8**

**Property Owner’s Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

Deed Book 2526, Page 780 & 781  
 Recorded 07/30/1986

**Lot Description**

Trant Berkshire Area, Lot 4, Robinhood Forest,  
 909 Hall Haven Drive

**GPIN**

1498-42-6983

**Current Property Owner**

Nilkanth N. & Kalpana N. Patel

**DESCRIPTION OF NONCOMPLIANCE**

**Unauthorized Improvements**

- Unauthorized development within the Resource Protection Area (RPA) with the expansion of existing accessory structures.

**Location of Unauthorized Improvements**

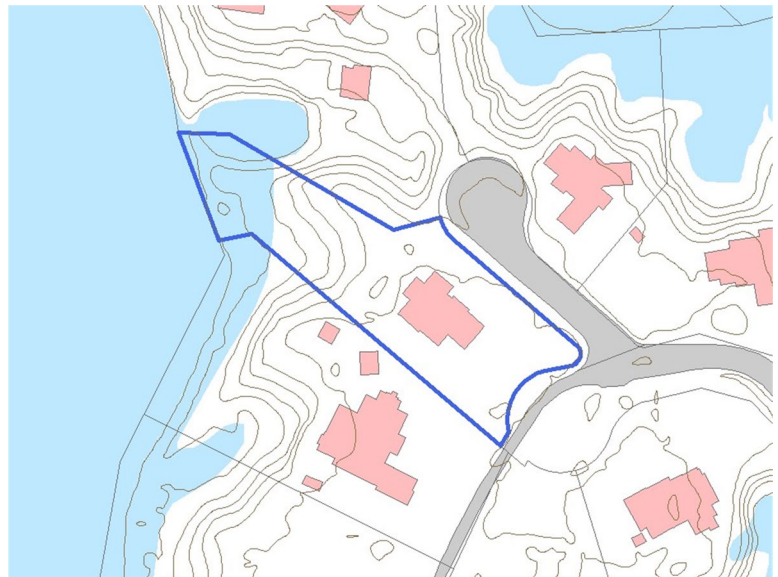
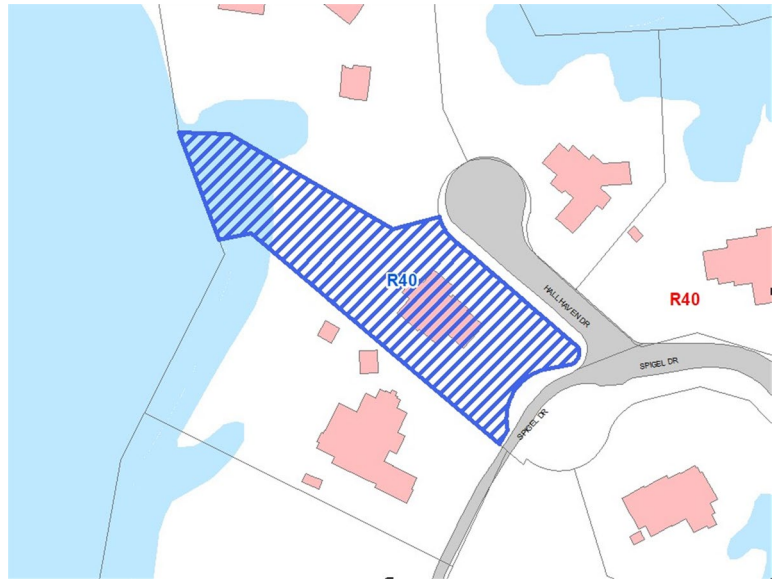
50-foot Landward Buffer

**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**

Less than 2,500 square feet



## CBPA Ordinance Variance History

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

- August 28, 2023, Board Public Hearing

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

A CBPA Administrative Variance was authorized on September 10, 2021 for an addition to the primary structure, expansion of the existing driveway, and paver sidewalk.

## History of Noncompliance

To Staff's knowledge, Nilkanth & Kalpana Patel have no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the description of noncompliance.

## Chronology of Noncompliant Event

September 2, 2021	<p>A preliminary Project Request (PPR) was submitted to the Department of Planning and Community Development for the following improvements.</p> <ul style="list-style-type: none"><li>• Removal of one declining Pine tree in accordance with the Virginia Beach Department of Housing and Neighborhood Preservation Hazardous Tree(s) Violation Notice dated June 25, 2021</li><li>• Additions to the primary structure</li><li>• Paver sidewalks and driveway</li></ul>
August 10, 2021	<p>Staff sent a Chesapeake Bay Preservation Area (CBPA) Administrative Variance authorization letter to the property owner for the proposed improvements associated with the PPR request.</p>
November 5, 2021	<p>A Single-Family Site Plan in the RPA was accepted for review by the Development Services Center.</p>
November 8, 2021	<p>Chesapeake Bay Preservation Area (CBPA) Administrative Variance signs were provided to the property owner and the property posted advertising the CBPA Administrative Variance request in compliance with City Code, Appendix F, Sec. 110(B) <i>Administrative Variances</i>.</p>
December 8, 2021	<p>A review letter was sent to the property owner regarding the completion of the first review of the Single-Family Site Plan in the RPA for the property. The site plan was not approved at that time.</p>
August 19, 2022	<p>Staff sent a Notice to Comply letter to the property owner to remove the unauthorized improvements within the Resource Protection Area. Said removal of unauthorized improvements could be handled through the site plan review process and addressed on the resubmittal of the Single-Family Site Plan in the RPA to the DSC.</p>
August 10, 2023	<p>Staff sent a Show Cause letter to the property owner to serve as written notice to appear before the CBPA Board at the public hearing scheduled Monday, August 28, 2023.</p>



August 28, 2023

A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 909 Hall Haven Drive to the October 23, 2023 CBPA Board public hearing. The motion passed.

## 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 is without appropriate Staff review, approval or permitting. Said expansion of the existing wood deck and the construction of a Tiki Bar area, concrete walkway and pad located off the rear of the residence occurred within the upper reach of the 50-foot landward buffer of the Resource Protection Area (RPA). Expansions of accessory structures within the 100-foot RPA of the Chesapeake Bay watershed 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. In addition, the proposed improvements associated with the 2021 CBPA Administrative Variance require review and approval by the Development Services Center before permitting and construction.

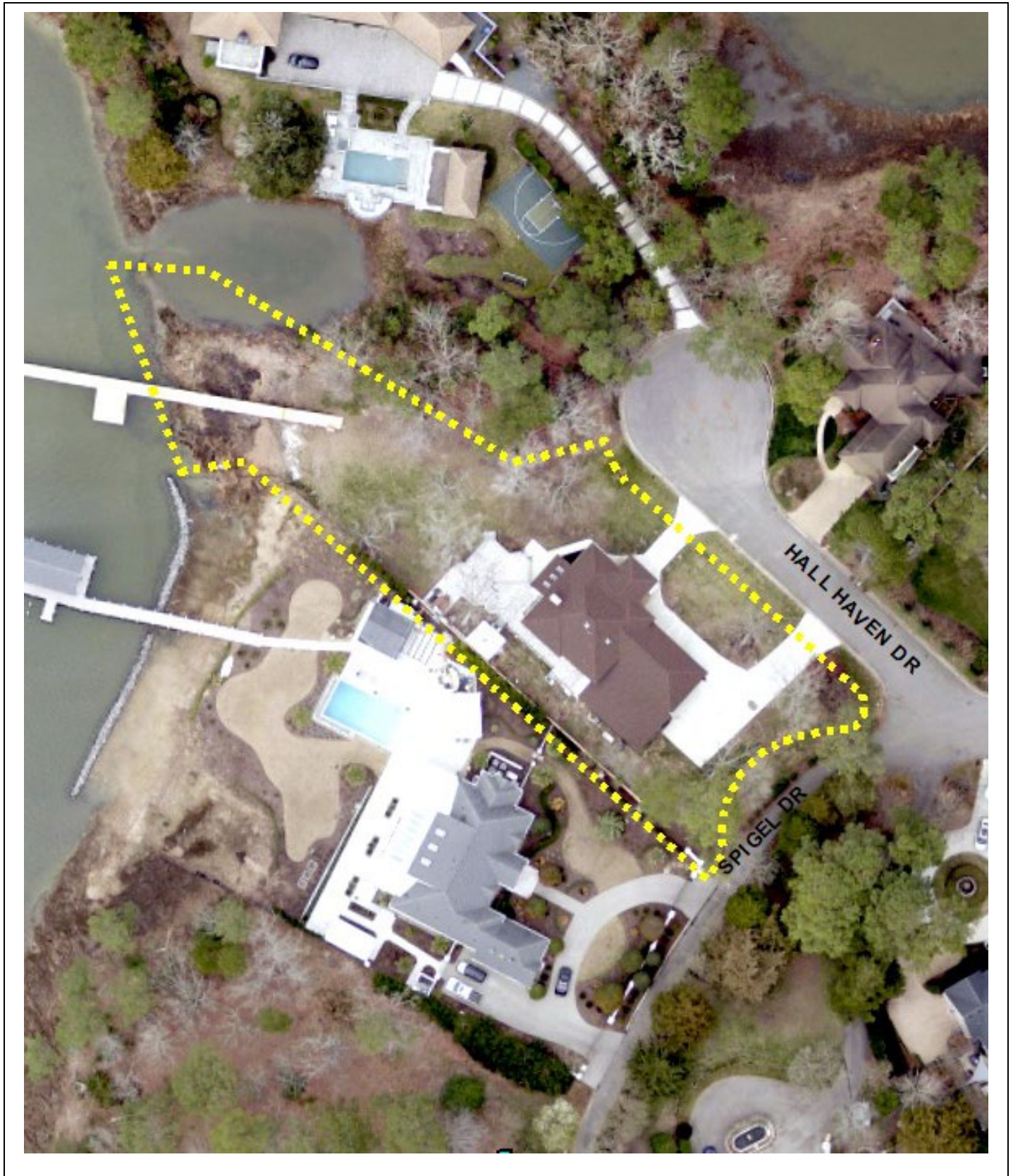
### Environmental Impact

Staff is of the opinion that the subject area of noncompliance lies within the 50-foot landward buffer 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, the unauthorized improvements were constructed without site plan approval and compliance with all applicable erosion and sediment control measures.

### 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.

Site Aerial





# 2021 CBPA Administrative Variance – Proposed Improvements

