

# Chesapeake Bay Preservation Area Board Agenda

September 25, 2023





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# CHESAPEAKE BAY PRESERVATION AREA BOARD

## NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, September 25, 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 **September 25, 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.

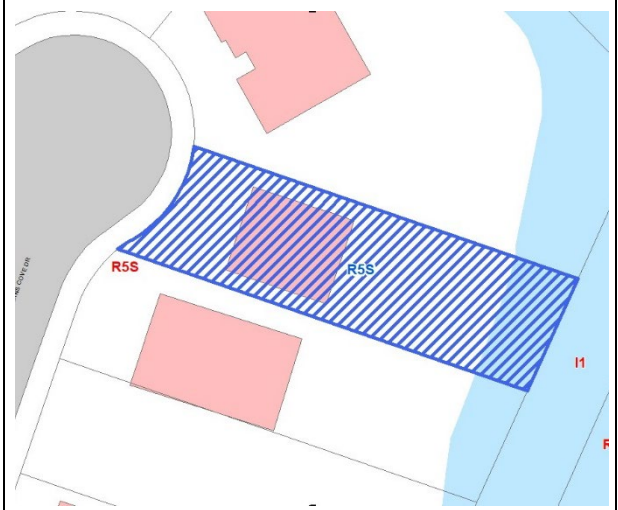
## NEW BUSINESS AGENDA ITEMS

**1. Randall & Carolyn Crutchfield**  
[Applicants & Property Owners]

**6309 Jonathans Cove Drive**  
GPIN 1457-40-1108  
City Council District: District 1  
Accela Record: 2023-CBPA-00044

**Variance Request** – Encroachment into the RPA to construct wood decks and permeable paver patio area.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 5

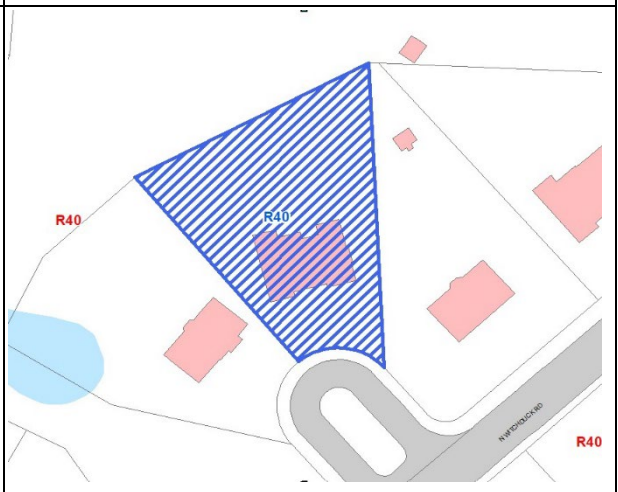


**2. Richard & Kathy France**  
[Applicants & Property Owners]

**4216 N. Witchduck Road**  
GPIN 1478-86-8319  
City Council District: District 9  
Accela Record: 2023-CBPA-00045

**Variance Request** – Encroachment into the RPA to construct covered deck and shed.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 17



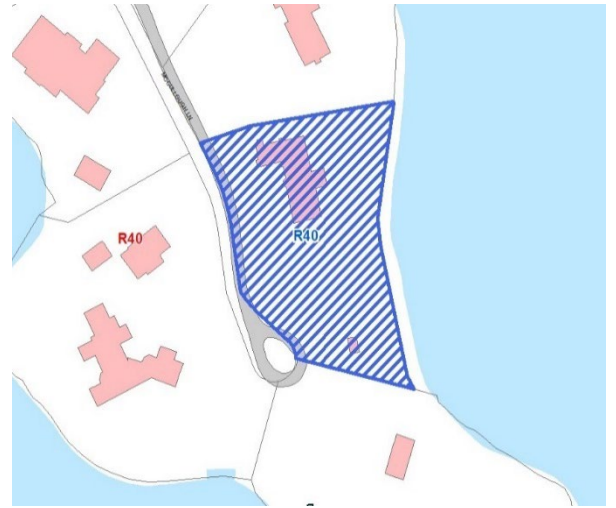
## SHOW CAUSE AGENDA ITEMS

**3. 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 29



## TENTATIVE 2024 CBPA BOARD PUBLIC HEARING DATES

|        |                    |          |                     |
|--------|--------------------|----------|---------------------|
| Monday | <b>January 22</b>  | Monday   | <b>July 22</b>      |
| Monday | <b>February 26</b> | Monday   | <b>August 26</b>    |
| Monday | <b>March 25</b>    | Monday   | <b>September 23</b> |
| Monday | <b>April 22</b>    | Monday   | <b>October 28</b>   |
| Monday | <b>May 30</b>      | Monday   | <b>November 25</b>  |
| Monday | <b>June 24</b>     | Thursday | <b>December 19</b>  |



Applicant & Property Owner **Randall & Carolyn Crutchfield**  
 Address **6309 Jonathans Cove Drive**  
 Public Hearing **September 25, 2023**  
 City Council District **District 1**

Agenda Item

**1**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct wood decks and a permeable paver patio area.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 247, Page 61  
 Recorded 11/22/1995

**GPIN**

1457-40-1108

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

1,004 square feet

**Area of New Development in RPA**

264 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

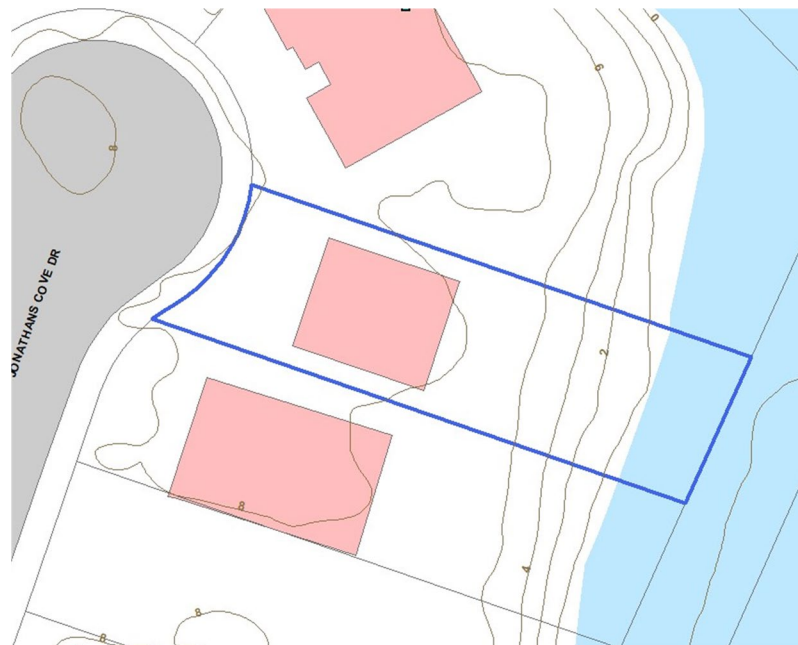
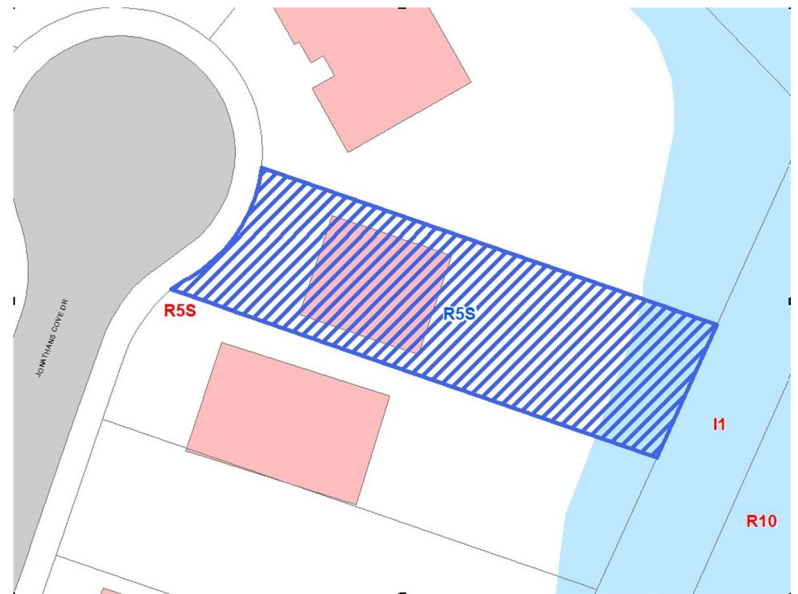
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Wood decks with associated steps and storage area
- Concrete paver area off rear of residence
- Concrete walk off rear of residence

### Construction Details

- New first and second story wood decks
- Concrete walk and permeable paver patio area with associated fire pit and seating wall
- Steppingstone walkways and steps

## CBPA Ordinance Variance History

**April 25, 1994, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision for single-family residential lots with the following conditions:**

1. *The metes and bounds of the building envelope for proposed parcel 1 to 35 shall be identified and approved by City staff prior to recordation of the final plat.*
2. *On-site best management practices will be required for all the parcels unless expressly waived or modified by City staff during the plan review process.*
3. *Once construction on each parcel is complete, the denuded area within the construction footprint shall be restored with vegetation according to an approved landscape plan to be submitted with the final site plan.*
4. *Appropriate stormwater, erosion and sediment control and landscape bonds must be posted with the Planning Department prior to the issuance of a building permit for any construction or land disturbing activity on proposed parcels 1 to 35.*
5. *The applicant or subsequent record owner of proposed parcel 1 to 35 shall submit a final site plan to the Planning Department for full plan of development review and approval prior to the issuance of a building permit. The proposed development on each of the parcels will meet all other performance standards of the Chesapeake Bay Preservation Area Ordinance. This final site plan shall delineate all areas to be disturbed and shall set forth all appropriate measures for revegetation of disturbed areas.*
6. *The applicant shall file and record in the Office of the Clerk of the circuit Court of the City of Virginia Beach an agreement of covenants and conditions reflecting the terms and conditions of this variance in such language as shall be approved by the City Attorney's Office. Such agreement shall be recorded together with the final subdivision plat and a certified copy of said agreement shall be submitted to the Planning Department prior to the issuance of any permits.*
7. *The limits of the building envelope shall be amended to include the sidewalks and driveways.*
8. *The applicant shall secure, from City Council, appropriate subdivision variances and a rezoning of the property to develop the site as proposed.*
9. *All dwellings shall adhere to the minimum front yard setback requirements and shall be so noted in recorded covenants and on the final plat, and*



10. The applicant shall convene with staff to establish a detailed sequence of events schedule for the entire project.

11. city sewer is required.

The April 24, 1995 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

Flood Zone AE, Base Flood Elevation (BFE): 8

### Soil Type(s)

Udorthents Series (moderately well-drained soils altered by excavation)

### Shoreline

Shoreline is stabilized with a retaining wall with marsh vegetation present seaward.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

Portions of the rear yard are currently developed with a wood deck, concrete pathways, and brick paver areas. The applicant desires to redevelop the existing wood deck area with first and second story wood decks and construct a new permeable paver patio area with a fire pit and seating wall with associated steppingstone and concrete walkways. The proposed improvements would constitute approximately 1,004 square feet of redevelopment over existing impervious cover and introduce 264 square feet of new impervious cover within the 50-foot seaward buffer of the Resource Protection Area (RPA) on the lot.

Staff is of the opinion that while the proposal includes an increase within the 50-foot seaward buffer, the applicant has chosen to use permeable pavers with the proposed patio area to ensure that the use of materials with the project will be harmonious with the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance towards maximizing rainwater infiltration with the proposed improvements to the greatest extent practicable. Additionally, the lot lacks a mature tree canopy cover and with the slight increase in impervious cover with this request, the applicant will be required to plant buffer restoration as conditioned in this Staff report. Staff offers that the introduction of canopy tree to the lot will aid towards future rainwater interception.

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 findings of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege or be a detriment to water quality as proposed.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was created after the bay act was adopted and the site was originally a dumping ground for construction debris etc. The subdivision contains approximately 20 some s/f dwellings all of which have required a variance due to the location of the buffer encroaching onto all the lots."* Staff is of the opinion that should the board grant the variance to encroach into the RPA feature with the proposed decks and permeable paver patio, that a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded with the improvements of their lots.
- 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 bay act was enacted by the state and the avoidance of the buffer is simply not possible due to the location of the buffer lines. Water quality can be enhanced by the placement of infiltration measures and adding riparian buffer areas."* Staff is of the opinion that the proposed improvements are modest and necessary due to the state of the existing accessory structures in the rear yard.
- 3) The variance is the minimum necessary to afford relief because *"the current plan contains mostly redevelopment of existing impervious cover and a minimum of new impervious cover; the new impervious cover will be mitigated accordingly as well as redeveloped areas."* Staff is of the opinion the variance request utilizes redevelopment to the greatest extent and the new impervious cover will consist of permeable pavers that allow for rainwater infiltration.
- 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 entire subdivision has been developed and as part of our plan we will be required to ensure all buffer restoration from the previous variance is still in place as well as stormwater treatment facilities are operating properly plus mitigate for all new development, all to promote water quality post construction."* Given the use of materials and the minimal land disturbance associated with the request, Staff is of the opinion that the variance request will not be of substantial detriment to water quality given the recommended conditions provided in this staff report.
- 5) *"No net increase will be achieved by making sure the previous treatment facilities are functioning, all buffer restoration previous required is still present, single point access, stockpile on existing hard surfaces, strict enforcement of erosion and sediment control measures are all important to promote water quality"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that this is a sparsely wooded lot and would benefit from the buffer restoration coupled with the flat topography of the lot providing pervious cover for run-off produced from the proposed improvements to sheet-flow across and infiltrate before draining into the tidal waters.

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

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated June 30, 2023, prepared by Gallup Surveyors & Engineers 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. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. Buffer restoration shall be installed in substantial compliance with the Landscape Plan View – Outdoor Living exhibit prepared by Visionscapes Landscape Design & Installation, dated May 1, 2023.

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Under deck treatment of sand and gravel shall be installed.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 25, 1994.

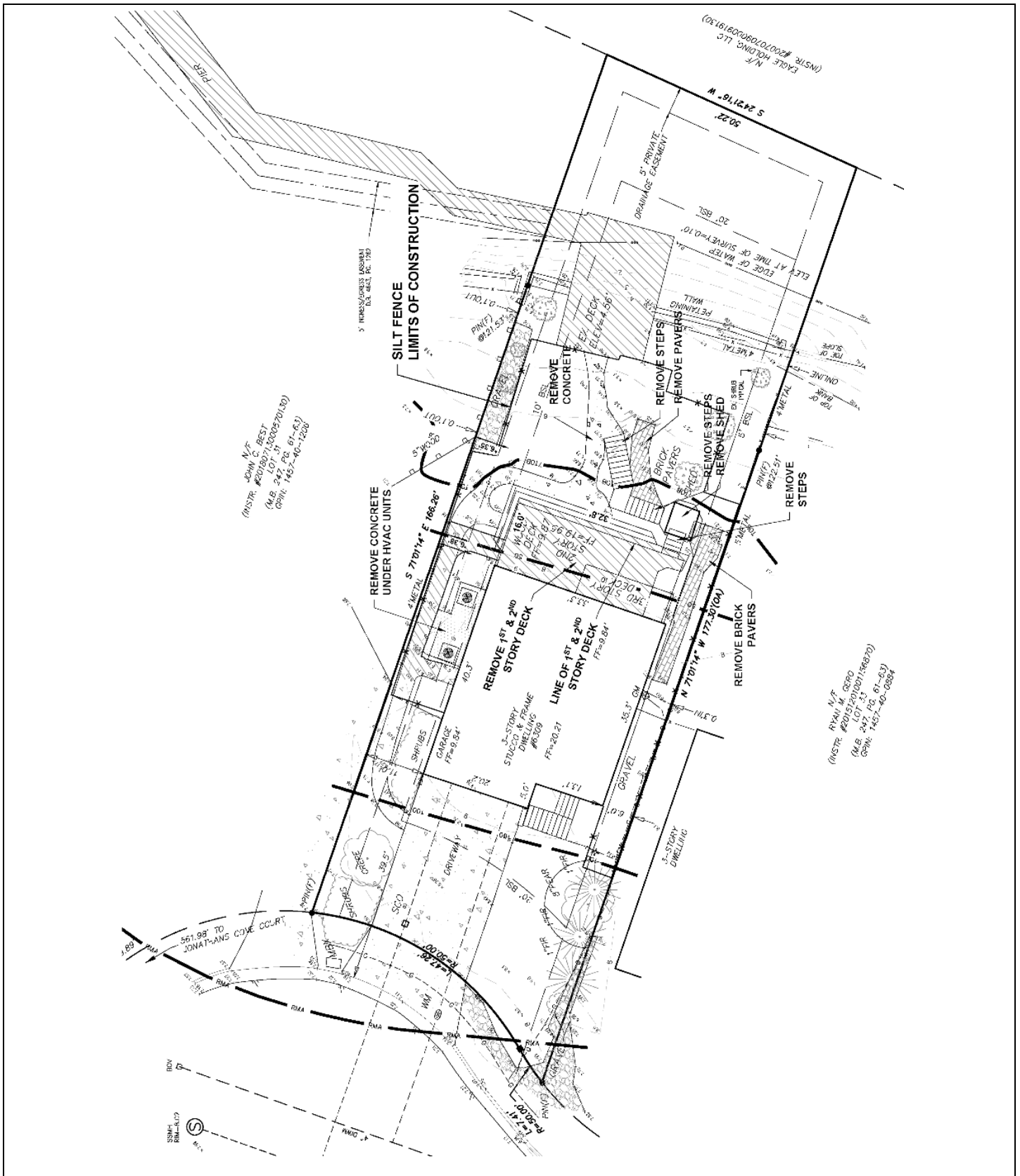
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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



Site Aerial



**CBPA Exhibit – Existing Conditions**

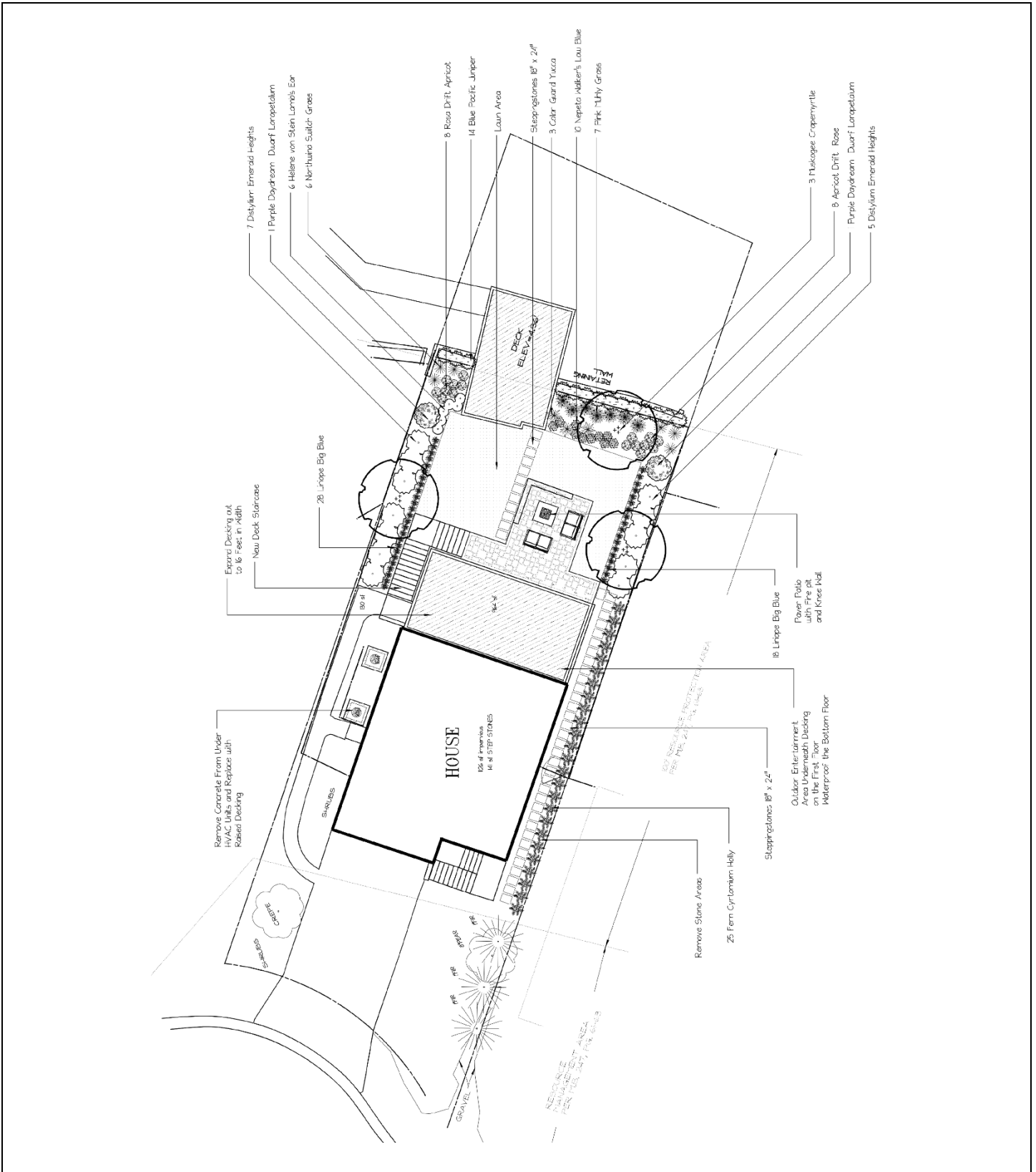








# CBPA Exhibit – Landscape Plan View, Outdoor Living Exhibit



# 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 Randall Avery Crutchfield

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.  
Billy Garrington - Governmental Permitting Consultant

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

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

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

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## Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

Shawn Anderson, Visionscapes, LLC

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

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

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## Disclosure Statement



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

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

### Applicant Signature

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

*Randall Crutchfield*

Applicant Signature

Randall Avery Crutchfield, Homeowner

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 |



Applicant & Property Owner **Richard & Kathy France**  
 Address **4216 N. Witchduck Road**  
 Public Hearing **September 25, 2023**  
 City Council District **District 9**

Agenda Item

**2**

**Variance Request**

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

**Applicant's Agent**

Lon Kennedy  
 Beach Brothers Contracting of Tidewater, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Instrument Number 200309050141955  
 Recorded 09/04/2003

**GPIN**

1478-86-8319

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RMA**

1,088 square feet

**Location of Proposed Impervious Cover**

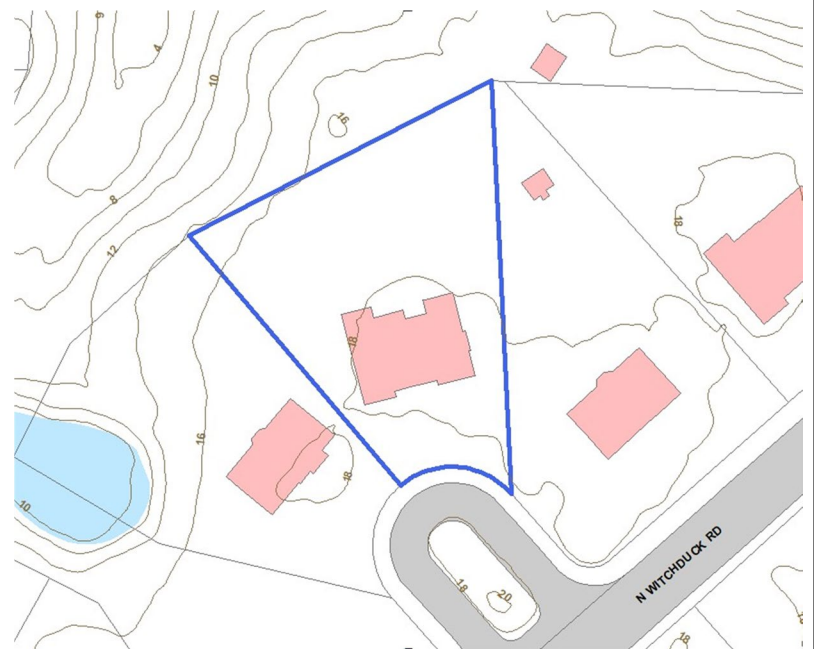
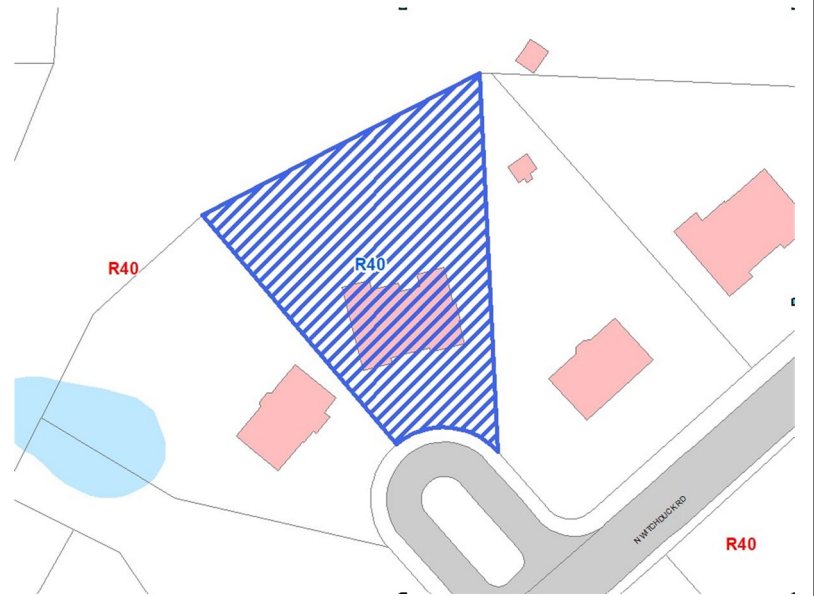
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Covered deck adjacent to residence
- Storage structure – approximately 22 feet by 30 feet
- Driveway expansion

## CBPA Ordinance Variance History

**June 24, 2002 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of a single parcel into 21 lots with the following conditions:**

1. *Lots 2 through 7, 9, 11 through 13, 17, 18, and 20 shall be a maximum of 30,000 square feet. For Lot 6 (the point), the lot area devoted to driveway and water / marsh shall not be considered when calculating the maximum lot size of 30,000 square feet.*
2. *Structural improvement limits shall be in substantial conformance with the site rendering dated May 29, 2002, prepared by MSA and Porterfield Design Center.*
3. *A minimum of 25% of the remaining pervious area on each lot (including those lots within the RMA) shall incorporate mulched planting beds and be so noted on each site plan. Bayscape landscape principals are encouraged.*
4. *Tree compensation shall be double the canopy requirements espoused by the City Tree Preservation and Replacement Ordinance. Said condition shall be so noted on each individual site plan. This condition applies to both RMA and RPA lots.*
5. *Those lots, whose side and rear yards are impacted by the 100' buffer (measured from the top-of-bank), shall be enhanced with buffer restoration, inclusive of trees, shrubs, and mulch, to the greatest extent practicable. The applicant may desire to co-mingle this initiative with aforementioned condition 3 and 4. Said condition shall be noted on the subdivision plat and each applicable site plan.*
6. *The limits of construction shall lie a maximum of 20 feet outboard of improvements on proposed Lot 6. Triple erosion and sedimentation control measures, inclusive of one row of straw bales shall lie adjacent to prescribed limits of construction. A temporary chain link fence shall also lie adjacent to prescribed limits of construction and shall remain in-place throughout the construction phase of the project. Improvements shall lie within the general vicinity of existing impervious cover, shall not exceed existing impervious cover, and shall be positioned equidistant of top-of-banks. In no case shall any improvement lie within 15 feet of the top-of-bank*
7. *The southern lot line for Lot 6 shall lie no further than 50' south of the residence.*
8. *Buffer restoration of all open space pastureland shall be in substantial conformance with the site rendering dated May 29, 2002, prepared by MSA and Porterfield Design Center. Said restoration plan shall be coordinated with CBPA staff prior to submission. As a guide, trees shall be a minimum of 1" caliber and shall be installed on 25' centers. Shrubs shall be in 3-gallon containers - grasses 1 gallon. Native species shall dominate pastureland. If the applicant envisions a series of trails, bridges, gazebo overlook area, etc., said design features shall be shown on the restoration plan.*
9. *The existing driveway and residence within the open space area to the northeast shall be removed (the area east of Lot 21).*

10. *Payment shall be provided into the Lynnhaven River Oyster Heritage Fund for those portions of impervious cover within the buffer. Payment is intended to provide the equivalent of a 12" oyster shell plant within the Lynnhaven River for an equal amount of displaced buffer. Payment shall be based on the square footage of impervious cover divided by 27 = cubic yards X 15 (bushels per cubic yard) X \$1.65 (installed price). Said payment shall be made prior to or concurrent with approval of applicable site plans.*
11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The July 24, 2002 Chesapeake Bay Preservation Area (CBPA) Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

Zone X

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The Resource Protection Area (RPA), specifically the city's 100-foot Variable Width Buffer, encompasses portions of the rear yard of this lot. As situated, all the proposed improvements associated with this variance application fall within the Resource Management Area (RMA) of the Chesapeake Bay watershed; however, the lot is subject to the conditions of the June 2002 Chesapeake Bay Preservation Area (CBPA) Board variance for the development of a twenty-one (21) lot subdivision which necessitated the September 2004 CBPA Variance to be heard by the Board. At this time the applicant is asking for reconsider of the following conditions associated with the 2004 CBPA Variance.

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 scope of the work area is within the existing fenced in rear property.”* Staff adds that similar improvements are found on adjacent properties in the neighborhood.

- 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 *“all scope of work is to be within the existing fenced area within the rear of the property and will not impact anything outside the fenced area.”* Staff adds that the owners are new to the area and were not associated with the prior variance request and wish to construct the proposed improvements to accommodate their family needs.
- 3) The variance is the minimum necessary to afford relief because *“the scope of work will be within the existing fenced in area of rear property.”* Staff adds that the proposed improvements are outboard of 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 *“all scope of work will not impact areas outside of existing fence in area of rear of property.”* Staff adds that the proposed improvements are not located within the RPA and fall within the RMA on the lot and is of the opinion that the improvements will not be of substantial detriment to water quality.
- 5) *“All scope of work is to be performed within existing fenced in area of rear of property”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 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.
3. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
4. This variance and associated conditions **are in addition to** the conditions of the Board variance granted June 24, 2002.

\*\*\*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 with Topography Overlay



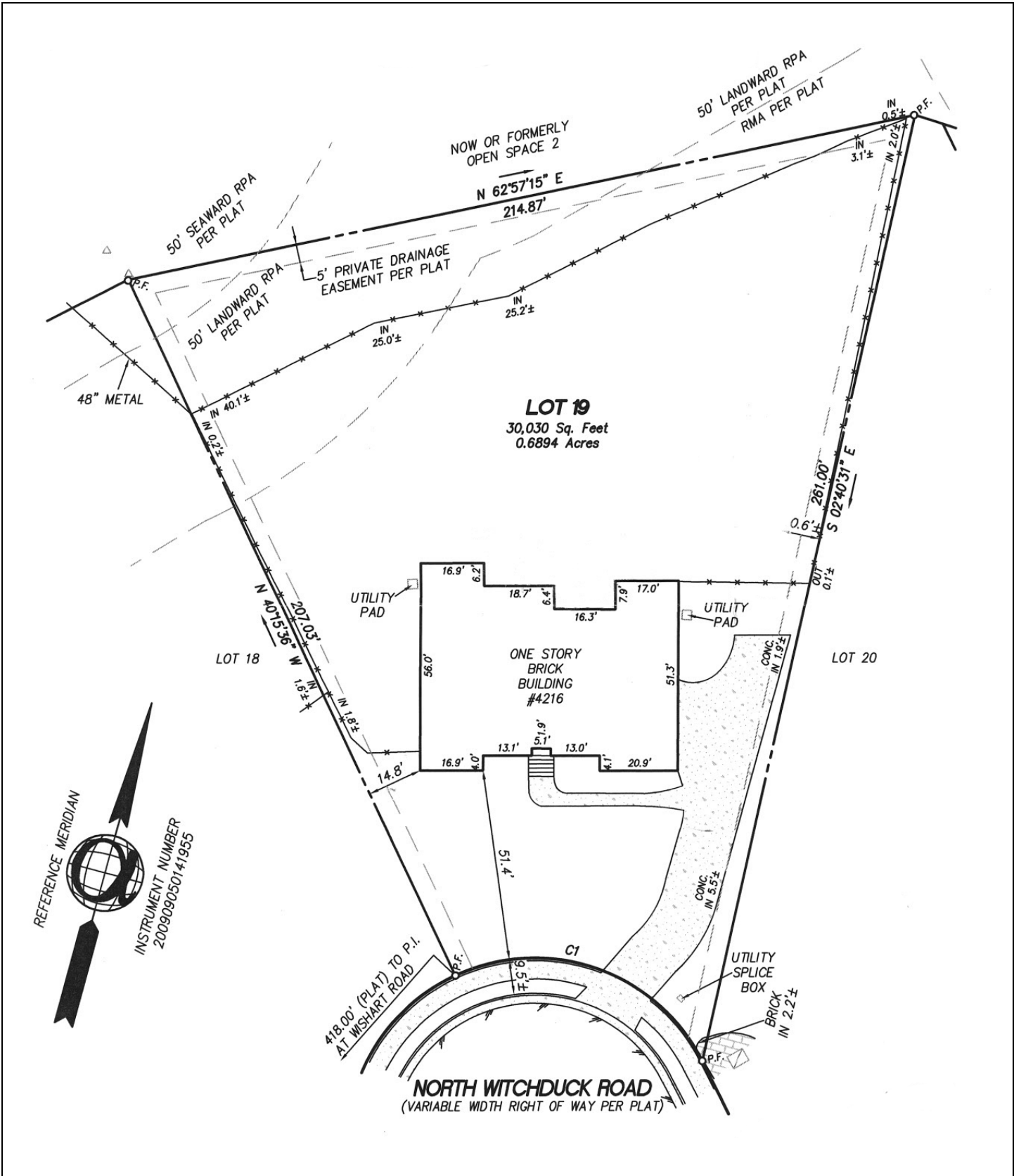


# Site Aerial





# CBPA Exhibit – Existing Conditions





# 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** Richard and Kathleen France

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

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

Beach Brother Contracting of Tidewater Inc. 4176 S Plaza Trail Virginia Beach Va 23452

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

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

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

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

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



## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

**Yes**  **No**

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

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

**Yes**  **No**

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

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

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

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

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

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

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

# Disclosure Statement



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

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

Beach Brothers Contracting of Tidewater inc. 4176 S Plaza Trial Virginia Beach Va 23452

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.

Alphatec Surveyors Ltd. 530 Woodlake Circle, suite 200, Chesapeake Va 23320

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.

*Richard A France*

*Kathleen M. France*

Applicant Signature

Richard A France and Kathleen M France homeowner

Print Name and Title

8/02/23

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 |  |

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Applicant & Property Owner **Shane & Maria Sullivan**  
 Address **1508 McCullough Lane**  
 Public Hearing **September 25, 2023**  
 City Council District **District 6**

Agenda Item

**3**

**Property Owner’s Agent**

Self-represented

**Staff Planner**

Cole Fisher

**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**

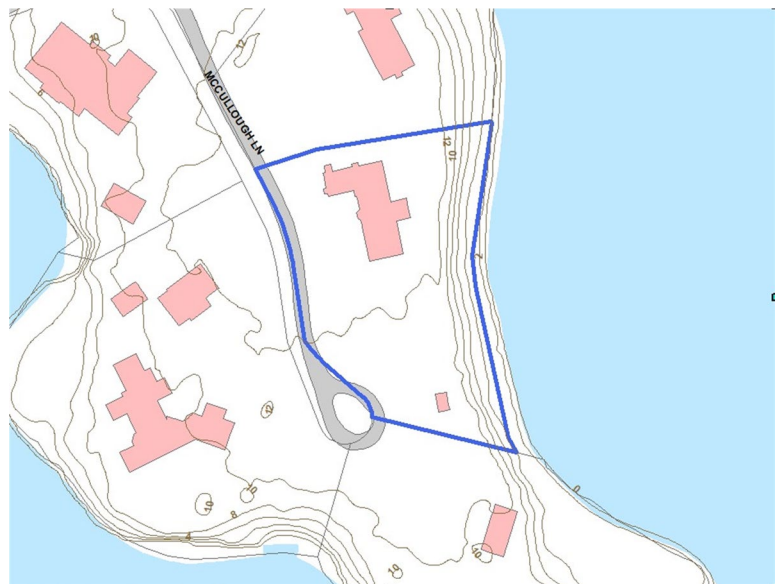
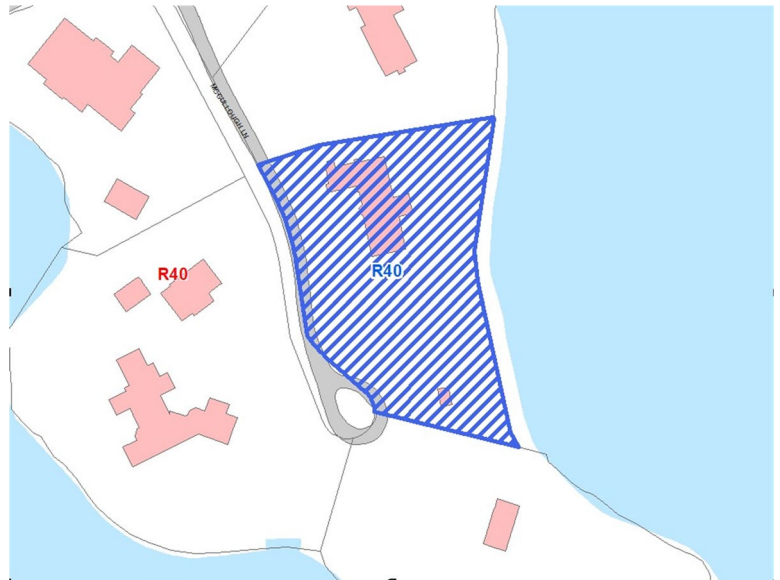
50-foot Landward Buffer

**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

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 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."*
- 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.

## 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





**Exhibit – Approximate Area of Unauthorized Improvements**

