

# Chesapeake Bay Preservation Area

## Board Agenda

February 27, 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, February 27, 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 **February 27, 2023**

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

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

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

## OLD BUSINESS AGENDA ITEMS

**1. 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 9



**2. 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 27



## OLD BUSINESS AGENDA ITEMS (CONTINUED)

### 3. 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 39



## NEW BUSINESS AGENDA ITEMS

### 4. Edward & Angela Anderson

[Applicants & Property Owners]

#### 1208 Witchduck Bay Court

GPIN 1488-08-1551

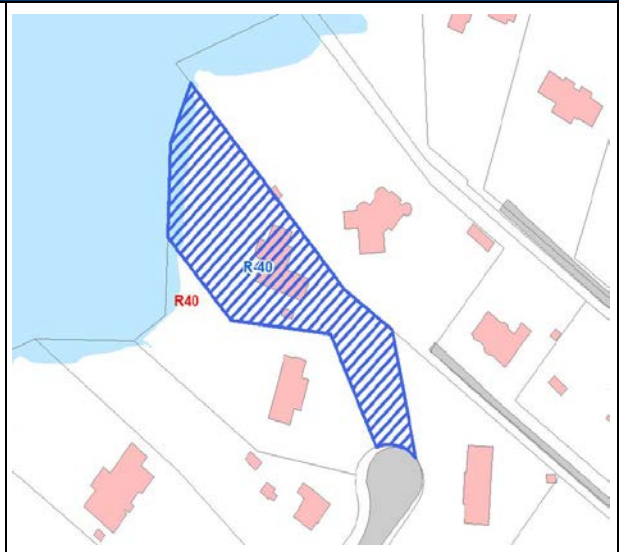
City Council District: District 9, formerly Bayside

Accela Record: 2022-CBPA-00048

**Variance Request** – Encroachment into the RPA to construct a patio expansion, covered gazebo, covered pergola, retaining walls, and driveway expansion/redevelopment.

**Staff Planner** – Cole Fisher

**Staff Report** – page 53



### 5. Charles Waldron

[Applicant & Property Owner]

#### 2000 Alphine Court

GPIN 1499-77-7989

City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00078

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 55



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

**6. Macklin & Diane Smith**  
[Applicants & Property Owners]

**2513 Broad Bay Road**  
GPIN 1499-88-2629  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2022-CBPA-00080

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

**Staff Planner** – Cole Fisher  
**Staff Report** – page 67



**7. Brian & Brandy Clark**  
[Applicants & Property Owners]

**1108 Michaelwood Drive**  
GPIN 1488-55-6738  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2023-CBPA-00001

**Variance Request** – Encroachment into the RPA to construct a swimming pool, patio, and equipment pad.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 77

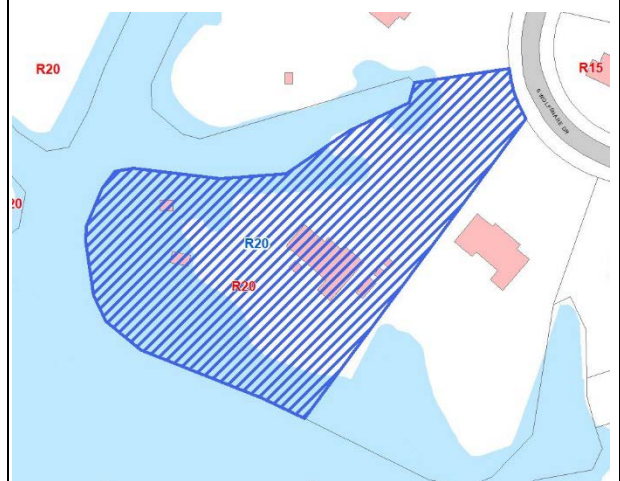


**8. Cargin, LLC**  
[Applicant & Property Owner]

**2369 S. Wolfsnare Road**  
GPIN 1498-80-4089  
City Council District: District 8, formerly Lynnhaven  
Accela Record: 2023-CBPA-00002

**Variance Request** – Encroachment into the RPA to construct a swimming pool, patio, and detached garage.

**Staff Planner** – Cole Fisher  
**Staff Report** – page 87



## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 9. Mary & Nathan Cobb

[Applicants & Property Owners]

#### 3913 Meeting House Road

GPIN 1489-24-7031

City Council District: District 9, formerly Bayside

Accela Record: 2023-CBPA-00004

**Variance Request** – Encroachment into the RPA to construct a swimming pool with patio surround, paver patios with associated walkways and fire pit area, deck with associated steps, and artificial turf area.

**Staff Planner** – Cole Fisher

**Staff Report** – page 99



### 10. Matthew & Claire Goose

[Applicants & Property Owners]

#### 1025 Curlew Drive

GPIN 2418-34-2775

City Council District: District 6, formerly Lynnhaven

Accela Record: 2023-CBPA-00005

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 111



### 11. Erik N Moore & et al

[Applicant & Property Owner]

#### 2760 Holly Road

GPIN 2418-90-3409

City Council District: District 6, formerly Beach

Accela Record: 2023-CBPA-00006

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 123





## NEW BUSINESS AGENDA ITEMS (CONTINUED)

### 12. Jennifer Cosentino & Shane Spanitz

[Applicants & Property Owners]

#### 3105 Lynnhaven Drive

GPIN 1499-08-7657

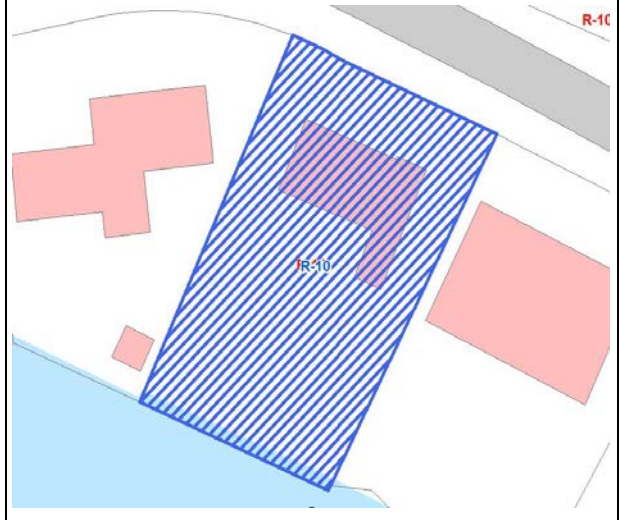
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00003

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 135



## RESTORATION HEARING

### 13. Dennis Ellmer

[Applicants & Property Owners]

#### 2871 River Road

GPIN 1499-41-4751

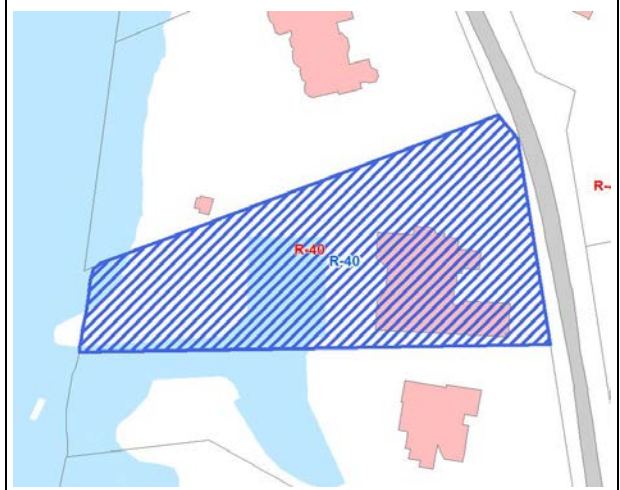
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00075

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

**Staff Planner** – Cole Fisher

**Staff Report** – page 149



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**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 Consultants, Inc.

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 136, Page 4  
 Recorded 8/20/1979

**GPIN**

1499-56-4825

**SITE AREA**

37,802 square feet or 0.868 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

25,845 square feet or 0.593 acres

**EXISTING IMPERVIOUS COVER OF SITE**

9,853 square feet or 38.2 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

11,390 square feet or 44.1 percent of site

**Area of Redevelopment in RPA**

6,126 square feet

**Area of New Development in RPA**

2,260 square feet

**Location of Proposed Impervious Cover**

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

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Deny as submitted



## Summary of Proposal

### Demolition Details

- Concrete driveway with associated parking area
- Swimming pool with associated patio and steps to the existing pier

### Construction Details

- Driveway and parking area with new front walkway
- Swimming pool with associated patio
- New steps to existing pier

## CBPA Ordinance Variance History

This variance request was deferred at the following CBPA Public Hearing.

- December 5, 2022, CBPA Board Public Hearing
- January 23, 2023, CBPA Board Public Hearing

**On November 25, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a pool, raised patio, retaining wall, steps, and associated filling with the following conditions:**

- 1. Elimination of that portion of the patio north of the proposed retaining wall.*
- 2. Double erosion and sedimentation control measures shall be installed along the channel ward side of the project. Erosion control shall be installed a maximum of ten feet from actual improvements along the channel ward side of the project. Erosion control devices shall also function as the limits of construction.*
- 3. A site plan shall be submitted and approved by the DSC prior to the issuance of a building permit.*

The November 25, 1996, 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): 7

### Soil Type(s)

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

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of existing understory trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: The applicant is requesting to remove two Crape Myrtles, approximately 10-inches in diameter at breast height (DBH) and 16-inches DBH. The trees are located within the City's 100-foot variable width buffer and will be impacted by the construction activities associated with the proposed driveway expansion at the front of the residence.

## Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that rooftop disconnection, rainwater harvesting, and bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation. The submitted site plan does not show the location of the proposed best management practices.

## Evaluation and Recommendation

The applicant is proposing to redevelop and expand their existing driveway and front walkway as well as construct a new swimming pool with paver patio surround and artificial turf area. As submitted the variance request proposes 2,260 square feet of new development on the lot within the Resource Protection Area (RPA) buffer. As a result, there will be an increase in the overall impervious cover of the lot from 9,853 square feet to 11,390 square feet or 38 percent to 44 percent of the total lot area above water or wetlands. As situated, the proposed improvements all fall within the 50-foot landward buffer of the RPA with the only encroachment seaward resulting from expanded portions of the new walkway down to the existing pier.

During the deferral process, the applicant's agent revised the layout of the proposed improvements to provide an approximate 168 square foot reduction of new impervious cover within the 100-foot RPA buffer and has removed the encroachment of the proposed swimming pool from the 50-foot seaward buffer. However, a substantial portion of the new impervious cover associated with the proposed swimming pool encroaches beyond the top of bank feature. 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 proposed improvements 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 *"this property is similar to others in the neighborhood - redevelopment of these older homes and accessory improvements allow an improvement to runoff."* Staff acknowledges the statement provided by the applicant's agent and offers that while in keeping with the neighborhood most requests to improve existing built conditions on these lots along Long Creek occurs as redevelopment with little to no further encroachment seaward. The request presented by the applicant expands the existing impervious cover on the lot within the 50-foot seaward buffer and relocates the swimming pool over the top of bank feature. Staff is of the opinion that the privilege to encroach into the RPA feature was afforded with the 1996 Chesapeake Bay Preservation Area (CBPA) buffer and to further encroach given the past CBPA variance history and existing environmental conditions would be a convenience to the applicant.
- 2) The applicant's agent provides that *"the property was created, and the home was built before the CBPA Act. Improvements and redevelopment allow for the stormwater management on a previously developed"*

*property.*” Staff offers that a hardship exists in that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance. However, a variance was granted after the adoption of the City’s CBPA Ordinance for an encroachment into the RPA feature.

- 3) The applicant’s agent provides that the variance is the minimum necessary to afford relief because *“the property owner is requesting a reasonable amount of outdoor living space, commensurate with the prior improvements and mostly in the same footprint.”* Staff offers that the redevelopment of the proposed swimming pool increases in size by approximately 209 square feet from 479 square feet (existing) to 688 square feet (proposed). In addition, approximately 558 square feet of new impervious cover is proposed within the 50-foot seaward buffer and extends beyond the top of bank feature.
- 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 improvement projects in the neighborhood and will improve water quality since stormwater management is required.”* Staff acknowledges the statement provided by the applicant’s agent and reiterates that most requests to improve existing built conditions on these lots along Long Creek occurs as redevelopment with little to no further encroachment seaward. As for water quality improvements, while required given the amount of land disturbance associated with the proposed improvements, Staff is of the opinion that the location of the best management practices in conjunction with the proposed buffer restoration is critical given the amount of encroachment proposed with this request and the existing environmental features on the lot.
- 5) The applicant’s consultant provides that *“the stormwater runoff will be directed to and treated by bioretention planting beds which will reduce pollution in the post-development stormwater runoff”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant’s consultant should comment to the impact construction activities will have on the existing bank feature and how the velocity of stormwater run-off will be mitigated as run-off sheet flows from the proposed improvements through the 50-foot seaward buffer.

Should the CBPA Board consider granting a variance, 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) There shall be no increase in impervious cover or further encroachment seaward within the 100-foot Resource Protection Area (RPA) buffer.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA, inclusive of the City’s 100-foot variable width buffer. Said restoration shall achieve the full complement of

vegetation consisting of 1 canopy trees, 1 understory trees, 2 large shrubs and 3 small shrubs or groundcovers per every 400 square feet of buffer restoration required.

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

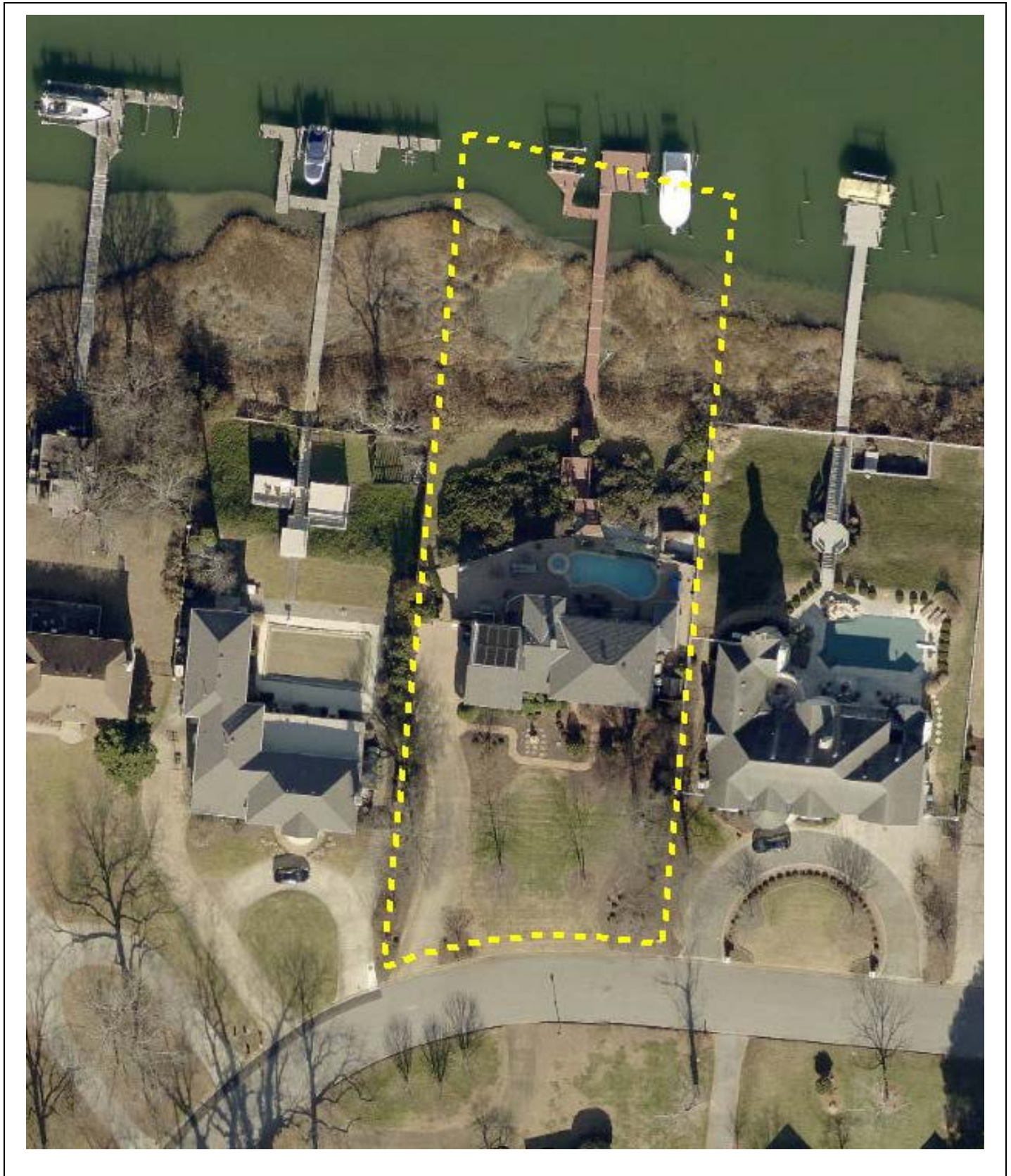
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 25, 1996.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated January 31, 2023, prepared by WPL. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn

presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

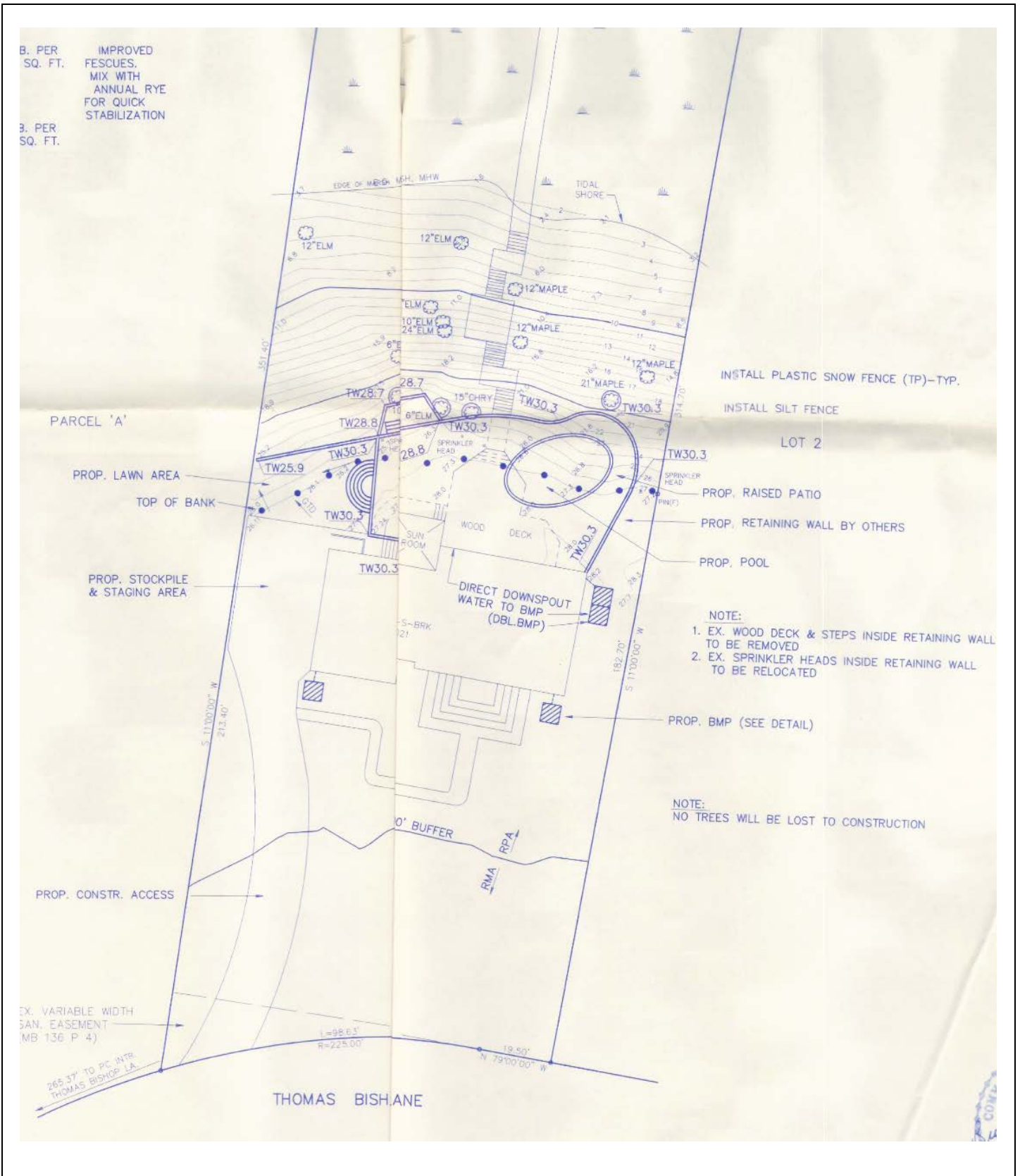
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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



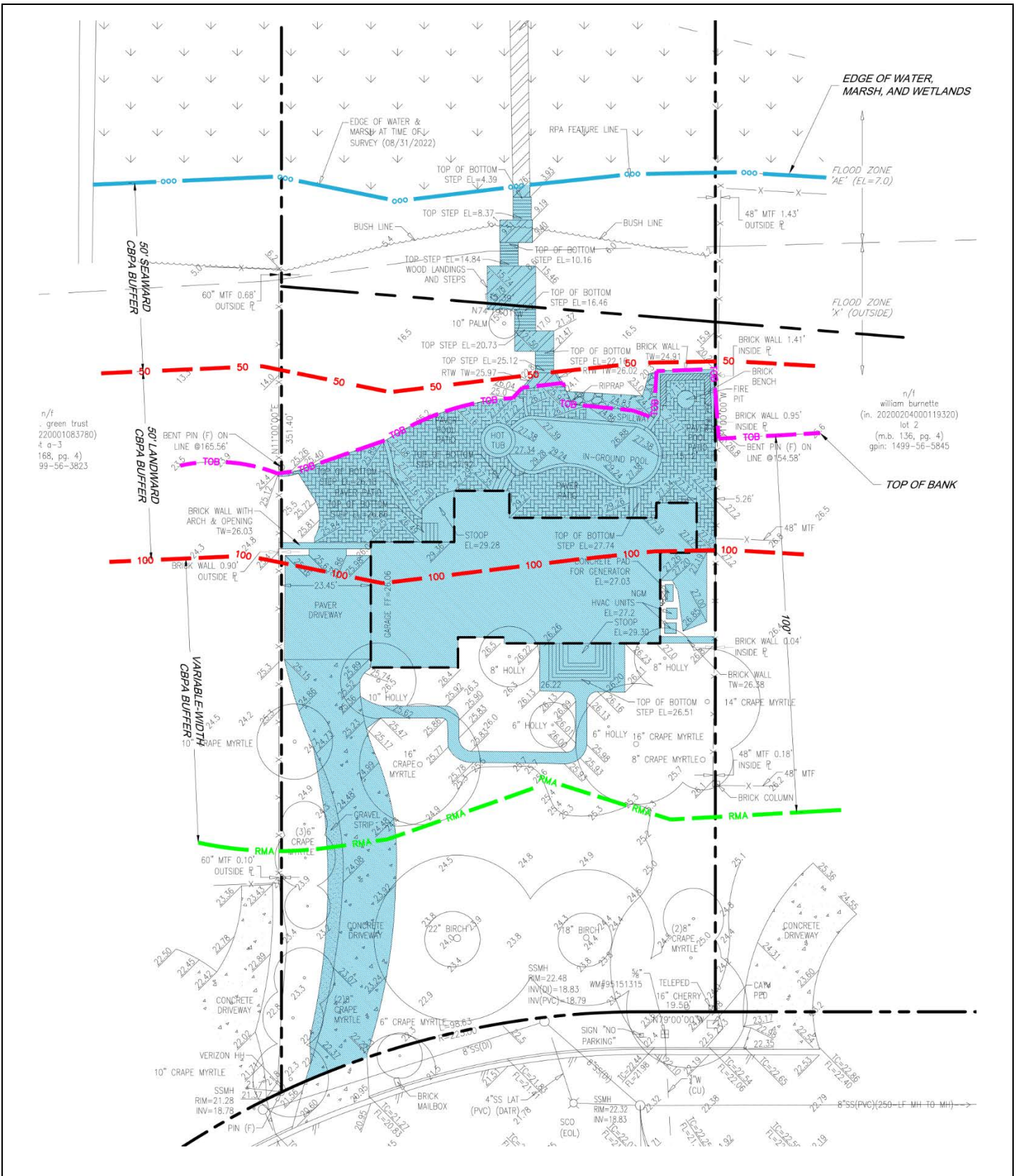
Site Aerial



November 25, 1996, CBPA Board Variance Exhibit

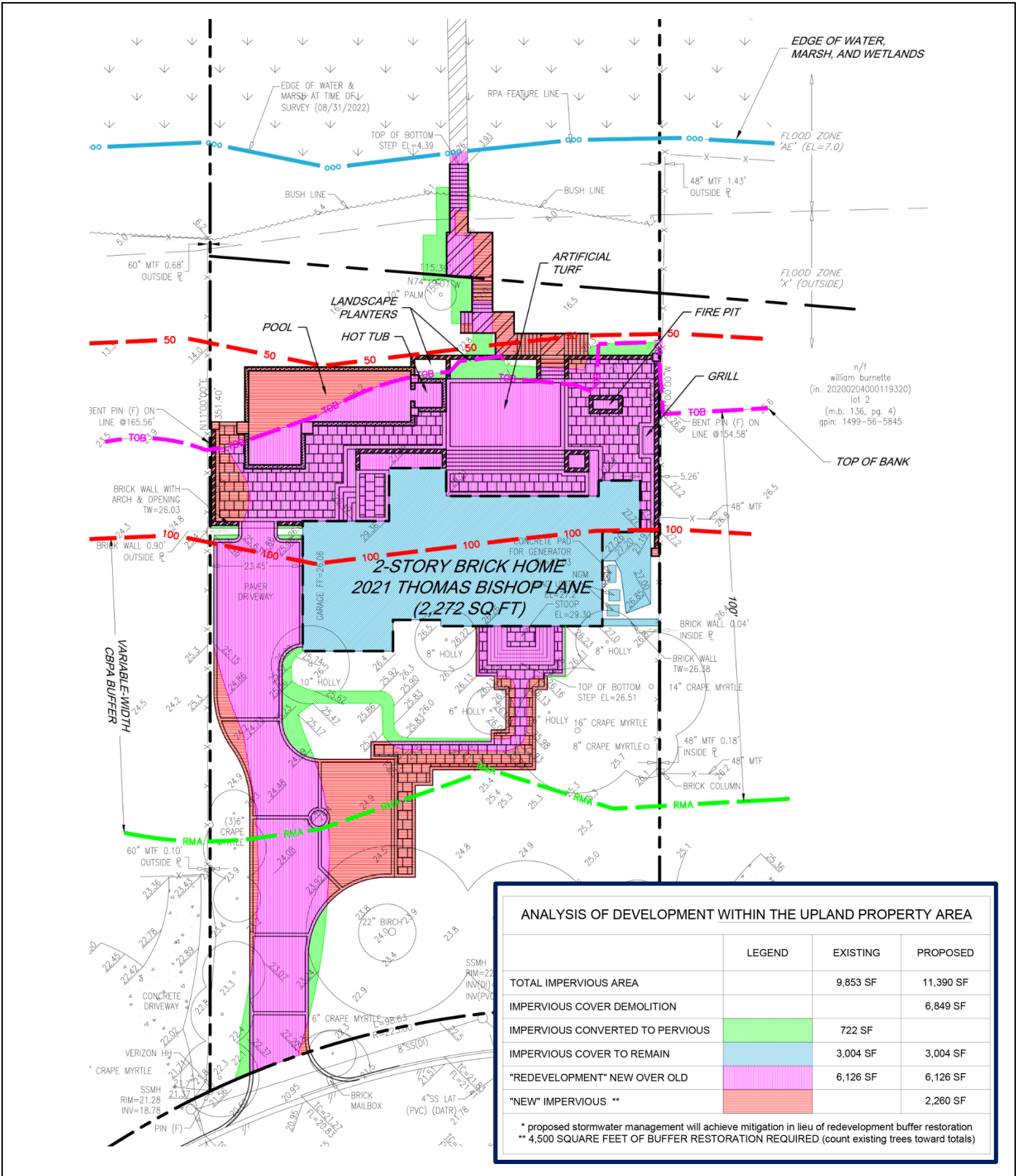


# CBPA Exhibit – Existing Conditions

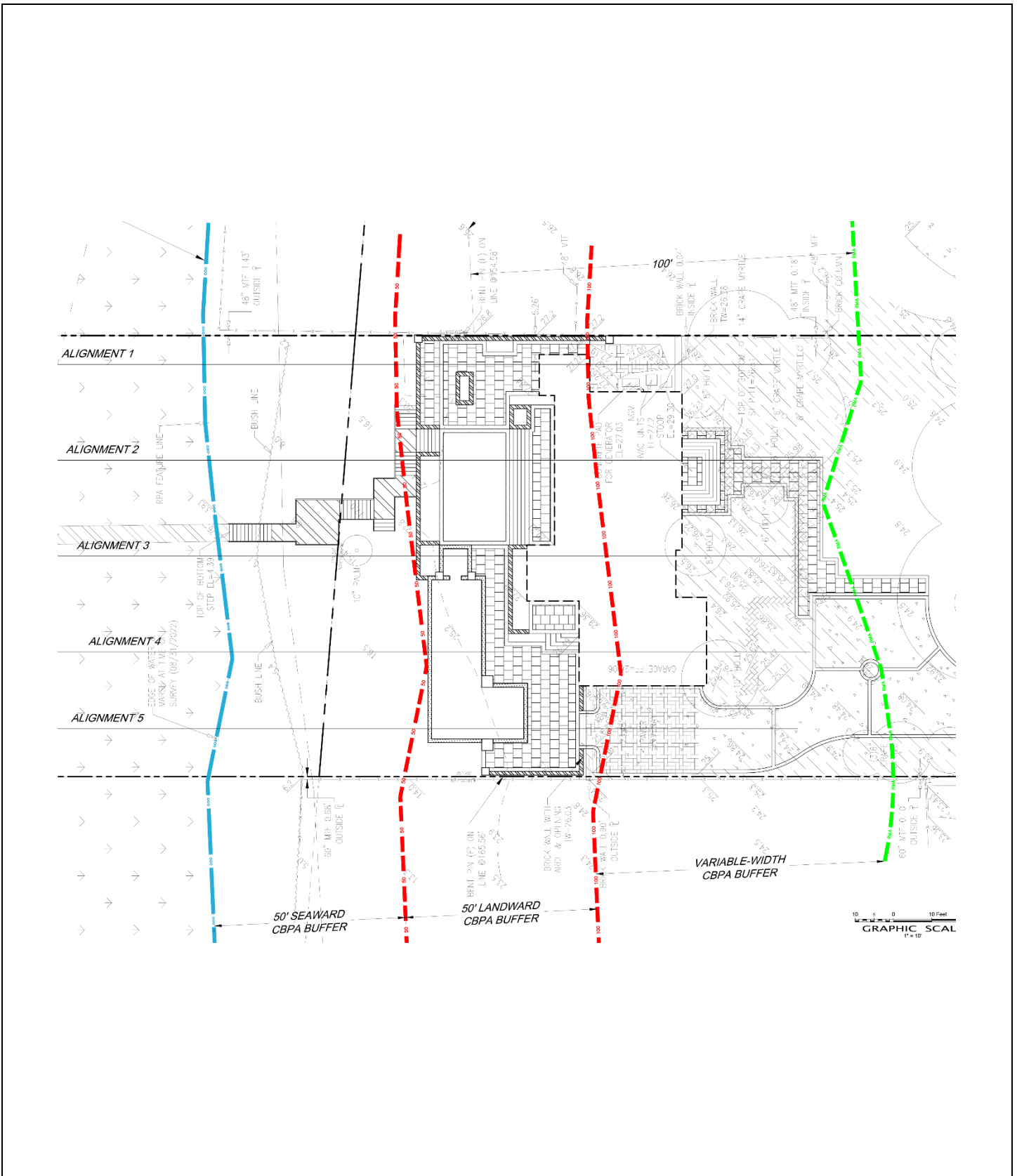




# CBPA Exhibit – Color Analysis

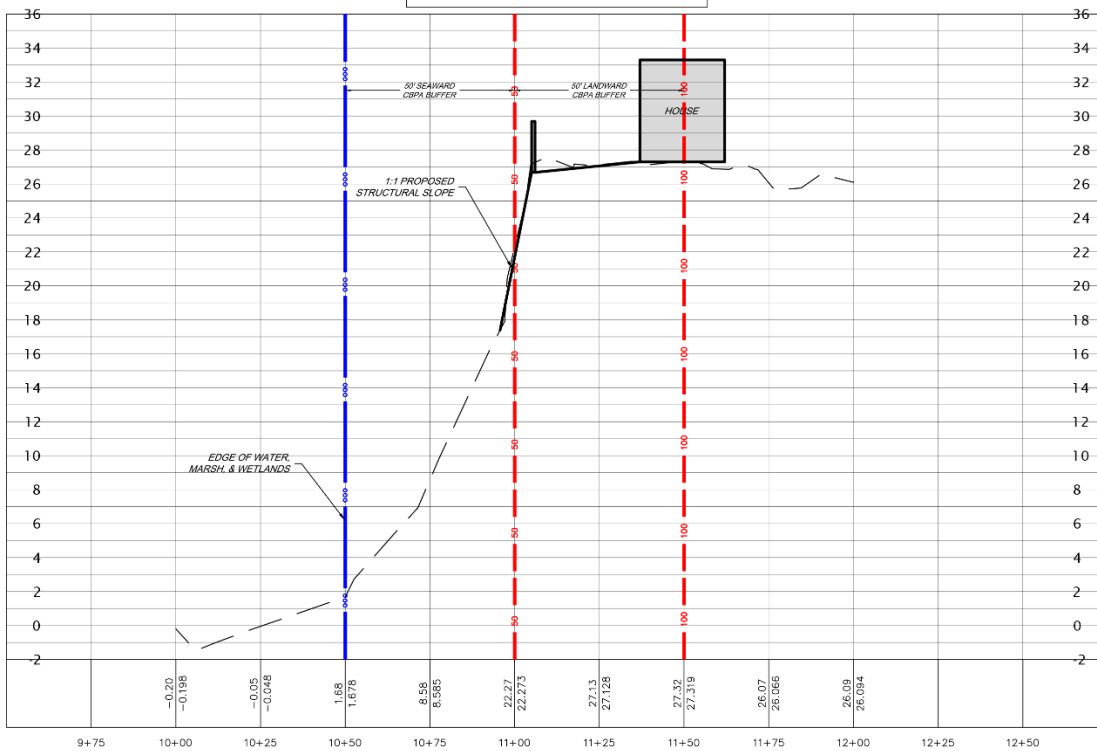


# CBPA Exhibit – Cross Section Alignment Profile Reference Plan

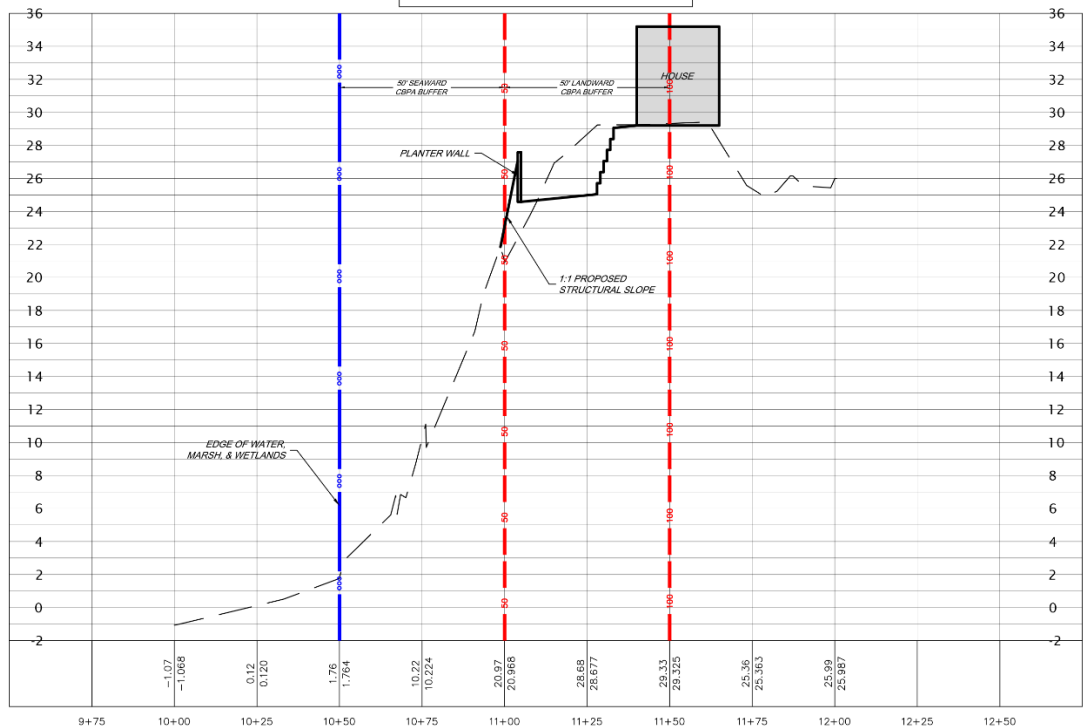


# CBPA Exhibit – Cross Section Alignment, Profile 1 and Profile 2

Alignment - (1) PROFILE

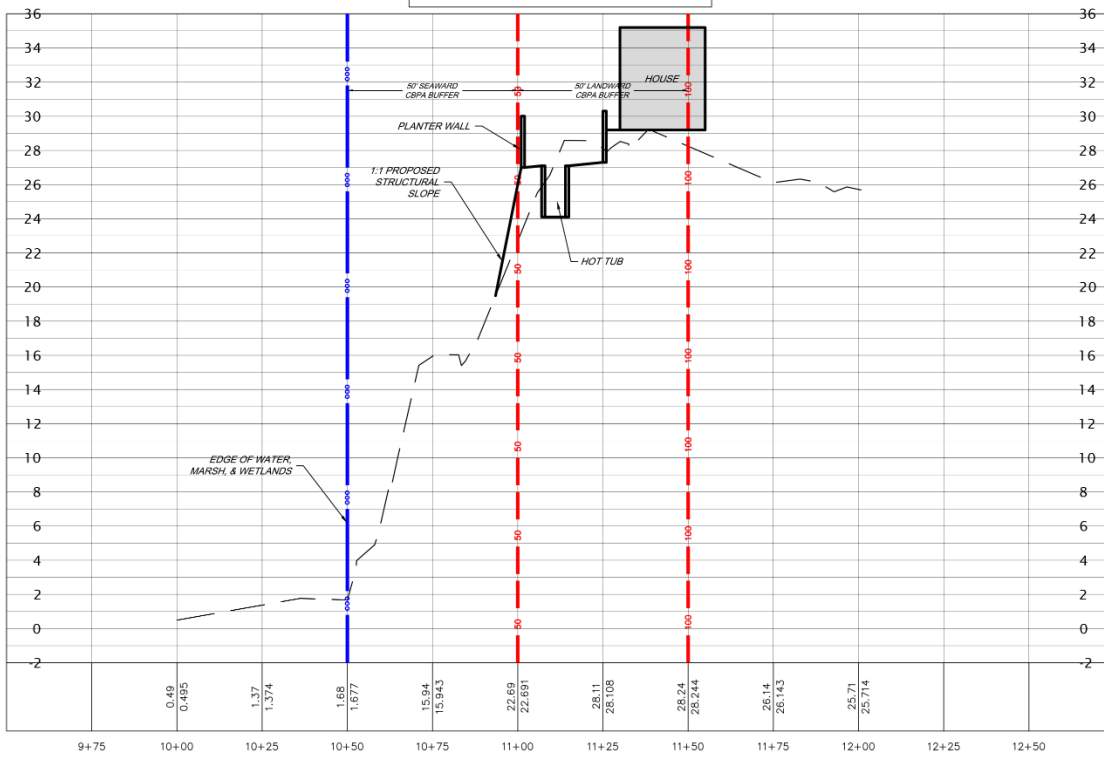


Alignment - (2) PROFILE

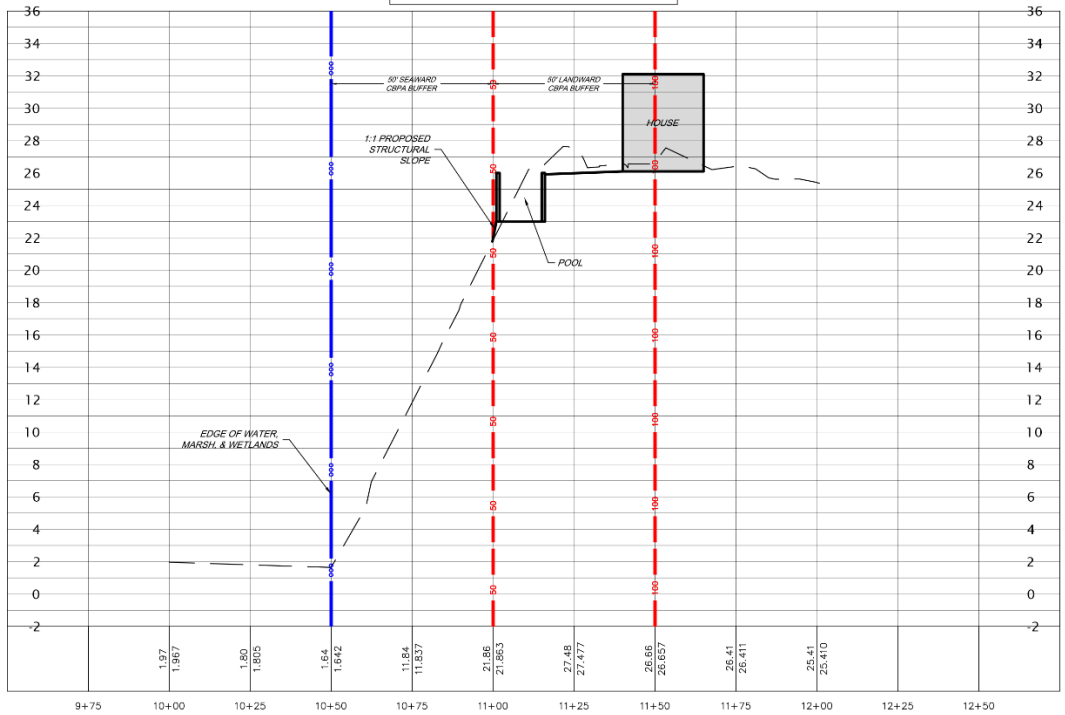


# CBPA Exhibit – Cross Section Alignment, Profile 3 and Profile 4

Alignment - (3) PROFILE

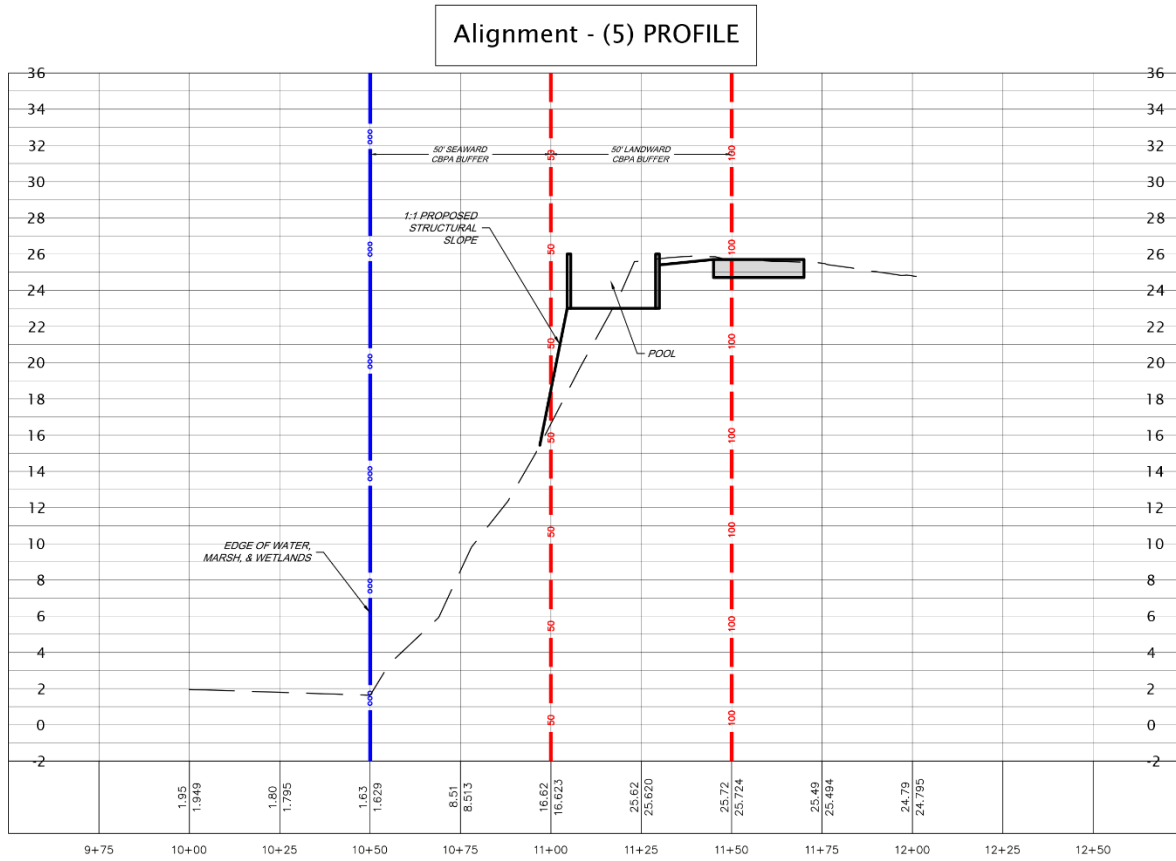


Alignment - (4) PROFILE





# CBPA Exhibit – Cross Section Alignment, Profile 5



# Disclosure Statement

DocuSign Envelope ID: B47F25F9-F68A-4781-B3FA-2A7FEB235C9B

## 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** Romeo Spino

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

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

WPL Site

**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.  
Bank of America
- 

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.  
Wall Einhorn & Chernitzer
- 

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.

Siska Aurand 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.

Axis Global Enterprises

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 Site

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.**

DocuSigned by:  
*Romeo Spino*  
712574DE280E402...

### Applicant Signature

Romeo Spino CEO

### Print Name and Title

11/1/2022

### Date

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

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

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

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



Applicant & Property Owner **Robert & Jessica Grosso**  
 Address **5324 Fairfield Boulevard**  
 Public Hearing **February 27, 2023**  
 City Council District **District 1**, formerly Kempsville

Agenda Item

**2**

**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**

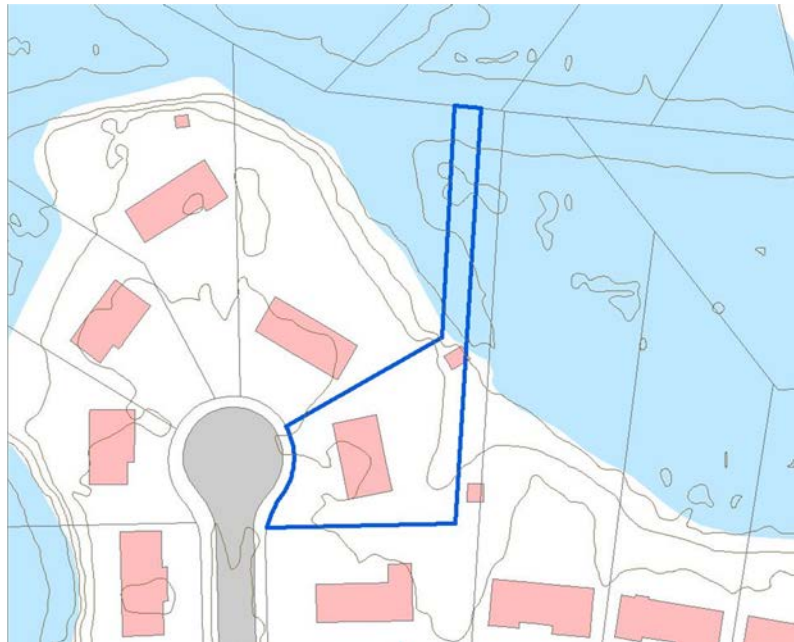
50-foot Landward Buffer  
 Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Construct a detached storage garage
- Gravel parking area

## CBPA Ordinance Variance History

This variance request was deferred at the following CBPA Public Hearing.

- January 23, 2023, CBPA Board Public Hearing

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: 5
- Evaluation of existing canopy tree removal request: The applicant is requesting to remove 5 trees located within the rear yard of the property. Staff has evaluated the request in the field and is of the opinion that a visual analysis of the existing trees showed abnormal branching structure due to old growth die back and flattened limb structure. Staff is of the opinion that the trees have reached their life expectancy.

## 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

Excerpt from the January 23, 2023, CBPA Board Staff Report.

*“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.”*

Since the deferral at the January 2023 CBPA Board public hearing, Staff spoke with the property owner regarding the location of the proposed improvements. At this time, the property owner desires to construct the detached storage shed off the southern side of the residence as presented to the CBPA Board at the January 2023 public hearing. Cognizant of the opposition present from the adjacent property owners and the discussion had by the CBPA Board members regarding the potential for the structure to flood, the property owner has provided an optional location of the proposed storage shed located off the northern side of the residence (see page 35). Based off the FEMA base flood elevation for the majority of this neighborhood, Staff is of the opinion that either location for the proposed storage shed may be subject to flooding from storm events. As such, whether located on the northern or southern side of the existing residence, the degree of flood protection for regulatory purposes would be same and based off acceptable engineering methods, material resistant to flood damage, and flood venting to minimize flood damage.

To further support their variance request, the property owner provides the following comments as merit towards the variance request not being detrimental to water quality or 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 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 and offers that several properties along this reach of the Elizabeth River watershed are located within the 100-foot Resource Protection Area (RPA) buffer and subject to the same environmental conditions as this property.
2. This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“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 provide merit towards water quality benefits. In addition, the property owner will be required to comply with the provisions of the City’s

Floodplain Ordinance. As such, the proposed improvements will be built to a higher standard for flood proofing and flood venting than most other accessory structures within the neighborhood.

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 **6** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 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. No perimeter fill material, disturbance of existing vegetation, or altering of existing contours is permitted.

\*\*\*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



# Site Aerial with Topography



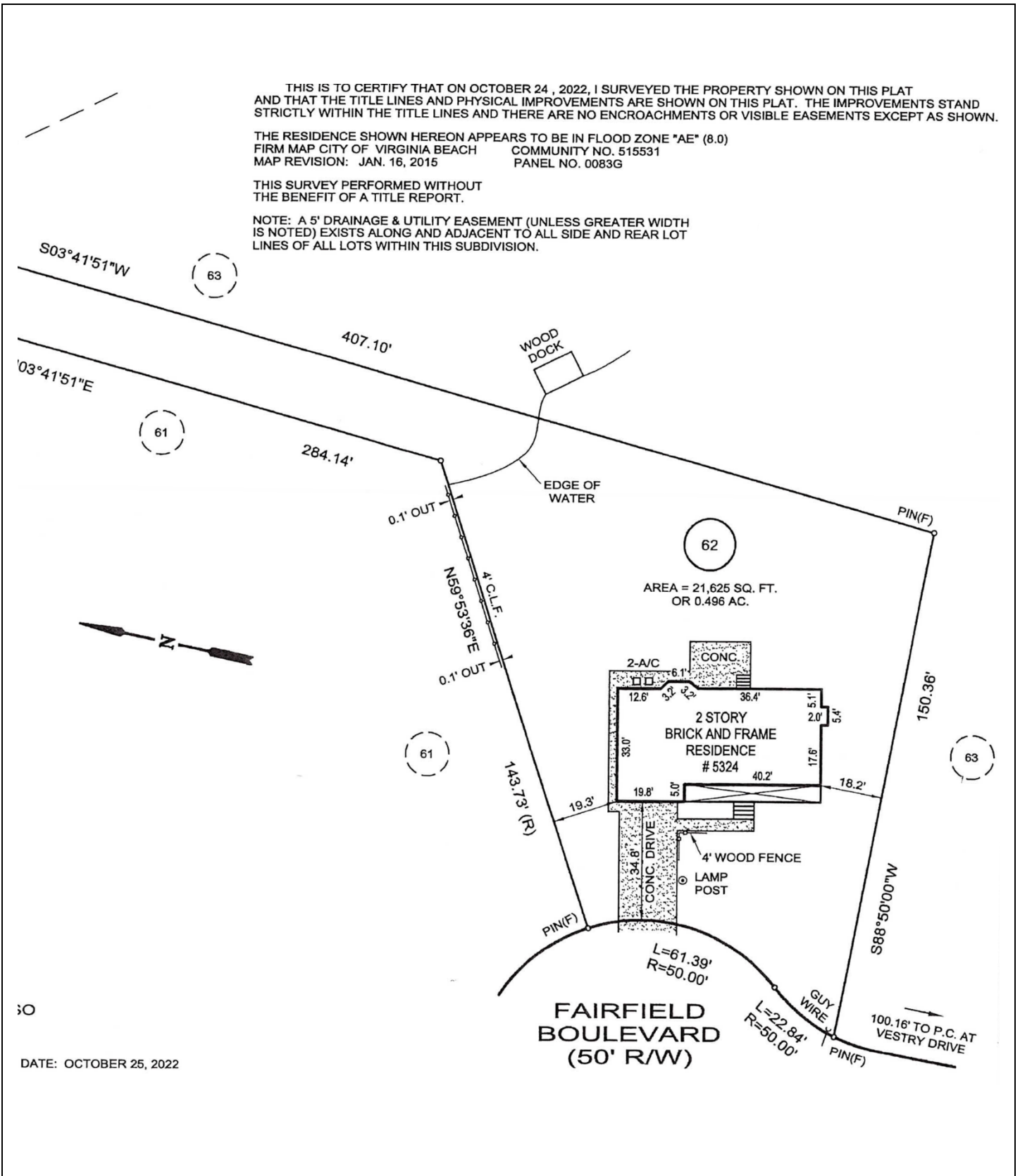
# CBPA Exhibit – Existing Conditions

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.

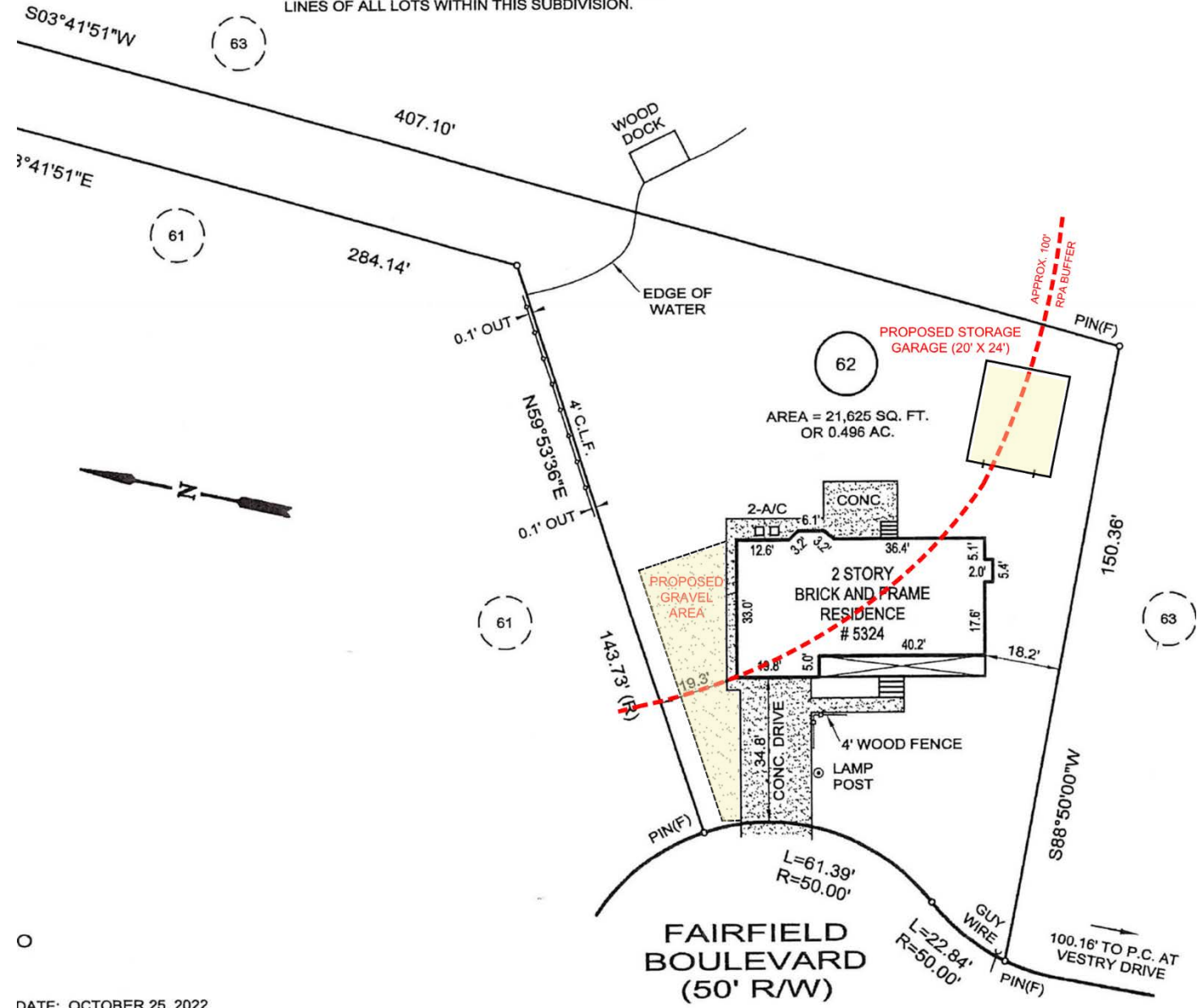


**CBPA Exhibit – Proposed Improvements, present to CBPA Board at January Public Hearing**

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

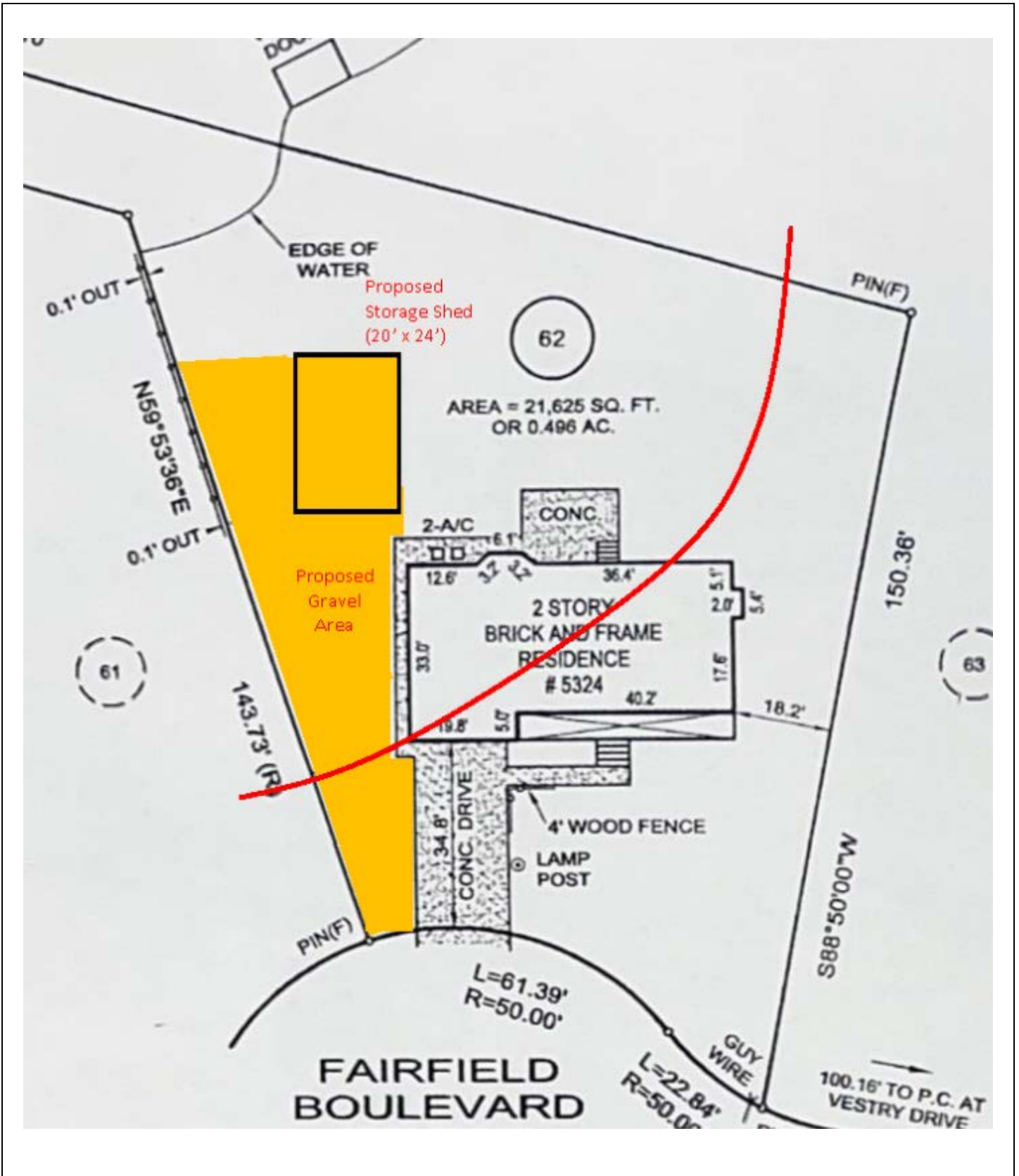
THIS SURVEY PERFORMED WITHOUT  
 THE BENEFIT OF A TITLE REPORT.

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, optional layout



# 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 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)

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

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

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

## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

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

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

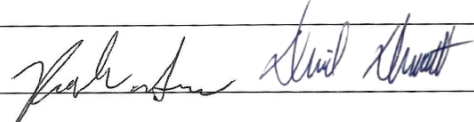
# Disclosure Statement



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

### Applicant Signature

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

**Applicant Signature** \_\_\_\_\_  
  
**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 **Dennis & Janice Ellmer**  
 Address **2871 River Road**  
 Public Hearing **February 27, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**3**

**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

**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 hardened with a vinyl bulkhead with a rip rap sill revetment located north of the existing pier.

### 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) that bioretention planting beds were provided as a best management practice for stormwater run-off mitigation associated with the 2007 CBPA Variance. Those facilities are functioning as intended.

Associated with this variance request, a cross-section of the synthetic turf was provided that specifies a 2 to 3 inch aggregate base of clean washed stone, geotextile fabric liner, flat panel drain underlayment at the base of the proposed synthetic turf area underlayment 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 2003 with additional improvements to the single-family residence in 2007. The same applicant desires to retain the after-the-fact synthetic turf within the Resource Protection Area (RPA) buffer and has submitted this variance request in conjunction with the restoration order for the Board's deliberation. Approximately 13,750 square feet of synthetic turf was installed on the lot of which approximately 8,100 square feet is located within to 100-foot RPA buffer. The existing lawn area was removed, and the synthetic turf installed in its place. No additional synthetic turf was added beyond the existing lawn area and no woody vegetation was removed from any of the existing landscape beds on the lot for the installation of the synthetic turf.

During the exception process for this encroachment request, the applicant and applicant's consultant team met with Staff several times to discuss mitigation options associated with the after-the-fact variance request for the retention of the synthetic turf areas. Said mitigation consists of the following:

- On-site mitigation of 27 trees integrated into existing landscape planting beds. Approximately 1 tree per every 500 square feet of synthetic turf area. Staff evaluated this mitigation measure based off location of existing naturalized areas on the lot towards soil volume calculations providing an area of approximately 400 cubic yards of uncompacted soil per tree in relationship to projected growth over a 10-year period and estimated area of canopy at that time. Providing adequate soil area promotes tree species to reach full height and crown spread.
- Approximately 291 square feet of bioretention planting bed located adjacent to the existing bulkhead providing approximately 175 cubic feet of stormwater runoff storage from upland improvements. The intent of the applicant is to remove an area of synthetic turf adjacent to the tidal where the most linear feet of turf is present and provide a bioretention planting bed to aid in the reduction, filtration, biological uptake and microbial activity during the pollutant removal process in runoff reduction practices.

In addition to the above mitigation measures, the applicant's consultant team offers that the subgrade of the synthetic turf provides an important practice towards the overall infiltration potential of the lot in that available void space is present within the subbase of the synthetic turf to capture the 'first flush' (percent of total event pollution transported by the first 10% of storm runoff volume) treatment of urban surface runoff. Staff is of the opinion that this perspective provides merit towards an availability of infiltration and that the site, while urban, is not stressed with an extensive amount of impervious cover comparable to a more commercial or industrial setting found in nearby urban areas. Therefore, the input of runoff sheet flowing to the subbase area is less intense and offers a potential towards greater infiltration given the lesser concentration of flow over this shallow subbase area. 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 proposed improvements 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 (CBPA) who are subject to the provisions of this Ordinance and are similarly situated because *"the site was originally platted in 1952 and the existing improvements area in keeping with the neighborhood."* Staff offers that premise of this finding is to get to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision when considering granting a variance to the CBPA Ordinance. During this encroachment process associated with the restoration order the applicant separated from the contractor who performed the work without proper authorizations and has since followed all necessary procedures to retain the improvements that were installed prior to obtaining a variance to the CBPA Ordinance.
- 2) The applicant's agent 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 thus impacting 90 percent of the lot."* Staff acknowledges the statement provided by the applicant's agent that a hardship is present based off the recordation of this legally created residential lot and the post-adoption of the City's CBPA Ordinance. However, prior variances have been granted for development on this lot and those exceptions followed the legal process to obtain a variance to the Ordinance. At this time, the applicant has gone through all corrective measures to request an after-the-fact variance request. Any proposal may be reviewed and approved by the locality in accordance with the variance process from any provisions of the Ordinance with the right and ability to prove such an exception in the Resource Protection Area (RPA).

- 3) The variance is the minimum necessary to afford relief because *“the synthetic turf although currently categorized as impervious area still allows water infiltration into the ground water aquifers.”* Staff offers that the terms “minimum necessary to afford relief” is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. In this case the existing lawn area was removed and replaced with synthetic turf. The applicant does use the area of synthetic turf to recreate with grandchildren, host events, entertain guest, and allow for the dogs to run which can be upwards of 5 or more when fostering. While the area of synthetic turf could be relocated so that the encroachment into the RPA feature is less the result would impact and established landscape.
  
- 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 has the potential to improve the site by conserving water (estimated that every square foot of natural grass replaced saves 55 gallons of water per year); the reduction of several pounds of harmful pesticides and fertilizers, and can help reduce noxious emissions from lawnmower.”* 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 to Staff.
  - *“The contractor provided specifications as to the installation process of the synthetic turf regarding the clean washed aggregate base installed, condition of the underlying soil horizon (Tetotum series – deep, moderately well drained soils), and underlayment treatment of the synthetic turf. The underlying stone base offers infiltration practices to allow incoming rainwater and stormwater runoff to exfiltrate into underlying soil profile.”*
  
  - The manufacturer of the product provides that the toxicological information for this product is considered to be non-hazardous under the Federal Occupational Safety and Health Administration Hazard Communication Standard [29CFR1910.1200]. SYNlawn synthetic turf is made with a soy-based backing called EnviroLoc™ which uses soy-based polyol technology developed with support from the soybean checkoff. Based on UL third-party verification, soybean oil displaces 60 percent of the petroleum-based polyurethane in common artificial grass products.
  
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“bioretention beds will be improved and expanded seaward of the improvements to store and treat the synthetic turf and additional trees installed to offset the impacts of how turf is categorized.”* Staff acknowledges the statement provided by the applicant’s agent and is of the opinion that a minimal amount of available void space may be present within the aggregate subbase of the synthetic turf providing some value towards pollutant capture and infiltration of rainwater.

Given the above comments, Staff recommends the following 3 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

## Recommended Conditions

- 1) Upon granting of a variance, a CBPA / CIVIL permit must be obtained within 45 days. All required restoration must be installed or in the process of installation within 60 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.
  
- 2) This variance and associated conditions are **in addition to** the conditions of the CBPA Board variance granted November 24, 2003 and July 23, 2007.

- 3) The conditions and approval associated with this variance are based on the exhibit plan dated January 3, 2022, prepared by WPL, titled CBPA Planting 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











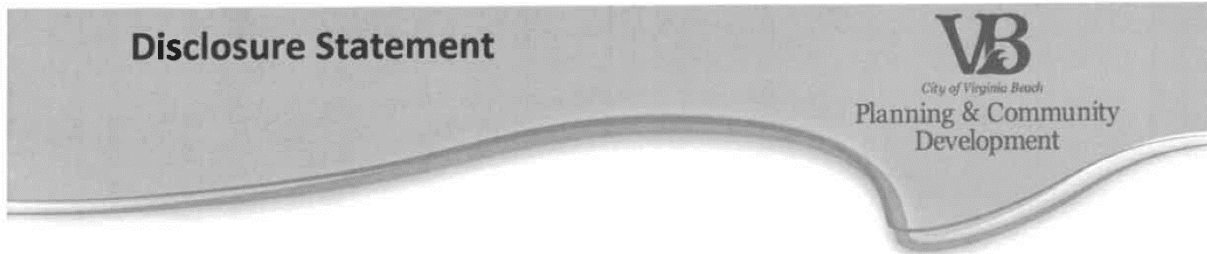
# CBPA Exhibit – Proposed Improvements, Tree Mitigation Plan



## PLANT SCHEDULE

TREES	QTY	BOTANICAL NAME	COMMON NAME	SIZE	HEIGHT
	4	ACER PALMATUM 'BLOODGOOD'	BLOODGOOD JAPANESE MAPLE	GAL. (15)	FT. (6-8)
	6	BETULA NIGRA 'BNMTF'	DURA HEAT® RIVER BIRCH	GAL. (15)	FT. (10-12)
	10	CARPINUS CAROLINIANA	AMERICAN HORNBEAM	GAL. (15)	FT. (10-12)
	2	PRUNUS SERRULATA 'KWANZAN'	KWANZAN JAPANESE FLOWERING CHERRY	GAL. (15)	FT. (6-8)
	4	QUERCUS PHELLOS	WILLOW OAK	GAL. (15)	FT. (10-12)
	1	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	GAL. (15)	FT. (10-12)

# 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** Dennis M Ellmer & Janet S Ellmer

**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?

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## **Applicant Services Disclosure**

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

**Yes**  **No**

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

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

**Yes**  **No**

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

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

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

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

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

WPL

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

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

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# Disclosure Statement



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

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

Chesapeake Lawn Garden Inc.

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

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

WPL

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

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

### Applicant Signature

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

Applicant Signature

Dennis Ellmer

Print Name and Title

12/29/2022

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Edward & Angela Anderson**  
 Address **1208 Witchduck Bay Court**  
 Public Hearing **February 27, 2023**  
 City Council District **District 9**, formerly Bayside

Agenda Item

**4**

**The applicant is requesting a deferral of this application indefinitely to allow additional time to address Staff's concerns. Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a patio expansion, covered gazebo, covered pergola, retaining walls, and driveway expansion/redevelopment.

**Applicant's Agent**

Daniel Vandyke

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 101, Page 28  
 Recorded 2/25/1971

**GPIN**

1488-08-1551

**SITE AREA**

54,577 square feet or 1.25 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

50,638 square feet or 1.16 acres

**EXISTING IMPERVIOUS COVER OF SITE**

13,653 square feet or 27 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

15,991 square feet or 32 percent of site

**Area of Redevelopment in RPA**

3,257 square feet

**Area of New Development in RPA**

1,050 square feet

**Location of Proposed Impervious Cover**

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

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet



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Applicant & Property Owner **Amanda & Benjamin Waldron**  
 Address **2000 Alpine Court**  
 Public Hearing **February 27, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**5**

**Variance Request**

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

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultants, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 29, Page 48  
 Recorded 10/06/1966

**GPIN**

1499-77-7989

**SITE AREA**

22,055 square feet or 0.506 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

17,003 square feet or 0.390 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,242 square feet or 25 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,255 square feet or 37 percent of site

**Area of Redevelopment in RPA**

149 square feet

**Area of New Development in RPA**

1,762 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

- Existing deck and patio

### Construction Details

- Swimming pool with permeable paver patio surround
- Permeable paver walkway and mechanical equipment pad

## CBPA Ordinance Variance History

**On August 11, 2021, a Chesapeake Bay Preservation Area (CBPA) Administrative Variance was granted for the construction of a detached garage and gravel driveway replacement with pavers 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. Land disturbance at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet staff may issue a stop work order until a site development plan, in compliance with local and State regulations, is submitted for review and approval through the Development Services Center (DSC).*
- 4. 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. Said silt fence shall be installed 15 feet from improvements.*
- 5. Construction limits shall lie a maximum of 15 feet seaward of improvements. Exclusive of the 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, in the RPA may not be removed.*
- 6. All trees shall be preserved outboard of the limits of construction unless they have been specifically approved for removal by this letter. All unauthorized vegetation impacts (damage or removal) shall provide a 3:1 replacement ratio.*
- 7. 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. No activity shall occur within these barriers, particularly, the storage of equipment, materials, debris, or fill.*
- 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, as required by the Virginia Erosion and Sediment Control Law and Regulations.*
- 9. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 779 square feet x 200% = 1,558 square feet.*

*Said restoration shall achieve the full complement of vegetation consisting of 4 canopy trees, 8 understory trees and 12 small shrubs consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the RPA, in areas currently devoted to turf or where impervious cover is removed.*

*The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 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.*

10. Under deck treatment of sand and gravel shall be installed.

11. No perimeter fill is authorized outboard or seaward of the proposed improvements.

12. The conditions and approval associated with this administrative variance are based on the exhibit submitted with the PPR form.

*The August 11, 2021, Administrative Variance has been acted upon and the associated improvements constructed.*

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

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

### Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed to limb up low hanging branches shading existing tidal marsh and to remove invasive plant species, specifically *Smilax rotundifolia* (Roundleaf Greenbrier).

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown within the footprint of the proposed improvements.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

This variance request includes the construction of a new in-ground swimming pool with a permeable paver patio surround and walkway. This request will add 1,762 square feet of new impervious cover within the Resource Protection Area (RPA) with the majority within the 50-foot landward buffer. As submitted, the proposal increases the overall impervious cover of the lot from 4,242 square feet to 6,255 square feet (25 to 37 percent) of the total area above water and wetlands. Of this new impervious cover, approximately 1,072 square feet proposed is new impervious cover consisting of permeable pavers associated with the patio surround and walkway and 390 square feet associated with the footprint of the proposed swimming pool.

The performance standards set forth within the Chesapeake Bay Preservation Area Ordinance are intended to prevent a net increase in nonpoint source pollution from new development and redevelopment on previously developed land. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural or nonstructural urban best management practices [Sec. 106 (A)(3)]. Per the applicant's submitted variance request, the proposed improvements will combine the use of structural (permeable pavers) and nonstructural (bioretention) best management practices for the stormwater treatment of this site. Staff is of the opinion that the combination of structural and nonstructural best management practices provide merit towards the variance request. In addition, given the elevations of the southern portion of the lot and lack of a function riparian ecosystem within the 50-foot seaward buffer, Staff is of the opinion that the recommended buffer restoration conditioned specific to this variance request further aids in the redevelopment of this lot and is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood.

After hearing sufficient testimony from the applicant's agent on the feasibility of the proposed urban best management practices utilized to prevent degradation of water quality, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1952 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that this variance request will not confer upon the applicant any special privilege if the recommended conditions are followed, and a comprehensive buffer restoration plan is implemented restoring the majority of this lot back to a functioning riparian buffer ecosystem.
- 2) The applicant's agent 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."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the improvements are being proposed within the small available footprint between the existing house and the retaining wall to minimize site impacts in the lower lying areas of the site."* While the Resource Protection Area (RPA) encompasses the entirety of the lot and Staff acknowledges the placement of the proposed improvements in harmony with the existing improvements on the lot, the overall all impervious cover on the lot does increase from 25 percent to 37 percent. Given similar request within this neighborhood, Staff is of the opinion that a 10 percent increase in impervious cover associated with the redevelopment of a residential zoned R-10 lot is more appropriate and has provided recommended condition 1 below to address this concern.

- 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.”* Staff is of the opinion that this proposal is in harmony with the purpose and intent of the CBPA Ordinance if the recommended conditions of this variance request are accepted by the applicant.
- 5) *“The proposed buffer mitigation will enhance and compliment the site. Permeable Pavers will be installed to meet the stormwater management regulations to store 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 agrees that the buffer restoration will benefit the little to no tree canopy present on the lot and will ensure that the variance does not contribute nonpoint source pollution into the bay.

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) The overall impervious cover of the lot shall not exceed 6,000 square feet or 35.3 percent of the lot above water and wetlands.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Said site plan shall address all conditions associated with the August 11, 2021, Chesapeake Bay Preservation Area (CBPA) Administrative Variance and the conditions associated with the February 27, 2023, CBPA Board Variance herein.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall achieve the following restoration requirements
  - Installation of **4,075 square feet** of buffer restoration in substantial compliance with CBPA Exhibit provided by WPL dated December 2, 2022 – approximately 3,475 square feet located along the southern portion of the lot between Broad Bay and the existing boat basin, and 600 square feet located adjacent to the swimming pool. Said 3,475 square feet buffer restoration area shall be restored to a suitable upland/high marsh wetland community based on existing topography and grade elevation (i.e., high marsh, transition, shrub, upland, etc.). Said plant material for this area shall specify wetland plants, perennial, shrub, and tree species appropriate for the existing environmental conditions and provide the required form / size (i.e., plug, bare root, container, etc.) for each.
  - Installation of **4 canopy trees, 4 understory trees, 8 large shrubs and 12 small shrubs or grasses.**
  - Installation of **1,558 square feet** of buffer restoration. Said restoration shall achieve the full complement of vegetation consisting of **4 canopy trees, 8 understory trees and 12 small shrubs** consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of

Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the RPA, in areas currently devoted to turf or where impervious cover is removed.

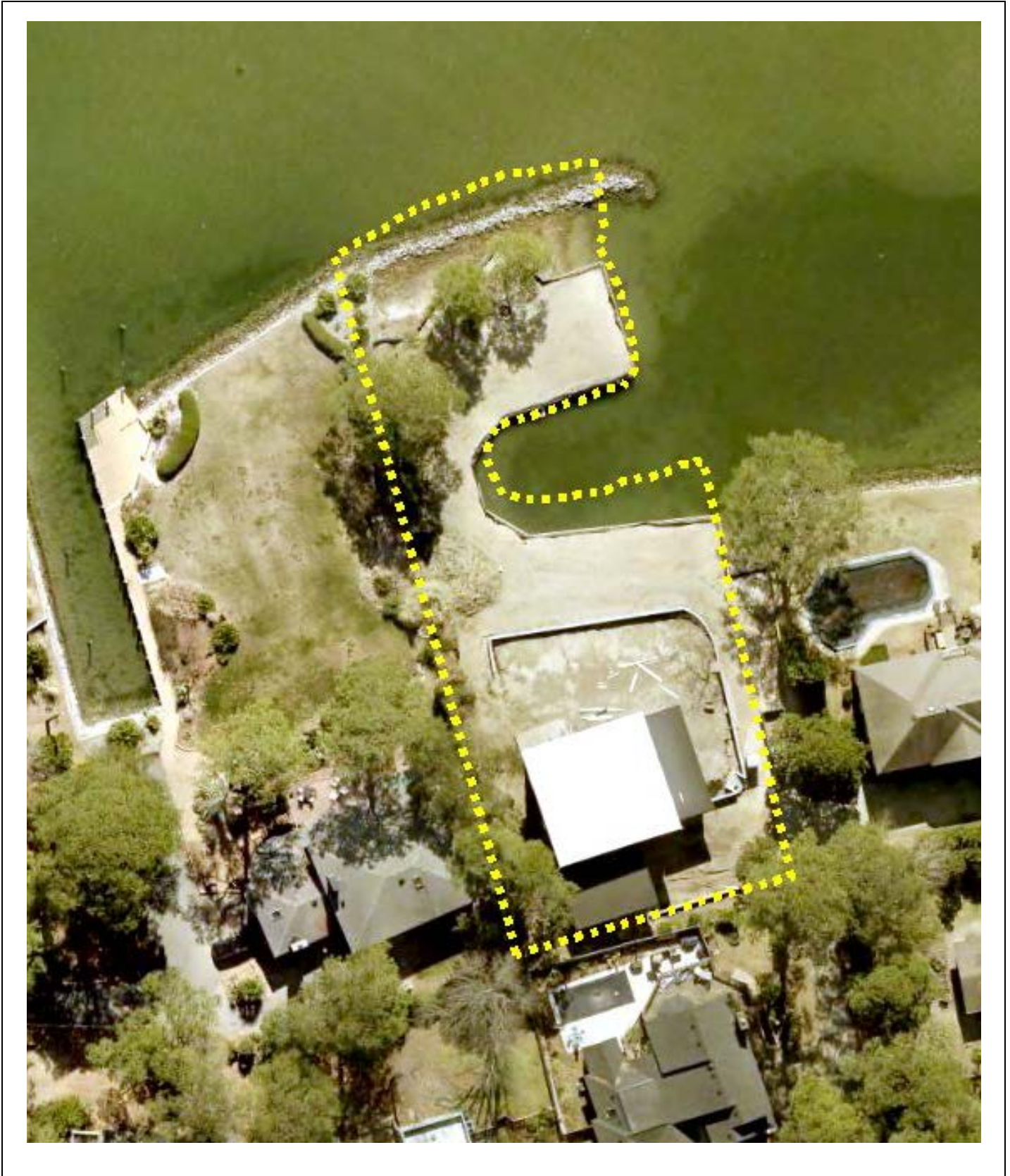
The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings.

Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

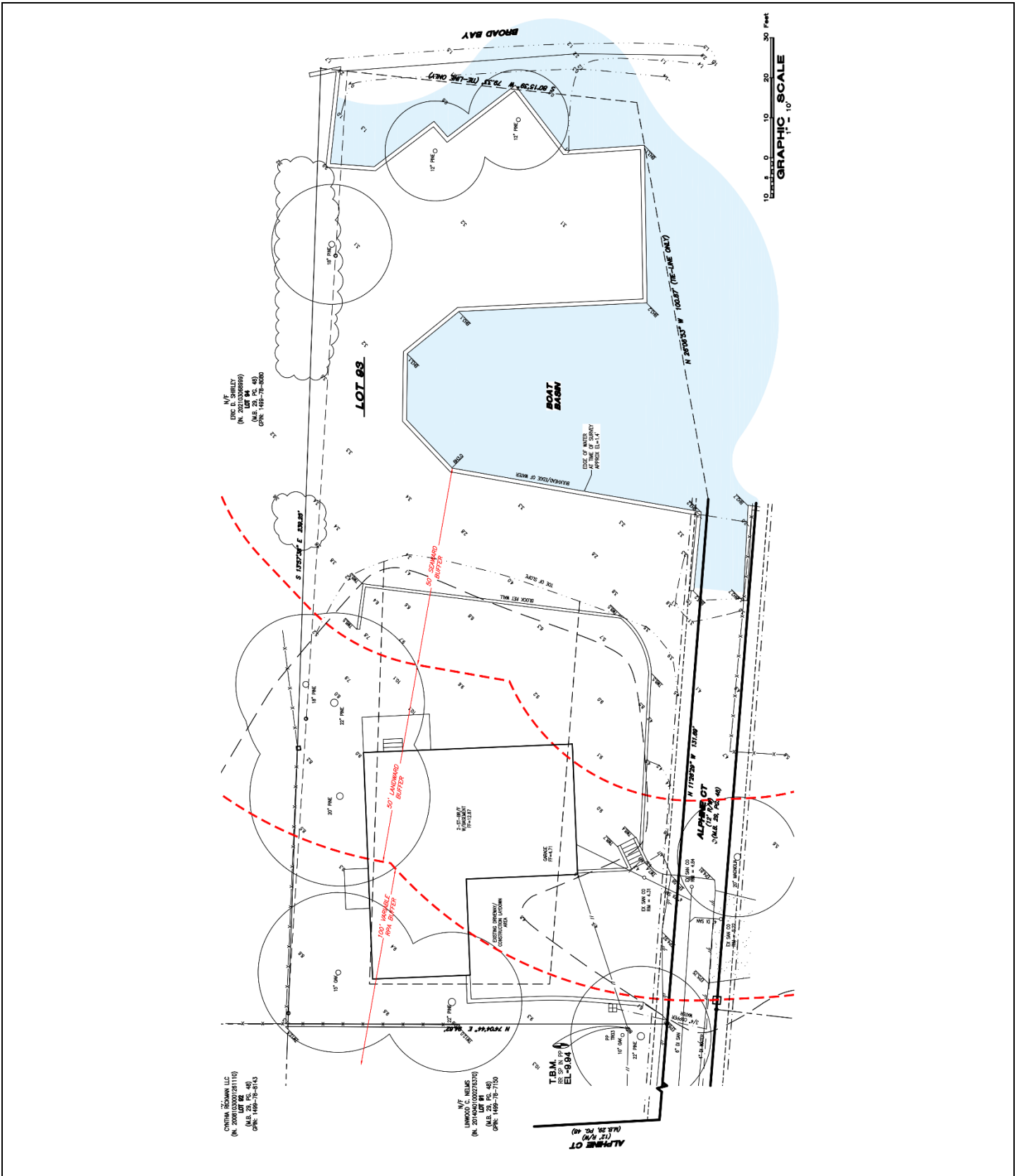
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Wire reinforced 36-inch silt fence, 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.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 9) 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.
- 10) The proposed walkway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided, and a site plan submitted to the Development Services Center for review and approval.
- 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) The conditions and approval associated with this variance are based on the exhibit plan dated December 2, 2022, prepared by WPL, signed January 29, 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 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







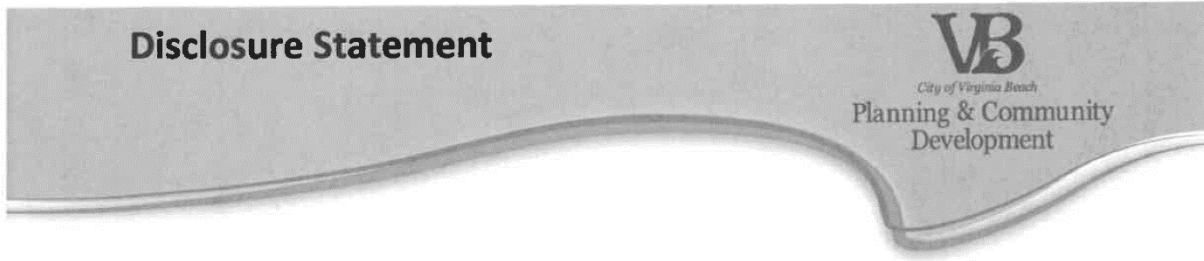
M/T  
CENTIN ROMAN LLC  
(N. 2001400(0000000))  
LOT #4  
(A.L.S. 26, P.C. 40)  
CPL: 1497-78-5000

M/T  
CENTIN ROMAN LLC  
(N. 2001400(0000000))  
LOT #4  
(A.L.S. 26, P.C. 40)  
CPL: 1497-78-5043

M/T  
LUNWOOD C. HELMS  
(N. 2016400(00027070))  
LOT #1  
(A.L.S. 26, P.C. 40)  
CPL: 1497-78-7150

T.B.M.  
(A.L.S. 26, P.C. 40)  
E.L. 8.94

# 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** Amanda Lorraine Waldron & Benjamin Charles Waldron

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

- If yes, list the name of the representative.

Billy Garrington, GPC, Inc

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

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

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

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

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

**Yes**  **No**

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

Atlantic Bay Mortgage Group, LLC

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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.

Ionic Deziign Studios

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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.

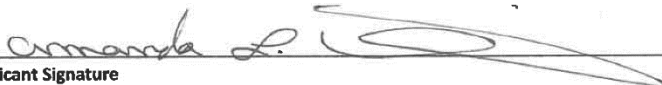
WPL & Fox Land Surveying


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.



Print Name and Title  


Date

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

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

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

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



Applicant & Property Owner **Macklin & Diane Smith**  
 Address **2513 Broad Bay Road**  
 Public Hearing **February 27, 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 and patio.

**Applicant's Agent**

Self-represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 29, Page 48  
 Recorded 03/27/1952

**GPIN**

1499-88-2629

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

122 square feet

**Area of New Development in RPA**

678 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval As Conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with patio surround

## CBPA Ordinance Variance History

A CBPA Board variance request was withdrawn at the April 27, 2009, CBPA Public Hearing for the construction of a two-story building addition, wood deck, patio replacement, swimming pool, retaining wall with walkway and steppingstones.

## Environmental Conditions

### Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

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

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

### Shoreline

Shoreline is stabilized by a rip rap revetment.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

The 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 has proposed to include methods such as rainwater harvesting, infiltration beds, bioretention planting beds, soil amendments, and shoreline management to further ensure a no net increase in nonpoint source pollution load.

## Evaluation and Recommendation

The applicant is proposing to construct an in-ground swimming pool with a patio surround within the 50-foot landward buffer of the Resource Protection Area (RPA). This is a relatively flat lot with little topographic elevation change and the applicant wishes to construct the proposed improvements off the rear of the residence adjacent to an existing wood deck and patio area. The lot is completely encumbered by the RPA buffer and was platted decades before the adoption of the City's CBPA Ordinance. Staff is of the opinion that the applicant has provided a design that is respectful to the above circumstances with the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance in mind.

In addition, the applicant does not wish to disturb the existing canopy cover on the lot and has situated the proposed improvements on the lot to sit adjacent to the existing wood deck and to preserve the existing riparian buffer. Furthermore, should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff provides that the surrounding adjacent properties have similar improvements.
- 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 this project to meet the small project standards to limit land disturbance and impact to the buffer."* Staff acknowledges the statement provided by the applicant and notes that the applicant has located the proposed improvements to avoid impacts to existing vegetation on the lot within the 100-foot RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the majority of neighboring properties have pools. The pool itself helps to harvest rainwater."* Staff provides that adjacent properties have in-ground swimming pools and adds that this request disturbs less than 2,500 square feet of land, but the applicant has chosen to provide several stormwater management facilities to treat runoff before entering the bay.
- 5) *"The native soil is sand, in addition to landscape mitigation and BMP as needed"* as a means to manage towards a no net increase in nonpoint source pollution load. The applicant proposes to include soil amendments, rainwater harvesting, infiltration beds, bioretention planting beds, and no disturbance to the existing riparian buffer as BMPs on the lot, even though they are not required due to the land disturbance associated with the request.

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

## Recommended Conditions

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

2. Buffer restoration shall be in substantial compliance with the landscape design provided by Di-namic Landscape Designs dated February 6, 2023, prepared by Diane Smith, VNLA Certified Horticulturalist.

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.

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
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. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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



Site Aerial





# Disclosure Statement

## 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** Diane & Macklin Smith

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

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

Diane Smith

**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)

Di-namic Landscape Designs Inc. Only employee and officer President Diane E Smith

- 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.

Mortgage, Wells Fargo

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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.

Di-namic Landscape Designs Inc. - Diane Smith

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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.

Fox Land Survey, Travis Fox

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

Diane E Smith

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 **Brian & Brandy Clark**  
 Address **1108 Michaelwood Drive**  
 Public Hearing **February 27, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**7**

**Variance Request**

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

**Applicant’s Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 31, Page 51  
 Recorded 03/11/1954

**GPIN**

1488-55-6738

**SITE AREA**

63,145 square feet or 1.45 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

61,059 square feet or 1.40 acres

**EXISTING IMPERVIOUS COVER OF SITE**

12,827 square feet or 21 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

14,561 square feet or 25.4 percent of site

**Area of Redevelopment in RPA**

56 square feet

**Area of New Development in RPA**

1734 square feet

**Location of Proposed Impervious Cover**

50-foot Landward Buffer

100-foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Swimming pool with concrete patio and equipment pad

## 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

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

### Shoreline

Shoreline is stabilized by a timber bulkhead.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The applicant is requesting to remove three Oak trees that lie directly seaward of the proposed swimming pool and patio area. Staff is of the opinion that the request to remove these trees is warranted given the layout of the proposed improvements and has added additional buffer restoration to mitigate for the tree removals.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct a swimming pool with a paver patio within the 50-foot landward buffer and variable width buffer portions of the Resource Protection Area (RPA). The dimensions of the proposed swimming pool (18 feet by 38 feet) are slightly larger than the average residential swimming pool (16 feet by 32 feet). The rear yard of the lot has a moderate to steep topographic elevation change from the area of the proposed improvements to the shoreline and the entire residence and any associated accessory structures fall within the RPA feature. Staff offers that



these circumstances pose challenges when redeveloping this lot, however, the applicant's agent has managed to situate the proposed improvements landward of the delineated top of bank feature.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that several lots along this reach of Michaelwood Drive have improvements located landward of the top of bank feature with several of those lots having an overall impervious cover of approximately 25 percent of the lot above water and wetlands. As submitted, the proposed improvements increase the overall impervious cover of this lot to 24 percent of the lot above water and wetlands.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed development is encroaching minimally into the 50-foot landward buffer and all other proposed improvements are in the variable width buffer."* Staff concurs with the applicant's statement. The proposed improvements slightly encroach within the upper limits of the 50-foot landward buffer with no encroachment proposed within the 50-foot seaward buffer. Staff is of the opinion the applicant has situated the proposed improvements to minimize encroachment within the buffer to the best of their ability.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff to improve water quality."* Staff concurs.
- 5) *"Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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: **1,734 square feet x 200 percent = 3,468 square feet.**

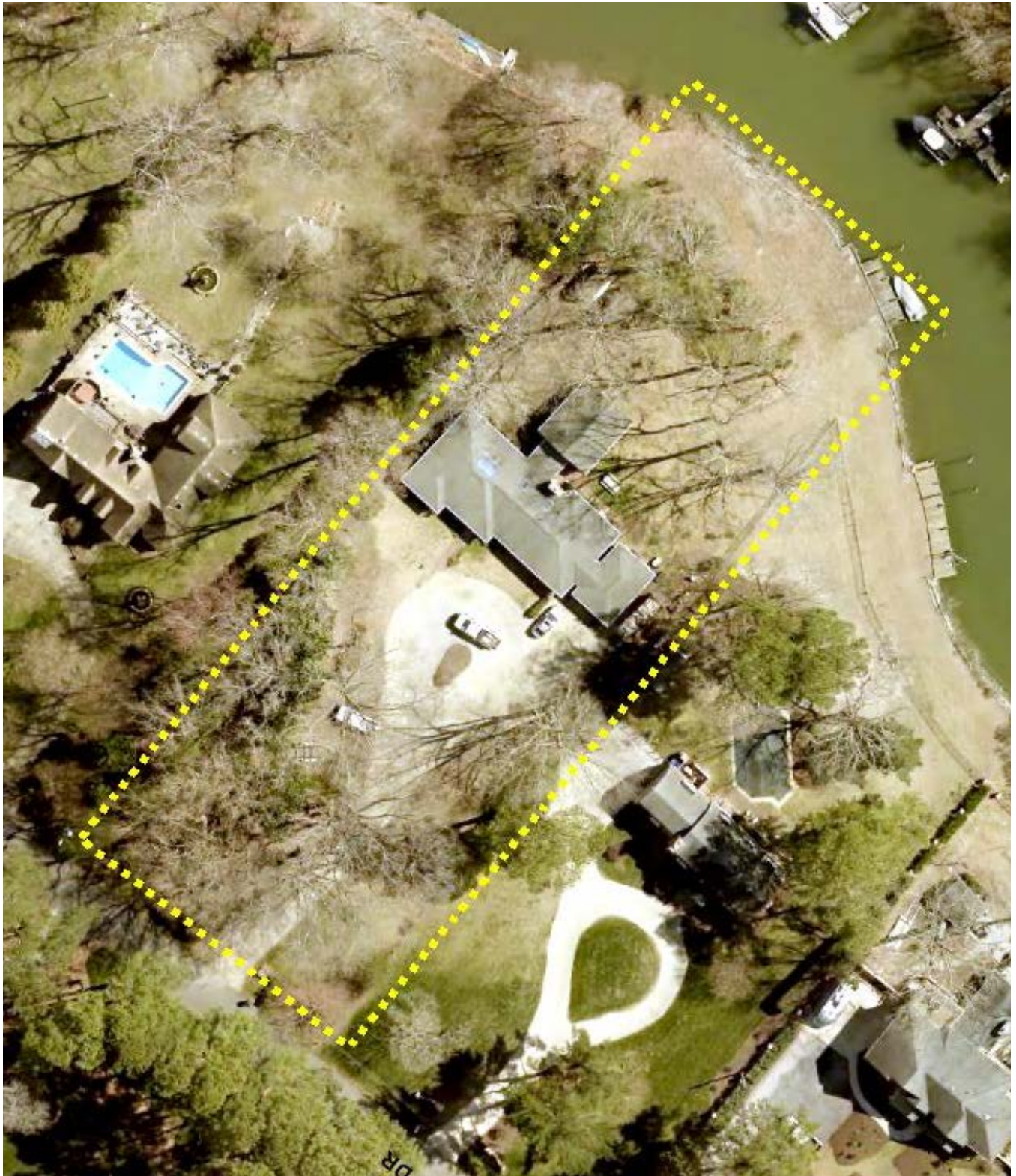
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **11 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 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.

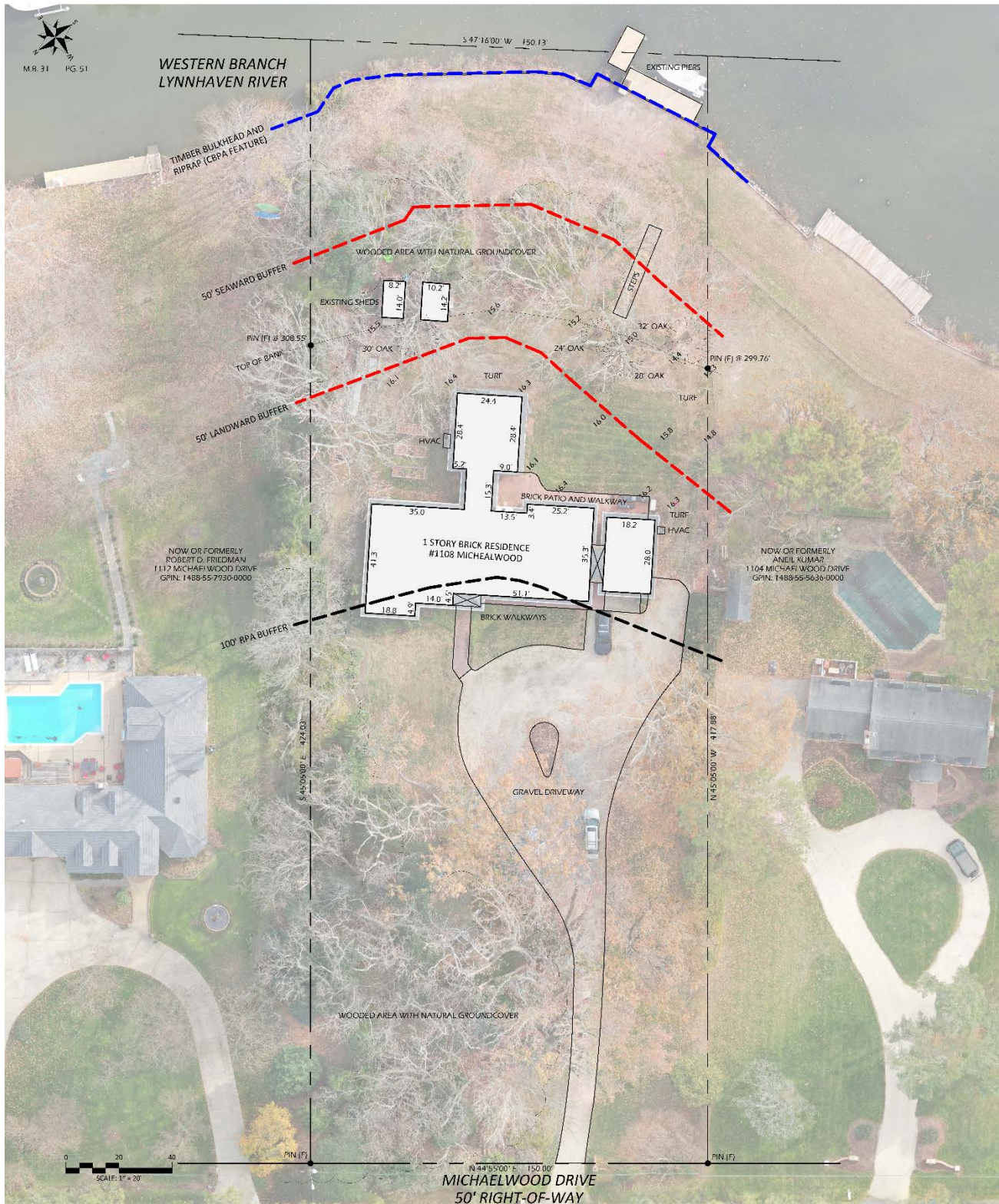
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited 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) 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 December 15, 2022, prepared by Align Surveying & Design, P.C. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

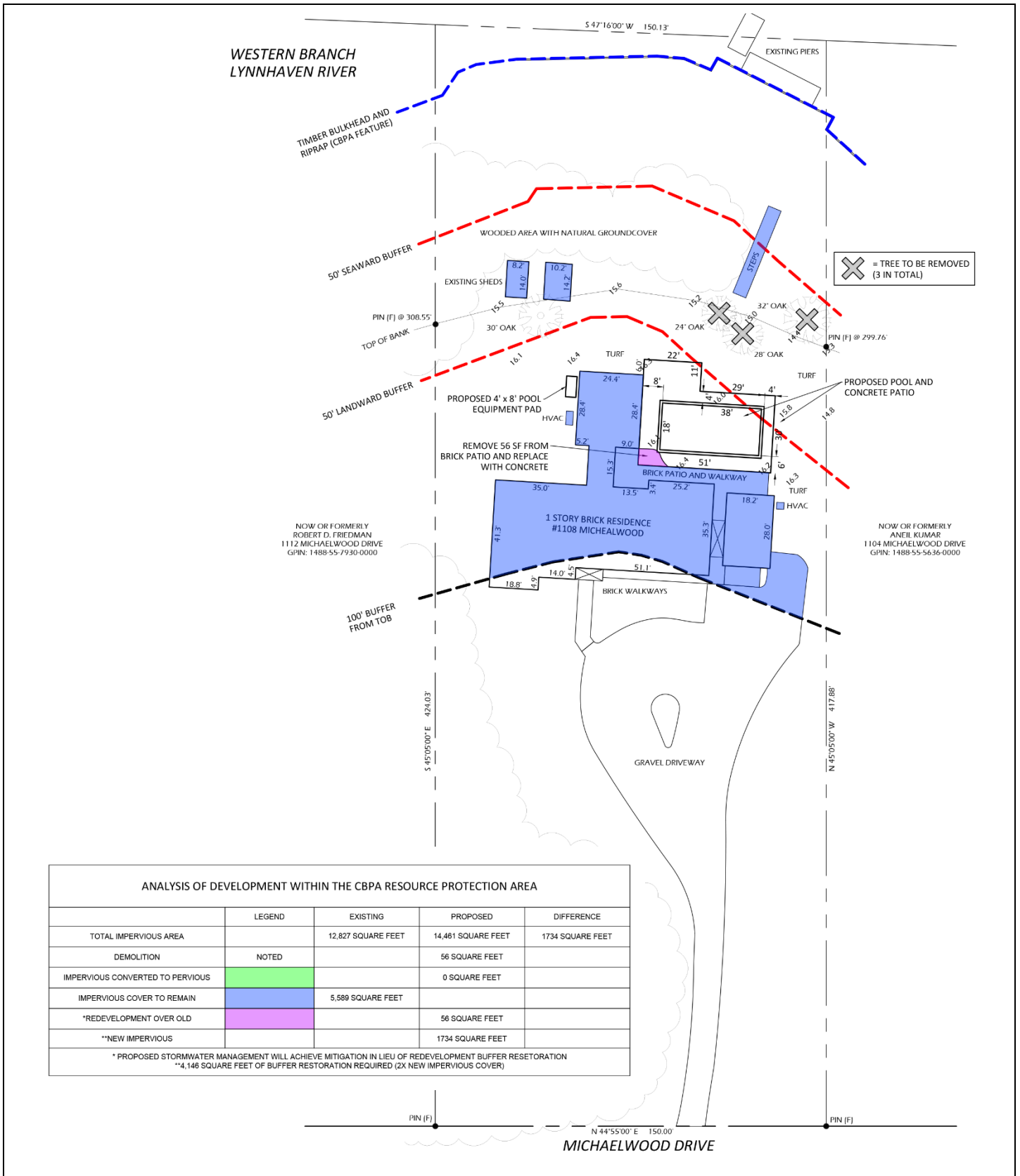
Site Aerial



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA				
	LEGEND	EXISTING	PROPOSED	DIFFERENCE
TOTAL IMPERVIOUS AREA		12,827 SQUARE FEET	14,461 SQUARE FEET	1734 SQUARE FEET
DEMOLITION	NOTED		56 SQUARE FEET	
IMPERVIOUS CONVERTED TO PERVIOUS			0 SQUARE FEET	
IMPERVIOUS COVER TO REMAIN		5,589 SQUARE FEET		
*REDEVELOPMENT OVER OLD			56 SQUARE FEET	
**NEW IMPERVIOUS			1734 SQUARE FEET	
* PROPOSED STORMWATER MANAGEMENT WILL ACHIEVE MITIGATION IN LIEU OF REDEVELOPMENT BUFFER RESETORATION **4,146 SQUARE FEET OF BUFFER RESTORATION REQUIRED (2X NEW IMPERVIOUS COVER)				

# Disclosure Statement

DocuSign Envelope ID: 8827AEC7-F7FB-4B36-802A-68B2D1CD12A9

## Disclosure Statement



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### Applicant Disclosure

**Applicant Name** Brian R. Clark

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

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

Robert E. Simon, Eddie Bourdon

**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?

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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.

**SHELLPOINT MTG**

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

Yes  No

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

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

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

**NONE**

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

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

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

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

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# Disclosure Statement



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

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

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

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

Waterfront Consulting, Inc., Align Surveying & Land Design P.C., & Sykes, Bourdon, Ahern, & Levy, P.C.

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

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

### Applicant Signature

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

DocuSigned by:

*Brian Clark*

Applicant Signature

Brian R. Clark, Applicant/Owner

Print Name and Title

12/15/2022

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	





**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, patio, and detached garage.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultant, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 42, Page 25  
 Recorded 09/28/1956

**GPIN**

1498-80-4089

**SITE AREA**

92,748 square feet or 2.13 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

54,451 square feet or 1.25 acres

**EXISTING IMPERVIOUS COVER OF SITE**

9,002 square feet or 16.5 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

10,093 square feet or 18.5 percent of site

**Area of Redevelopment in RPA**

137 square feet

**Area of New Development in RPA**

1,631 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

### Construction Details

- Swimming pool and paver patio
- Detached garage

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

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

### Shoreline

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

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of the proposed swimming pool and patio.

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct a swimming pool with a paver patio and detached garage within the 100-foot buffer of the Resource Protection Area (RPA). Given the peninsula shape of the lot, a portion of the proposed swimming pool encroaches into the upper reach of the 50-foot seaward buffer of the RPA. To minimize the encroachment into the 50-foot seaward buffer the applicant has situated the proposed swimming pool adjacent to the existing residence to the greatest extent practicable and has selected a swimming pool that is dimensionally comparable to the average residential swimming pool – 16 feet by 32 feet. In the front yard of the lot, the applicant wishes to construct a 500 square foot detached garage encompassed by the existing asphalt driveway located within the 50-foot landward buffer

of the RPA. As merit towards the variance request being in harmony with the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance the applicant is removing approximately 555 square feet of impervious cover from the seaward buffer on the lot by demolishing three existing sheds and converting the area back to a natural state.

Staff is of the opinion that the layout of the proposed improvements reflects the minimum necessary to afford relief as the request features a standard sized swimming pool with a standard patio surround. Furthermore, the proposed improvements only slightly encroach into the 50-foot seaward buffer portion of the RPA and are situated directly off the rear of the residence with the seaward buffer located approximately twenty feet from the footprint of the residence. As such, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered 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 variance will not convey any special privilege on the owner."* Staff concurs.
- 2) The applicant's agent 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."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the pool is located in the only place possible and is limited in size as much as possible. The garage is in the front yard area in the existing driveway as far from the feature as possible."* Staff is of the opinion that the layout of the proposed improvements is reasonable given the location of the RPA buffer on the lot. The proposed improvements have been situated to limit the increase within the more environmentally sensitive portions of the lot.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch runoff and improve water quality."* Staff is of the opinion that variance is in harmony with the purpose and intent of the CBPA Ordinance given the size and layout of the proposed improvements on the lot.
- 5) *"Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay. The removal of the accessory structures will also be an upgrade in water quality"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and adds that the lot has a well-established tree canopy cover, and the applicant is only requesting to remove trees within the exact area where the improvements are proposed.

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: **1,631 square feet x 200 percent = 3,262 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: **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) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) \*\* 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 \$373.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated January 2, 2023, prepared by Waterfront Consulting, LLC. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

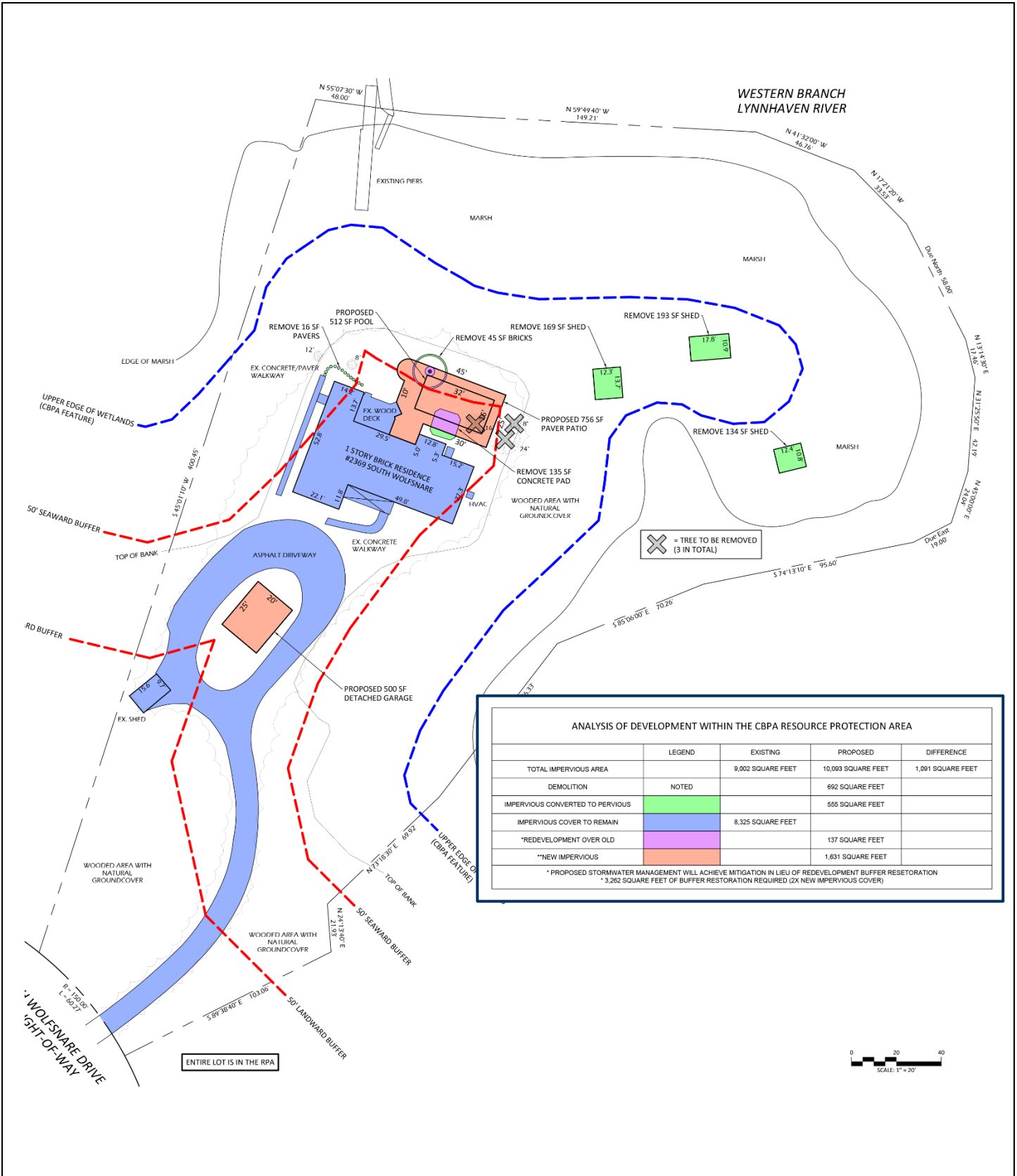
Site Aerial



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements & Color Analysis Exhibit





# Disclosure Statement

DocuSign Envelope ID: 61665D61-4C62-48AE-AC11-525F9F5C4D53

## 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** Cargin LLC

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

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

Billy Garrington, GPC

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

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

Michael Leanzo

Sotiria Angelopoulous

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

N/A

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

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

## Disclosure Statement



### Known Interest by Public Official or Employee

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

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

### Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

Lewis & Company

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

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

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.

STC 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 engineer/surveyor/agent.

Billy Garrington of GPC, Waterfront Consulting, Inc, & Stone Green Consulting, LLC

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

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

### Applicant Signature

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

DocuSigned by:  
*Michael Leanzo*

Managing Partner of Cargin LLC

**Applicant Signature**

Cargin LLC

**Print Name and Title**

1/2/2023

**Date**

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

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

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

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

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Applicant & Property Owner **Mary & Nathan Cobb**  
 Address **3913 Meeting House Road**  
 Public Hearing **February 27, 2023**  
 City Council District **District 9**, formerly Bayside

Agenda Item

**9**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with patio surround, paver patios with associated walkways and fire pit area, deck with steps, and artificial turf area.

**Applicant’s Agent**

Billy Garrington  
 Governmental Permitting Consultants, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 205, Page 65  
 Recorded July 27, 1990

**GPIN**

1489-24-7031

**SITE AREA**

47,736 square feet or 1.096 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

30,761 square feet or 0.706 acres

**EXISTING IMPERVIOUS COVER OF SITE**

6,897 square feet or 22 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

9,445 square feet or 31 percent of site

**Area of Redevelopment in RPA**

328 square feet

**Area of New Development in RPA**

2,705 square feet

**Location of Proposed Impervious Cover**

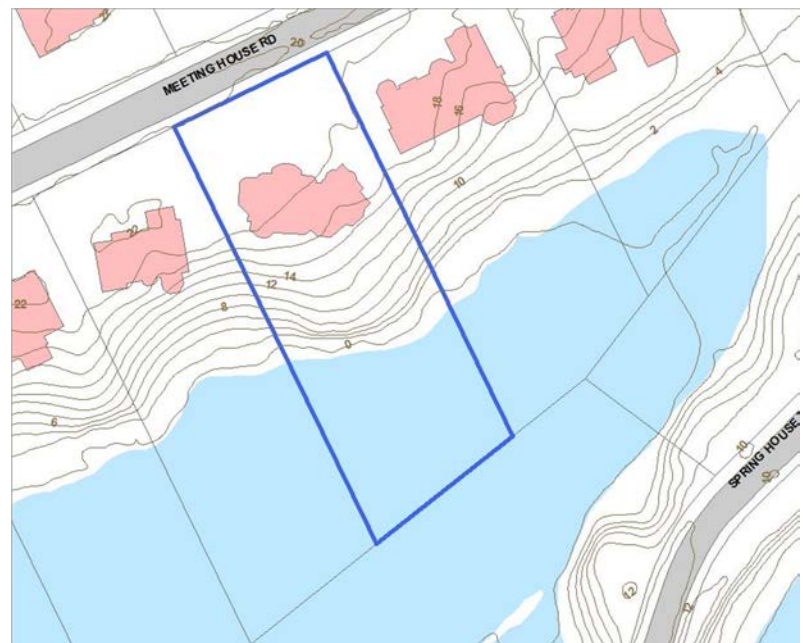
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Existing steps, wood stoop, garden, and flower beds

### Construction Details

- Paver patios and walkways
- Wood deck with steps and under deck storage
- Artificial turf area and outdoor kitchen/grill station
- Swimming pool with associated patio surround, fire pit, and equipment area

## CBPA Ordinance Variance History

**December 16, 1991, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for Lots 1, 3-6, 12-14, 16-30, 33-35 and 37-45 in Section Two of the Church Point Farm subdivision with the following conditions:**

1. *The encroachment granted under this variance shall be the minimum necessary for relief. Encroachment upon, or reduction in the width of the buffer area shall be the minimum necessary, as determined by the Chairman of the Chesapeake Bay Preservation Area Review Committee, to accommodate a reasonable construction footprint solely for a principal structure. Once construction is complete, the vacant area within the construction footprint shall be restored with vegetation according to a landscape plan to be submitted with the final site plan.*

*This encroachment will not include changes in grade elevations of the lot by filling or cutting or retaining structures.*

2. *Each individual lot shall submit a final site plan to the Development Services Center for full plan of development review and approval prior to issuance of a building permit. The proposed development will meet all the other performance standards beyond those specifically waived above. The encroachment granted shall be the minimum necessary to provide for reasonable residential use of the lot. This plan will delineate all areas to be cleared and appropriate measures for revegetation of disturbed areas, inclusive of tree mitigation.*
3. *Appropriate stormwater, erosion and sediment control and landscape bonds must be posted with the Development Services Center prior to issuance of a building permit*
4. *The applicant shall file and record such notice for Section Two, Lots 1, 3-6, 12-14, 16-30, 33-35, and 37-45, of Church Point Farm, which reflects the variance granted in such language as shall be approved by the City Attorney's office. Such notice shall be recorded prior to the issuance of any permits under this variance.*

**The December 16, 1991, 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): 7

## Soil Type(s)

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

## Shoreline

Shoreline is in a natural state.

## Riparian Buffer

Heavily Wooded Lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The existing residential lot has a steep slope in the rear yard with an elevation change of approximately 11 feet from the delineated top of bank feature to the rear of the existing single-family residence. Given the existing topographic features of the lot, much of the rear yard is challenged by these conditions to develop a plan that utilizes a typical layout of improvements similar to those proposed with this variance request – residential swimming pool and patio surround. To accommodate these conditions, the applicant proposes to construct several paver patio areas with associated walkways along the rear of the residence that integrates a contained artificial turf area and swimming pool. As submitted, this variance request increases the overall impervious cover of the lot from 6,897 square feet to 9,445 square feet or 22 percent to 31 percent of the total lot area above water and wetlands with no proposed improvements encroaching into the 50-foot seaward buffer of the Resource Protection Area (RPA). Staff offers that the request is like other variances granted within this neighborhood to property owners that have appeared before the Chesapeake Bay Preservation Area (CBPA) Board seeking a variance to the CBPA Ordinance for similar improvements.

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 site was originally platted in 1990 and the RPA buffers currently impact a 96% of the lot, at the time of the subdivision, the preservation limits were set at the 50' seaward line and the proposed development will not impact into the preservation area. The improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff acknowledges the statement provided by the applicant's agent and provides the recommended conditions below that mitigate for the proposed improvements and as a means towards this variance request being in harmony with other granted CBPA Variance within this neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is based upon circumstances that have been created by the predecessor in title that limits a reasonable construction footprint solely for a principal

structure; therefore, this request to further encroach has been designed in a manner that minimizes encroachment into the 100-foot RPA buffer for reasonable improvements.

- 3) The variance is the minimum necessary to afford relief because *“the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The house has been placed over the existing footprint of the current home to minimize site impacts and avoid development in the 50' seaward portion of the site.”* Staff is of the opinion that the layout of the proposed improvements situates the new impervious cover to minimize encroachment into the most environmentally sensitive portions of the riparian buffer. The applicant has situated the improvements adjacent to the existing residence with no encroachment within the 50-foot seaward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the redevelopment of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal. The proposed artificial turf will be designated with non-toxic materials and will have a gravel infiltration subbase that will serve as containment for its surface runoff thorough out the covered area.”* Staff provides the recommended conditions below that mitigates for the new impervious cover within the RPA associated with this variance request and manages the redevelopment of lot with respect to water quality.
- 5) *“The existing shoreline will be enhanced and expanded upon to compliment the site. Portions of the natural lawn areas will be replaced with buffer restoration and stormwater management facilities (Bioretention and gravel infiltration subbase) will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the canal”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the best management practices coupled with the buffer restoration as shown on the submitted buffer restoration plan will ensure a no net increase in nonpoint source pollution load into the bay with this variance request.

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 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) Buffer restoration shall be installed in substantial compliance with the Buffer Restoration Plan submitted with the Chesapeake Bay Preservation Area (CBPA) Exhibit prepared by WPL. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.



- 5) 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.
- 6) 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.**
- 7) 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.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 9) 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.
- 10) **\*\*** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$619.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 11) This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 16, 1991.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated June 9, 2022, prepared by WPL, signed December 21, 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.

**\*\*** 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.

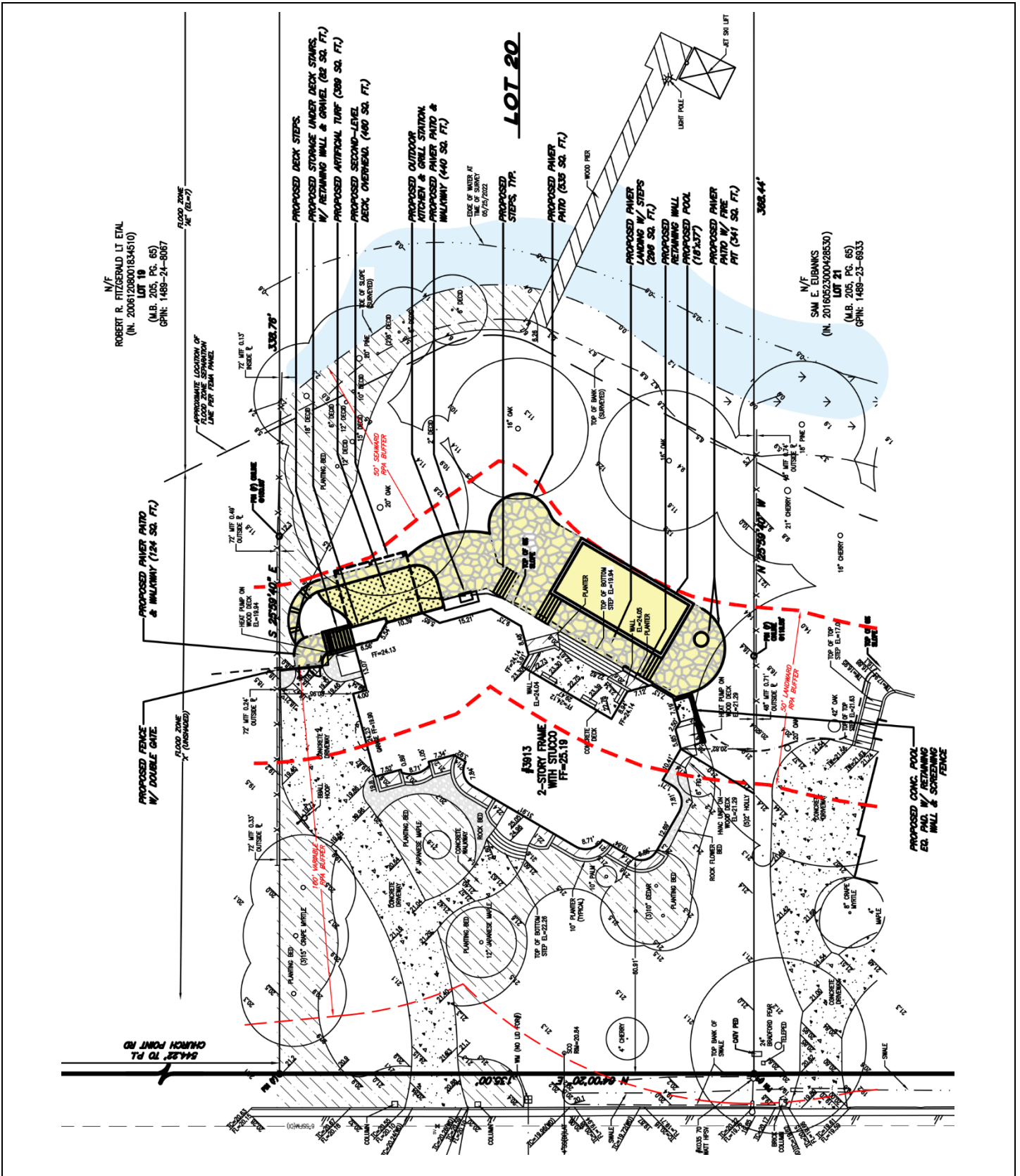
**\*\*\***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation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

Site Aerial





# CBPA Exhibit – Proposed Improvements



# CBPA Exhibit – Buffer Restoration Plan

## PLANTING REQUIREMENTS

**BUFFER RESTORATION BEDS REQUIRED-**  
 -NEW IMPERVIOUS AREA WITHIN RPA: 2,705 SQ. FT.  
 -200% OF NEW IMPERVIOUS AREA WITHIN RPA: 5,410 SQ. FT.





**BUFFER RESTORATION BEDS TO BE PROVIDED-**  
 -BUFFER RESTORATION BED AREA: 4,758 SQ. FT.  
 -SHORELINE BED IMPROVEMENT AREA: 654 SQ. FT.

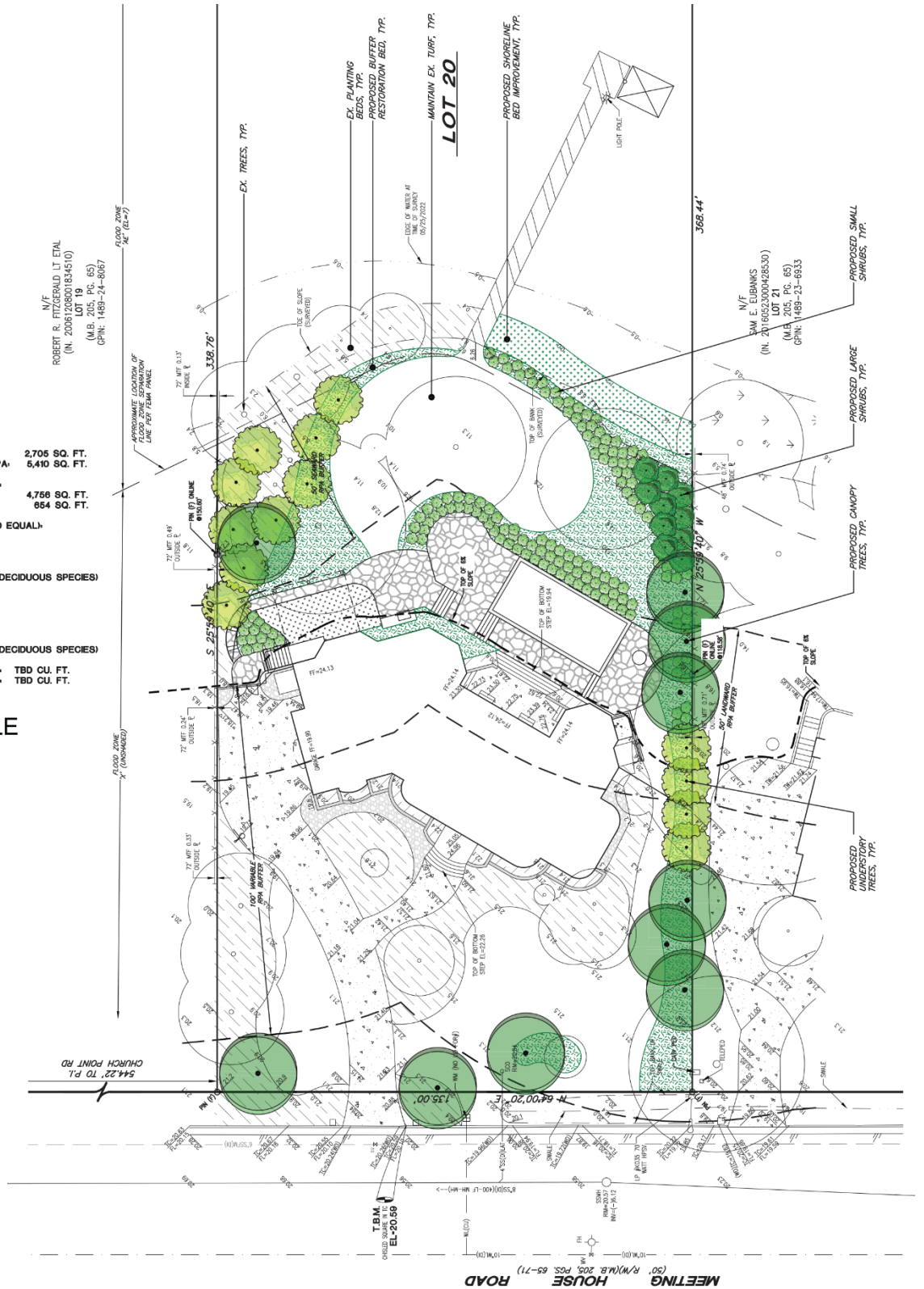
**BUFFER AREA UNITS REQUIRED (OR APPROVED EQUAL)-**  
 • 13 CANOPY TREES  
 • 28 UNDERSTORY TREES  
 • 0 LARGE SHRUBS  
 • 39 SMALL SHRUBS  
 (TREES TO BE 50% EVERGREEN AND 50% DECIDUOUS SPECIES)

**BUFFER AREA UNITS PROVIDED-**  
 • 10 CANOPY TREES  
 • 13 UNDERSTORY TREES  
 • 10 LARGE SHRUBS  
 • 144 SMALL SHRUBS  
 (TREES TO BE 50% EVERGREEN AND 50% DECIDUOUS SPECIES)

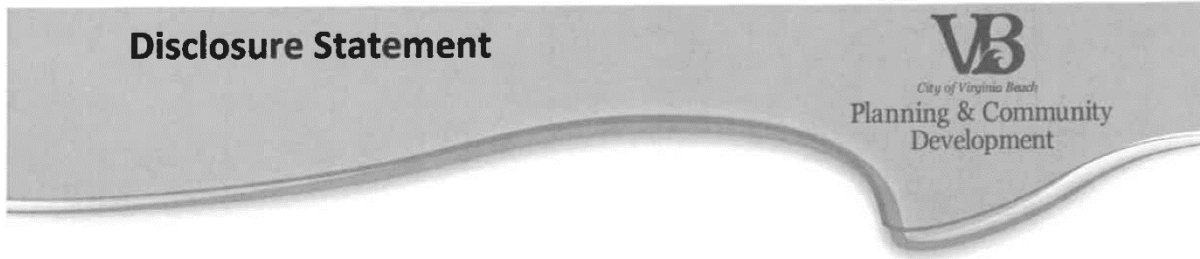
CBPA BIORETENTION PLANTING BED REQUIRED: TBD CU. FT.  
 CBPA BIORETENTION PLANTING BED PROVIDED: TBD CU. FT.

## PLANT SCHEDULE

	CANOPY TREE	10
	UNDERSTORY TREE	13
	LARGE SHRUB	10
	SMALL SHRUB	144



# 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** Mary H Cobb and Nathan J Cobb

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

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

Billy Garrington, GPC, Inc

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

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

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

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

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

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

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

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

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

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

WPL

---

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

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

## Disclosure Statement



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

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

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

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

WPL

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

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

### Applicant Signature

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

Applicant Signature

Nathan Cobb

Print Name and Title

03 Jan 2023

Date

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

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

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

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





Applicant & Property Owner **Matthew & Claire Coose**  
 Address **1025 Curlew Drive**  
 Public Hearing **February 27, 2023**  
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

**10**

**Variance Request**

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

**Applicant's Agent**

Billy Garrington  
 Governmental Permitting Consultants, Inc.

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 29, Page 58  
 Recorded 5/7/1952

**GPIN**

2418-34-2775

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

762 square feet

**Location of Proposed Impervious Cover**

50-foot Seaward Buffer  
 50-foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Construction Details

- Building addition to the existing two-story single-family residence

## CBPA Ordinance Variance History

**On August 27, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, concrete driveway, timber terrace, concrete walkway, side entrance door pad, HVAC pads and front porch with the following conditions:**

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 15' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from proposed impervious cover shall be conveyed to stormwater management facilities.*
7. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
8. *Under deck treatment of sand and gravel shall be installed.*
9. *For those portions of the residence constructed below the top-of-bank, said improvements shall be built into the slope with no perimeter fill.*
10. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,227.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 1,339 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
11. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
12. *Buffer restoration totaling 8,031 sq. ft. shall be installed which is equal to 150% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf (naturalized area identified on the plan to be mulched and maintained shall not be included in required restoration). Said restoration shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of twenty six (26) trees shall be*

*installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*

13. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
14. *The conditions and approval associated with this variance are based on the site plan dated 7/26/07, prepared by Massey Design & Associates..*
15. *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 August 27, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story single-family residence, deck with covered veranda, and pervious paver circular driveway with the following conditions:**

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

11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
12. *The conditions and approval associated with this variance are based on the site plan prepared by Bowman Consulting dated 8/7/12 and sealed 6/20/12 by Clayton E. Massey. The prior variance of August 27,2007 is hereby superseded.*
13. *All improvements shall be built into the existing slope with no perimeter fill authorized.*
14. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
15. *Areas of buffer restoration shall be as proffered as per the site plan referenced within condition 12 and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The restoration shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
16. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*

The August 27, 2012, 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)

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 rip rap revetment.

### Riparian Buffer

Sparsely wooded lot

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

## Stormwater Management Methodology

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

## Evaluation and Recommendation

The applicant is proposing to construct a building addition to the existing two-story single-family residence to create additional living space for a family member. This request consists of approximately 762 square feet of new impervious cover with the majority situated within 50-foot landward buffer of the Resource Protection Area (RPA) and portions encroaching within the 50-foot seaward buffer. Although no stormwater management facility is required given that the project limits the land disturbance to less than 2,500 square feet, the applicant is proposing to introduce soil amendments to increase soil permeability on the lot and infiltration planting beds as ways to improve conditions within the riparian buffer and to ensure a no net increase in nonpoint source pollution load.

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 *"this variance WILL NOT confer any special privilege on the owner, nearly every house on Curlew Drive has been redeveloped since the Bay Act was adopted and this project is similar to the other homes even the ones adjacent to the property. The lots were created many decades prior to the bay act being adopted."* Staff concurs and adds that this variance request is to add additional living space for a family member.
- 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 current owner purchased the house that was previously approved by the Board and needs some additional living space for a daughter. The bay act was already in place when he purchased the property, and no new development can take place without a variance being granted. The entire lot is impacted by the RPA feature both front yard and back yard."*
- 3) The variance is the minimum necessary to afford relief because *"the new addition being planned is relatively small in square footage (appx. 700 sq. ft.) in order to comply with the minimum necessary for relief and we have located it as far from the feature as possible to the extent a BZA variance will be required later."* Staff is of the opinion that the owners have designed the layout of the proposed improvements to minimize impacts to the best of their ability on this lot that is completely encumbered by the RPA.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this new development will include bmp's to filter storm water, additional buffer restoration as required for treatment of runoff."* Staff adds that the applicant is also performing soil amendments and infiltration planting beds to help with conditions on the lot, even though best management practices are not required given the associated land disturbance.
- 5) *"Infiltration planting beds and buffer restoration post construction. Strict E & S measures, stockpile on existing hard surfaces, and single point access all to help protect adjacent waterway"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that with the proposed best management practices and the required buffer restoration that this request ensures a no net increase in nonpoint source pollution load into the Chesapeake Bay.

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

## Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated November 10, 2022, prepared, and signed November 28, 2022, by Warren Allen Whitmore, Jr. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. A landscape plan showing the required buffer restoration detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements shall be submitted to the Planning Administration Chesapeake Bay Board team. 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: 762 square feet x 200 percent = 1,524 square feet consisting of 2 canopy trees, 2 understory trees, 16 large shrubs, and 24 small shrubs.

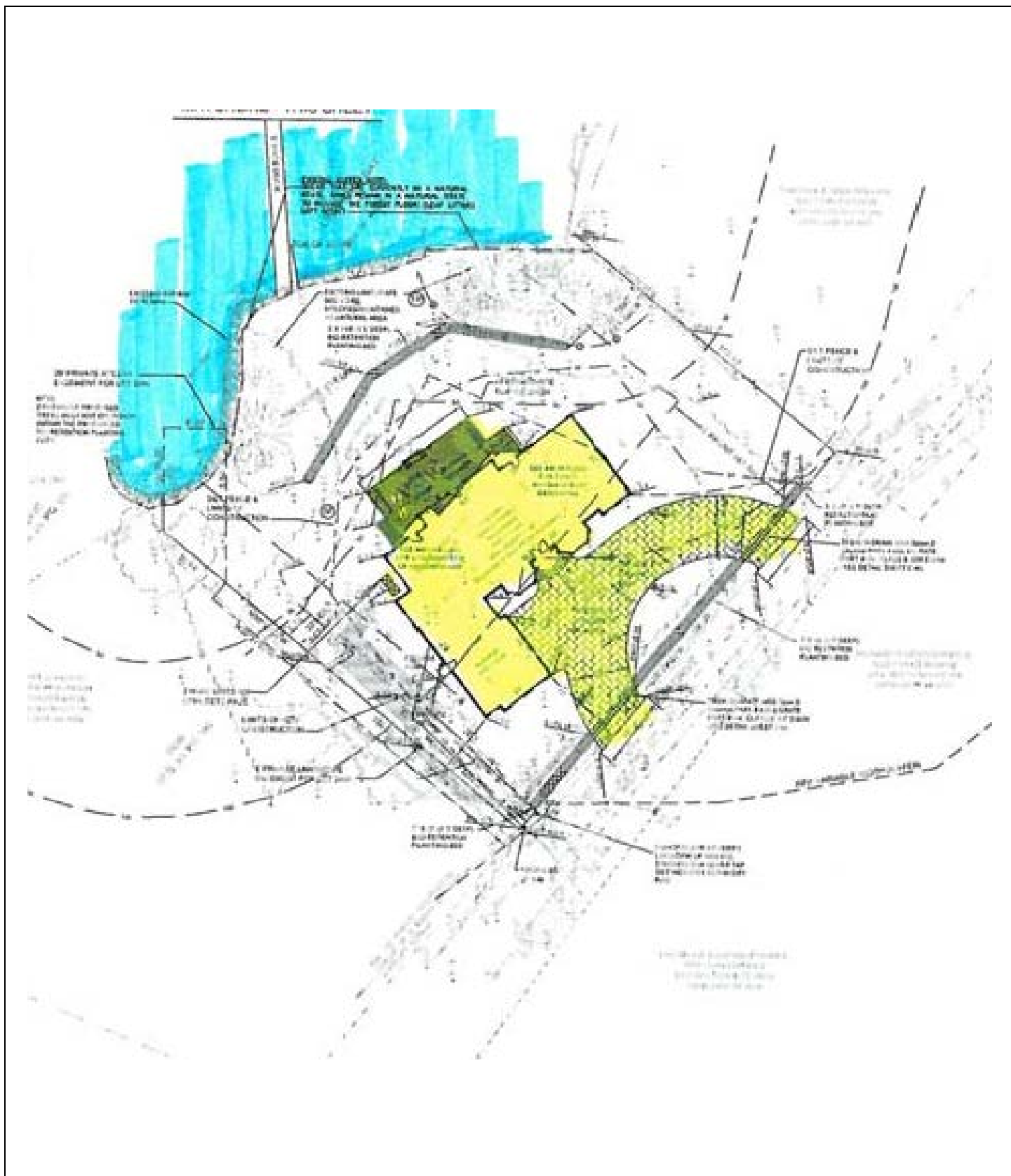
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted August 27, 2012.

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

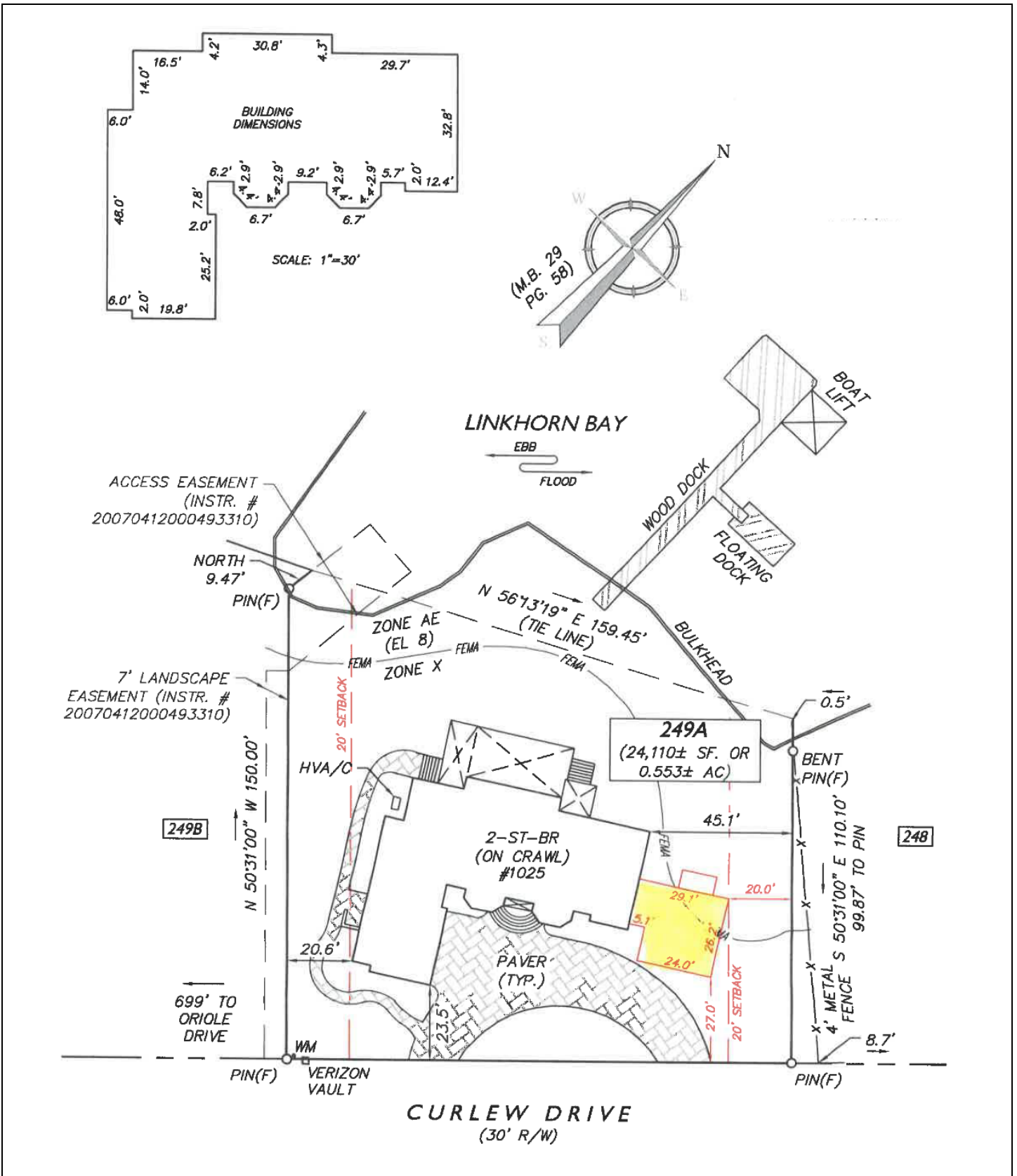
Site Aerial







**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 MATTHEW COOSE

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

Billy Garrison GPC

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

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

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

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

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

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

*ITHINK Financial*

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.

*FRANSON Group*

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.

*LINDA Sullivan Prop. Design*

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.  
VA. HERITAGE Bldr. Jim PERKINS
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.  
WARREN WHITMORE LS.
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property?  Yes  No
- If yes, identify the name of the attorney or firm providing legal services.

### Applicant Signature

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

X Matthew Coose 12/23/22  
 Applicant Signature

MATTHEW COOSE  
 Print Name and Title

X 12/23/22  
 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 **Erik N Moore & et al**  
 Address **2760 Holly Road**  
 Public Hearing **February 27, 2023**  
 City Council District **District 6**, formerly Beach

Agenda Item

**11**

**Variance Request**

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

**Applicant's Agent**

Self-represented

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 270, Page55  
 Recorded 2/5/1998

**GPIN**

2418-90-3409

**SMALL PROJECT IN THE RPA**

**PROPOSED IMPERVIOUS COVER**

**Area of Redevelopment in RPA**

0

**Area of New Development in RPA**

700 square feet

**Location of Proposed Impervious Cover**

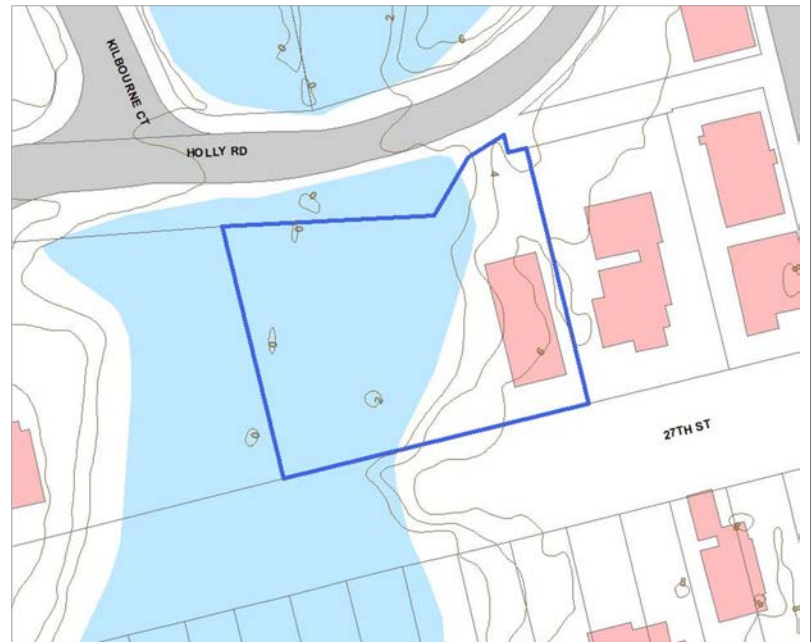
50-foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Deny as submitted



## Summary of Proposal

### Construction Details

- Wood deck

## CBPA Ordinance Variance History

**April 28, 1997, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a duplex with the following conditions:**

1. *All improvements shall be limited to that which is shown on the revised site plan dated April 17, 1997.*
2. *Tree compensation shall be at a three to one ratio.*
3. *The limits of construction shall lie a maximum of ten feet from the structure and driveway along the northern and western portions of the project and be so noted on the site plan.*
4. *A revised site plan shall be submitted to the DSC for review and approval prior to the issuance of a building permit.*
5. *An infiltration trench on the northwest side of the property shall be required.*

The April 28, 1997, Board granted variance has been acted upon and the associated improvements constructed.

## Environmental Conditions

### Flood Zone

Flood Zone – Zone AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

Rappahannock Series (deep and poorly drained soils)  
Yeopim Series (deep and moderately well-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 is proposing to construct a new wood deck off the side of the existing residence. This request will add 700 square feet of new impervious cover in the 50-foot seaward of the Resource Protection Area (RPA) in an area that consists of mucky, peat poorly drained soil type. The applicant indicated that most of their backyard remains saturated due to the low elevation of the site and wishes to construct the proposed deck to have space to enjoy the side yard area. The applicant indicated that the deck would be built around the existing trees on site to preserve them and continue to utilize them for hammocking and enjoying nature.

Staff is of the opinion that the request to encroach further seaward by approximately 17 feet (16'-9 ½") with an accessory structure within the 50-foot seaward buffer is not in harmony with the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance, specifically the minimum necessary to afford relief. Staff does acknowledge the need stated by the applicant towards being able to better use the property and understands the hardship the 1997 CBPA Variance has placed on the current property owner. To better understand the request to encroach into the RPA feature and the desire to better the current condition of the existing built environment on the lot, the applicant provides the following comments relative to the findings 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 deck will only be on my property and up to edge of marsh."* Staff acknowledges the statement provided by the applicant and offers that the 1997 CBPA Variance set a limit to the proposed improvements as conditioned by the CBPA Board at that time. While a subsequent variance request may be sought by owners of property subject to the provisions of the CBPA Ordinance, Staff is of the position that those requests must be evaluated on a case-by-case basis. As submitted, Staff is of the opinion that the proposed improvements would give the applicant a convenience not accorded to others who are subject to the provisions of this Ordinance and are similarly situated given the extent of the request as submitted. As such, Staff has provided recommended conditions in this Staff report for the Board's deliberation.
- 2) Staff offers that this variance request is based upon conditions that have been created by the original developer of the lot associated with the 1997 CBPA Variance. As provided by the applicant in the Water Quality Impact Assessment (WQIA) they *"would like to build the deck in my yard and wanted to ensure I was going through the proper process to so."* Staff acknowledges the statement provided by the applicant and is challenged in situations such as this when an individual purchases property and it is not disclosed that the said property falls within the Chesapeake Bay Preservation Area.
- 3) The variance is the minimum necessary to afford relief because *"the only thing going into the ground will be the deck posts that support the frame."* Staff acknowledges the statement provided by the applicant and the limited land disturbance associated with the construction of the proposed wood deck. Staff offers that while the land disturbance may be minimal, the encroachment into the RPA for the proposed wood deck exceeds that which is typically submitted to the Board for a variance request. As such, Staff has provided the recommended conditions in this Staff report for the Board's deliberation should they consider granting a variance for this request.
- 4) The applicant provides that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the deck will have no negative effect on the water quality and neighborhood."* Staff is of the opinion that the existing conditions of the lot – marsh fringe, upland areas, and existing vegetation appear stressed with little to no established undergrowth and ground cover present

within the area of the proposed improvements. While Staff is of the opinion that the proposed improvements are not the minimum necessary to afford there is merit towards conditioning the request in a manner that revegetates denuded areas, implements organic material towards the reestablishment of a forest floor seaward of the existing retaining wall, and deploys methodologies to abate ongoing surface erosion.

- 5) *“We will use quality materials to not be harmful to the environment”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers that the conditioned buffer restoration associated with the proposed improvements, under deck treatment, and retention of existing vegetation of the lot provide merit towards water quality benefits.

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. Along the west side of the existing single-family residence the width of the wood deck shall not exceed 9 feet and along the north side of the residence (front), the width of the wood deck from the front of the residence towards Holly Road shall not exceed 12 feet.
2. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
3. All areas seaward of the existing retaining walls and seaward of the proposed wood deck shall be restored to a forested floor condition. Said forested floor condition shall consist of a mulch layer of organic material (pine stray, leaf litter, etc.) at 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to a denuded condition exposing the existing soil surface. Within the restored naturalized area salt and flood tolerant plant species shall be installed at the following rate.
  - **8 small shrubs and 16 grasses**Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
7. 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.



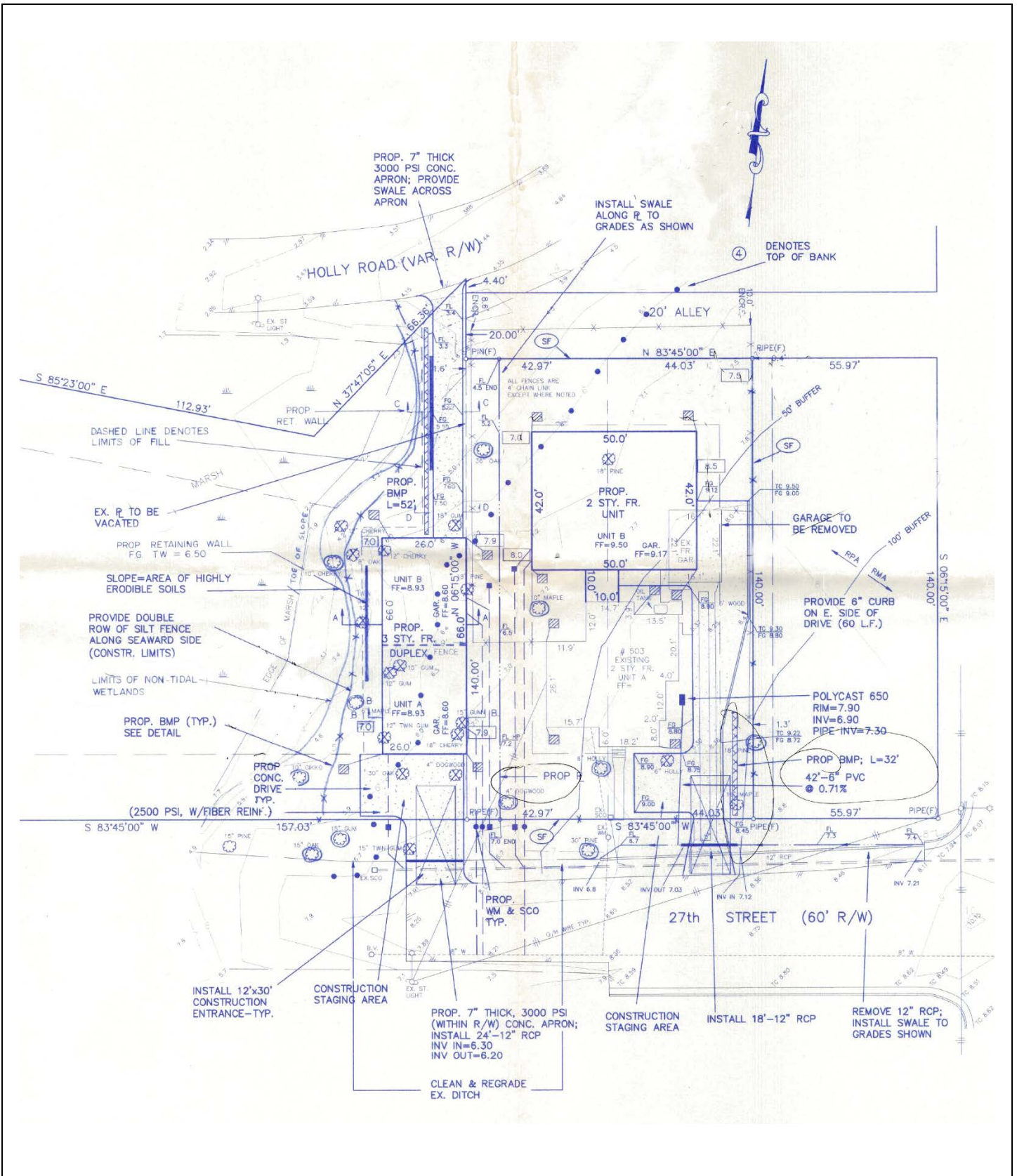
These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 28, 1997.

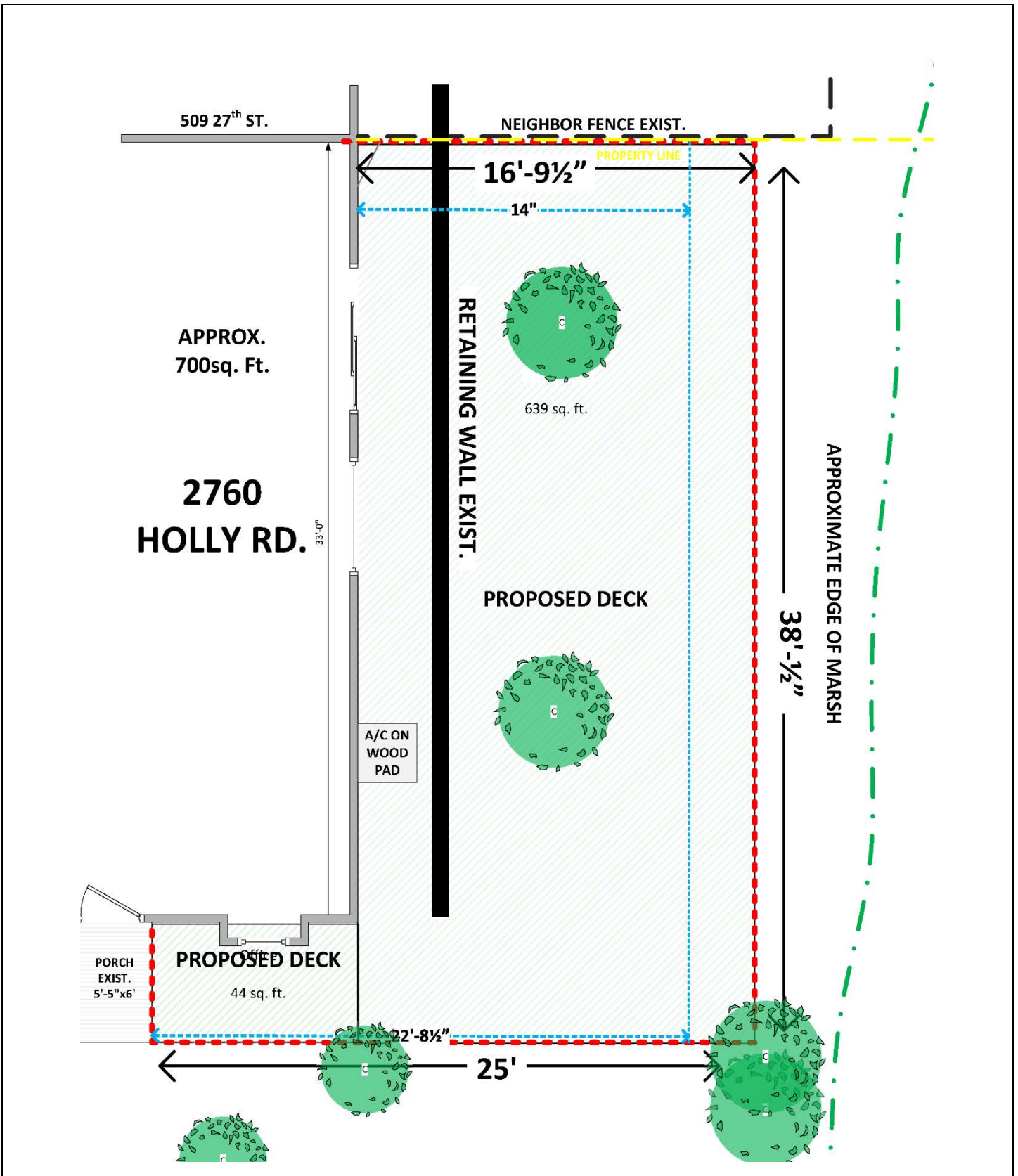
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





**CBPA Exhibit – Proposed Improvements**



# Disclosure Statement



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

### Applicant Disclosure

Applicant Name Steffan Naess Moore

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

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

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

# Disclosure Statement



## Known Interest by Public Official or Employee

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

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

## Applicant Services Disclosure

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

Yes  No

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

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

Yes  No

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

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

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

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

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

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

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

# Disclosure Statement



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

### Applicant Signature

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

Steffan Moore  
 Applicant Signature

Steffan Moore  
 Print Name and Title

1/13/23  
 Date

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

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

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

AS NEEDED, PAGE LEFT BLANK





Applicant & Property Owner **Jennifer Cosentino & Shane Spanitz**  
 Address **3105 Lynnhaven Drive**  
 Public Hearing **February 2, 2023**  
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

**12**

**Variance Request**

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

**Applicant’s Agent**

Eddie Bourdon  
 Sykes, Bourdon, Ahern & Levy, PC

**Staff Planner**

Cole S. Fisher

**Lot Recordation**

Map Book 37, Page 8  
 Recorded 9/9/1954

**GPIN**

1499-08-7657

**SITE AREA**

13,466 square feet or 0.309 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

13,784 square feet or 0.316 acres

**EXISTING IMPERVIOUS COVER OF SITE**

2,768 square feet or 20 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

4,058 square feet or 29 percent of site

**Area of Redevelopment in RPA**

580 square feet

**Area of New Development in RPA**

1,332 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 existing single-family residence, associated accessory structures, and driveway

### Construction Details

- Single family residence with concrete driveway and associated wood decks
- Swimming pool with concrete pool patio and paver steppingstone walkways

## CBPA Ordinance Variance History

**On August 1, 2022, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the home elevation and construction of a wood deck 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. *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 and 6 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.*

3. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition. All erosion and sediment control measures shall be staked in the field for review by City Staff prior to land disturbance.*
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the rear and side 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.*
5. *All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.*

6. *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, as required by the Virginia Erosion and Sediment Control Law and Regulations.*
7. *The construction access way, stockpiling area and contractor parking area shall be noted on the building plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.*
8. *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.*
9. *Under deck treatment of sand and gravel shall be installed.*

*The August 1, 2022, Board granted variance has not been acted upon.*

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

Corolla Series (moderately well-drained soils, fine sand)

### Shoreline

Shoreline is hardened by a wood bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The applicant desires to remove two trees located within the 100-foot Resource Protection Area (RPA) buffer; a 60-inch Pine tree and a 24-inch deciduous tree. Both trees are located along the western portion of the lot and the Pine tree requested for removal is within the limits of the proposed steppingstone path to the existing pier. The deciduous tree proposed for removal is close to the property line. Staff offers that the existing Pine falls within 10 feet of the proposed improvements and would be within the limits of construction. Due to the proposed construction and activities that would occur within the critical root zone of the subject tree, Staff is of the opinion that the tree should be removed and mitigated for at a 3:1 ratio. As for the 24-inch deciduous tree, Staff is of the opinion that list tree falls outboard of the limits of construction and should be preserved during the construction of the proposed improvements on the lot.

## 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 applicant has submitted this variance request to demolish the existing single-family residence, driveway, and associated accessory structures to construct a new elevated single-family residence and associated accessory structures on the lot. This request differs from the August 2022 Chesapeake Bay Preservation Area (CBPA) Variance that proposed to elevate the existing residential structure and renovate. Staff is of the opinion that the application submitted provides merit towards redeveloping a lot that was platted prior to the adoption of the City's CBPA Ordinance while addressing coastal resilience and adaptation to sea-level rise and climate change mitigation measures.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed dwelling and associated improvements area in keeping with the necessary redevelopment in this impacted area of Lynnhaven Colony which, in addition to the Bay Act, has been impacted by sea level rise causing it to be essential to redevelop at a higher finished floor elevation."* Staff offers that several lots within this neighborhood have been redeveloped and the residential structures elevated to meet current finished floor (FF) elevations. Those methodologies have differed by lot and Staff is of the opinion that the applicant's approach to redevelop this lot as proposed does not afford them a privilege that has not be given to others in the neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The house has been placed over the existing footprint of the current home to minimize impacts, and avoid development in the 50' seaward portion of the site."* Staff acknowledges that the placement of the proposed improvements limits encroachment into the 50-foot seaward buffer and utilizes redevelopment to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed dwelling and improvements are in keeping with the redevelopment of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however, if approved, the proposed development will be required to have treatment provided between the improvements and the canal."* Staff offers that the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the use of underdeck treatment with the proposed improvements. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.
- 5) *"The existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat*

*runoff prior to discharging into the canal*” as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

## Recommended Conditions

- 1) The 24-inch deciduous tree located along the western portion of lot shall be preserved. Submitted concurrent with the Single-Family RPA Site Plan shall be a tree preservation plan that provides the location and type of tree preservation measures for all trees on the lot to be preserved.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,332 square feet x 200 percent = 2,664 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 14 understory trees, 14 large shrubs, and 21 small shrubs.**

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

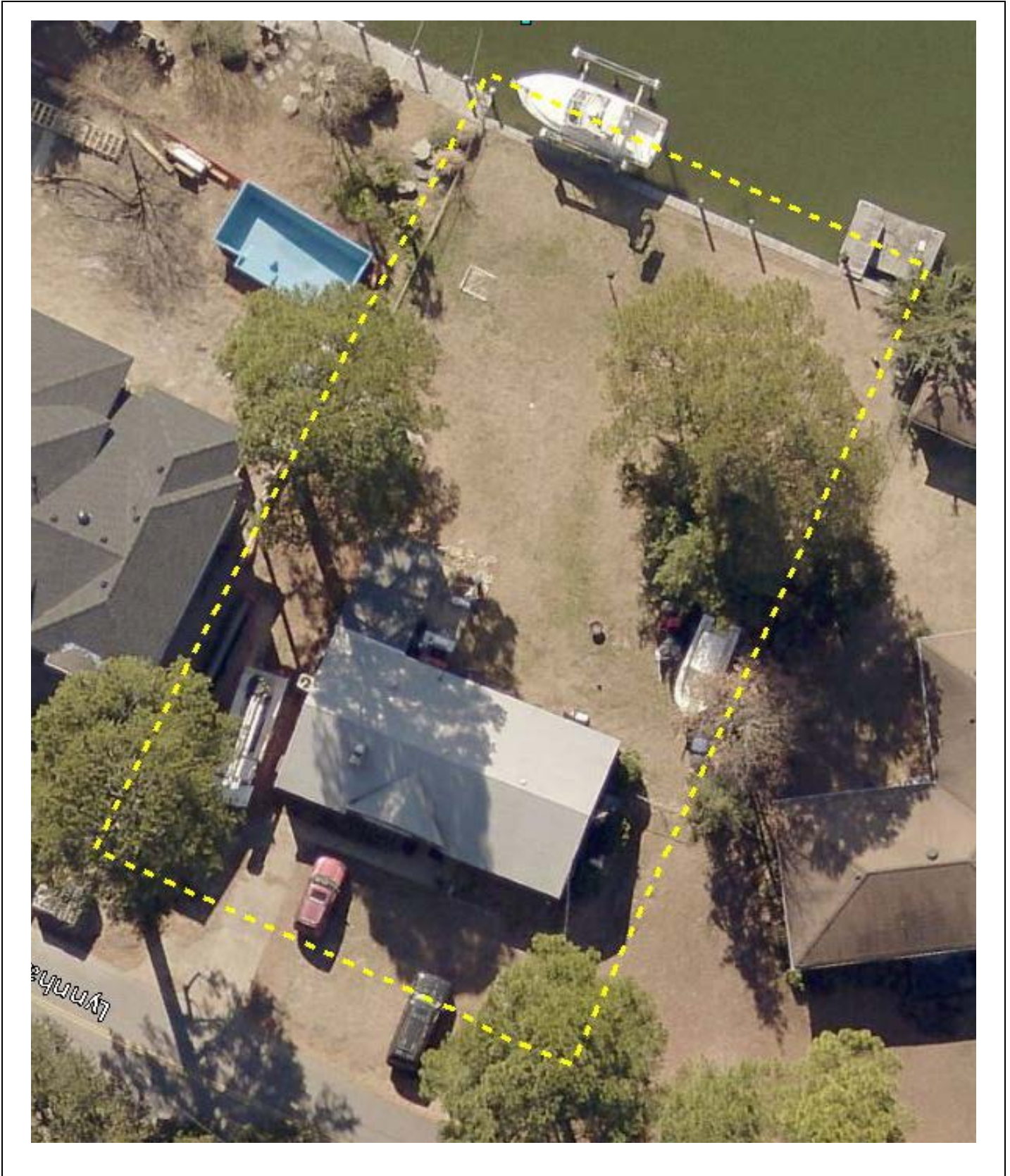
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited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

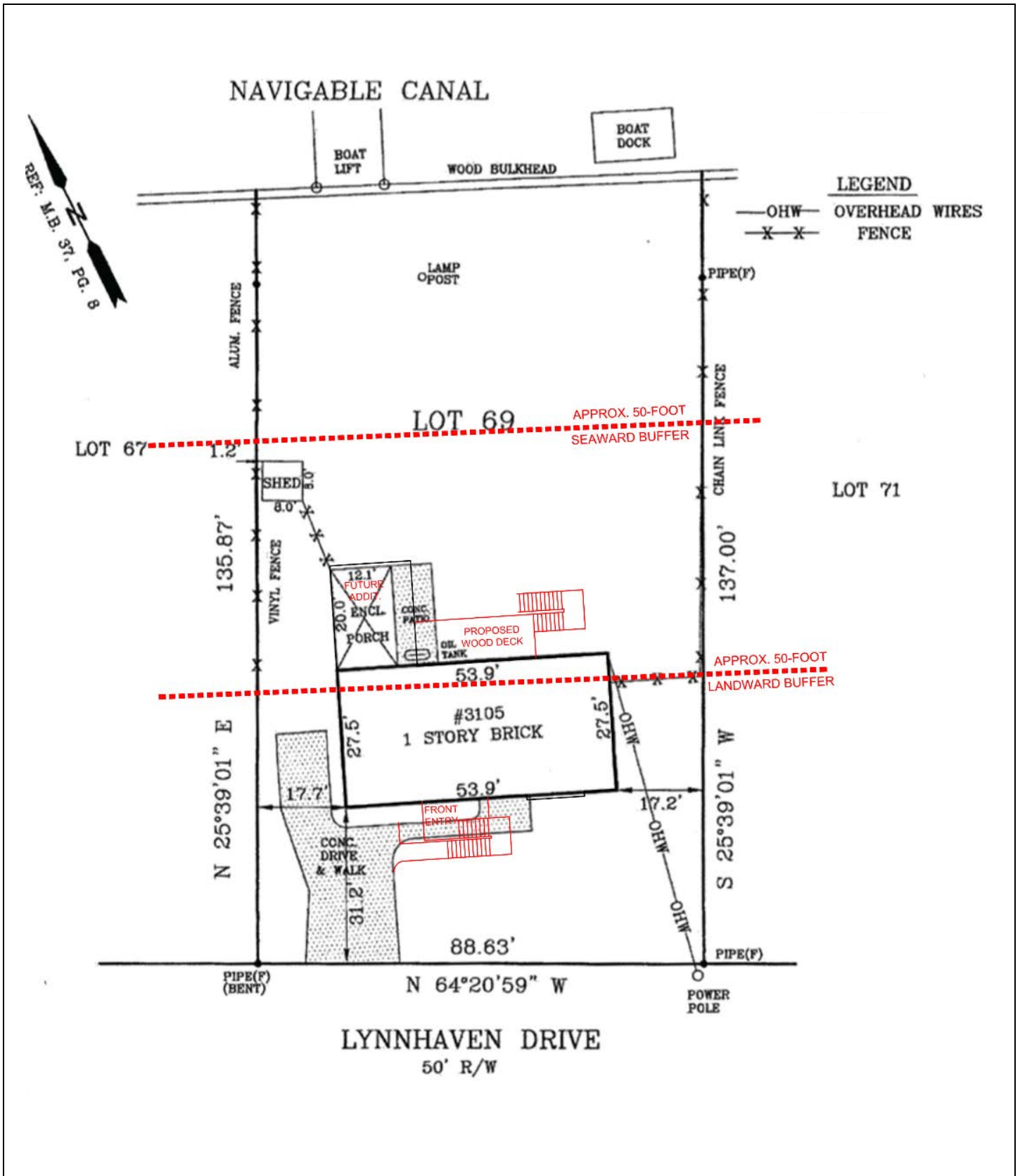
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) \*\* As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$305.25 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted August 1, 2022.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated November 23, 2022, prepared by WPL, signed December 30, 2022, by Eric A Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

\*\* 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.

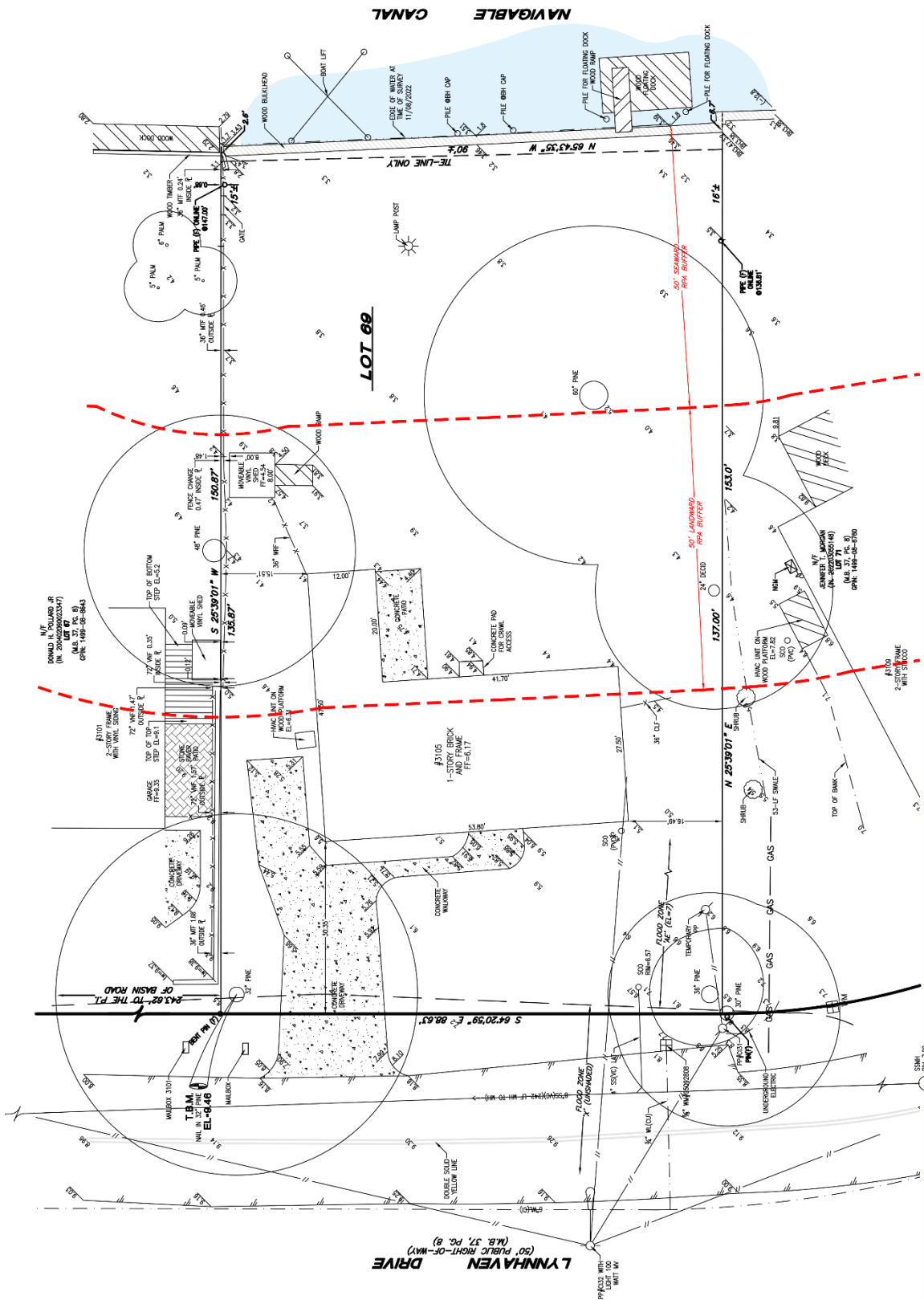
Site Aerial





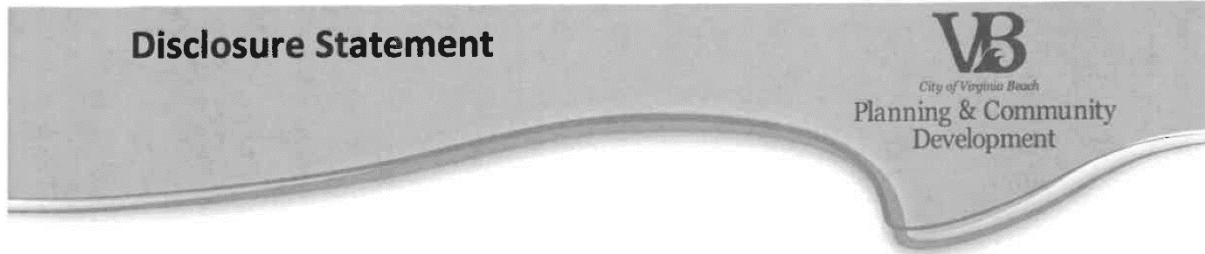


# CBPA Exhibit – Existing Conditions





# Disclosure Statement



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### Applicant Disclosure

**Applicant Name** Jennifer Jean Cosentino & Shane M Spanitz

Does the applicant have a representative?  Yes  No

- If yes, list the name of the representative.

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

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

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

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

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

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

# Disclosure Statement



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

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

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

## **Applicant Services Disclosure**

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

**Yes**  **No**

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

Atlantic Bay Mortgage Group, 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 real estate broker/realtor.
- 

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

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

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

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

WPL & Fentress Home Design

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

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

# Disclosure Statement



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

- If yes, identify the construction contractor.

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

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

WPL

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

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

### Applicant Signature

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

Applicant Signature

Jennifer Spanitz Shane Spanitz

Print Name and Title

12/29/2023

Date

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

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

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

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

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Address of Noncompliance **2871 River Road**  
Property Owner **Dennis & Janice Ellmer**  
Public Hearing **February 27, 2023**  
City Council District **District 8**, formerly Lynnhaven

Agenda Item

**13**

**Noncompliance with the CBPA Ordinance**

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

**Restoration Hearing**

Show Cause hearing held on September 8, 2022, and a 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 & Janice Ellmer.

**Lot Description**

Lot 6A, River and N. Shorehaven Waterfront

**Lot Recordation**

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

**GPIN**

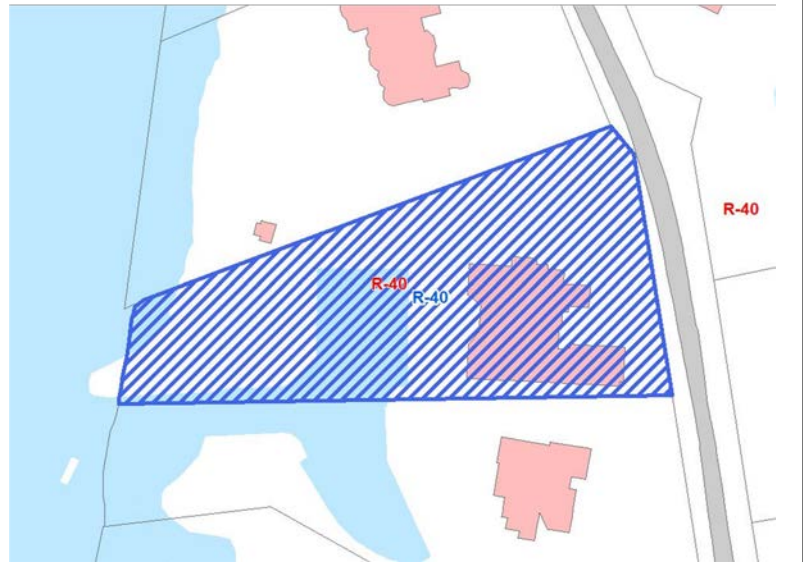
1499-41-4751

**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	<p>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.</p> <p>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 &amp; Janice Ellmer to be 60-90 days from the September 8, 2022, CBPA Board public hearing.</p>
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 imposed and a restoration hearing ordered within 60-90 days from the date of the October 3, 2022, CBPA public hearing.
January 23, 2023	The Restoration Hearing ordered by the CBPA Board was deferred to the February 27, 2023, CBPA Board public hearing.

## Evaluation and Recommendation

The subject area of the unauthorized improvements – installation of synthetic turf occurred within the 100-foot Resource Protection Area (RPA) and the City's Variable Width buffers of the Chesapeake Bay watershed adjacent to a tidal waterway. Provided by the applicant's agent, approximately 13,750 square feet of existing lawn area was removed, and an equal amount of synthetic turf installed. The synthetic turf was installed only in areas devoted to turf on the lot and no existing vegetation was removed associated with this unauthorized activity. Staff has evaluated the installation of the synthetic turf with the property owner, contractor, manufacturer of the product, and the Virginia Department of Environmental Quality (VA DEQ) and provide the following statements from those entities for the CBPA Boards review.

- The property owner, working with Staff evaluated the existing vegetation on the site and has provided a mitigation plan to install additional canopy and understory trees on the lot. The evaluation analyzed areas within the lot where additional canopy trees would be appropriate, areas where understory trees would be suitable within the existing landscape and was cognizant of the existing hardened shoreline not to introduce a plant species that may compromise the integrity of the vinyl bulkhead structure in the future.
- The contractor provided specifications as to the installation process of the synthetic turf regarding the clean washed aggregate base installed, condition of the underlying soil horizon (Tetotum series – deep, moderately well drained soils), and underlayment treatment of the synthetic turf. The underlying stone base offers infiltration practices to allow incoming rainwater and stormwater runoff to exfiltrate into underlying soil profile. As for residential water use, Staff was provided a statistic that approximately 1/3 of residential water is used for outdoor irrigation, and SYNLawns sub-base of gravel along with the perforated pattern of the synthetic turf allows for a great infiltration rate.
- The manufacturer of the product provides that the toxicological information for this product is considered to be non-hazardous under the Federal Occupational Safety and Health Administration Hazard Communication Standard [29CFR1910.1200]. SYNLawns synthetic turf is made with a soy-based backing called EnviroLoc™ which uses soy-based polyol technology developed with support from the soybean checkoff. Based on UL third-party verification, soybean oil displaces 60 percent of the petroleum-based polyurethane in common artificial grass products.
- The VA DEQ provides that the Office of Stormwater Management's position on artificial turf is that it should be considered impervious cover. From a water quality standpoint, the land area would be considered as impervious and, thus, impervious land cover in the Virginia Runoff Reduction Method (VRRM) spreadsheet. From a water quantity standpoint, an adjusted CN can be used for artificial turf when an appropriate subterrain or underdrain system is provided. As long as the artificial turf base is designed in accordance with the Stormwater Design Specification No. 7 for Permeable Pavement (i.e., underlain by an open graded gravel system), then it can be accounted for as such in the VRRM spreadsheet as a BMP, which gives a runoff reduction credit for water quality.

The materials you sent me regarding a particular brand of artificial turf, SYNLawns, indicates that PFAS is not used in its manufacturing process. This is a very positive statement - as some similar products use PFAS in their manufacturing process or contain such compounds. DEQ recommends the use of artificial turf products that do not use or contain PFAS, so these compounds are not leached into receiving water bodies through runoff or underdrains.

Regarding the allowance of artificial turf in the Resource Protection Area (RPA) for putting greens, the Chesapeake Bay Preservation Act (CBPA) and Regulations provide very specific, limited allowances for encroachment in the RPA without an exception. Any proposal would have to be reviewed and approved by the locality in accordance with their CBPA ordinances and exception process including submission of a Water Quality Impact Assessment. The locality has the right and the ability to approve such an RPA Exception.

Given the extent of information provided with this restoration order, Staff is of the opinion that the restoration hearing for the property located at 2871 River Road and the after-the-fact CBPA Variance request, agenda item 3 of this Staff report for the February 27, 2023, CBPA Board public hearing should be heard in conjunction. Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives.

Site Aerial



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