

# Chesapeake Bay Preservation Area Board Agenda

January 23, 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, January 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 [www.vbgov.com/cbpa](http://www.vbgov.com/cbpa) or visit the Department of Planning and Community Development, 2875 Sabre Street, Suite 500, Virginia Beach, Virginia by appointment.

The Staff reviews all the items on this agenda and offer recommendation for consideration by the Board, in the event they should approve the application. However, it should not be assumed that those conditions constitute all the conditions that will ultimately be attached to the project. Staff agencies may impose further conditions and requirements applicable to city ordinances.

Those members of the public interested in attending the public hearing should be advised that, for reasons the Board deems appropriate, certain items on the agenda may be heard out of order and that it should not be assumed that the order listed below will be exactly followed during the public hearing.

### **THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING**

*(IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT A STAFF MEMBER VIA EMAIL ([pscully@vbgov.com](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.

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



# CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **January 23, 2023**

**9:00 AM** INFORMAL STAFF BRIEFING OF PUBLIC HEARING AGENDA ITEMS.

**10:00 AM** FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS.

## ADMINISTRATIVE AGENDA ITEMS

### 1. Election of 2023 Chesapeake Bay Preservation Area Board Secretary

**Staff Report** – page 9

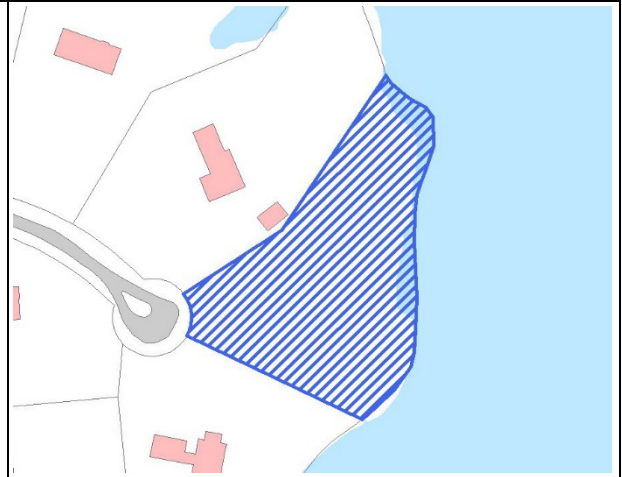
## OLD BUSINESS AGENDA ITEMS

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

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

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 11

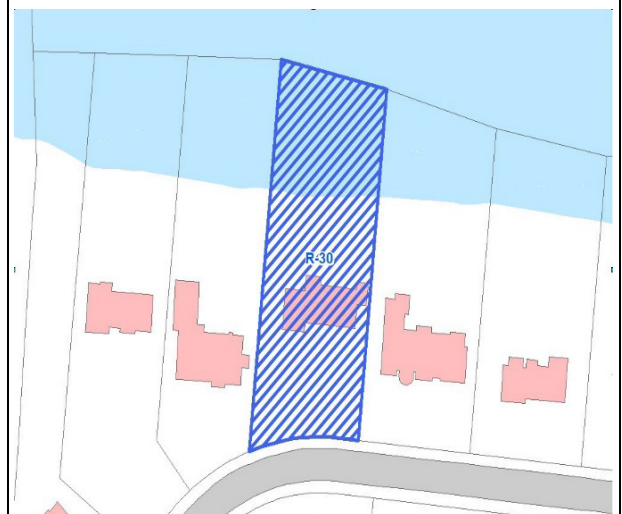


### 3. Romeo Spino [Applicants & Property Owners]

**2021 Thomas Bishop Ln**  
GPIN 1499-56-4825  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00065

**Variance Request** – Encroachment into the RPA to construct a swimming pool, patio, redevelop driveway and construct new parking area.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 25



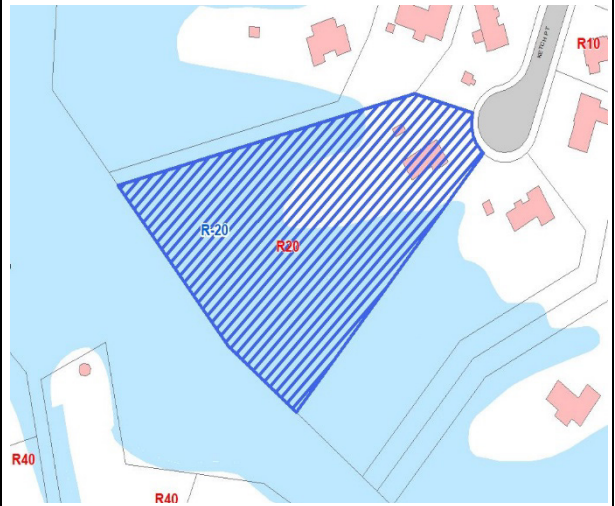
## NEW BUSINESS AGENDA ITEMS

**4. Philip & Jane Jones**  
[Applicants & Property Owners]

**1291 Ketch Pt**  
GPIN 1498-76-8959  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00068

**Variance Request** – Encroachment into the RPA to construct covered porches, car port, and redevelop sidewalks and driveway.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 27

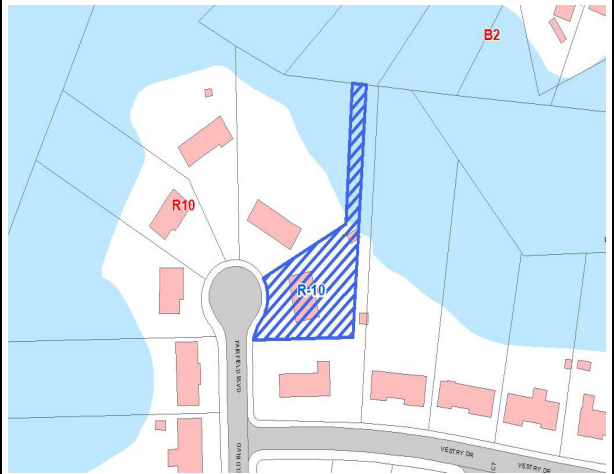


**5. Robert & Jessica Grosso**  
[Applicants & Property Owners]

**5324 Fairfield Boulevard**  
GPIN 1466-48-6342  
City Council District: District 1, formerly Kempsville  
Accela Record: 2022-CBPA-00069

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 41

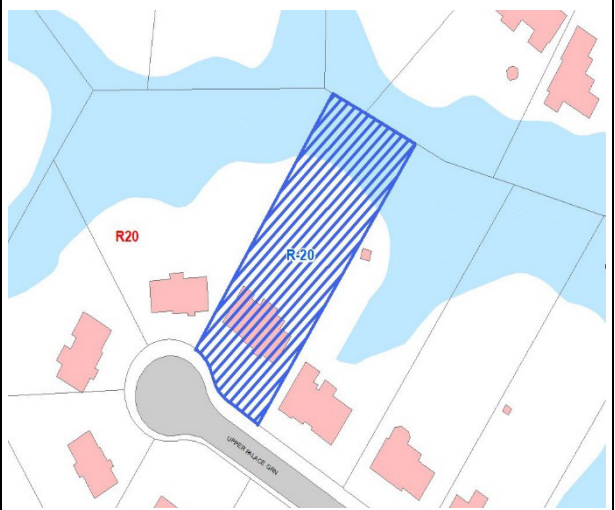


**6. Victoria & Victor Spears**  
[Applicants & Property Owners]

**3328 Upper Palace Green**  
GPIN 1498-05-4885  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00070

**Variance Request** – Encroachment into the RPA to construct a swimming pool, patio, shed, and redevelop a wood deck and concrete walkway.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 51



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**7. Elizabeth & Wesley Flowers**  
[Applicants & Property Owners]

**1804 Duke of York Quay**

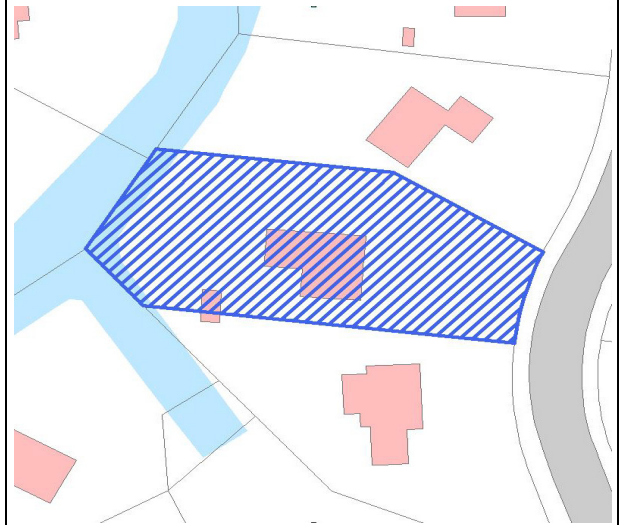
GPIN 1499-84-4234

City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00071

**Variance Request** – Encroachment into the RPA to construct a swimming pool, patio, covered porch, walkway, and reconfigure a wood deck.

**Staff Planner** – Cole Fisher

**Staff Report** – page 65



**8. Taylor Milhaly**  
[Applicants & Property Owners]

**3113 Basin Road**

GPIN 1499-07-6979

City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00072

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 79



**9. ORP Ventures, LLC**  
[Applicants & Property Owners]

**816 24th Street**

GPIN 2417-78-8769

City Council District: District 6, formerly Beach  
Accela Record: 2022-CBPA-00074

**Variance Request** – Encroachment into the RPA to construct two new two-story dwellings with associated patios, walkways, and driveways.

**Staff Planner** – Cole Fisher

**Staff Report** – page 91



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 10. ORP Ventures, LLC

[Applicants & Property Owners]

#### Lot 5, 2984 Queen City Road

GPIN 1456-03-5949

City Council District: District 1, formerly Kempsville  
Accela Record: 2022-CBPA-00076

**Variance Request** – Encroachment into the RPA to construct a single-family residence.

**Staff Planner** – Cole Fisher

**Staff Report** – page 105



### 11. ORP Ventures, LLC

[Applicants & Property Owners]

#### Lot 6, 2984 Queen City Road

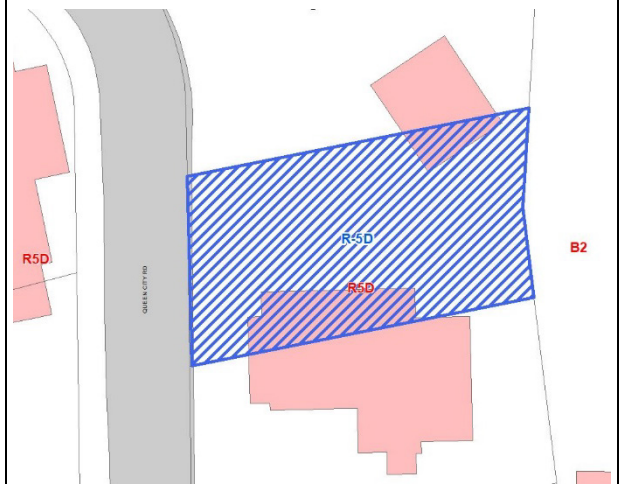
GPIN 1456-03-5949

City Council District: District 1, formerly Kempsville  
Accela Record: 2022-CBPA-00076

**Variance Request** – Encroachment into the RPA to construct a single-family residence.

**Staff Planner** – Cole Fisher

**Staff Report** – page 115



### 12. David Miller

[Applicants & Property Owners]

#### 3220 Stapleford Chase

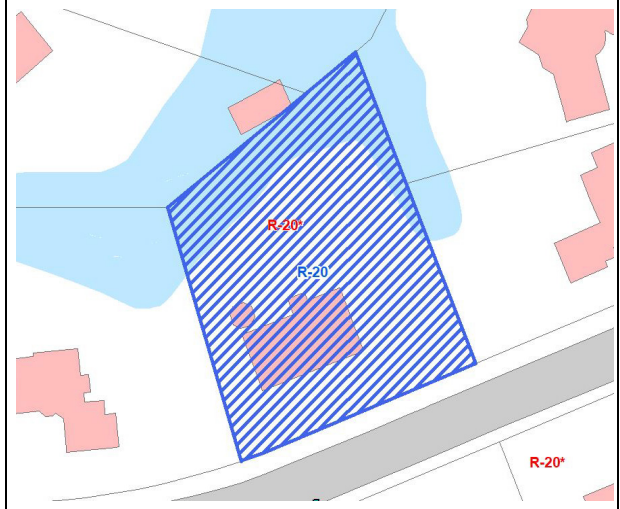
GPIN 1498-16-4212

City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00073

**Variance Request** – Encroachment into the RPA for an after-the-fact construction of two retaining walls.

**Staff Planner** – Cole Fisher

**Staff Report** – page 125





## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 13. Dennis Ellmer

[Applicants & Property Owners]

#### 2871 River Road

GPIN 1499-41-4751

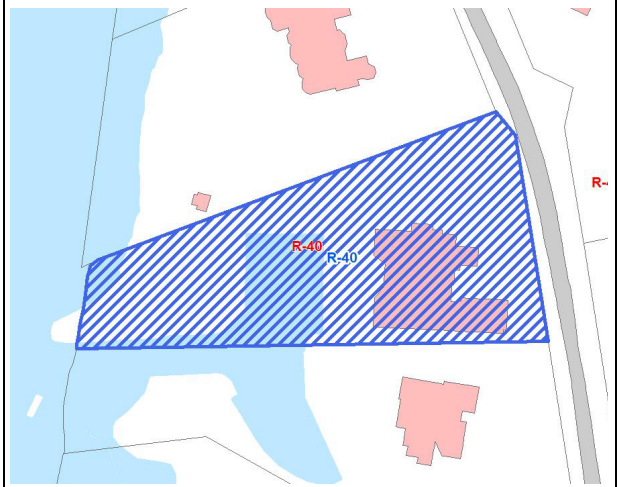
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00075

**Variance Request** – Encroachment into the RPA for an after-the-fact installation of artificial turf.

**Staff Planner** – Cole Fisher

**Staff Report** – page 137



## RESTORATION HEARING

### 14. David Miller

[Applicants & Property Owners]

#### 3220 Stapleford Chase

GPIN 1498-16-4212

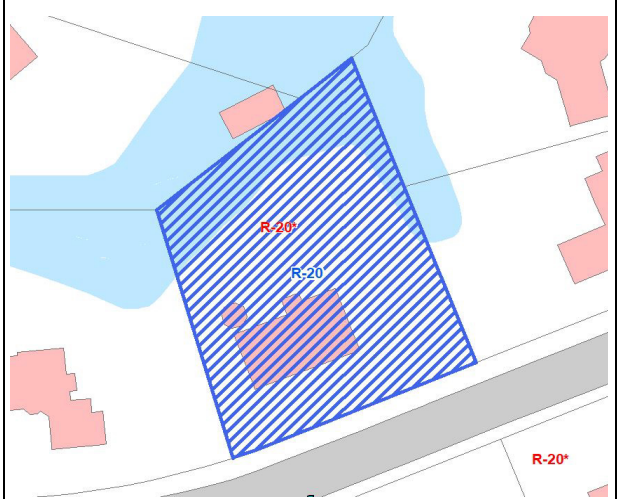
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00073

**Statement of Noncompliance** – Land disturbance and removal of existing vegetation (turf) for the installation of segmented retaining walls.

**Staff Planner** – PJ Scully

**Staff Report** – page 143



### 15. Dennis Ellmer

[Applicants & Property Owners]

#### 2871 River Road

GPIN 1499-41-4751

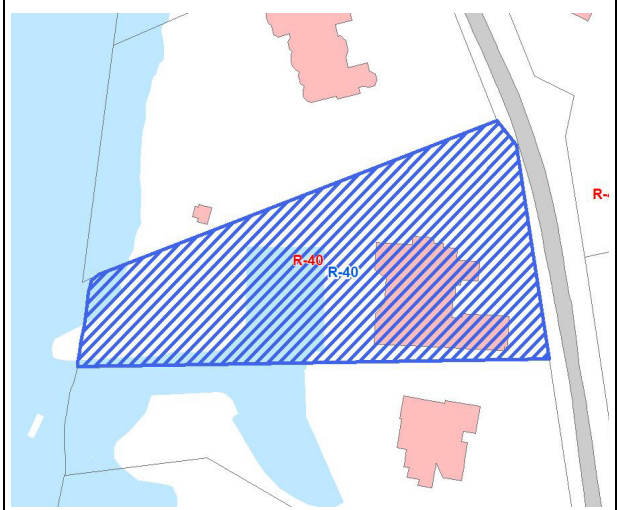
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00075

**Statement of Noncompliance** – Land disturbance and removal of existing vegetation (turf) for the installation of synthetic turf.

**Staff Planner** – PJ Scully

**Staff Report** – page 147



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

## **2023 CBPA BOARD PUBLIC HEARING DATES**

Monday	<b>January 23</b>	Monday	<b>July 24</b>
Monday	<b>February 27</b>	Monday	<b>August 28</b>
Monday	<b>March 27</b>	Monday	<b>September 25</b>
Monday	<b>April 24</b>	Monday	<b>October 23</b>
Monday	<b>May 22</b>	Monday	<b>November 27</b>
Monday	<b>June 26</b>	Wednesday	<b>December 20</b>



Administrative Business

**2023 Chesapeake Bay Preservation Area Board  
Election of Secretary**

Public Hearing **January 23, 2023**

Agenda Item

**1**

**2023 Chesapeake Bay Preservation Area Board Members**

- Dave France, Chair
- Casey Jones, Vice Chair
- Steve Ballard
- June Barrett-McDaniels
- Bill Burnette
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

**2022 Chesapeake Bay Preservation Area Board Secretary**

- Casey Jones, Secretary

**2023 Chesapeake Bay Preservation Area Board  
Election of Secretary**

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Applicant & Property Owner **1600 Arnold Circle, LLC**  
 Address **1600 Arnold Circle**  
 Public Hearing **January 23, 2023**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**2**

**Variance Request**

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

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

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

**GPIN**

2409-82-3546

**SITE AREA**

84,900 square feet or 1.949 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

62,600 square feet or 1.437 acres

**EXISTING IMPERVIOUS COVER OF SITE**

19,256 square feet or 30.8 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

19,256 square feet or 30.8 percent of site

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

*\*Increase in area of new development in RPA on site calculated off area of synthetic turf in RPA*

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

*\*8,800 square feet – area of synthetic turf*

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

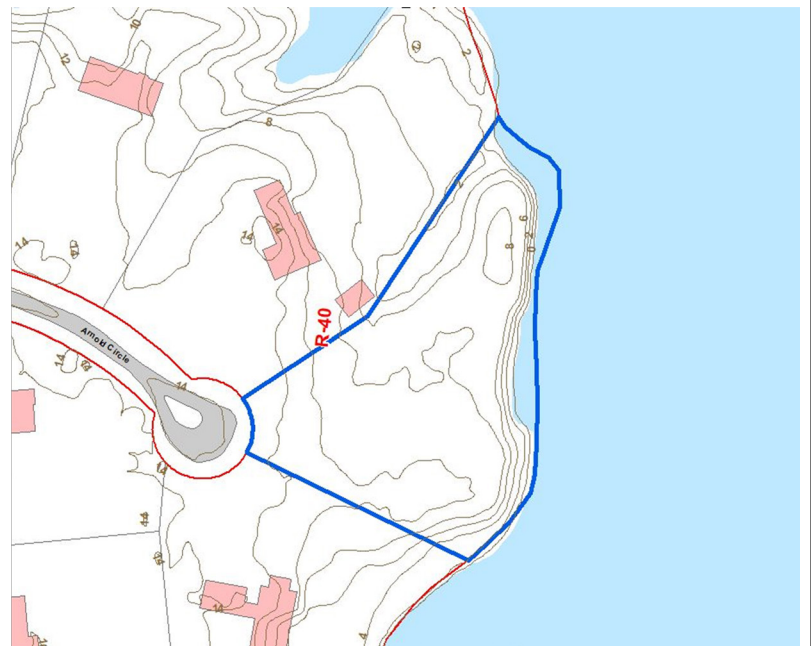
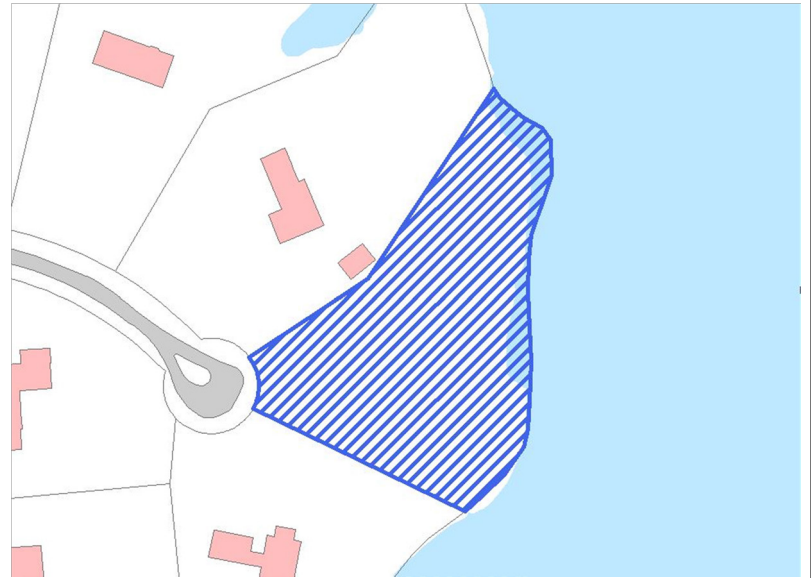
50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Synthetic turf area

## CBPA Ordinance Variance History

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

- September 8, 2022 CBPA Board Public Hearing
- November 7, 2022 CBPA Board Public Hearing

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

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.*
5. *Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
8. *A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
9. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
10. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 15,452 square feet x 200 percent = 30,904 square feet.*

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

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

11. *The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.*
12. *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
13. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$3,541.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
14. *The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by WPL, signed September 7, 2018 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*
15. *This variance supersedes the previous CBPA Board variance dated September 24, 2007.*

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Bojac Series (deep, moderately well-drained soils)

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

### Shoreline

Shoreline is hardened with a rip rap revetment.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The Chesapeake Bay Preservation Area (CBPA) Board granted a variance for the redevelopment of this lot with a single-family residence in 2018 which is currently under construction. The same applicant desires to install synthetic turf within to 100-foot Resource Protection Area (RPA) buffer in conjunction with the required buffer restoration conditioned with the 2018 CBPA variance.

Since the deferral of this request at the November 2022 CBPA Board public hearing, the applicant's consultant team has provided a revised "Buffer Planting Area Plan", see page 20 below as a means of mitigation for the proposed area of synthetic turf on the lot. Buffer mitigation with the revised plan has been increased from 30,904 square feet conditioned in the 2018 CBPA Variance to 34,455 square feet as offered with this variance request. This revision to the variance request provides an additional 3,551 square feet of buffer restoration or approximately 40 percent of the proposed synthetic turf area (8,800 square feet). In addition to the proposed mitigation measures, Staff provides that the area of synthetic turf as shown on the "Buffer Planting Area Plan" below does not impact existing vegetation, is located within the limits of construction, and is limited to an area primarily located off the rear of the residence. To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the performance standards of the CBPA Ordinance and believes that the installation of the synthetic turf will not be injurious to the neighborhood or of substantial detriment to water quality.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the redevelopment of this lot is consistent with other redeveloped lots within the neighborhood that have either constructed new or have expanded existing residences. Specific to this lot, approximately 30,000 square feet of buffer restoration which will be installed seaward of the proposed syntenic turf area."* Staff offers that the conditions of the 2018 CBPA Variance with regards to buffer restoration will not be infringed upon with the installation of the synthetic turf and Staff has provided recommended conditions below, specifically recommended condition 3 that the synthetic turf shall not be calculated towards the stormwater management requirements associated with the April 11, 2019 approved site plan. In addition, the location of the synthetic turf will not require the removal of any existing mature canopy trees or other wood vegetation on the lot.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because *"the applicant is not asking for any additional improvements associated with the primary and accessory structures granted with the 2018 CBPA Variance. The applicant simply wants to minimize maintenance requirements for the property, decrease water use by not irrigating sod, and infiltrate rainwater to the best of the lot's ability."* Staff offers that



approximately 43,344 square feet of the lot is pervious. Conditioned with the 2018 CBPA variance 30,904 square feet of buffer restoration is required leaving approximately 12,440 square feet of pervious area on the lot of which the applicant desires to install 8,800 square feet of synthetic turf and restore the remaining pervious area of the lot with buffer restoration. Although the “minimum necessary to afford relief” is subject to individual judgement, the applicant has shown a desired area for the synthetic turf that is mindful to previous CBPA variance conditions and does not utilize all the remaining pervious area on the site not devoted to buffer restoration.

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

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

## Recommended Conditions

- 1) The synthetic turf area shall not exceed 8,800 square feet as shown on the submitted CBPA Exhibit.
- 2) 3,551 square feet of buffer restoration shall be installed. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration shall be located in the Resource Protection Area, in substantial compliance with the “Buffer Planting Area Plan” and in conjunction with the Development Services Center (DSC) Single-family Site Plan in the Resource Protection Area (RPA) approved April 11, 2019.

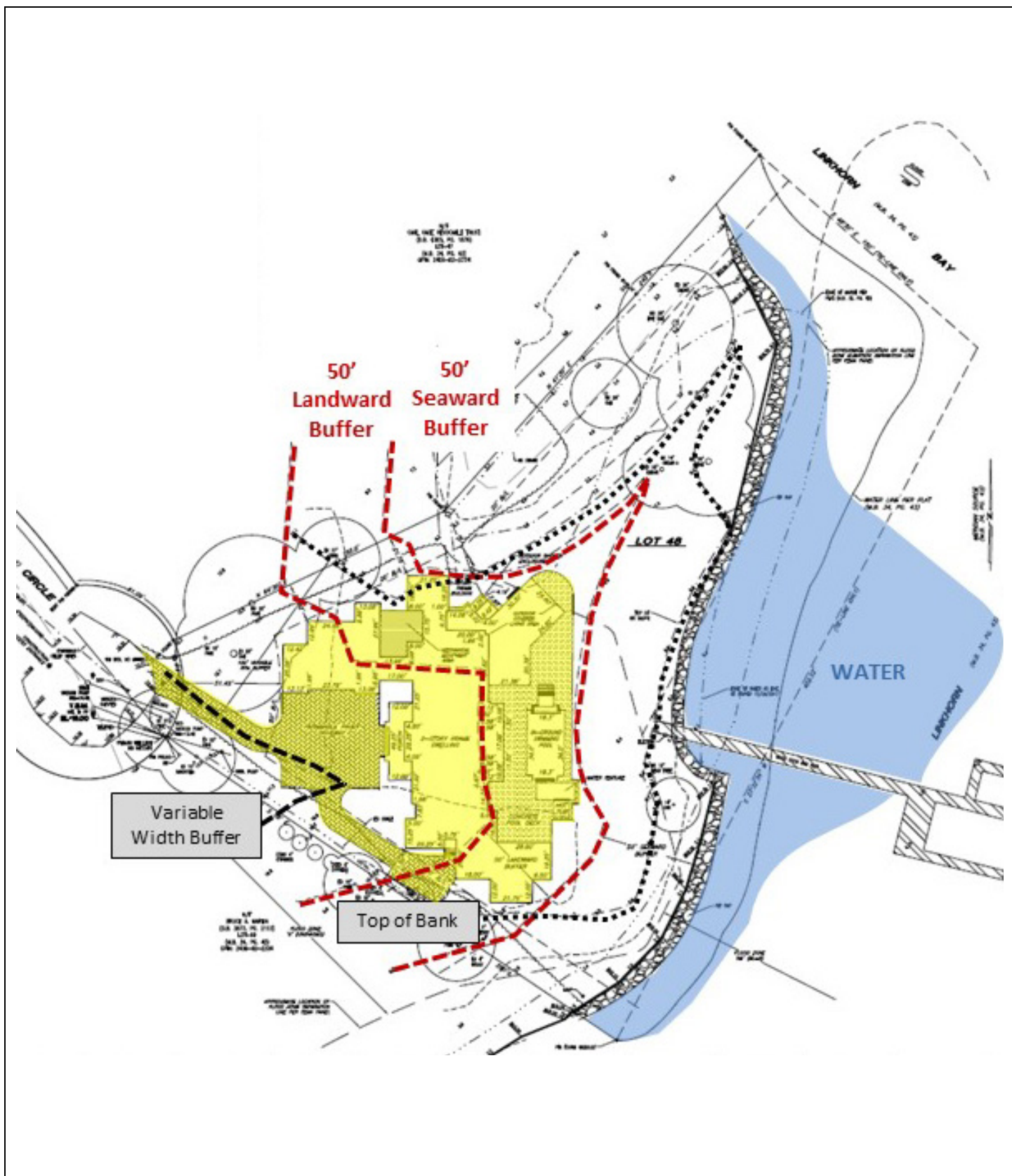
- 3) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan and submitted as a field change to the Development Services Center for recordation.

- 4) The area of synthetic turf shall not be calculated towards the stormwater management requirements associated with the April 11, 2019 approved site plan. All approved stormwater management facilities shall remain in place and functional as designed with the area of synthetic turf considered as additional stormwater treatment not associated with the approved site plan.
- 5) This variance and associated conditions are **in addition to** the conditions of the CBPA Board variance granted September 24, 2018.
- 6) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2022, prepared by WPL, titled CBPA Exhibit. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

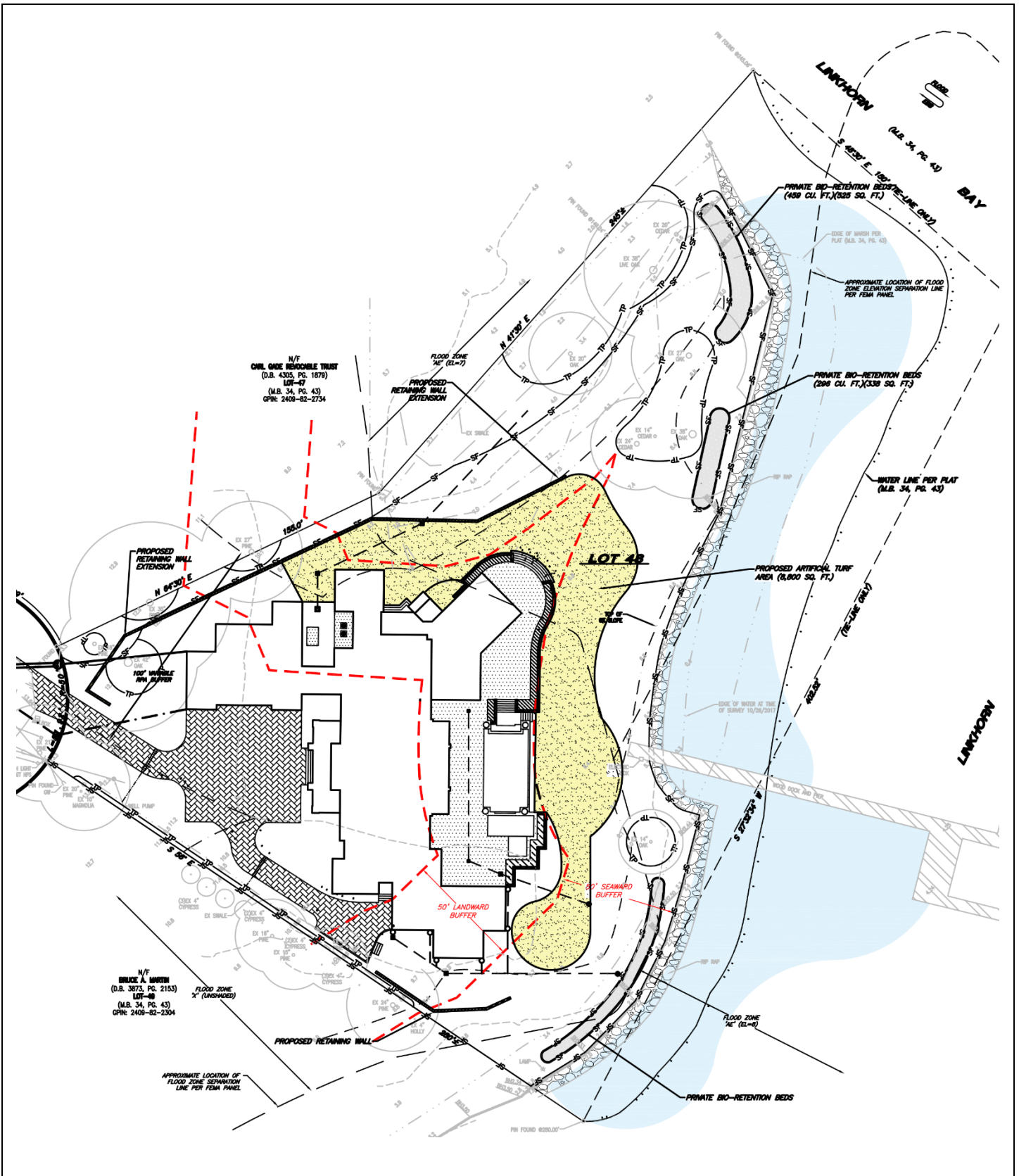
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

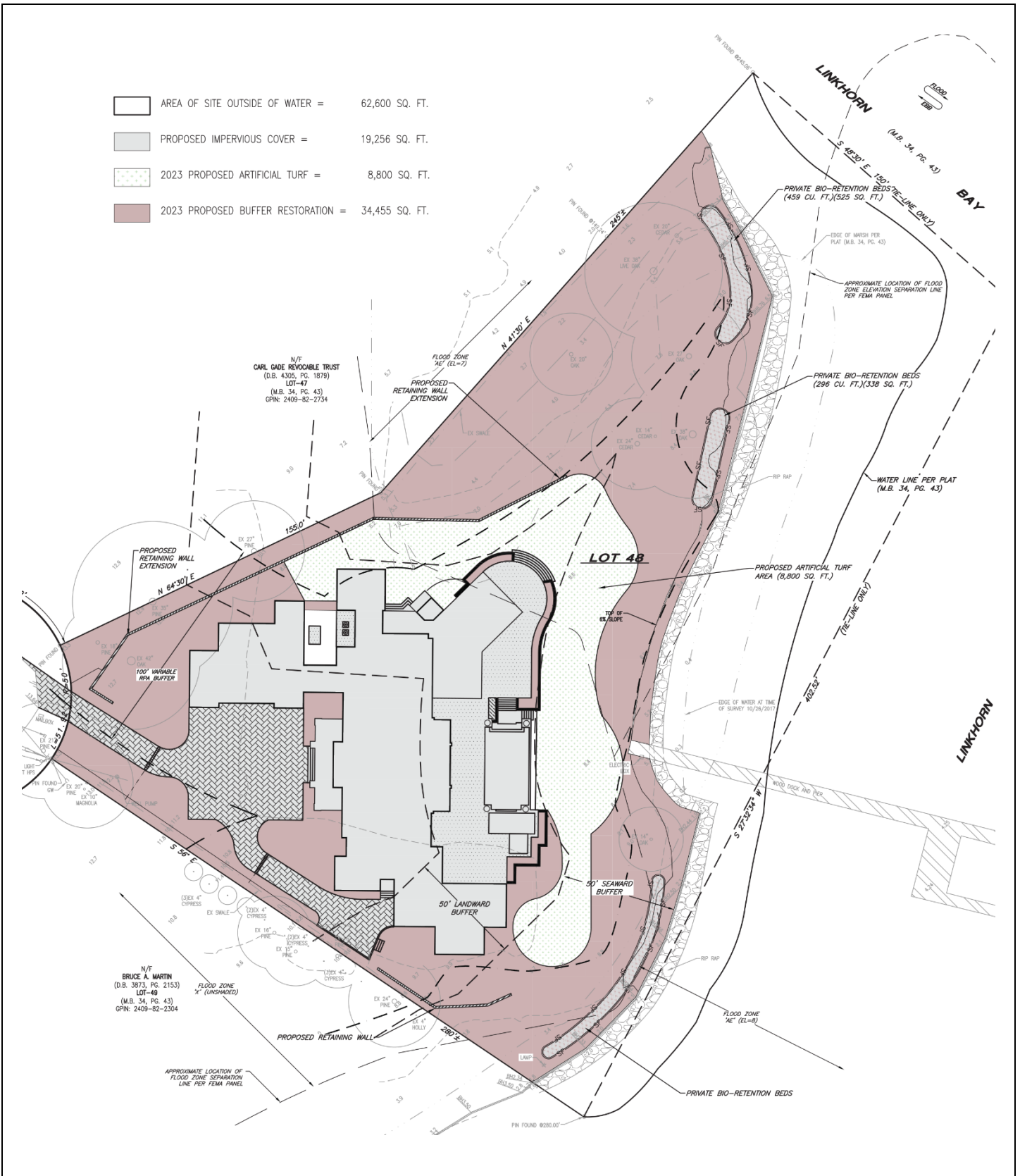




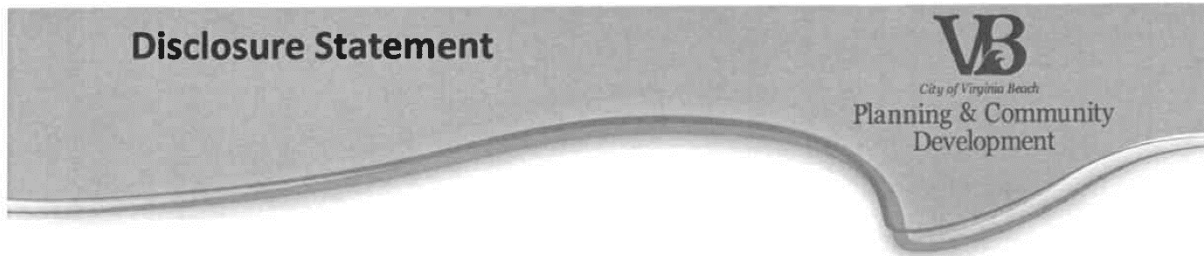
CBPA Exhibit – Proposed Improvements as submitted September 8, 2022



# REVISED CBPA Exhibit – Proposed Improvements, Buffer Planting Area Plan



# Disclosure Statement



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

## Applicant Disclosure

**Applicant Name** 1600 Arnold Circle, LLC

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

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

Billy Garrington, GPC, Inc

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

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

Brad Peterson, Joanna Peterson

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

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

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

# Disclosure Statement



## **Known Interest by Public Official or Employee**

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

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

## **Applicant Services Disclosure**

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

**Yes**  **No**

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

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

**Yes**  **No**

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

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

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

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

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

Becker Morgan Group, WPL , & Ann Stokes Landscape Architects

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

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



# Disclosure Statement



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

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

Jackson Andrews Building + Design

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

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

WPL

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

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

## Applicant Signature

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

Applicant Signature

Brad Peterson, 1600 Arnold Circe, LLC

Print Name and Title

Date

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

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

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

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

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Applicant & Property Owner **Romeo Spino**  
 Address **2021 Thomas Bishop Lane**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**3**

**The variance request is being deferred to the Monday, February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to allow additional time to address Staff's concerns.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, patio, redevelop driveway and construct parking area.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

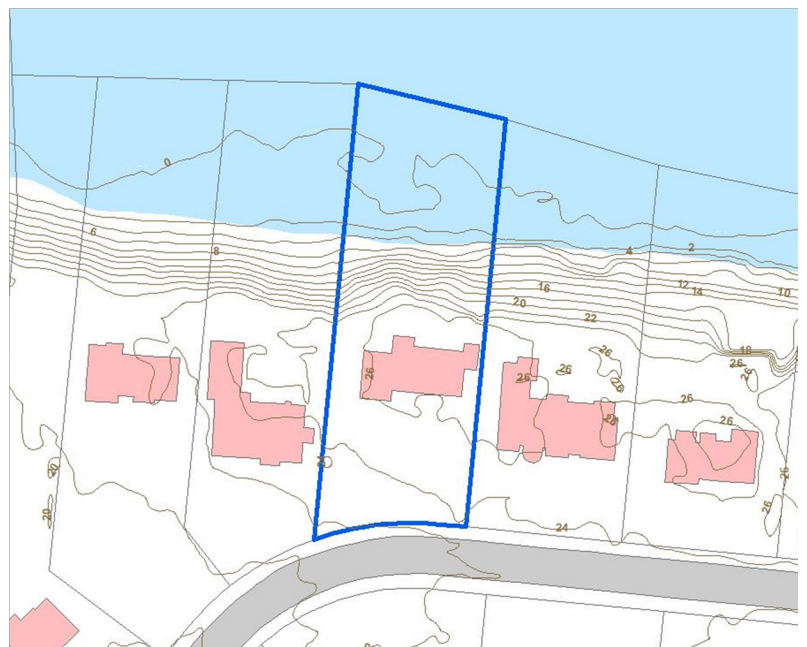
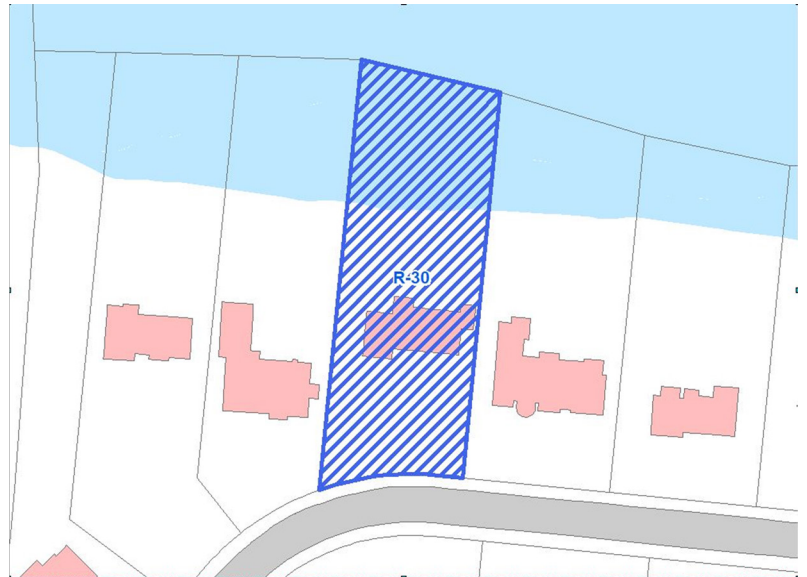
Map Book 136, Page 4

**GPIN**

1499-56-4825

**CBPA Variance Request History**

A CBPA board variance was approved on November 25, 1996 for the construction of a swimming pool, raised patio, and retaining wall



Site Aerial





Applicant & Property Owner **Philip & Jane Jones**  
 Address **1291 Ketch Point**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**4**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct covered porches, car port, and redevelop sidewalks and driveway.

**Applicant’s Agent**

Self-represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 92, Page 3  
 Recorded 06/08/972

**GPIN**

1498-76-8959

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

1,023 square feet

**Area of New Development in RPA**

357 square feet

**Location of Proposed Impervious Cover**

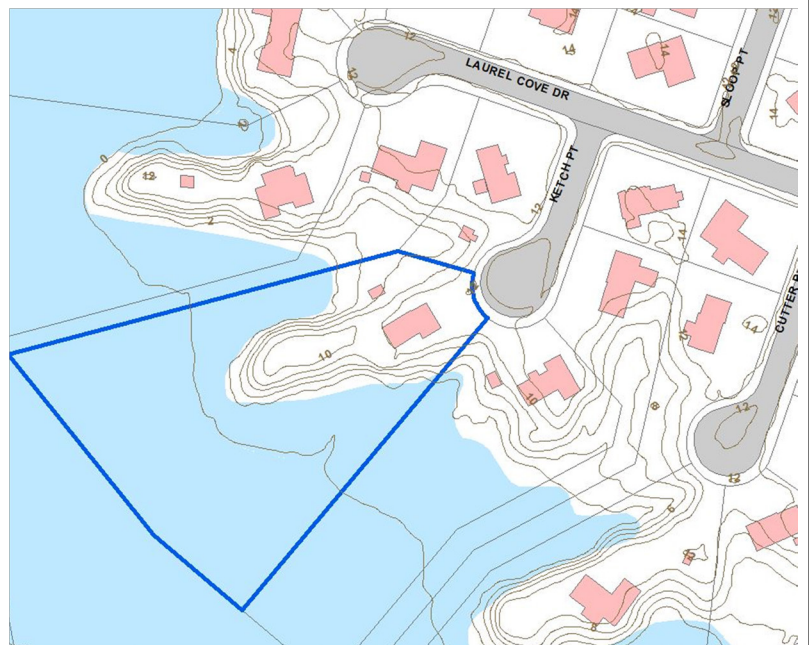
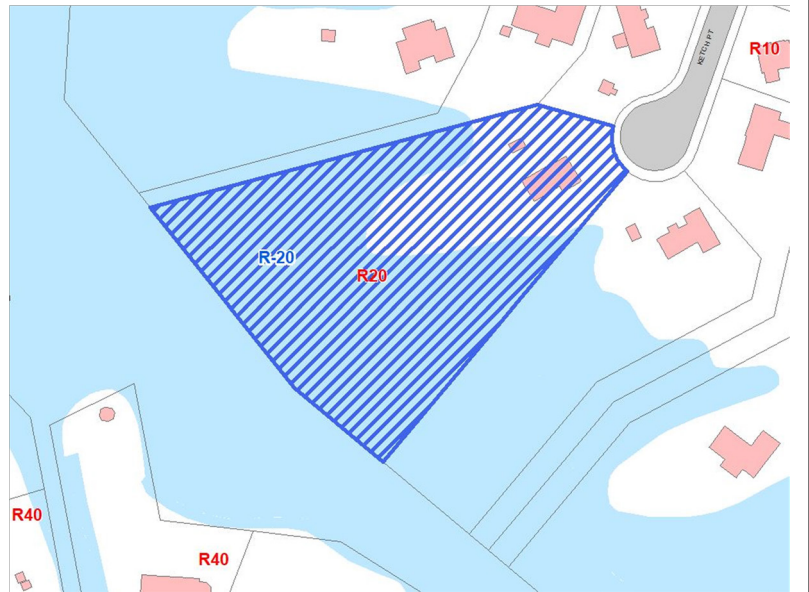
50-foot Seaward Buffer  
 50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Remove two existing sidewalks

### Construction Details

- Covered porches – two in total located off front of residence and side of residence
- Covered car port over existing driveway to be redeveloped in same footprint
- Redevelop driveway and portions of existing sidewalk

## CBPA Ordinance Variance History

**On September 8, 2022, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of a single parcel into two residential lots with the following conditions:**

- 1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
- 2. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.*
- 3. 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.*
- 4. No perimeter fill is authorized outboard or seaward of the proposed improvements.*

The September 8, 2022 Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)  
Rappahannock Series (deep and poorly drained soils)  
Rumford Series (highly erodible soils) located below the top of bank

### Shoreline

Shoreline is in a natural state.

## Riparian Buffer

### Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within proximity to the proposed improvements. Staff is of the opinion that the heavily wooded lot can support the request while maintaining the functional value of the existing riparian ecosystem.

## 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

Interior renovation to the existing single-family residence has been permitted and the applicant desires to construct two new covered porches and redevelop the existing driveway and portions of the associated sidewalk as part of an exterior renovation. As proposed, the new covered front porches, both front and side, would add approximately 357 square feet of new impervious cover within the 100-foot Resource Protection Area (RPA) on the lot. In addition to the new impervious cover proposed with this request, approximately 779 square feet of the existing driveway will be redeveloped. A carport is proposed to be constructed over the redeveloped driveway. In addition, the applicant will also be converting over 60 square feet of impervious cover to pervious within the RPA feature. Staff is of the opinion this variance request will not cause a substantial detriment to water quality given the minimal amount of new impervious cover with this request and the presence of a mature riparian buffer between the proposed improvements and edge of the tidal feature.

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 *"other property owners in the RPA area have applied for and have had approved similar small projects."* Staff concurs.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"all previous impervious cover and property improvements were prior to CBPAO adopted on January 1, 1991. Request is project staying within existing impervious cover boundary as much as possible, removing approximately 62 square feet of impervious cover."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"this request is to use the property to construct one (1) covered car port and redevelop existing driveway to protect vehicles from damage due to falling tree limbs and pine tar that happens frequently, and repair existing concrete that has been damaged due to encroachment of existing tree roots. Additionally, reasoning for the request is to utilize the property to construct two (2) covered porch's so that the new areas can be used to enjoy the properties aesthetic scenic setting. Means taken to minimize impacts include but not limited to project staying within existing impervious cover boundary as much as possible, removing approximately 24 square feet of impervious cover inside landward 50 foot buffer portion of RPA, removing approximately 38 square feet of impervious cover outside landward 50 foot buffer of the RPA, is in a flat area, minimum amount of excavation to existing*

area, will use a silt fence to catch construction debris on front porch project area, will perform majority of debris producing construction prefab to be performed on side of house in the driveway area close to the street, away from the 50 foot buffer portion of the RPA.” Staff is of the opinion that the request and layout of the proposed improvements offers merit towards the variance request being the minimum necessary to afford relief.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“utilizing the minimum necessary to afford relief. Means taken to minimize impacts include but not limited to project staying within existing impervious cover boundary as much as possible, removing approximately 24 square feet of impervious cover inside landward 50 foot buffer portion of RPA, removing approximately 38 square feet of impervious cover outside landward 50 foot buffer of the RPA, is in a flat area, minimum amount of excavation to existing area, will use a silt fence to catch construction debris on front porch project area, will perform majority of debris producing construction prefab to be performed in side of house in the driveway area close to the street, away from the 50 foot buffer portion of the RPA.”* Staff is of the opinion that the applicant has an understanding of the Ordinance and has brought forth an application that minimizes impacts to the RPA buffer to the greatest extent practicable.
- 5) *“Construction will be in property flat areas, minimum amount of excavation to existing area, will use a silt fence to catch construction debris, will perform majority of debris producing construction prefab to be performed use in the driveway area close to the street, away from the 50-foot buffer portion of the RPA”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the request will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay.

Given the above comments, Staff recommends the following **9** 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. Submitted concurrent with building permit application shall be the required buffer restoration shown on the exhibit/physical survey detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements.
3. Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 2 understory trees and 3 large shrubs.**

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

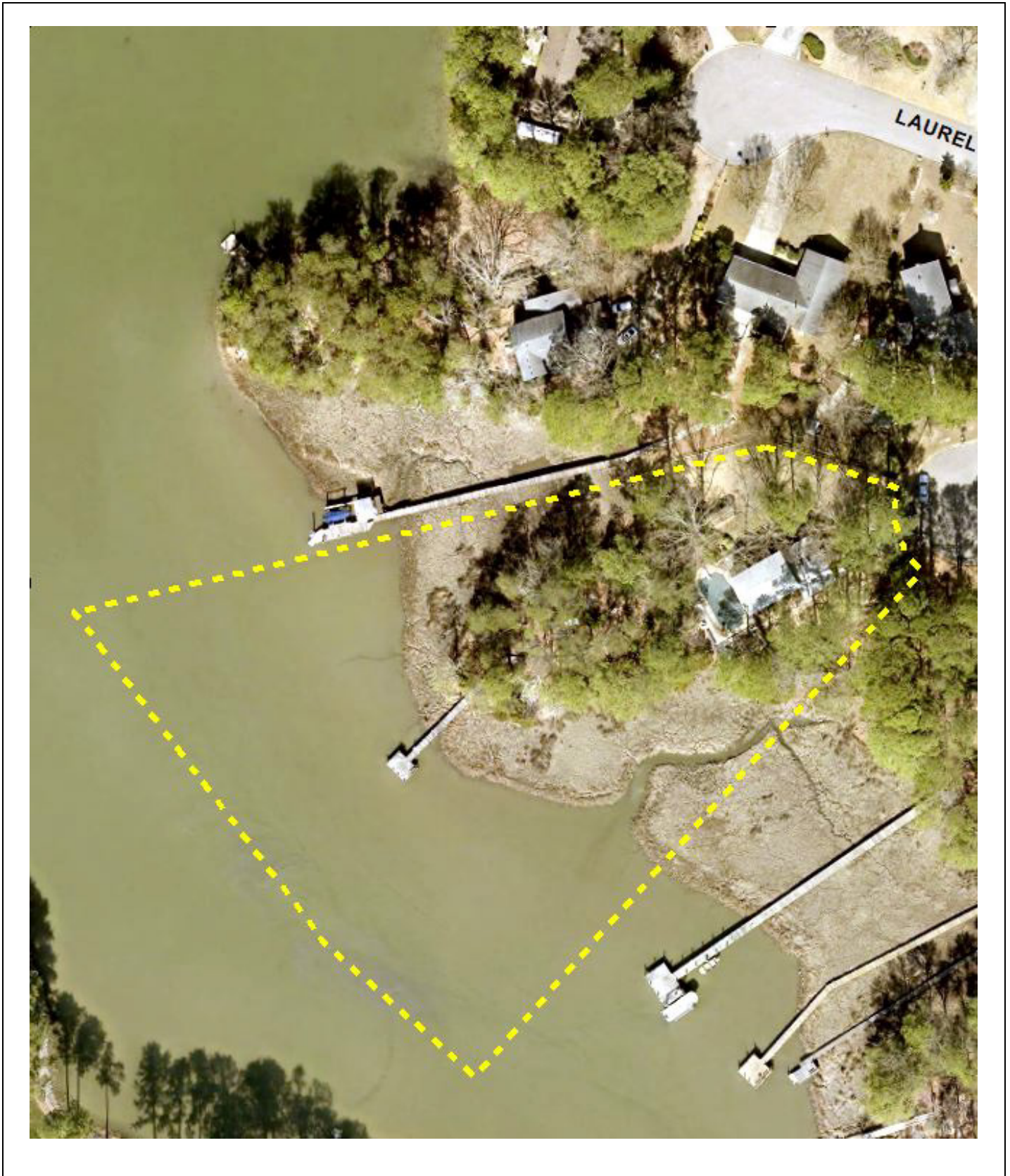


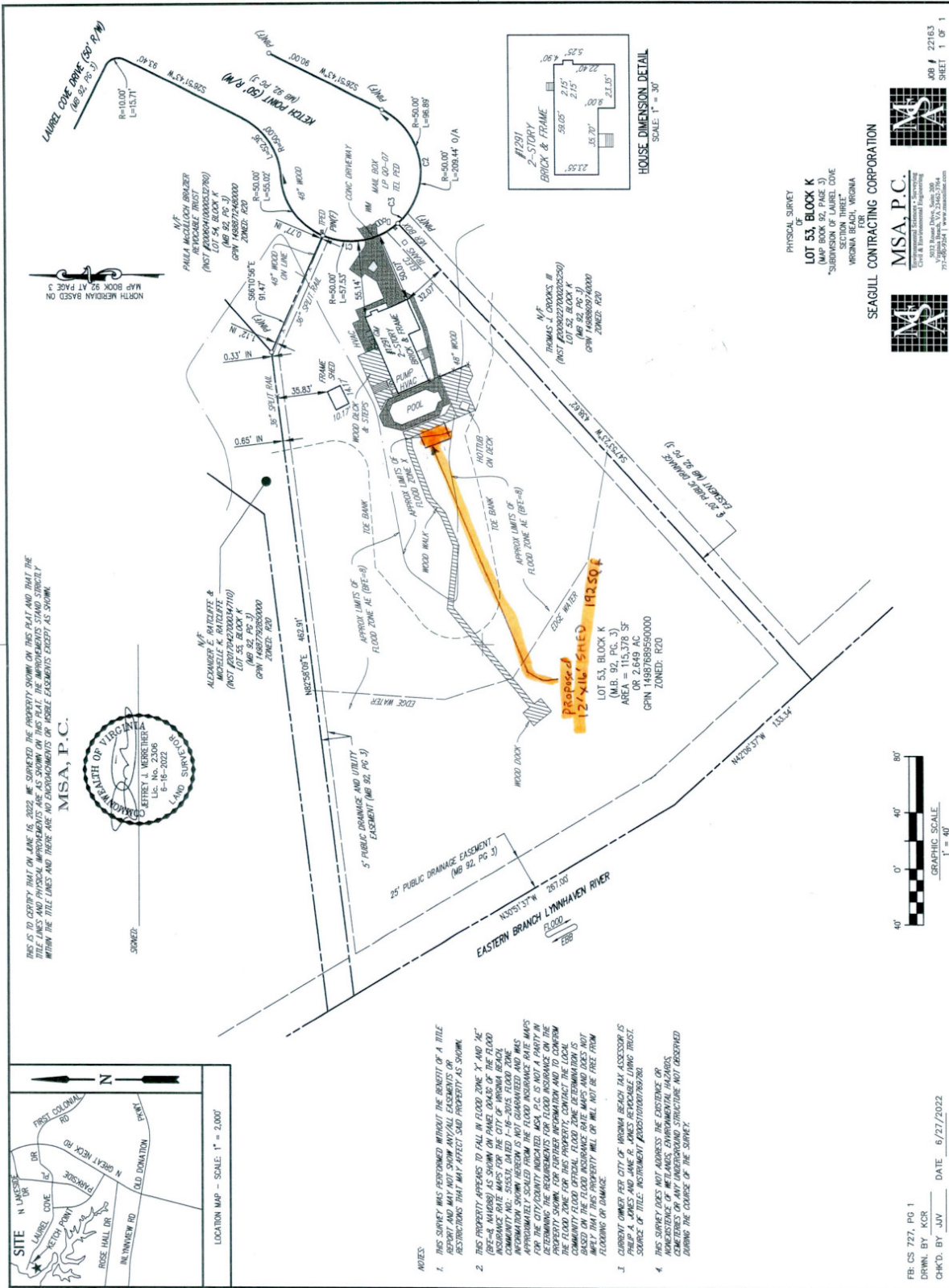
where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Under deck treatment of sand and gravel shall be installed.
8. Perimeter fill material 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 riparian buffer area.
9. This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 8, 2022.

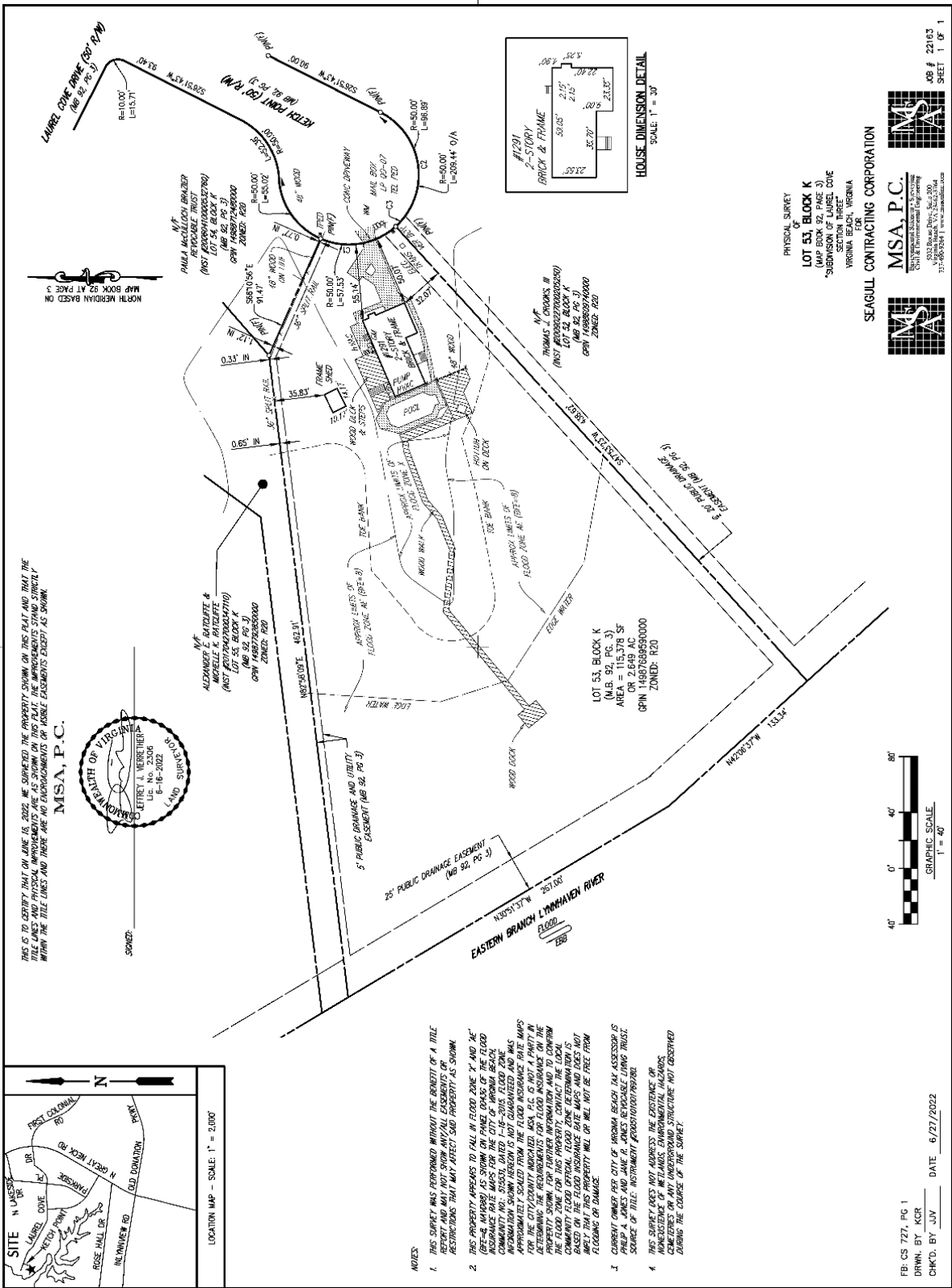
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial



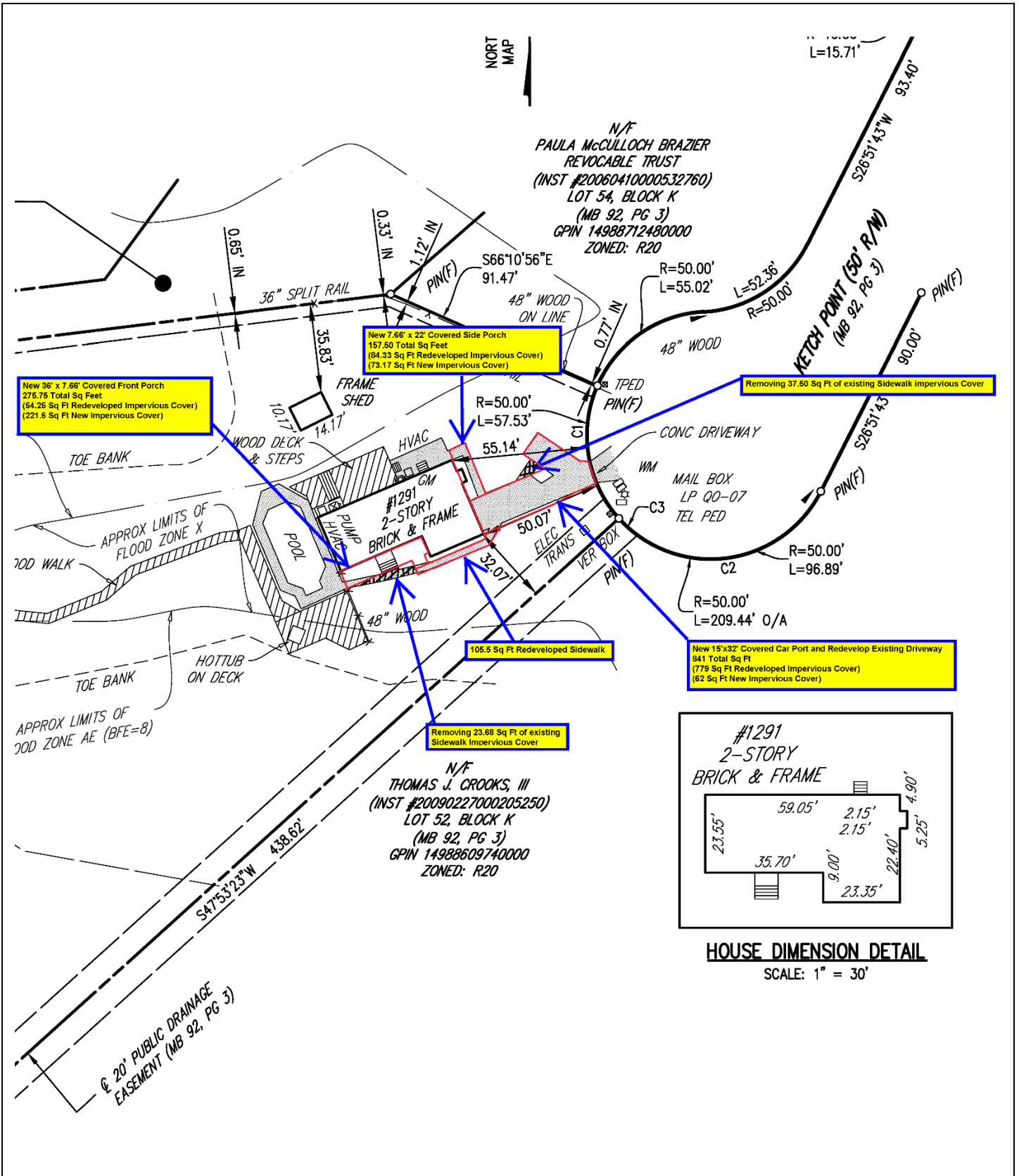


# CBPA Exhibit – Existing Conditions





**CBPA Exhibit – Proposed Improvement, Enlarged Plan View**



# Disclosure Statement



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## Applicant Disclosure

Applicant Name Philip A Jones

Does the applicant have a representative?  Yes  No

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

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

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

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

**Yes**  **No**

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

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

**Yes**  **No**

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

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

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

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

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

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.

Seagull Contracting Corporation

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.

MSA, PC

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.

*Philip A. Jones*

Applicant Signature

Philip A. Jones, Applicant & Owner

Print Name and Title

Philip A Jones

07-21-2022

Date

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

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

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

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

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Applicant & Property Owner **Robert & Jessica Grosso**  
 Address **5324 Fairfield Boulevard**  
 Public Hearing **January 23, 2023**  
 City Council District **District 1**, formerly Kempsville

Agenda Item

**5**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a detached garage and gravel parking area.

**Applicant's Agent**

David Durrett

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 87, Page 16  
 Recorded 11/30/1970

**GPIN**

1466-48-6342

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

700 square feet

**Location of Proposed Impervious Cover**

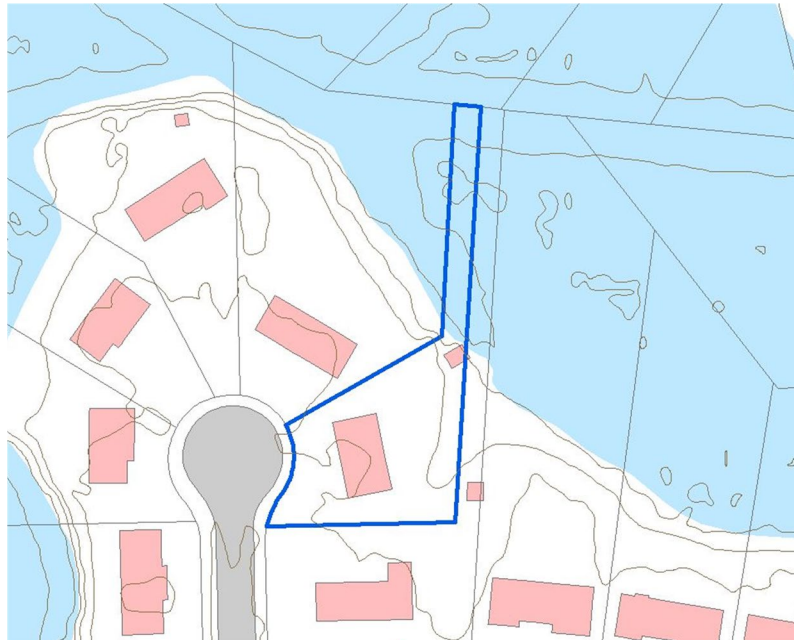
50-foot Landward Buffer  
 Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Defer



## Summary of Proposal

### Construction Details

- Construct a detached storage garage
- Gravel parking area

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

August-Urban Land Complex (deep, poorly drained soils)  
Rappahannock Series (deep, poorly drained soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant desires to construct a detached storage garage off the rear of the existing single-family residence and a gravel area adjacent to the existing driveway. The purpose of the proposed improvements is to store equipment such as a riding lawnmower, various yard equipment, recreational camper, and family bikes that currently are located throughout portions of the rear yard and attached garage. No additional pavement for access from the existing driveway is proposed to the detached storage garage. As submitted, Staff supports the location of the proposed improvement and is of the opinion that the applicant has situated the improvements in the least sensitive portion of the lot.

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

1. Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed 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 improvements will be required to have treatment provided between the improvements and the bay.”* Staff concurs.
2. This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“we are utilizing the portion of the lot furthest away from the water of the Chesapeake Bay Preservation Area and minimize encroachments to the greatest extent practicable.”* Staff concurs and 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.
3. The variance is the minimum necessary to afford relief because *“majority of the rear lot is impacted by the CBPA and this request sits the proposed improvements with setbacks with minimal encroachment.”* Staff concurs and offers that the applicant has provided a layout that is cognitive of the existing confined conditions of the lot, zoning setbacks, and delineated RPA feature within the neighborhood, which appears to be consistent with the findings of the CBPA Ordinance.
4. The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the planned detached garage will meet setback requirements with minimal impact to the CBPA buffer while maintaining similar siding/roof to match the house.”* Staff concurs and offers that the conditioned buffer restoration associated with the proposed improvements and retention of existing vegetation of the lot provide merit towards water quality benefits.
5. *“Garage gutters will be directed towards vegetated land cover for infiltration and buffer restoration shall be planted to help”* 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 **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 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. Submitted concurrent with building permit application 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 consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **2 canopy trees, 4 understory trees, 8 large shrubs and 16 small shrubs.**

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

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. No perimeter fill material, disturbance of existing vegetation, or altering of existing contours is permitted.
8. Gravel downspout intercepts shall be provided as a means of erosion and sediment control for stormwater runoff from the proposed improvements.

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

Site Aerial



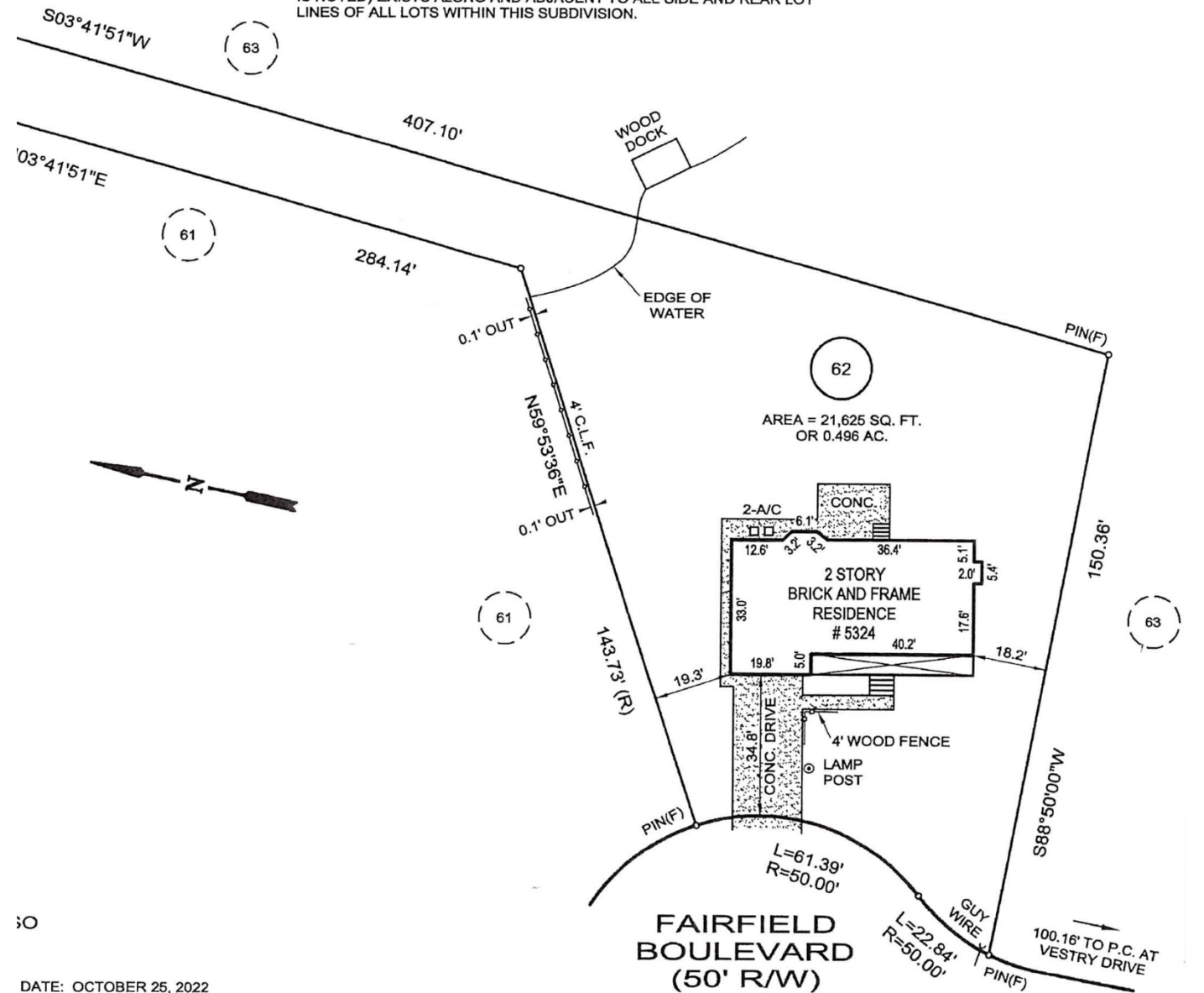
# CBPA Exhibit – Existing Conditions

THIS IS TO CERTIFY THAT ON OCTOBER 24, 2022, I SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE SHOWN ON THIS PLAT. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

THE RESIDENCE SHOWN HEREON APPEARS TO BE IN FLOOD ZONE "AE" (8.0)  
 FIRM MAP CITY OF VIRGINIA BEACH COMMUNITY NO. 515531  
 MAP REVISION: JAN. 16, 2015 PANEL NO. 0083G

THIS SURVEY PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE: A 5' DRAINAGE & UTILITY EASEMENT (UNLESS GREATER WIDTH IS NOTED) EXISTS ALONG AND ADJACENT TO ALL SIDE AND REAR LOT LINES OF ALL LOTS WITHIN THIS SUBDIVISION.



DATE: OCTOBER 25, 2022

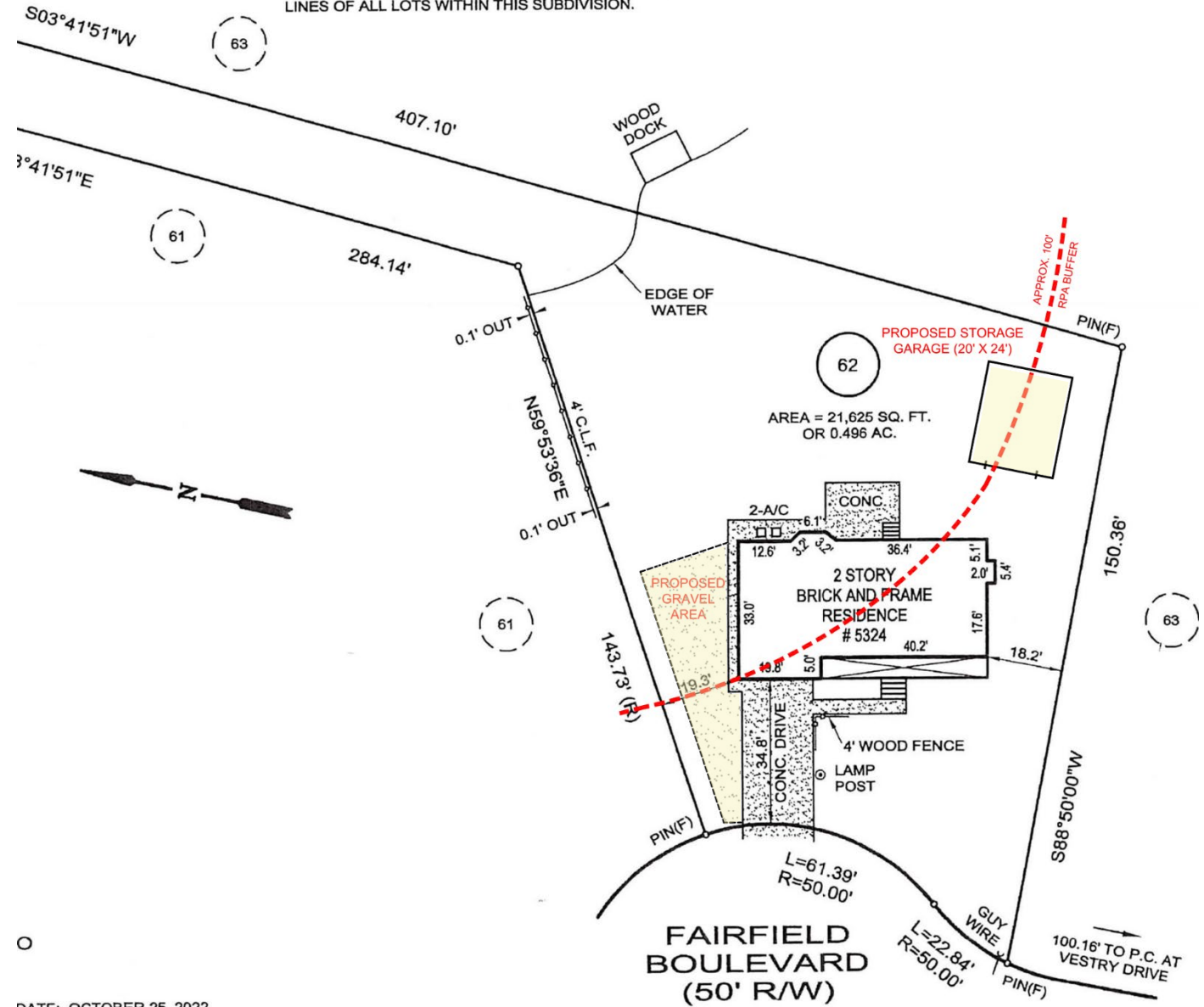


# CBPA Exhibit – Proposed Improvements

THE RESIDENCE SHOWN HEREON APPEARS TO BE IN FLOOD ZONE "AE" (8.0)  
 FIRM MAP CITY OF VIRGINIA BEACH COMMUNITY NO. 515531  
 MAP REVISION: JAN. 16, 2015 PANEL NO. 0083G

THIS SURVEY PERFORMED WITHOUT  
 THE BENEFIT OF A TITLE REPORT.

NOTE: A 5' DRAINAGE & UTILITY EASEMENT (UNLESS GREATER WIDTH  
 IS NOTED) EXISTS ALONG AND ADJACENT TO ALL SIDE AND REAR LOT  
 LINES OF ALL LOTS WITHIN THIS SUBDIVISION.



DATE: OCTOBER 25, 2022

# 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** Robert Grosso

Does the applicant have a representative?  Yes  No

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

David Durrett

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

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

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

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

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

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

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

## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

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.

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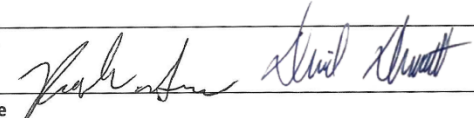
- 7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property?  Yes  No
  - If **yes**, identify the firm and individual providing the service.

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

### Applicant Signature

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

Applicant Signature 

Print Name and Title  
Robert Grosso - Home Owner and Applicant

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 **Victoria & Victor Spears**  
 Address **3328 Upper Palace Green**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**6**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, patio, shed, and redevelop wood deck and concrete walkway.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultants, Inc.

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 136, Page 39  
 Recorded 09/26/1979

**GPIN**

1498-05-4885

**SITE AREA**

32,005 square feet or 0.735 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

24,399 square feet or 0.560 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,901 square feet or 20 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,683 square feet or 32 percent of site

**Area of Redevelopment in RPA**

1,094 square feet

**Area of New Development in RPA**

2,825 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

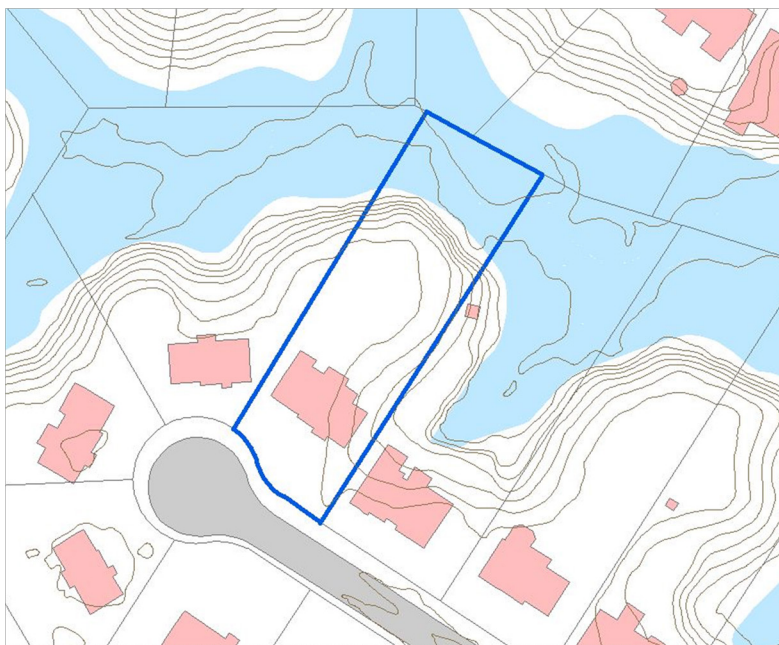
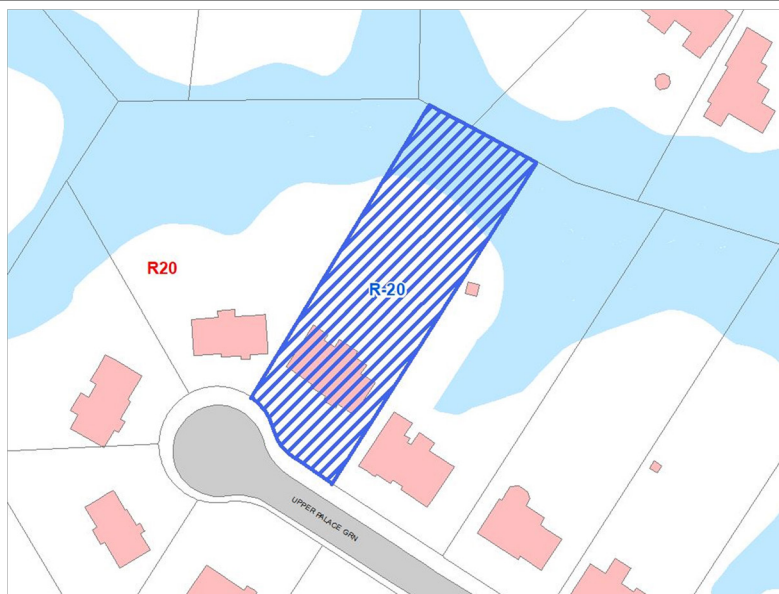
100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Remove and replace existing wood deck and concrete walkways

### Construction Details

- In-ground swimming pool with concrete pool surround
- Storage shed with concrete steppingstones and surround
- Wood deck and concrete sidewalk redevelopment/reconfiguration

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Rappahannock Series (deep and poorly drained soils)

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

Yeopim Series (deep and moderately well-drained soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 5
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction and within the footprint of the proposed swimming pool and patio surround.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The 100-foot Resource Protection Area (RPA) buffer encumbers the majority of the lot with the variable width buffer extending from the top of bank over the remaining portion of the lot. As submitted, this variance request will add

approximately 2,825 square feet of new impervious cover in the Resource Protection Area (RPA) with the construction of the proposed swimming pool, concrete pool patio surround with associated sidewalk along the east side of the residence and a storage shed. Approximately 1,094 square feet of existing impervious cover on the lot will be redeveloped consisting of the existing wood deck off the rear of the residence and reconfiguring the layout of existing sidewalks along the west side of the residence. As submitted, the proposed improvements will increase the overall impervious cover of the lot by 12 percent from 4,901 square feet to 7,683 square feet on a 24,399 square foot lot.

Working through the application process, the applicant was amenable to Staff's recommendations upon the initial review of the proposal and has reduced portions of the concrete surround associated with the proposed shed as well as relocated the proposed sidewalk along the east side of the residence out of the 50-foot seaward buffer. Staff provides that the applicant and their consultant team have situated the proposed improvements on the lot to the best of their ability given the presence of the 100-foot RPA buffer encumbering the entire rear portion of the lot and the location of the underground electrical line feed to the residence. The red line provided on the Master Plan below (pages 59 and 60) shows the location of the electrical line feed to the residence and unique path it takes around the rear of the residence. The applicant did explore the option to relocate the feed, however, given the expense, chose to work with the consultant team to provide a master plan for the lot that is cognizant of this situation and the encroachment within the 100-foot RPA buffer.

As a means to mitigate stormwater runoff from the existing and proposed impervious surfaces and prevent an increase in nonpoint source pollution load in the Chesapeake Bay Watershed, the applicant's agent has indicated that bioretention planting beds and gravel underdeck treatment will be implemented with the improvements. Given the master planning provided with this variance request that creates substantial naturalized areas within the 50-foot seaward buffer and planting areas adjacent to the existing residence, Staff is of the opinion that the overall redevelopment of the lot provides merit towards aiding the infiltration of rainwater and stormwater runoff consistent with the performance standards in Section 106 (A)(1 – 3) of the Chesapeake Bay Preservation Area (CBPA) Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1979 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) 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 structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offer stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be added to facilitate treatment from the new improvement for the betterment*

of the bay.” Staff is of the opinion that the location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.

- 5) *“The proposed buffer mitigation will enhance and compliment the site. Bioretention beds will be installed between the improvements and the waterway to meet the stormwater management regulations and will be placed to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant has provided a layout of proposed improvements that ensures a no net increase in nonpoint source pollution load, including new bioretention planting beds and sand/gravel underdeck treatment to slow, capture, and treat the on-site stormwater runoff before entering the river.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration layout and proposed naturalized areas on the lot shall be in substantial compliance with the Master Plan and Detailed Site Design exhibits provided by WPL, dated November 21, 2022. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

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

- 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.**

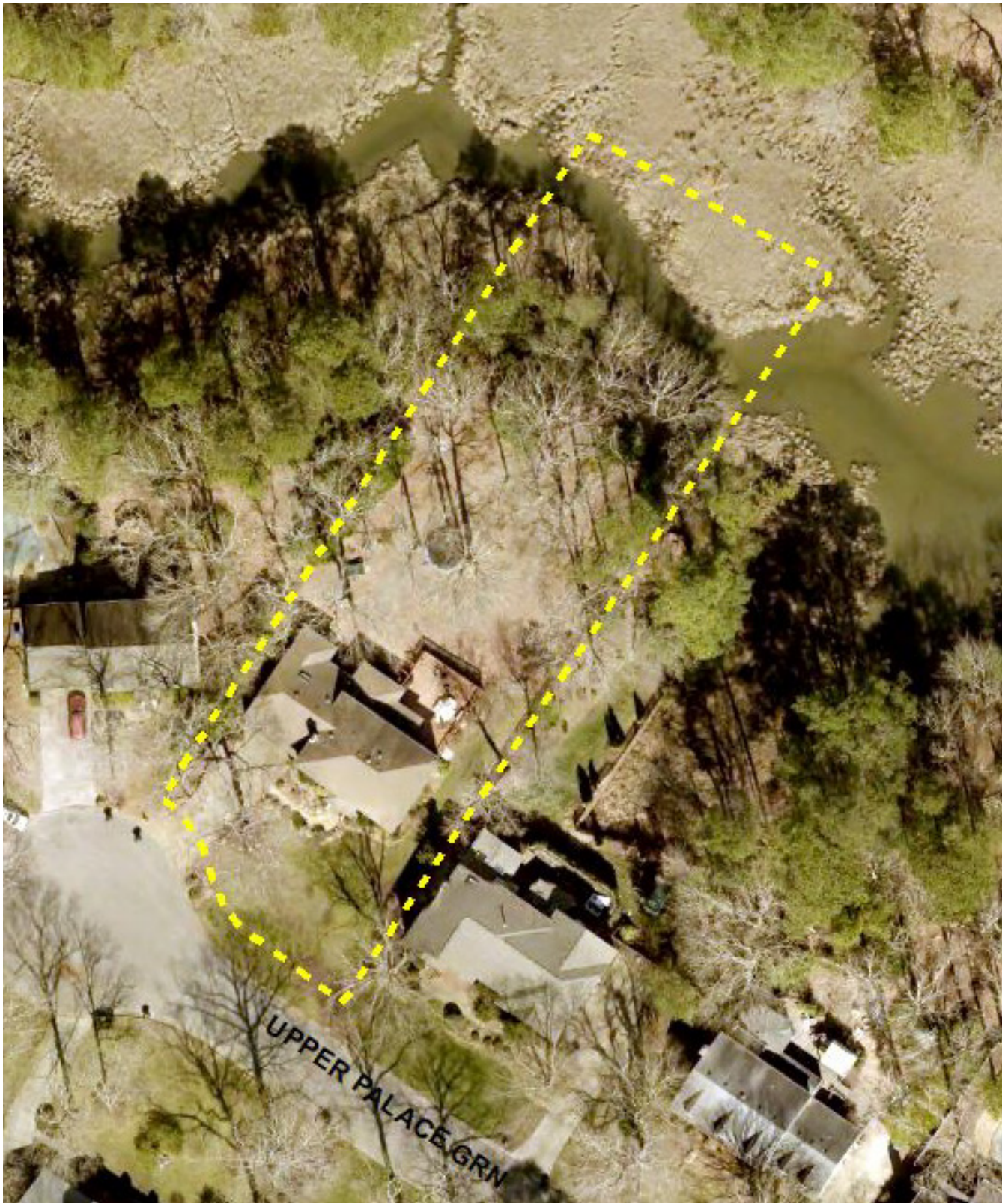


- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the 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) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$647.39 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.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated October 4, 2022, prepared by WPL, signed January 3, 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



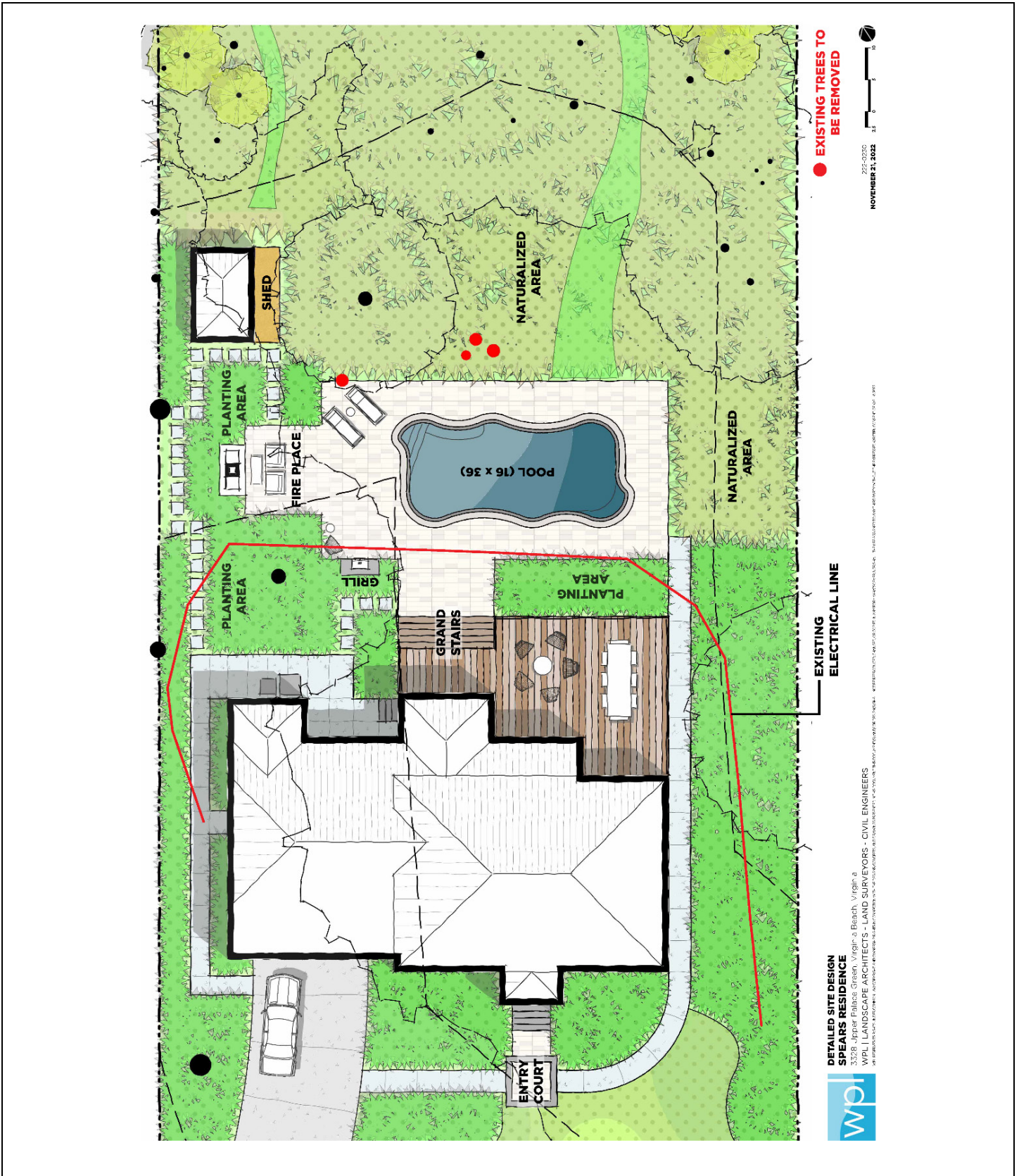




# CBPA Exhibit – Master Plan



# CBPA Exhibit – Detailed Site Design



# Disclosure Statement

## Disclosure Statement



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### Applicant Disclosure

Applicant Name Victoria A Spears & Victor L Spears, III

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)

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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.

Navy Federal Credit Union

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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



# Disclosure Statement



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

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.

*Victor L. Spears*

Applicant Signature

VICTOR L. SPEARS

Print Name and Title

NOVEMBER 29, 2022

Date

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

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

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

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

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Applicant & Property Owner **Elizabeth & Wesley Flowers**  
 Address **1804 Duke of York Quay**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**7**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, patio, covered porch, walkway, and reconfigure a wood deck.

**Applicant's Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy PC

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 96, Page 5  
 Recorded 03/28/1973

**GPIN**

1499-84-4234

**SITE AREA**

23,332 square feet or 0.536 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

21,445 square feet or 0.492 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,771 square feet or 27 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,060 square feet or 33 percent of site

**Area of Redevelopment in RPA**

154 square feet

**Area of New Development in RPA**

1,530 square feet

**Location of Proposed Impervious Cover**

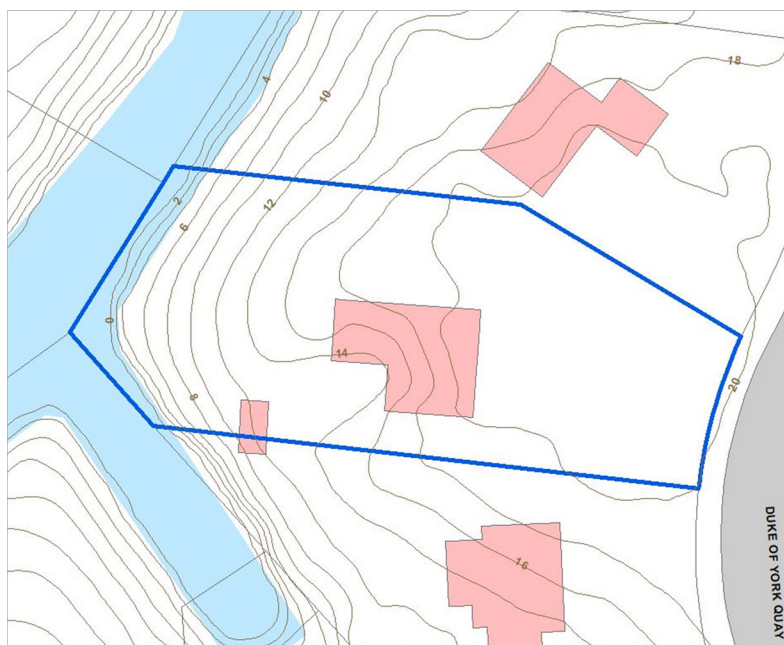
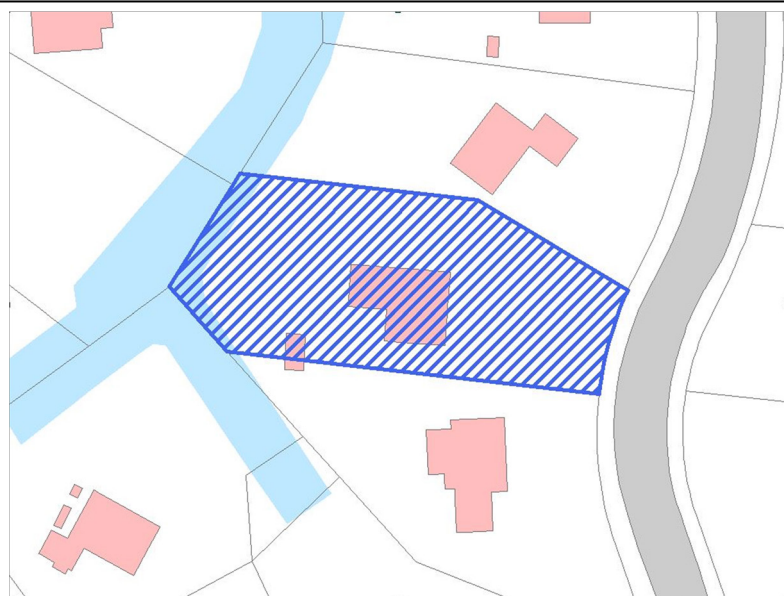
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Remove and reconfigure existing wood deck

### Construction Details

- Swimming pool with paver patio and paver walkway
- Redeveloped wood deck with pool equipment pad
- Covered porch with steps

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 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 stabilized by a timber bulkhead.

### Riparian Buffer

Sparsely 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: 0
- Evaluation of existing canopy tree removal request: The 36-inch Oak tree being requested for removal is within the footprint of the proposed swimming pool. During the site visit, Staff performed a visual analysis of the existing 36-inch Oak tree on the lot adjacent to the proposed paver patio area. The tree showed abnormal branching structure and deviated from normal canopy shape due to old growth die back and flattened limb structure. Staff is of the opinion that the tree has reached the life expectancy and should be removed with the construction of the proposed improvements to limit future land disturbance within the RPA buffer.

## Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds and underdeck treatment for the redeveloped deck adjacent to the proposed swimming pool will be provided as a best management practice for stormwater run-off mitigation.

## Evaluation and Recommendation

The topography on the lot transitions approximately 13 feet in elevation from the existing bulkhead (elevation 4.5 feet above sea level) to rear corner of the residence (elevation 17.5 feet above sea level). Given this condition the applicant is proposing to construct the proposed improvements primarily within the side yard of the lot thus reducing the extent of retaining walls needed to accommodate the elevation change within the 100-foot RPA and need to fill within the RPA for the proposed improvements. This approach also situates all of the proposed improvements within the upper limits of the 50-foot landward buffer and variable width buffer of the RPA.

Although there is an increase of new impervious cover within the 100-foot Resource Protection Area (RPA), Staff is of the opinion that the applicant has designed the proposed improvements on the lot to minimize encroachment into the 100-foot buffer to the greatest extent practicable by situating the proposed improvements primarily in the upper reaches of the landward buffer and variable width buffer on the lot. This request does not encroach into the environmental sensitive seaward buffer portion and the size of the proposed improvements are acceptable.

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 1973 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) 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 structures and off in the side yard of the lot flatter area and further landward of the existing bulkhead to the greatest extent practicable to maximize the redevelopment and to minimize site impacts."* Staff acknowledges the applicant's statement and agrees that the location of the proposed improvements are in the most reasonable spot on the lot to minimize impacts to the riparian buffer and existing topography.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offers stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be added to facilitate treatment from the new improvement for the betterment of the bay."* This request does not encroach into the 50-foot seaward buffer and the applicant has situated the proposed improvements to fall within the upper limits of the landward buffer and variable width buffer.
- 5) *"The proposed buffer mitigation will enhance and compliment the site. Bioretention beds will be installed between the improvements and the waterway to meet the stormwater management regulations and will be placed to capture and treat runoff prior to discharging into the river"* as a means to manage towards a net increase in nonpoint source pollution load. Staff is of the opinion that the buffer restoration areas as

shown on the proposed plans and best management practices proposed provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,530 square feet x 200 percent = 3,060 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 8 understory trees, 16 large shrubs, and 24 small shrubs.**

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

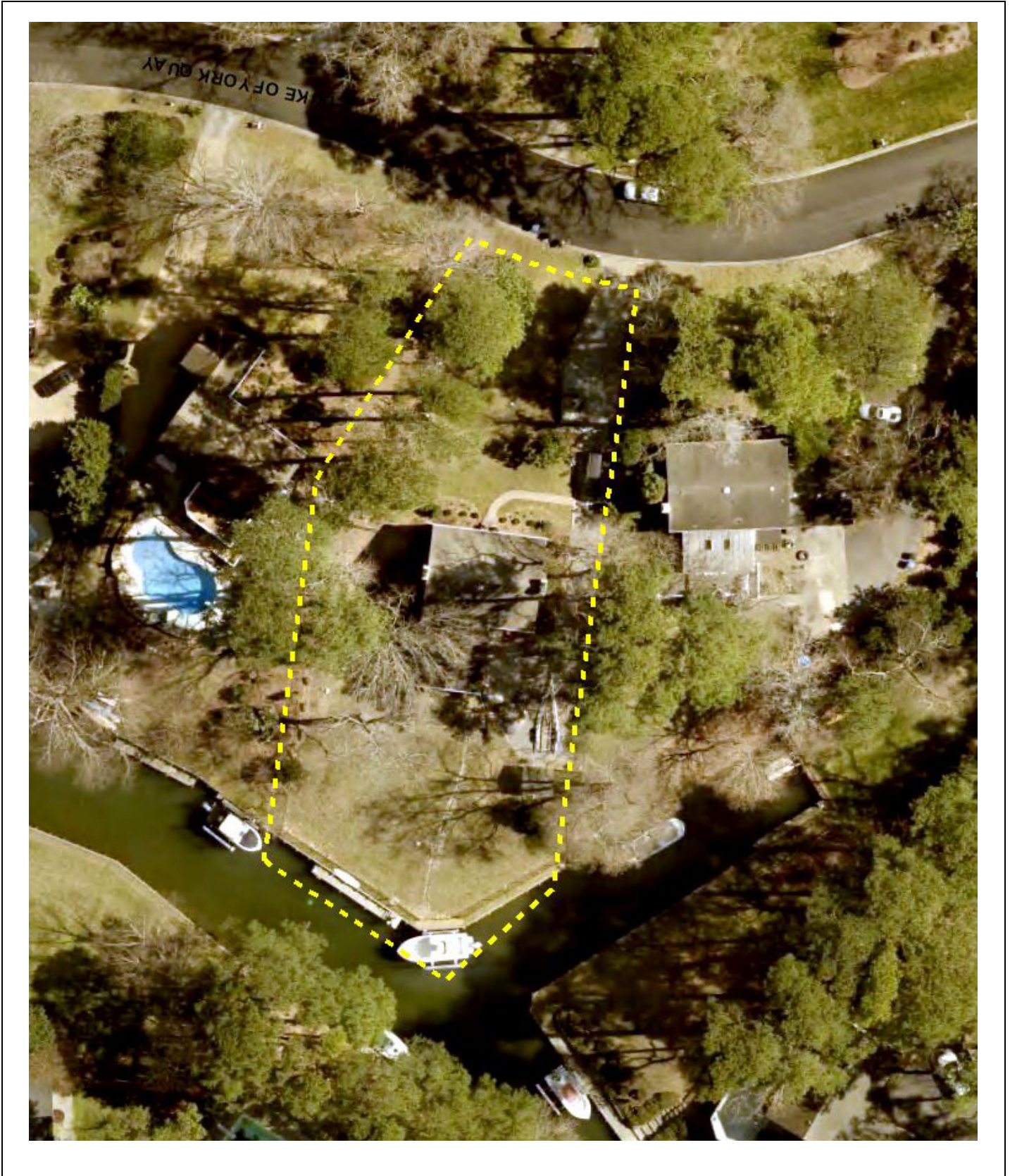
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited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

- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) Underdeck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$382.50 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated July 15, 2022, prepared by WPL, signed January 6, 2022 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

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

Site Aerial





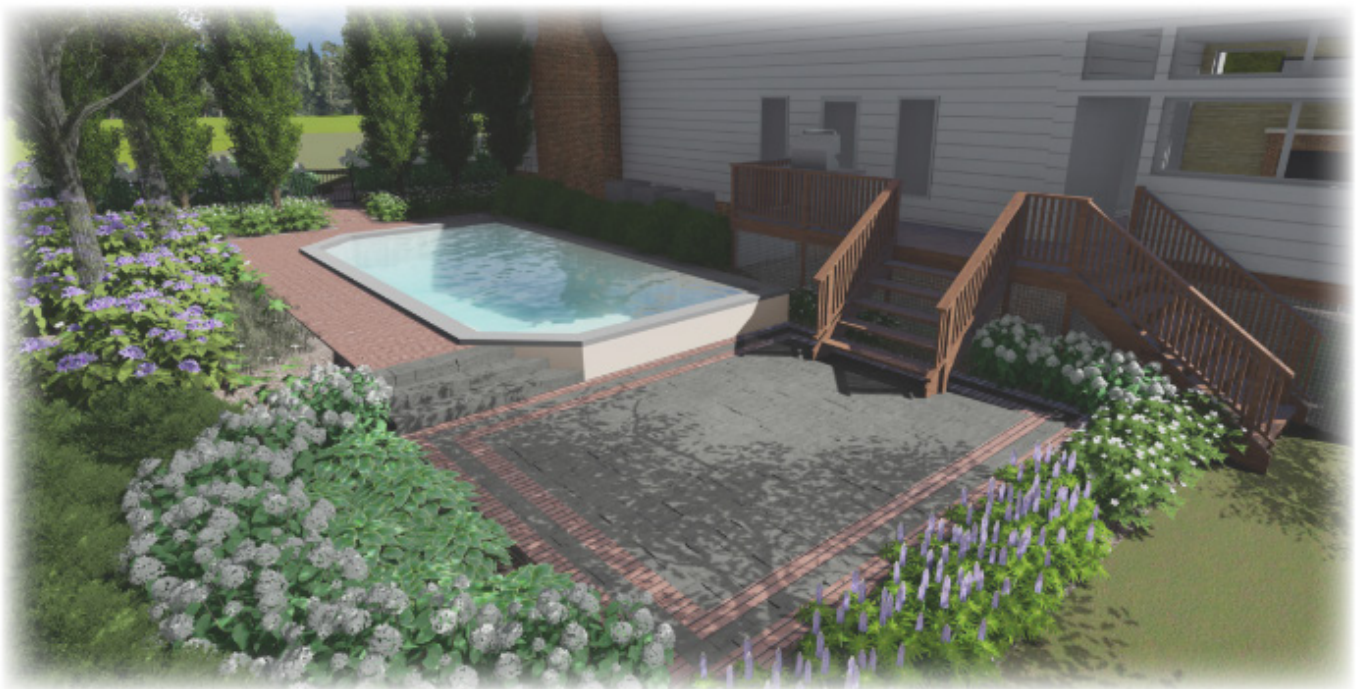
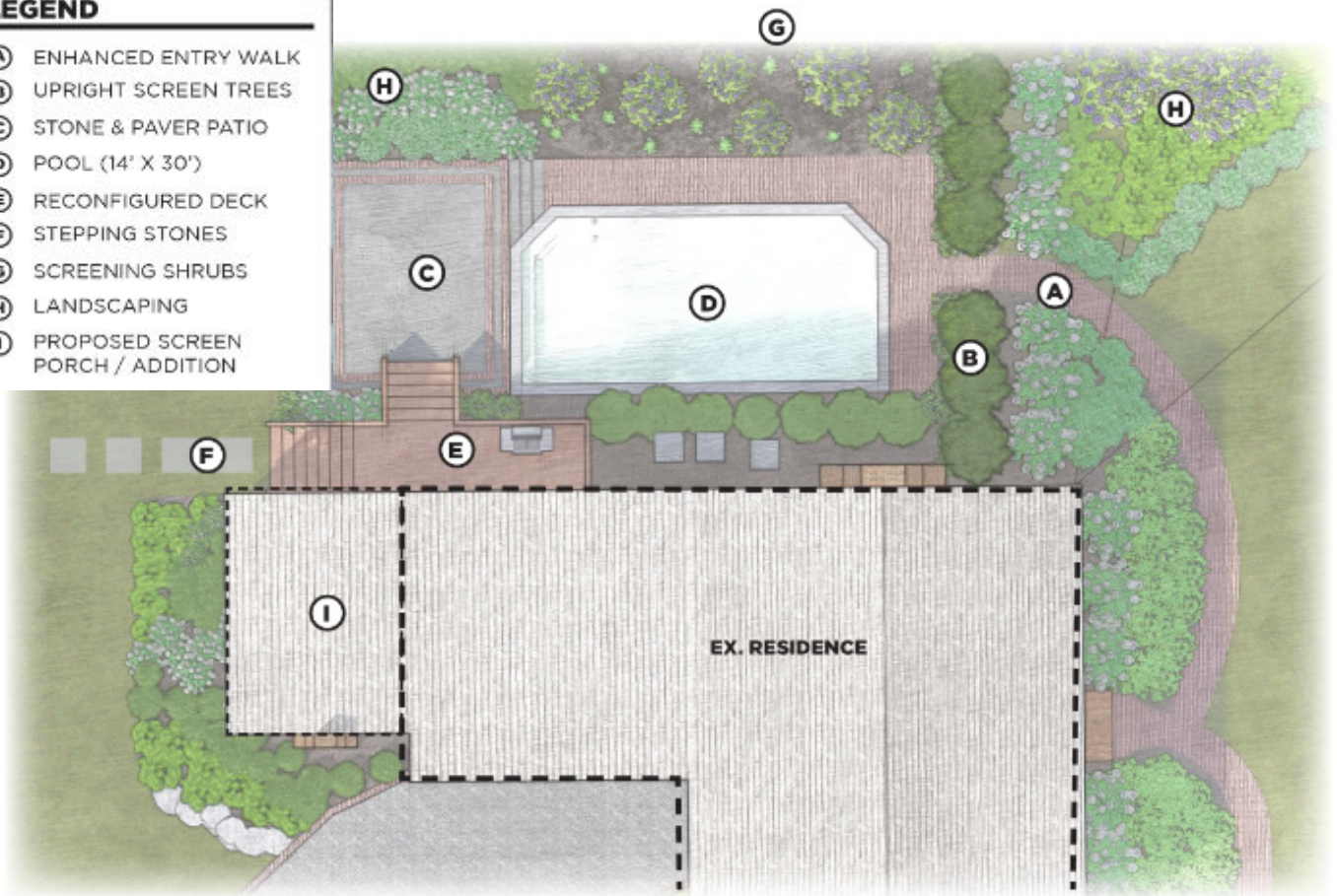




# CBPA Exhibit – Design Updates & Illustrations

## LEGEND

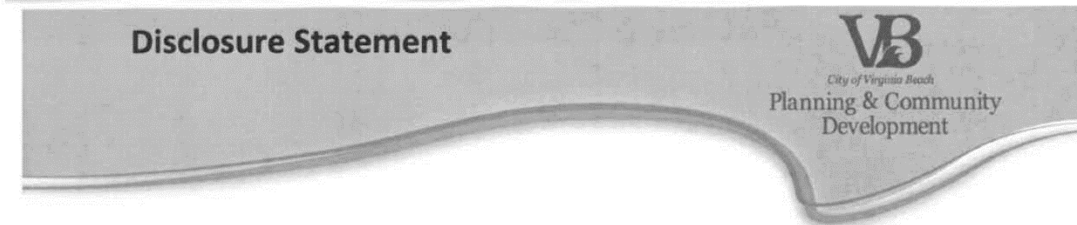
- (A) ENHANCED ENTRY WALK
- (B) UPRIGHT SCREEN TREES
- (C) STONE & PAVER PATIO
- (D) POOL (14' X 30')
- (E) RECONFIGURED DECK
- (F) STEPPING STONES
- (G) SCREENING SHRUBS
- (H) LANDSCAPING
- (I) PROPOSED SCREEN PORCH / ADDITION



CBPA Exhibit – Illustrations, Rear of Residence View



# Disclosure Statement



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

## Applicant Disclosure

**Applicant Name** Elizabeth S Flowers & Wesley B Flowers

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

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

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

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

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

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- If **yes**, list the businesses that have a parent-sub subsidiary<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-sub subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

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

# Disclosure Statement



## **Known Interest by Public Official or Employee**

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

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

## **Applicant Services Disclosure**

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

**Yes**  **No**

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

Southern Trust Mortgage, LLC

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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

# Disclosure Statement



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

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

Whitney Construction

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

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

WPL

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

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

### Applicant Signature

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

*Elizabeth Flowers*

Applicant Signature

Elizabeth Flowers

Print Name and Title

12/1/22

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK





Applicant & Property Owner **Taylor Milhaly**  
 Address **3113 Basin Road**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**8**

**Variance Request**

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

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 43, Page 3  
 Recorded 01/13/1957

**GPIN**

1499-07-6979

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**SITE AREA OUTSIDE OF WATER/WETLANDS**

12,945 square feet or 0.297 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,152 square feet or 39.8 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

5,945 square feet or 45.9 percent of site

**Area of Redevelopment in RPA**

183 square feet

**Area of New Development in RPA**

793 square feet

**Location of Proposed Impervious Cover**

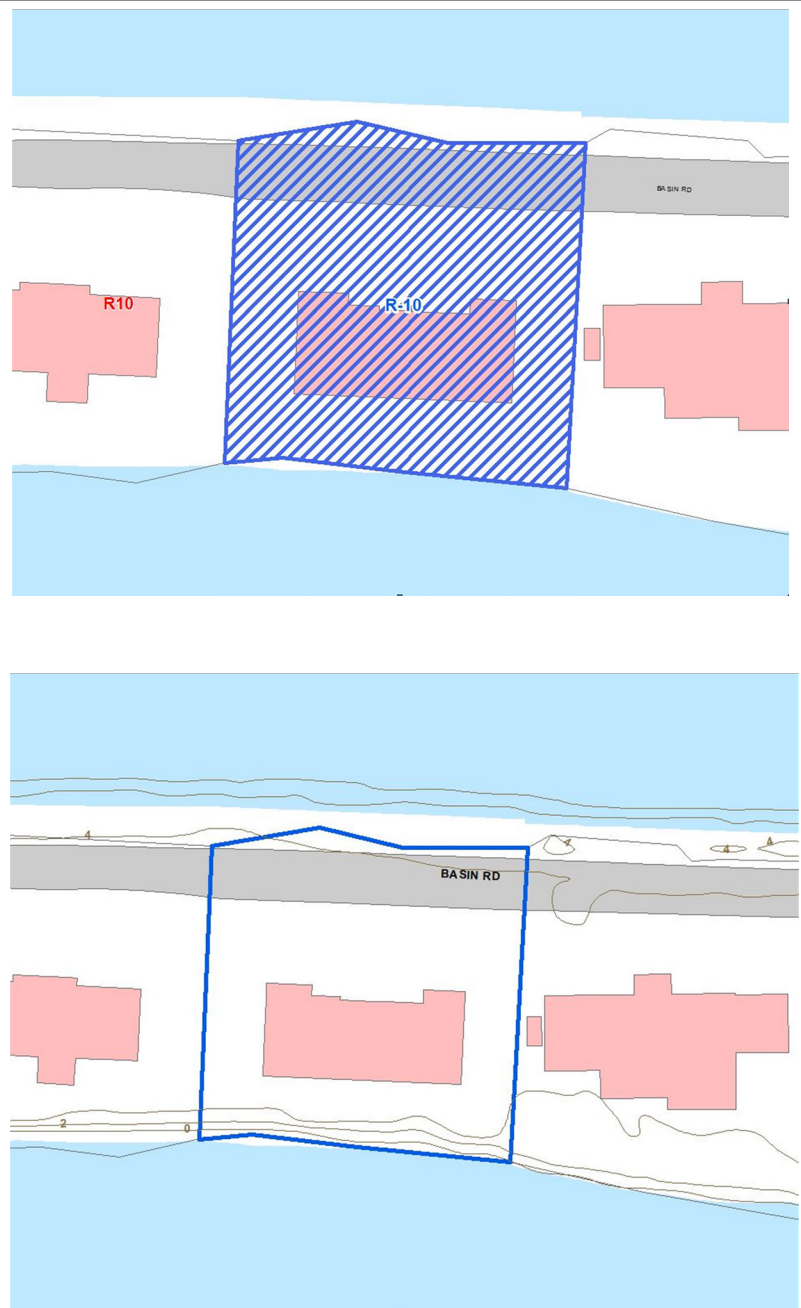
50-foot Seaward Buffer  
 50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Portion of concrete walkway with associated steppingstones

### Construction Details

- Swimming pool with associated pool deck

## CBPA Ordinance Variance History

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

In April of 2022 the applicant redeveloped existing impervious cover off the rear of the residence to construct the raised stone patio and outdoor kitchen as shown on the existing conditions exhibit, page 84 below. The redevelopment of impervious cover provided a reduction of impervious cover by approximately 165 square feet and a 2-foot retreat of impervious cover from the edge of water.

## Environmental Conditions

### Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

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

### Shoreline

Shoreline is stabilized by a bulkhead.

### Riparian Buffer

The lot is primarily devoted to turf with minimal landscape beds along the foundation of the existing residence.

## 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. However, the applicant's agent provided in the Water Quality Impact Assessment (WQIA) that rooftop disconnects, rainwater harvesting and bioretention planting beds will be provided as best management practices to prevent the variance request from contributing to an increase in nonpoint source pollution loading from the proposed improvements. The submitted CBPA Exhibits do not show the proposed location of these practices on the lot.

## Evaluation and Recommendation

The applicant is proposing to construct an in-ground swimming pool with associated pool surround. The proposed improvements will add approximately 793 square feet of new impervious cover within the 100-foot buffer of the Resource Protection Area (RPA) primary located within the 50-foot seaward buffer. Staff offers that encroachment into

the RPA buffer is unavoidable given the location of the lot on a narrow peninsula impacted by the seaward buffer from the front and rear portions of the lot.

The area where the proposed improvements are located is primarily devoted to turf with portions allocated towards the redevelopment of an existing concrete walkway with associated steppingstones. During the application process, the applicant's consultant team provided revisions to the layout of the proposed improvements based off Staff's comments. Those revisions provided a reduction of new impervious cover of the lot from approximately 1,090 square feet to 976 square feet for a 114 square foot reduction. This reduction decreased the proposed pool surround from 625 square feet to 511 square feet.

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 purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements, coupled with restoration initiatives of stormwater management and riparian buffer mitigation stated in the WQIA, will aid with the redevelopment of this lot from not being of substantial detriment to water quality.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this property is similar to others in the neighborhood (Basin Road and Basin Court), some of which have recently permitted similarly situated pools."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Basin Road with most residential structures being built during the 1960's and the density of the area equal to or greater than 4 dwelling units per acre, Staff is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff for this variance request.
- 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 property was created, and the home built before the CBPA Act. New improvements and redevelopment allow for beneficial stormwater management on a previously developed property."* Staff acknowledges the statement provided by the applicant's agent regarding the timing of the plat being recorded prior to the City's adoption of the CBPA Ordinance. With regard to beneficial stormwater management on the lot associated with the proposed improvements, Staff has addressed this statement by the applicant's agent with the recommended conditions below.
- 3) The variance is the minimum necessary to afford relief because *"the property owner is requesting a reasonable amount of outdoor living space, in the proposed deck area around the proposed pool."* Staff offers the northern reach of Basin Road is a narrow manmade canal that creates a thin peninsula of land where the subject lot is located. The average width of the peninsula ranges from approximately 70 feet to 145 feet. Given the environmental constraints created by the peninsula and the overall impervious cover proposed with the variance request, Staff performed a conceptual analysis based off aerial photography to examine existing impervious cover of lots in the vicinity for comparison. It was determined that the average existing impervious cover for properties in the vicinity range from approximately 42 percent to 60 percent. The subject variance request results in an overall impervious cover of 45.9 percent.
- 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 *"this redevelopment project is similar to other improvements in the neighborhood and will result in improved water quality since stormwater is required."* To address the statement the applicant's consultant

provided, Staff is of the opinion that the recommended conditions provided below for this variance request offers merit towards this variance request being in harmony with the CBPA Ordinance.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the stormwater runoff will be directed to and treated by bioretention planting beds which will reduce pollution in the post-development stormwater runoff.”* To address the statement the applicant’s consultant provided, Staff is of the opinion that the recommended conditions provided below for this variance request offers management towards this variance request being a no net increase in nonpoint source pollution load for the proposed improvements.

Given the above comments, Staff recommends the following **12** 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 Small Projects 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. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) 1,600 square feet of buffer restoration shall be installed. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees, 12 large shrubs, and 16 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. 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.

- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.**
- 6) 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 5 feet from improvements.

- 7) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 8) 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.
- 9) Stormwater treatment shall be provided equal to 200 percent of the proposed new impervious cover within the RPA – treatment of 1,586 square feet of impervious cover.
- 10) 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.
- 11) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated January 12, 2023 prepared by WPL. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

\*\*\*NOTE: The 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

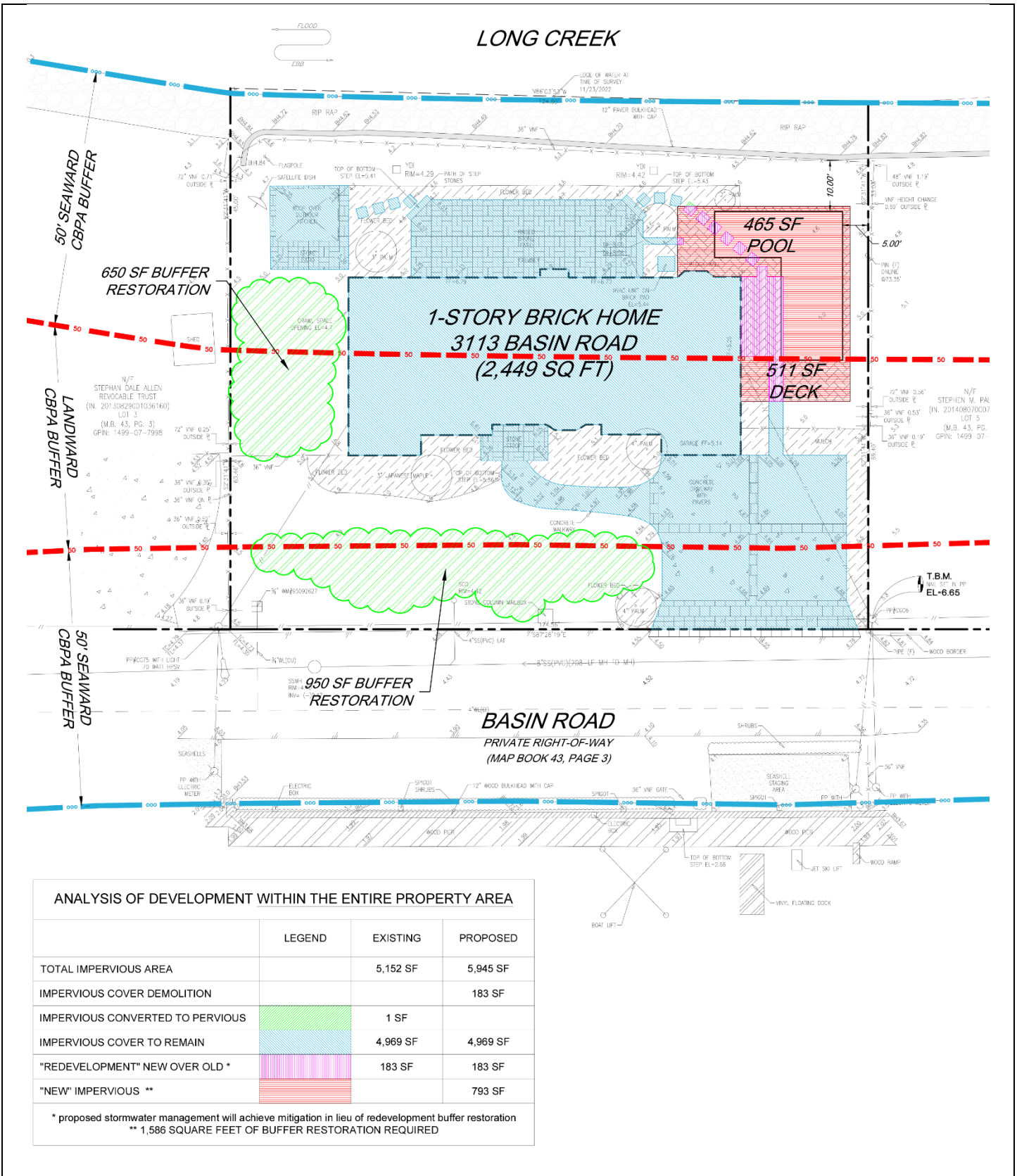








# CBPA Exhibit – Color Analysis



# Disclosure Statement

## Disclosure Statement



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### Applicant Disclosure

Applicant Name Taylor Milhaly

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

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

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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.

\_\_\_\_\_ *Luxury 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.

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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.

\_\_\_\_\_ *LANOSA & Co*

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.

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# 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** Taylor Mihaly

**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-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.

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Applicant & Property Owner **ORP Ventures, LLC**  
 Address **816 24th Street**  
 Public Hearing **January 23, 2023**  
 City Council District **District 6**, formerly Beach

Agenda Item

**9**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct two new two-story dwellings with associated patios, walkways, and driveways.

**Applicant's Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy. PC.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 115, Page 18  
 Recorded 06/1976

**GPIN**

2417-78-8769

**SITE AREA**

Proposed Lot A-1: 11,874 square feet  
 Proposed Lot A-2: 6,000 square feet

**SITE AREA OUTSIDE OF WATER/WETLANDS**

Lot A-1: 11,169 square feet or 0.256 acres  
 Lot A-2: 6,000 square feet or 0.138 acres

**EXISTING IMPERVIOUS COVER OF SITE**

Lot A-1: 1,503 square feet or 13.4 percent of lot  
 Lot A-2: 1,356 square feet or 27 percent of lot

**PROPOSED IMPERVIOUS COVER OF SITE**

Lot A-1: 1,846 square feet or 16.5 percent of lot  
 Lot A-2: 2,756 square feet or 46 percent of lot

**Area of Redevelopment in RPA**

*\*See Evaluation & Recommendation Section*

**Area of New Development in RPA**

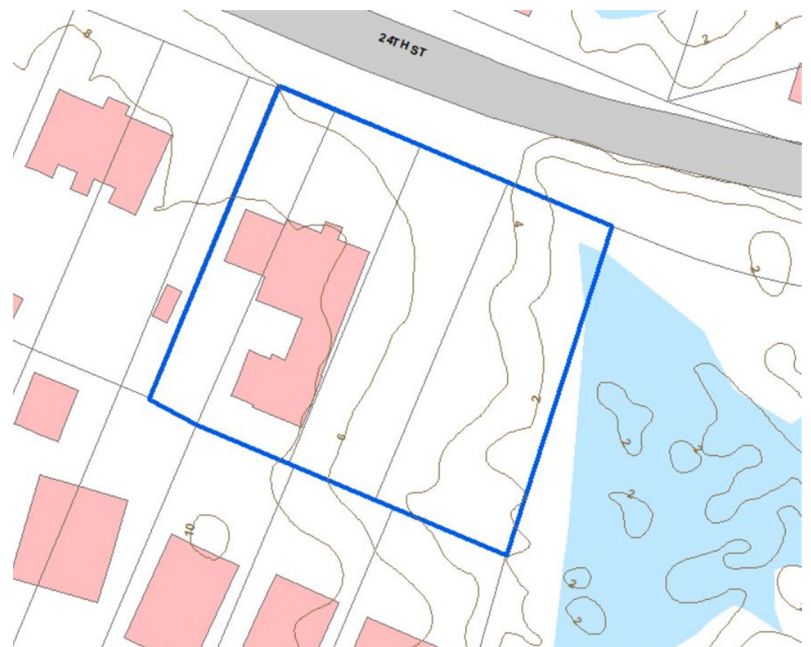
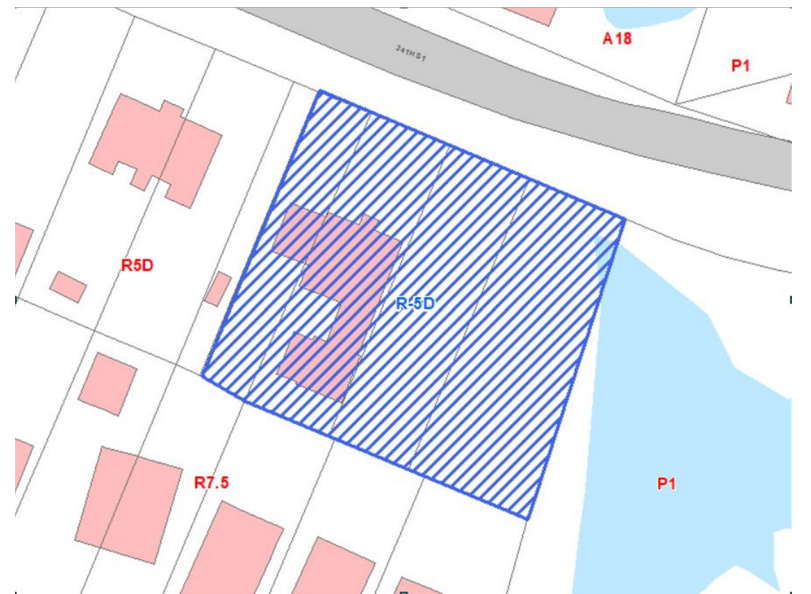
*\*See Evaluation & Recommendation Section*

**Location of Proposed Impervious Cover**

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

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Single family residence with associated accessory structures – complete demolition of improvements on lot

### Construction Details

- Two single-family residences with associated patios, mechanical equipment, walkways, and driveways.  
*\*Lot will be subdivided into two conforming R5D lots for the proposed improvements*

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

### Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the 50-foot seaward buffer.

### 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: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are directly adjacent to the existing residence.

## Stormwater Management Methodology

The applicant's agent provided in the Water Quality Impact Assessment (WQIA) for this variance request that rooftop disconnects and bioretention planting beds will be provided as best management practices for stormwater runoff mitigation.

## Evaluation and Recommendation

The lot was originally platted in 1925 as 4 individual lots then consolidated in 1976 to 1 lot prior to the City's adoption of the Chesapeake Bay Preservation Area (CBPA) Ordinance. Due to the application of the CBPA Ordinance, the Resource

Protection Area (RPA) impacts more than 90 percent of the lot. The current condition of the 100-foot Resource Protection Area (RPA) buffer primarily consists of turf grass adjacent to the existing residence that transitions into a vegetated area adjacent to the contiguous tidal wetland feature. This portion of the RPA buffer is overgrown with non-native invasive vine species. The high marsh and woody upland community adjacent to the tidal wetland feature is in a transitional stage dominated by the overgrowth of *Smilax rotundifolia*, Common Greenbriar vine monoculture.

The applicant has taken means to utilize redevelopment over existing impervious cover and situate the proposed improvements on the lot to minimize encroachment into the RPA to the greatest extent practicable. Staff met with the applicant’s consultant team to discuss the proposed improvements associated with this variance request with the need towards addressing the utilization of existing grade elevations with a retaining wall to limit fill and land disturbance within the lower-lying areas of Lot A-1. Also discussed was the introduction of vegetative cover within the RPA buffer, specifically the eastern portion of the lot within the 50-foot seaward buffer. Staff is of the opinion that this area is most susceptible to future inundation and associated hazards given the range of topographic elevation of 1.9 feet to approximately 4.3 feet above sea level. Staff is of the opinion that this area of the lot offers substantial benefit towards coastal ecosystem migration if properly restored to prevent against increased river nutrient loads, subsequent decomposition of organic matter and hypoxia, and sediment delivery due to upland land use on the lot and adjacent lots draining through this property. Staff offers that the structural and non-structural elements of the variance request provide merit towards re-establishing the ecological benefit of the coastal ecosystem. Due to these measures, water quality has the potential to improve while allowing the RPA to function as intended by not introducing an extensive amount of fill material or severely altering existing site conditions. As such, the applicant’s consultant team has situated the proposed improvements on the lot to preserve the existing vegetation in the 50-foot seaward buffer to the greatest extent practicable while keeping the proposed improvements in harmony with the development of the neighborhood and adjacent lots. To further understand the encroachment of impervious cover into the RPA feature, the applicant’s consultant provides the following:

	<b>Existing Impervious</b>	<b>Proposed Impervious</b>	<b>New Development</b>	<b>Redevelopment</b>
<b>Proposed Lot A-1</b>	1,503 square feet	1,846 square feet	1,027 square feet	835 square feet
<b>Proposed Lot A-2</b>	1,356 square feet	2,756 square feet	1,317 square feet	1,036 square feet

The applicant’s agent provides the following comments and believes that the proposed improvements, coupled with restoration initiatives of stormwater management and riparian buffer mitigation stated in the WQIA, is in harmony with the purpose and intent of the CBPA Ordinance.

- 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 site was originally platted as 4 lots in 1925 and consolidated into 1 lot in 1976 for a duplex (2 unit) development, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and will remain as a 2-unit development.”* Staff acknowledges the statement provided by the applicant’s agent and offers that the proposed development conforms with zoning regulations and is consistent with the character of the neighborhood.
- 2) The applicant provides 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.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“the owner have designed the additions and improvements over the existing structures to the greatest extent practicable and to minimize site impacts in the critical buffer areas.”* Staff agrees with the applicant’s agent that the layout of the proposed

improvements on the lot minimize impacts to the RPA to the greatest extent practicable and preserves the existing topography of the 50-foot seaward buffer. Staff has provided recommended conditions that restore the RPA towards future adaption of sea level rise.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal.”* Staff is of the opinion that the proposed improvements will not be detrimental to the public welfare or of substantial detriment to water quality.
- 5) *“Bioretention stormwater management and gravel drip intercepts will be used as methods 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 reasonable and appropriate conditions for the individual lots, Lot A-1 and Lot A-2 towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

### Chesapeake Bay Preservation Area (CBPA) Conditions: 16 conditions for Lot A-1

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,027 square feet x 200 percent = 2,054 square feet**. The required restoration shall be located seaward of the proposed retaining wall to the greatest extent practicable with the required canopy and understory trees located throughout the lot to promote long-term healthy growing habits.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 15 large shrubs, and 20 small shrubs**.

Said 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. 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) Fill material shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration. No perimeter fill or grading is authorized seaward of the proposed improvements.
- 6) All trash and debris shall be removed by hand from the 50-foot seaward buffer and disposed of in a lawful manner. Moderate maintenance shall be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the 50-foot seaward buffer.
- 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 10 feet from improvements. **Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 11) Construction limits and all construction activities shall be contained within the limits of the delineated silt fence.
- 12) All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that “All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence.”.
- 13) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking noted on the site plan.
- 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) **\*\*** 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 \$235.35 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 January 3, 2023 and revised January 11, 2023, prepared by WPL, signed January 11, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

**Chesapeake Bay Preservation Area (CBPA) Conditions: 13 conditions for Lot A-2**

- 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) 2,600 square feet of buffer restoration shall be installed on the lot. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 18 large shrubs, and 24 small shrubs.**

The required restoration shall be located 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. 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) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) 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.
- 12) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$301.81 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 13) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2023 and revised January 11, 2023, prepared by WPL, signed January 11, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

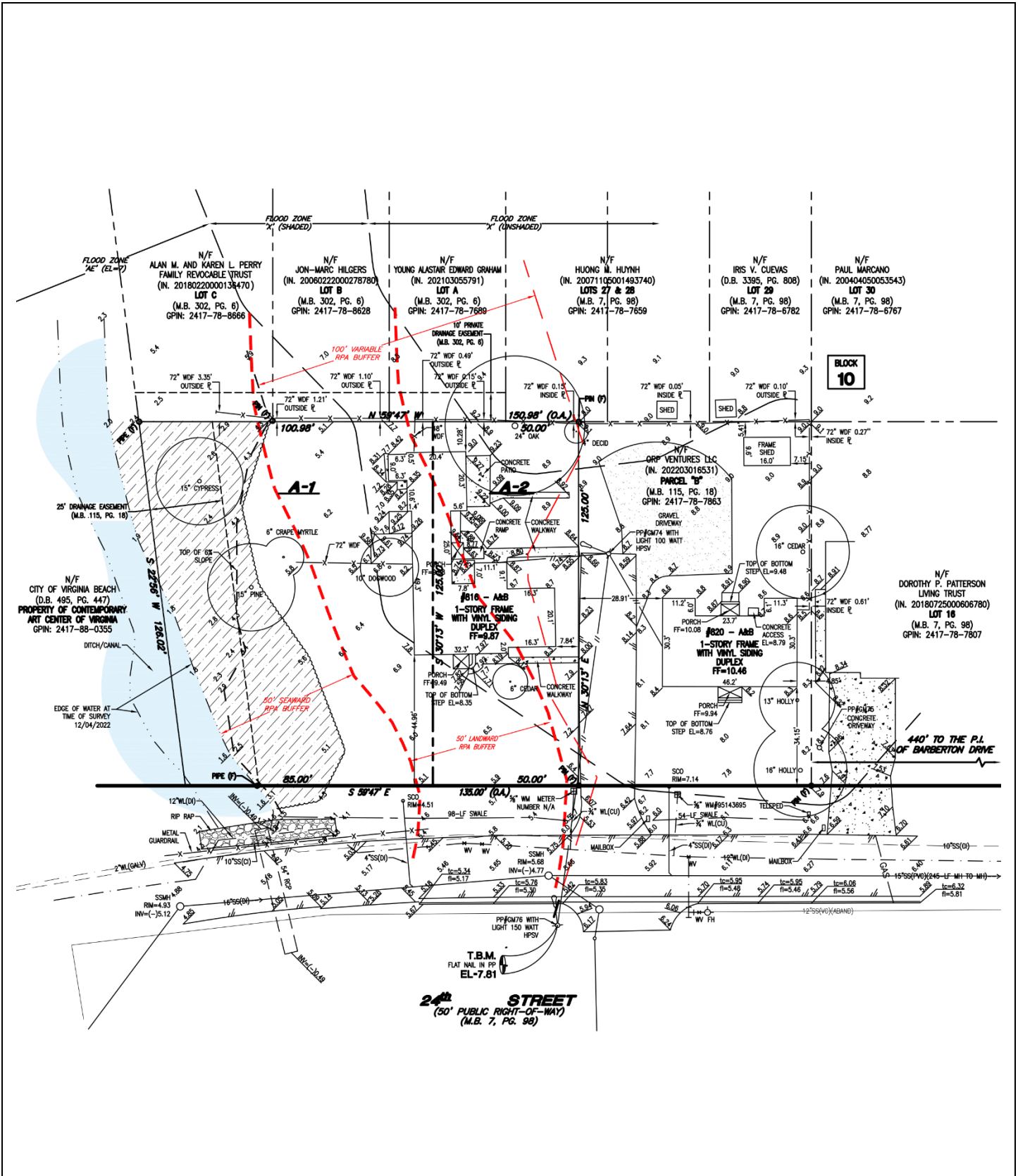
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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





# Disclosure Statement

## Disclosure Statement



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### Applicant Disclosure

Applicant Name ORP Ventures, LLC

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

R. Edward Bourdon, Jr.

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)

Steven W. Bishard & John K. Bishard, Managers

- 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.

Towne Bank

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

**Yes**  **No**

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

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

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

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, Eric Garner

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

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



# Disclosure Statement



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

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

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

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

WPL, Eric Garner

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.

R. Edward Bourdon, Jr. & R. Harry Purkey, Jr.

### Applicant Signature

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

Applicant Signature

Steven W Bishard, Manager

Print Name and Title

11/22/22

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **ORP Ventures, LLC**  
 Address **Lot 5, 2984 Queen City Road**  
 Public Hearing **January 23, 2023**  
 City Council District **District 1**, formerly Kempsville

Agenda Item

**10**

**Variance Request**

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

**Applicant's Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 4, Page 153  
 Recorded in 1910

**GPIN**

1456-03-5949

**SITE AREA**

4,995 square feet or 0.114 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

4,957 square feet or 0.113 acres

**EXISTING IMPERVIOUS COVER OF SITE**

1,066 square feet or 21.5 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

1,750 square feet or 35.3 percent of site

**Area of Redevelopment in RPA**

658 square feet

**Area of New Development in RPA**

1,084 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer

50-foot Landward Buffer

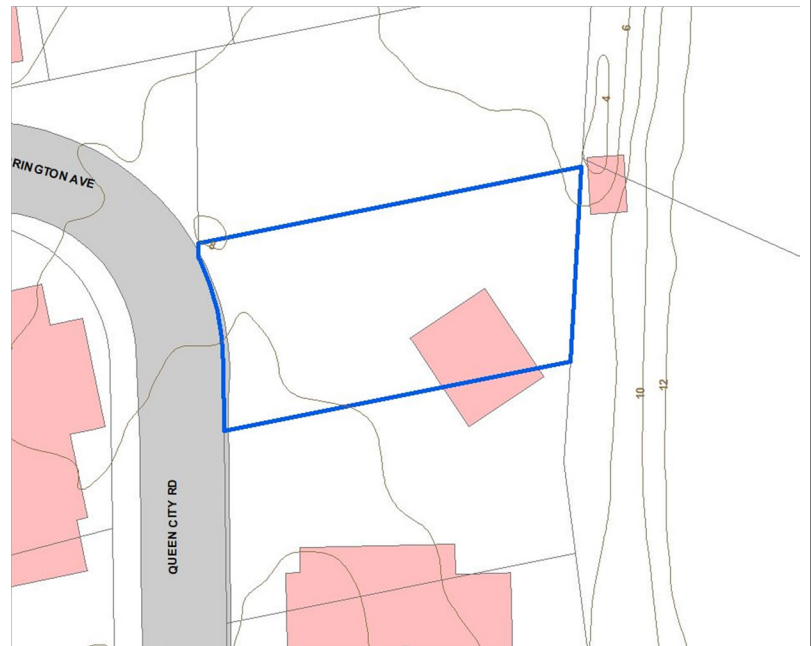
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Demolish of existing pavilion and associated asphalt pavement

### Construction Details

- Single family residence with associated front porch, patio, and concrete driveway

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Augusta Series (deep, somewhat poorly drained soils)

### Shoreline

The shoreline of the lot is a manmade ditch with a concrete culvert headwall located at the north corner of the lot. Two concrete stormwater pipes (45 inch and 60 inch) discharge through the headwall. These stormwater pipes collect both public and private stormwater runoff from upland improvements and drain a substantial area of the neighborhood into the man-made drainage ditch on this lot.

### Riparian Buffer

The lot is primarily devoted to turf with random planting beds around existing 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, dry swales, and infiltration beds will be provided as a best management practice for stormwater run-off mitigation.

## Evaluation and Recommendation

The applicant proposes to demolish the existing pavilion on the lot and construct a new single-family residence with associated accessory structures consisting of a patio area, driveway, and associated walkways. Approximately 610 square feet of the 1,750 square feet of new impervious cover consists of a portion of the single-family residence and concrete patio within the upper reach of the 50-foot seaward buffer with 1,111 square feet of impervious cover proposed within the 50-foot landward buffer of the RPA. Staff is of the opinion that the redevelopment of this lot is challenged by the timeframe the lot was platted (1910 under Princess Anne County), presence of two recorded public drainage easements accounting for approximately 2,000 square feet of the lot area, and presence of the RPA buffer

delineated off a man-made drainage ditch that was constructed in the early 1950s to serve as a drainage facility for the development of the neighborhood.

To 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 purpose and 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 in the 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 surrounding area is densely populated with encroaching properties."* Staff concurs and offers that the lot is challenged by the timeframe the lot was platted (1910 under Princess Anne County), and presence of the RPA buffer delineated off a man-made drainage ditch that was constructed in the early 1950s to serve as a drainage facility for the development of the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted in 1910 – approximately 80 years prior to the adoption of the Chesapeake Bay Preservation Act.
- 3) The variance is the minimum necessary to afford relief because *"the proposed development has been scaled down and shifted forward (away from the buffer) as much as possible."* Staff is of the opinion that the proposed improvements are suitable for the lot given the zoning district requirements for lot area and dimension requirements for lot width. The applicant has situated the proposed single-family residence at the front yard setback and has selected a house footprint with an attached garage to utilize the buildable area 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 *"we will take all precautions possible to minimize the impact towards the bay."* Staff acknowledges the statement provided by the applicant's agent and offers that erosion and sediment control requirements coupled with stormwater management regulations aid in the preservation of water quality on a constricted lot such as the subject lot during construction of the proposed improvements with best management practices contributing to the long-term sustainability of water quality.
- 5) *"We are building the home in our portfolio that most minimizes encroachment"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds that the applicant is proposing infiltration beds, bioretention planting beds, and dry swales as best management practices on the lot with this request coupled with the conditioned buffer restoration below.

Given the above comments, Staff recommends the following **14** 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 along the south side of the residence. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees, 8 large shrubs, and 16 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) 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.
- 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 per the following specifications.
  - A maximum of 5 feet off the rear or east side of the proposed improvements.
  - A maximum of 8 feet off the south side of the proposed improvements.
  - A maximum of 15 feet off the north side of the proposed improvements.

All construction activity shall be within the limits of silt fence as specified above.

- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) 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.
- 12) 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.

13) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$248.41 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) The conditions and approval associated with this variance are based on the exhibit plan dated November 18, 2022, prepared by Fox Land Surveying. 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.

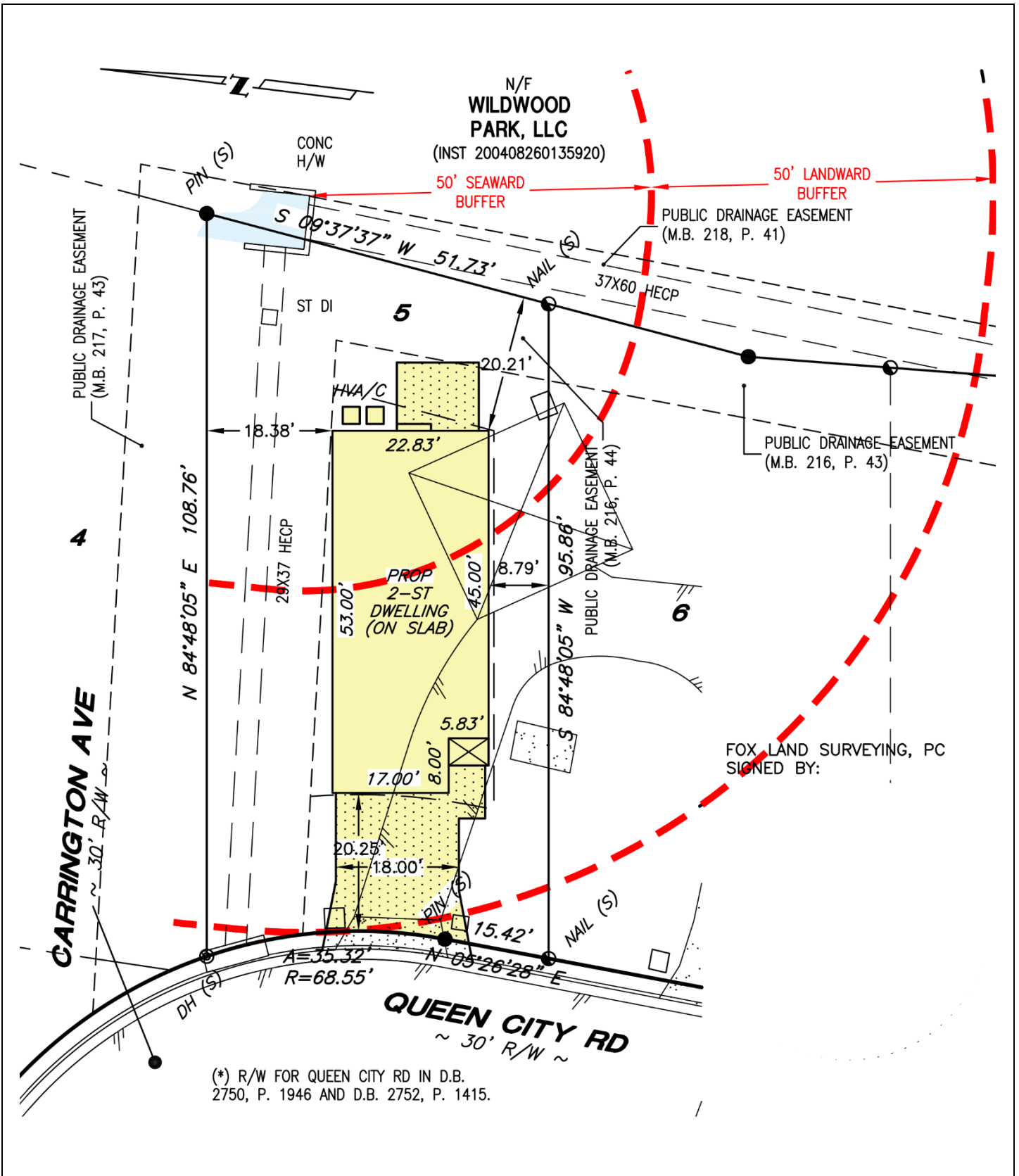
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





**CBPA Exhibit – Proposed Improvements**



(\* R/W FOR QUEEN CITY RD IN D.B. 2750, P. 1946 AND D.B. 2752, P. 1415.

FOX, LAND SURVEYING, PC  
SIGNED BY:

# 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** ORP Ventures, LLC

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

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

R. Edward Bourdon, Jr.

**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)

Steven W. Bishard and John K. Bishard

- 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.

Towne Bank

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

Yes  No

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

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

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

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, Eric Garner

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

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

# Disclosure Statement



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

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

WPL, Eric Garner

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.

R. Edward Bourdon, Jr. & R. Harry Purkey, Jr.

### Applicant Signature

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

Applicant Signature

Steven W Bishard, Manager

Print Name and Title

11/22/22

Date

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

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

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

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



Applicant & Property Owner **ORP Ventures, LLC**  
 Address **Lot 6, 2984 Queen City Road**  
 Public Hearing **January 23, 2023**  
 City Council District **District 1**, formerly Kempsville

Agenda Item

**11**

**Variance Request**

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

**Applicant’s Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 4, Page 153  
 Recorded in 1910

**GPIN**

1456-03-5934

**SITE AREA**

4,737 square feet or 0.108 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

4,737 square feet or 0.108 acres

**EXISTING IMPERVIOUS COVER OF SITE**

1,778 square feet or 37.5 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

2,250 square feet or 47.4 percent of site

**Area of Redevelopment in RPA**

614 square feet

**Area of New Development in RPA**

971 square feet

**Location of Proposed Impervious Cover**

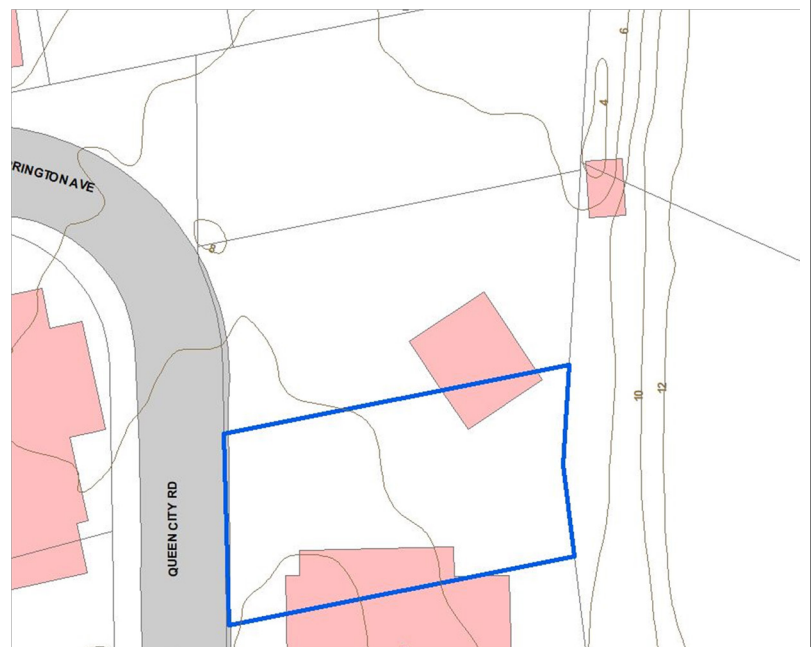
50-foot Landward Buffer  
 Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Demolish of existing single-family residence that encroaches on portions of the lot

### Construction Details

- Construct new two-story single-family residence with driveway, front porch, and concrete patio

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Augusta Series (deep, somewhat poorly drained soils)

### Riparian Buffer

The lot is primarily devoted to turf with random planting beds around existing 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, dry swales, and infiltration beds will be provided as a best management practice for stormwater run-off mitigation.

## Evaluation and Recommendation

The applicant proposes to demolish the existing single-family residence that partially encroaches onto the lot and construct a new single-family residence with a front porch, outdoor patio, and concrete driveway. As shown on the CBPA exhibit, the entire lot is within the 100-foot buffer of the Resource Protection Area (RPA) and as situated, the proposed improvements encroach in the 50-foot landward portions of the buffer. Approximately 851 square feet of the 2,250 square feet of new impervious cover consists of a portion of the single-family residence and concrete patio within the upper reach of the 50-foot landward buffer with 614 square feet of redeveloped impervious cover proposed within the 50-foot landward buffer of the RPA.

To 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 purpose and 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 in the 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 surrounding area is densely populated with encroaching properties. The property also backs up to a construction site that is subject to the same standards.”* Staff concurs and offers that the lot is challenged by the timeframe the lot was platted (1910 under Princess Anne County), and presence of the RPA buffer delineated off a man-made drainage ditch that was constructed in the early 1950s to serve as a drainage facility for the development of the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted in 1910 – approximately 80 years prior to the adoption of the Chesapeake Bay Preservation Act.
- 3) 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 development is the minimum encroachment achievable by setback and CBPA regulatory standards.”* Staff acknowledges that the layout must meet all zoning standards set forth in the City’s Zoning Ordinance. Staff is of the opinion the request is in harmony with the intent of the CBPA Ordinance.
- 4) The variance is the minimum necessary to afford relief because *“we will take all precautions to minimize impacts.”* Staff is of the opinion that the proposed improvements are suitable for the lot given the zoning district requirements for lot area and dimension requirements for lot width. The applicant has situated the proposed single-family residence at the front yard setback and has selected a house footprint with an attached garage to utilize the buildable area on the lot to the greatest extent practicable.
- 5) *“We have designed the size and layout of the home to ensure minimal impacts to the RPA”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds that the applicant is also proposing infiltration beds, bioretention planting beds, and dry swales as best management practices on the lot with this request.

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

## Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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: **971 square feet x 200 percent = 1,942 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual,

prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees, 12 large shrubs, and 16 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. 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 5 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) 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.
- 12) 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.
- 13) 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.
- 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 \$222.52 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**



15) The conditions and approval associated with this variance are based on the exhibit plan dated November 18, 2022, prepared by Fox Land Surveying. 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.

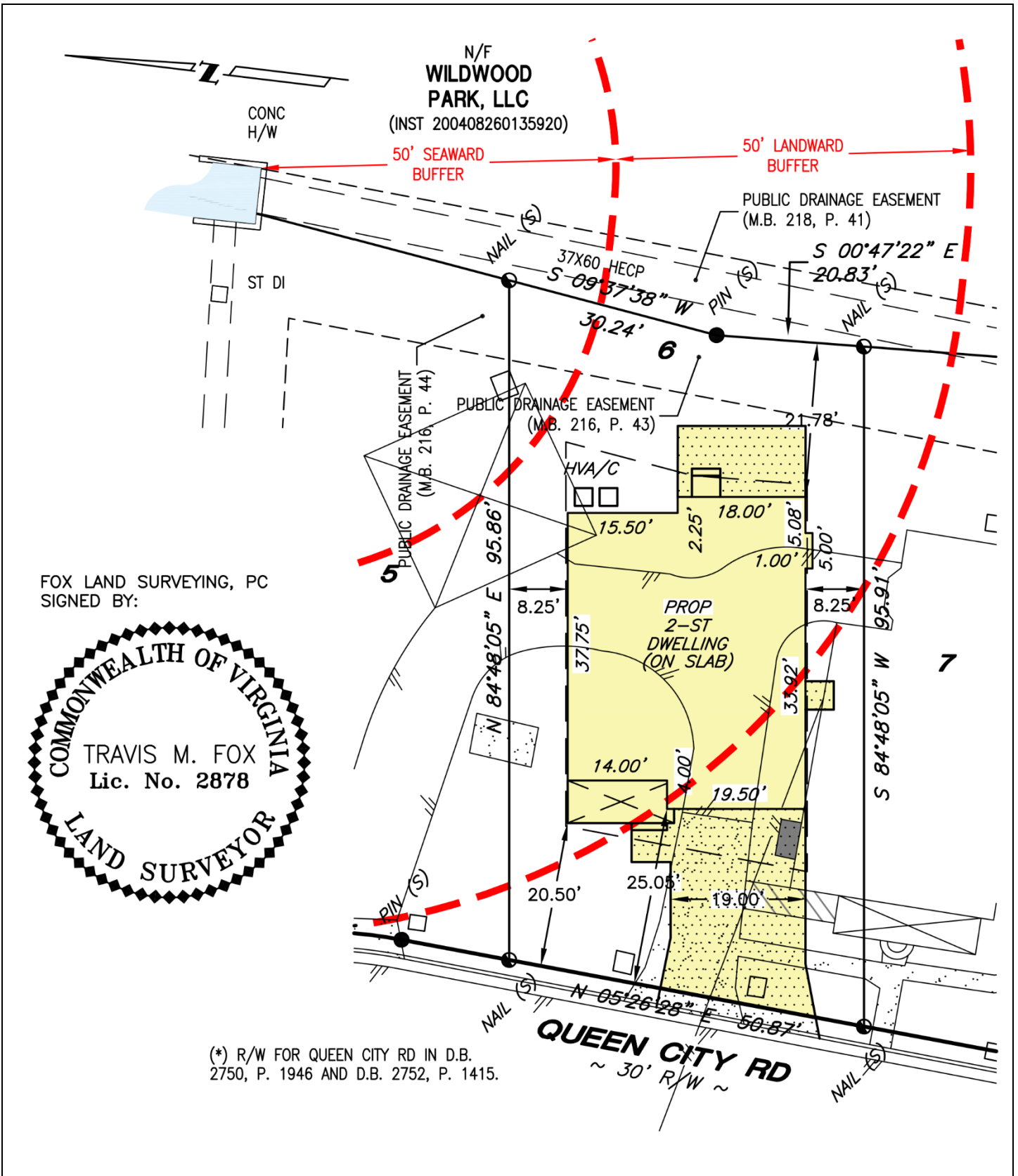
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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**



# 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 ORP Ventures, LLC

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

R. Edward Bourdon, Jr.

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)

Steven W. Bishard and John K. Bishard

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

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

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# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

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

Towne Bank

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

Yes  No

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

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

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

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, Eric Garner

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

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

# Disclosure Statement



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

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

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

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

WPL, Eric Garner

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.

R. Edward Bourdon, Jr. & R. Harry Purkey, Jr.

### Applicant Signature

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

Applicant Signature

Steven W Bishard, Manager

Print Name and Title

11/22/22

Date

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

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

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

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



Applicant & Property Owner **David Miller**  
 Address **3220 Stapleford Chase**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**12**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct after-the-fact segmented retaining walls and patio.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 180, Page 42  
 Recorded 06/21/1984

**GPIN**

1498-16-4212

**SITE AREA**

29,150 square feet or 0.669 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

21,647 square feet or 0.497 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,889 square feet or 22 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

5,501 square feet or 25 percent of site

**Area of Redevelopment in RPA**

47 square feet

**Area of New Development in RPA**

609 square feet

**Location of Proposed Impervious Cover**

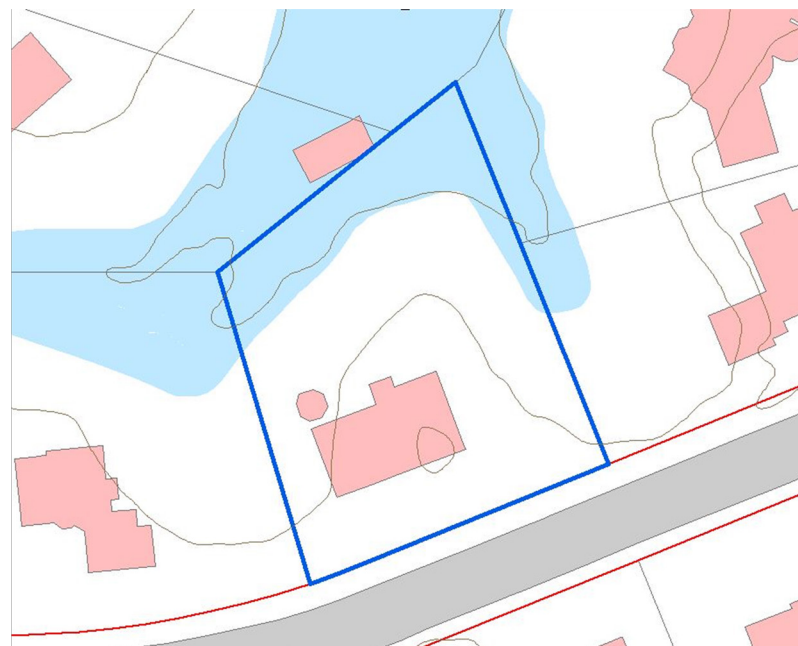
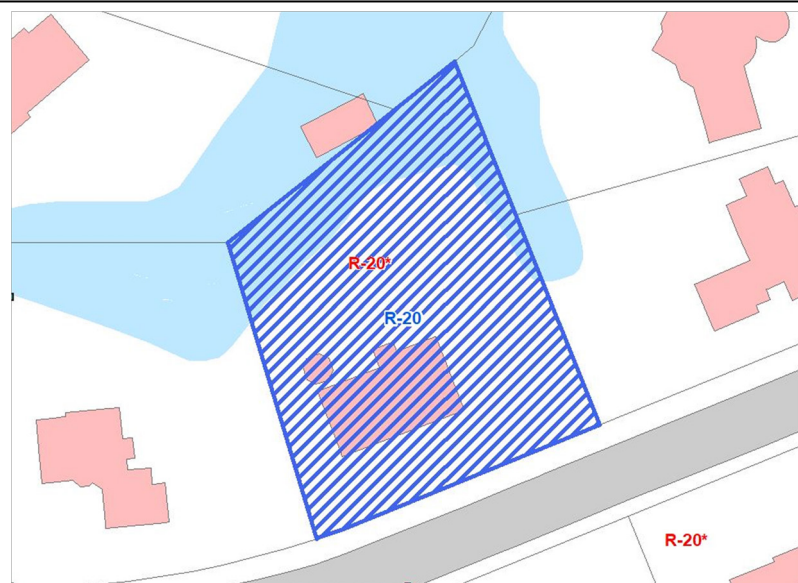
50-foot Seaward Buffer  
 50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Remove existing walkway and steps

### Construction Details

- After-the-fact segmented retaining walls
- Synthetic turf area with stone reservoir layout of BMP
- Steppingstone path
- Stone patio with associated walkway
- Synthetic mulch mat walkway to existing pier

## CBPA Ordinance Variance History

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

A Show Cause hearing was heard on September 8, 2022 and the CBPA Board made a finding of noncompliance to the provisions of the CBPA Ordinance for the unauthorized improvements. A restoration hearing was ordered by the CBPA Board, and the property owner has submitted and after-the-fact CBPA Variance application in conjunction with the restoration order for the CBPA Board's consideration.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

### Shoreline

Shoreline is in a natural state. Two low retaining walls are located on both sides of the existing wood dock. These retaining walls do not run the entire length of the shoreline. Staff is of the opinion that the retaining walls were constructed with the wood dock to provide a level area for access.

### Riparian Buffer

Moderate to Heavily Wooded Lot.

- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The health of the tree being requested for removal is not related to the unauthorized construction activities and no canopy trees were removed with the installation of the after-the-fact segmented block retaining walls.

## Stormwater Management Methodology

The applicant's agent has stated that permeable pavers and infiltration beds will be provided as a best management practice for stormwater run-off mitigation.



## Evaluation and Recommendation

A restoration hearing was ordered by the CBPA Board at the September 2022 Show Cause hearing for the subject lot, and the property owner has submitted and after-the-fact CBPA Variance application in conjunction with the restoration order. As submitted, the applicant is proposing to construct segmented retaining walls in the rear yard as well as an outdoor patio and walkway off the rear of the residence. During the site visit associated with the Show Cause hearing, the applicant expressed concern about the slope of the rear yard with regard to being able to use only a small portion adjacent to the existing single-family residence and the rate of runoff from storm events impacting the ability to establish a vegetative cover over portions of the rear yard. Rainwater drains from the front to the rear of the property and impacts this area of the lot due to the slope, northern exposure, and shading from existing mature canopy tree cover. Staff is of the opinion that the applicant's use of retaining walls will help infiltrate rainwater runoff and allow for vegetative cover to establish within this area of the lot by slowing down the velocity of runoff. Given that over half of the site falls within the 50-foot seaward portion of the RPA, encroachment for any associated improvements on the lot would require a CBPA Board variance. Staff is of the opinion that the applicant has taken measures to ensure that the proposed improvements minimize impacts to the RPA and have done so through the use of permeable pavers for the proposed patio and walkway, in addition to the infiltration beds associated with the segmented retaining walls. Furthermore, Staff supports the encroachment into the RPA as conditioned below.

Should the Board desire to consider hearing this variance request in conjunction with the restoration hearing, the following comments relative to the findings of the CBPA Ordinance 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 *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff concurs and offers the recommended conditions below for the Board's consideration.
- 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 minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff offers that the proposed improvements increase the impervious cover by 609 square feet on a lot that is over halfway encumbered by the 50-foot seaward buffer, which increases the proposed impervious cover of the lot from 22 to 25 percent of the lot area above water/wetlands.
- 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 purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to*

*benefit water quality.*” Staff concurs and adds that the applicant has proposed permeable pavers and infiltration beds coupled with the required buffer restoration to ensure that the proposed improvements will not be of substantial detriment to the water quality of the Chesapeake Bay.

- 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 has provided the recommended conditions to ensure a no net increase in nonpoint source pollution load into the bay.

Given the above comments, Staff recommends the following **11** 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: **609 square feet x 200 percent = 1,218 square feet.**

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

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

- 4) 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.

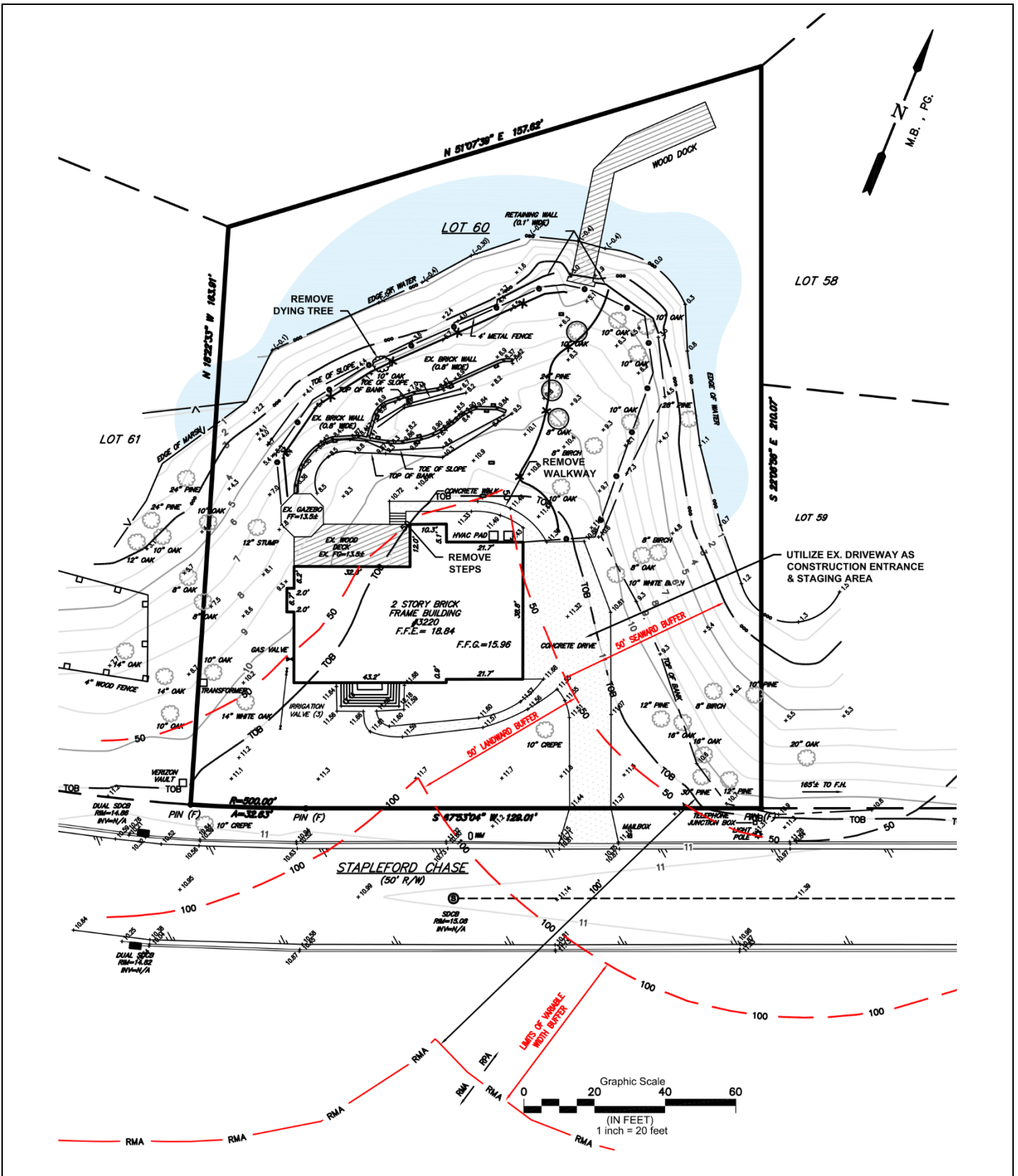
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 8) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 9) 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.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) The conditions and approval associated with this variance are based on the exhibit plan dated October 19, 2022, prepared by Gallup Surveyors and Engineers, signed October 19, 2022 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 applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 110(E) of the Chesapeake Bay Preservation Area Ordinance.

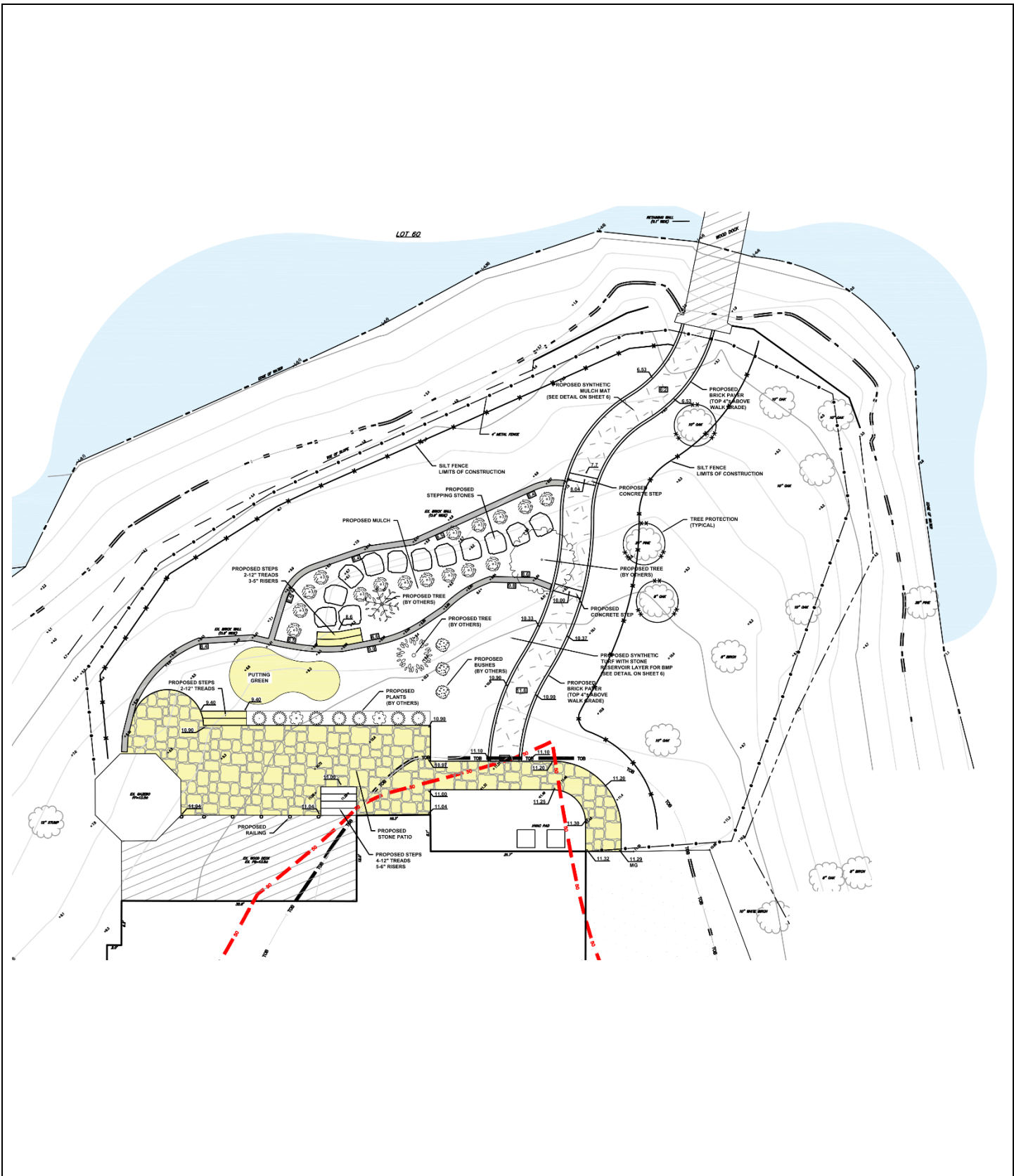
Site Aerial



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



# Disclosure Statement



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 David Miller

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.

*Penny Mac - Individual 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.

*Gallyp Surveyors & Billy Garington*

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 Surveyors - Dave Butler*

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.

*David Miller*

Applicant Signature

*David Miller*

Print Name and Title

*11/28/2022*

Date

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

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

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

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

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Applicant & Property Owner **Dennis & Janice Ellmer**  
 Address **2871 River Road**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**13**

**The applicant is requesting to defer the Restoration Hearing to the Monday, February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing. Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer for an after-the-fact installation of artificial turf.

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultants, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 32, Page 18  
 Recorded 07/14/1952

**GPIN**

1499-41-4751

**SITE AREA**

74,208 square feet or 1.704 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

58,695 square feet or 1.35 acres

**EXISTING IMPERVIOUS COVER OF SITE**

14,600 square feet or 24 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

14,600 square feet or 24 percent of site

*\*28,350 square feet or 48.3 percent of site*

*\*Increase in area of new development in RPA on site calculated off area of synthetic turf in RPA*

**Area of New Development in RPA**

13,750 square feet

**Location of Proposed Impervious Cover**

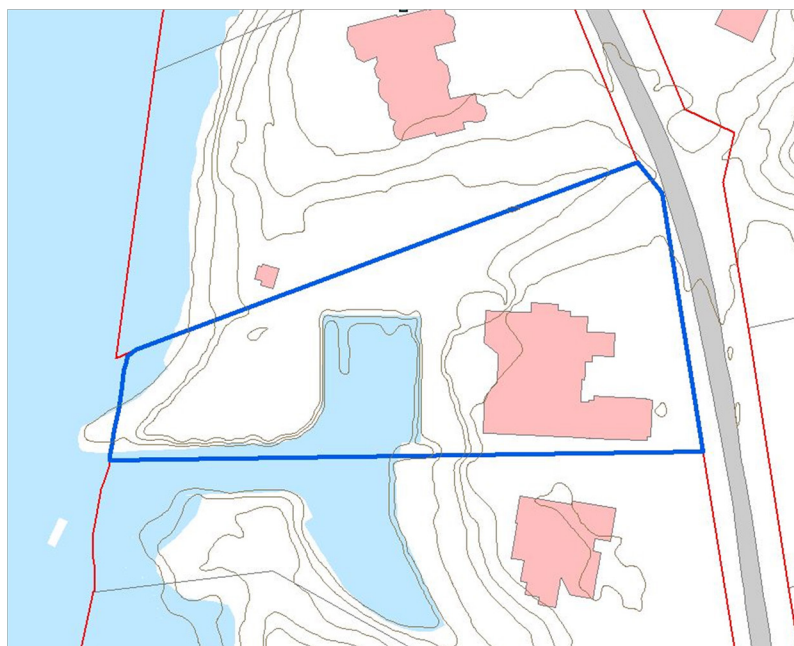
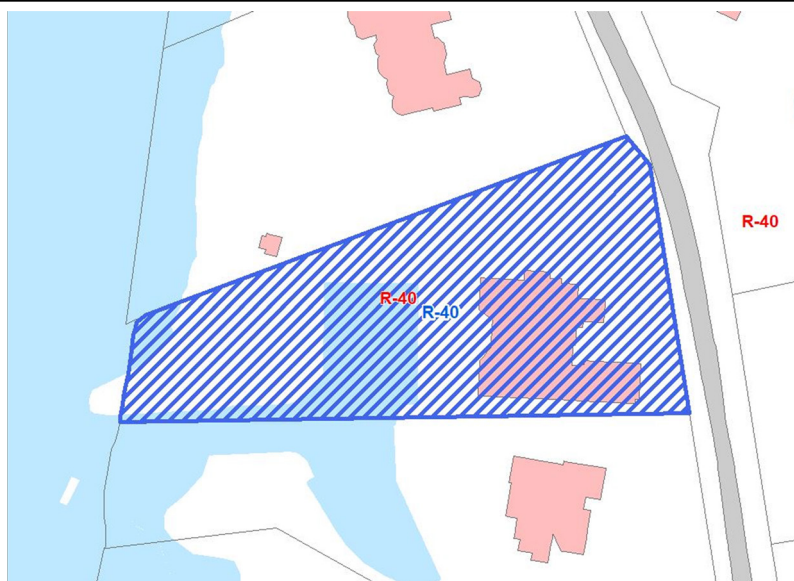
50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet



## Summary of Proposal

### Construction Details

- After-the-fact installation of artificial turf

## CBPA Ordinance Variance History

On November 24, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a single-family residence with the following conditions:

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
3. *Construction limits shall lie a maximum of 15' outboard of the project.*
4. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area. This condition applies to the demolition phase of the project as well.*
5. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$ 2,865.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 3,126 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
6. *The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
7. *All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
8. *When the shoreline is hardened, a sloped revetment shall be installed along the northern and eastern portions of the project. In addition, a marsh toe breakwater revetment shall be installed seaward of the proposed marsh. Tidal marsh compensation shall be approximately 1,500 square feet. A Joint Permit Application will be necessary.*
9. *Buffer restoration shall be installed equal to 125% of proposed impervious cover (15,629 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
10. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
11. *No less than 17 trees shall be installed on-site.*
12. *Pool decking shall be a maximum of 4'x4'x4'x8' (diving board end).*

13. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.

**On July 23, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a four-foot-high brick fence, auxiliary parking area, ornamental fence / knee wall along ROW, automatic gate, 225' by 6' paver walkway, 4' solid brick wall with brick columns, steppingstone pathways, short masonry retaining walls with backfill, stone storage area, retaining wall on the northern side of the residence, and tree removal (19). with the following conditions:**

1. A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.
2. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.
3. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.
4. Construction limits shall lie a maximum of 15' outboard of the project.
5. All construction access ways shall be noted on the site plan, as well as the stockpile staging area.
6. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$709.00 and is based on 25% of the new impervious cover above that previously authorized. Said payment shall provide for the equivalent of an approximate 774 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.**
7. The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.
8. All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.
9. Buffer restoration shall be installed equal to 125% of proposed impervious cover and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan. Buffer restoration shall be extended to run parallel to the bulkhead, minimum 4' wide buffer where turf meets bulkhead.
10. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.
11. No less than eighty (80) trees shall be installed. Said trees shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable.
12. The proposed paver walkway shall be a maximum of 4' in width and shall be comprised of organic material or its equivalent.

13. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.

14. Conditions in addition to other variance conditions imposed.

15. It is the Boards opinion that the impervious cover approved is the maximum the lot can support.

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

### Shoreline

Shoreline is stabilized by a bulkhead and rip rap.

### Riparian Buffer

Moderately to sparsely wooded lot

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

## Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds were provided as a best management practice for stormwater run-off mitigation associated with the previous CBPA Variance. Those facilities are functioning as intended.

## Evaluation and Recommendation

The applicant is requesting to defer the Restoration Hearing to the Monday, February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing. Staff supports the request to defer.

Site Aerial



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Address of Noncompliance **3220 Stapleford Chase**

Property Owner **David Miller**

Public Hearing **January 23, 2023**

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

Agenda Item

**14**

**Noncompliance with the CBPA Ordinance**

Development within the Resource Protection Area (RPA) buffer for the unauthorized construction of segmented retaining walls.

**Restoration Hearing**

Noncompliance found. On September 8, 2022 the Chesapeake Bay Preservation Area (CBPA) Board made a finding of noncompliance with the provisions of the CBPA Ordinance for the unauthorized improvements.

A civil charge of \$1,500.00 was imposed to the property owner. A Restoration Hearing was ordered by the CBPA Board for the property owner – David Miller.

**Lot Description**

Lot 60, Middle Plantation

**Lot Recordation**

Map Book 180, Page 42  
Recorded 06/21/1984

**GPIN**

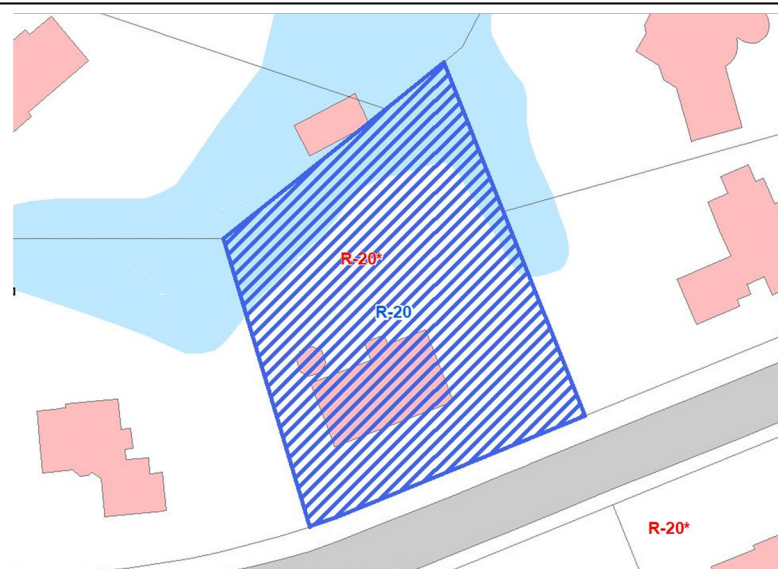
1498-16-4212

**Applicant's Agent**

Billy Garrington  
Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher



## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0

## CBPA Ordinance Variance History

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

## History of Noncompliance

To Staff's knowledge, David Miller has no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot.

## Chronology of Noncompliant Event

August 10, 2022	City Staff visited the property located at 3220 Stapleford Chase to investigate an inquiry regarding land disturbance occurring on the property.
August 17, 2022	Stop Work Order issued by Permits & Inspections, Civil Inspections for unauthorized land disturbance in the Chesapeake Bay Preservation Area. The unauthorized improvements occurred within the 50-foot seaward and 50-foot landward buffer of the Resource Protection Area (RPA) buffer of the Chesapeake Bay Preservation Area.
August 22, 2022	Staff sent written notice to the contractor to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, September 8, 2022 for a show cause hearing.
September 8, 2022	Show Cause hearing was held and a noncompliance found. A motion was made at the September 8, 2022 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance.  A civil charge was of \$1,500.00 imposed to the property owner. A Restoration Hearing was ordered within 60-90 days of the September 8, 2022 public hearing was ordered by the CBPA Board for the property owner – David Miller.

## Evaluation and Recommendation

The subject area of the unauthorized improvements occurred within the 50-foot seaward buffer of the Resource Protection Area (RPA) of the Chesapeake Bay watershed adjacent to a tidal waterway. Staff estimates that the area of land disturbance associated with the unauthorized improvements is greater than 2,500 and a full site plan shall be required to be submitted to the Development Services Center (DSC).

Should the Board approve the aforementioned agenda item 12 after-the-fact CBPA variance request, Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives. However, should the after-the-fact application be denied, Staff recommends that the unauthorized improvements be removed, the site restored to the original conditions prior to the unauthorized construction activity, and the area of land disturbance stabilized with vegetative cover within 90 days from the date of the January 23, 2023 CBPA Board public hearing.

Site Aerial





Address of Noncompliance **2871 River Road**  
 Property Owner **Dennis & Janice Ellmer**  
 Public Hearing **January 23, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**15**

**The applicant is requesting to defer the Restoration Hearing to the Monday, February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing. Staff supports the request to defer.**

**Noncompliance with the CBPA Ordinance**

Development within the Resource Protection Area (RPA) buffer for the unauthorized installation of artificial turf.

**Restoration Hearing**

Noncompliance found. On October 3, 2022 the Chesapeake Bay Preservation Area (CBPA) Board voted to re-open the case and made a finding of noncompliance with the provisions of the CBPA Ordinance for the unauthorized improvements.

No civil charge was imposed to the property owner. A Restoration Hearing was ordered by the CBPA Board for the property owner – Dennis Ellmer.

**Lot Description**

Lot 6A, River and N. Shorehaven Waterfront

**Lot Recordation**

Map Book 32, Page 18  
 Recorded 07/14/1952

**GPIN**

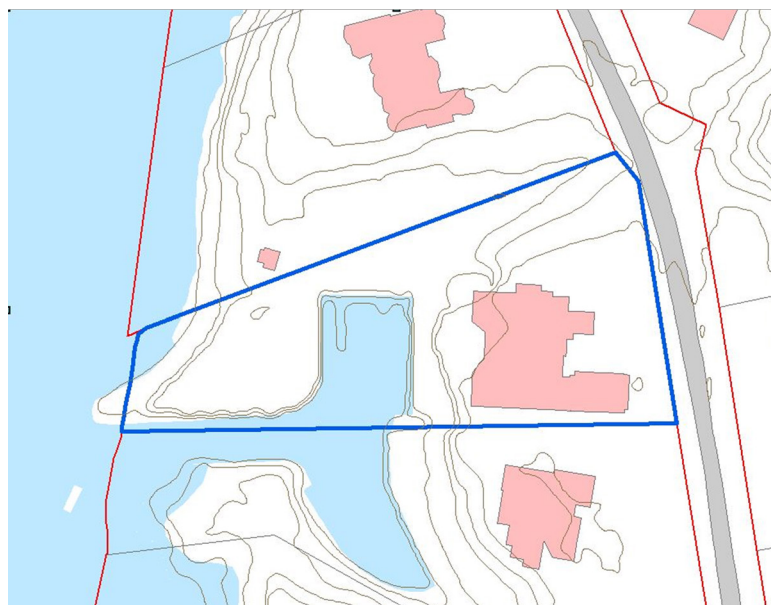
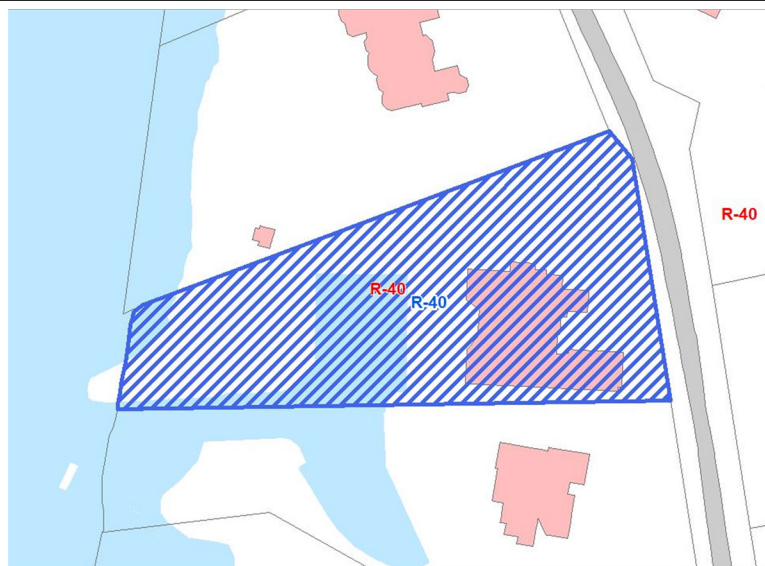
1499-41-4751

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher



## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

### Shoreline

Shoreline is stabilized by a bulkhead and rip rap.

### Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0

## CBPA Ordinance Variance History

**On November 24, 2003, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a single-family residence with the following conditions:**

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
3. *Construction limits shall lie a maximum of 15' outboard of the project.*
4. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area. This condition applies to the demolition phase of the project as well.*
5. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$ 2,865.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 3,126 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
6. *The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
7. *All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
8. *When the shoreline is hardened, a sloped revetment shall be installed along the northern and eastern portions of the project. In addition, a marsh toe breakwater revetment shall be installed seaward of the proposed marsh. Tidal marsh compensation shall be approximately 1,500 square feet. A Joint Permit Application will be necessary.*

9. *Buffer restoration shall be installed equal to 125% of proposed impervious cover (15,629 sq. ft.) and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
10. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
11. *No less than 17 trees shall be installed on-site.*
12. *Pool decking shall be a maximum of 4'x4'x4'x8' (diving board end).*
13. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

**On July 23, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for construction of a four-foot-high brick fence, auxiliary parking area, ornamental fence / knee wall along ROW, automatic gate, 225' by 6' paver walkway, 4' solid brick wall with brick columns, steppingstone pathways, short masonry retaining walls with backfill, stone storage area, retaining wall on the northern side of the residence, and tree removal (19). with the following conditions:**

1. *A preconstruction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Construction limits shall lie a maximum of 15' outboard of the project.*
5. *All construction access ways shall be noted on the site plan, as well as the stockpile staging area.*
6. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$709.00 and is based on 25% of the new impervious cover above that previously authorized. Said payment shall provide for the equivalent of an approximate 774 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
7. *The pool shall be built prior to or concurrent with the construction of the residence. A retaining wall will be necessary for any fill material more than 5' outboard of the pool itself.*
8. *All stormwater from proposed impervious cover (both within the RMA and RPA) shall be conveyed to structural stormwater management facilities.*
9. *Buffer restoration shall be installed equal to 125% of proposed impervious cover and shall utilize bayscape landscaping principles. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan. Buffer restoration shall be extended to run parallel to the bulkhead, minimum 4' wide buffer where turf meets bulkhead.*

## History of Noncompliance

To Staff's knowledge, Dennis Ellmer has no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot.

## Chronology of Noncompliant Event

- August 8, 2022 City Staff visited the property located at 2871 River Road to investigate an inquiry regarding land disturbance occurring on the property.
- August 15, 2022 Staff sent written notice to the property owner to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, September 8, 2022 for a show cause hearing.
- September 8, 2022 Show Cause hearing was held and a noncompliance found. A motion was made at the September 8, 2022 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance. The Board determined that the relative degree of deviation for the subject activity of noncompliance was high and the environmental impact to be high.
- A civil charge of \$10,000 was imposed at the September 8, 2022 CBPA Board public hearing to the property owner. A Restoration Hearing was ordered by the CBPA Board for the property owner, Dennis & Janice Ellmer to be 60 to 90 days from the September 8, 2022 CBPA Board public hearing.
- September 14, 2022 Staff received an email from a CBPA Board member informing that a motion to reopen the show cause hearing for 2871 River Road will be made at the October 3, 2022 CBPA Board public hearing.
- October 3, 2022 The CBPA Board voted to re-open the show cause hearing for 2871 River Road. A motion was made with a second provided to find the property in non-compliance with no civil charge impose and a restoration hearing ordered within 60-90 days from the date of the October 3, 2022 CBPA public hearing.

## Evaluation and Recommendation

The applicant is requesting to defer the Restoration Hearing to the Monday, February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing. Staff supports the request to defer.



Site Aerial



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