



Chesapeake Bay Preservation Area Board Agenda

March 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, March 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 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) 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 for the most updated meeting information.



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **March 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. For information call (757) 385-4621.

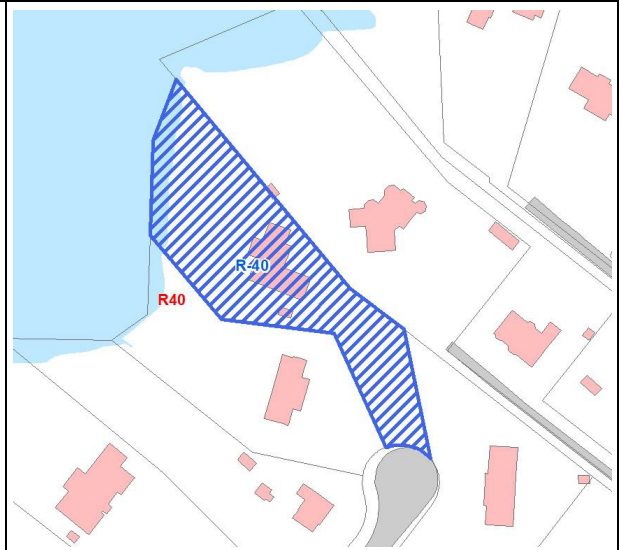
OLD BUSINESS AGENDA ITEMS

1. 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 7



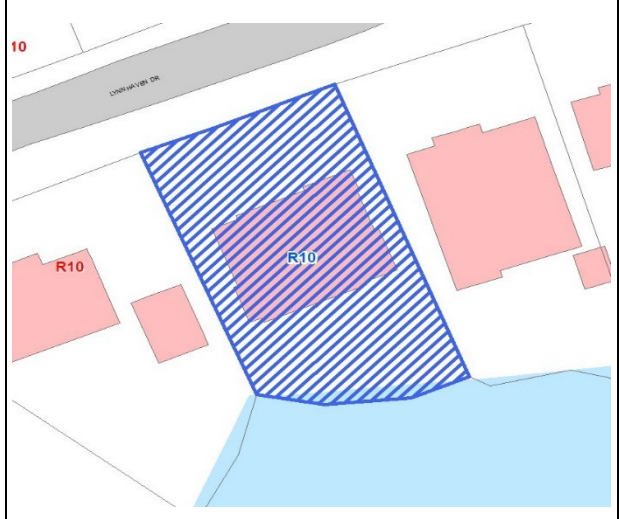
NEW BUSINESS AGENDA ITEMS

2. Dwight Wolf
[Applicant & Property Owner]

3129 Lynnhaven Drive
GPIN 1499-08-2691
City Council District: District 8, formerly Lynnhaven
Accela Record: 2023-CBPA-00008

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

Staff Planner – Cole Fisher
Staff Report – page 19



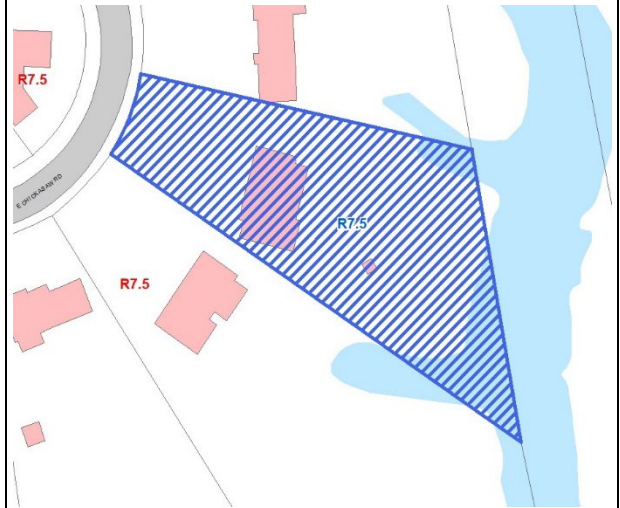
NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Christian & Tara Carpenter
[Applicants & Property Owners]

356 E. Chickasaw Road
GPIN 1456-99-2969
City Council District: District 1, formerly Kempsville
Accela Record: 2023-CBPA-00009

Variance Request – Encroachment into the RPA to construct a swimming pool with associated sheds.

Staff Planner – Cole Fisher
Staff Report – page 33

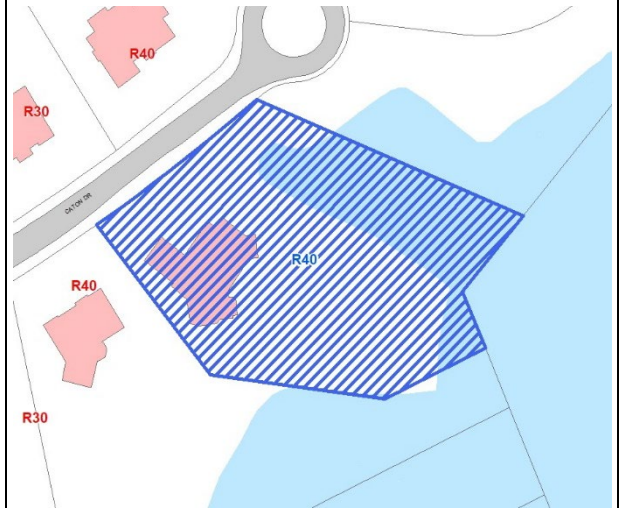


4. Sara Hewitt
[Applicant & Property Owner]

1108 Caton Drive
GPIN 2408-85-4699
City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00010

Variance Request – Encroachment into the RPA to construct a retaining wall with associated grading and fill.

Staff Planner – Cole Fisher
Staff Report – page 45

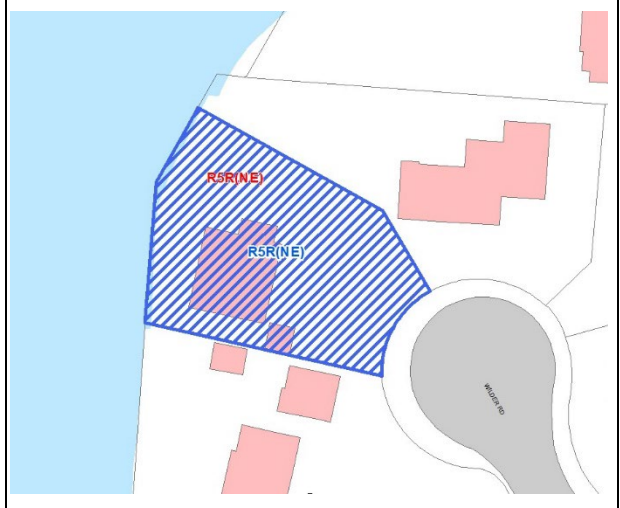


5. Martha M. Glasser Revocable Trust
[Applicant & Property Owner]

521 Wilder Road
GPIN 2418-69-4221
City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00011

Variance Request – Encroachment into the RPA to construct a two-story building addition and replace driveway.

Staff Planner – Cole Fisher
Staff Report – page 61



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Alyson Gross & Michael Yaary
[Applicants & Property Owners]

1360 Penguin Circle

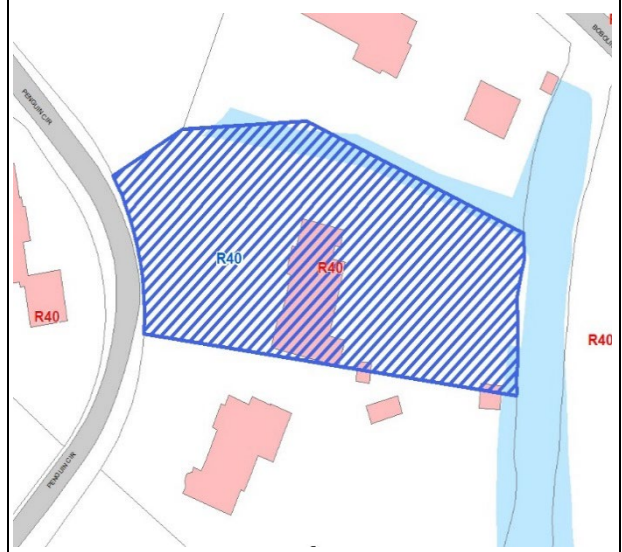
GPIN 2418-31-4438

City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00012

Variance Request – Encroachment into the RPA to construct a building addition, swimming pool and deck, retaining wall with steps, and driveway reconfiguration.

Staff Planner – Cole Fisher

Staff Report – page 73



7. Rebecca C. Provost
[Applicant & Property Owner]

909 Muller Lane

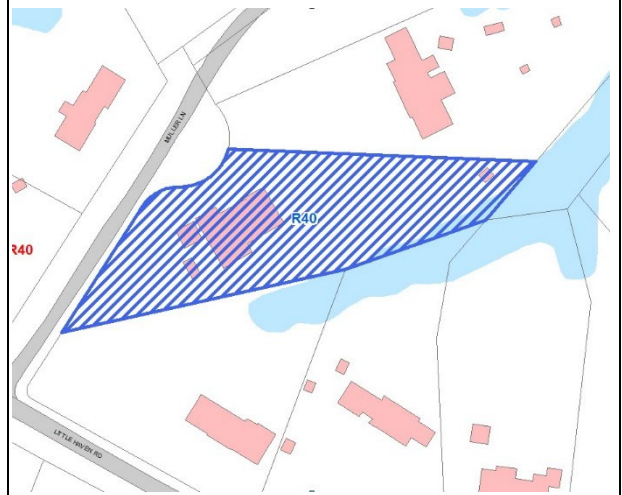
GPIN 1498-13-2616

City Council District: District 8, formerly Lynnhaven
Accela Record: 2023-CBPA-00013

Variance Request – Encroachment into the RPA to construct a swimming pool, patio, and pool house with pavilion.

Staff Planner – Cole Fisher

Staff Report – page 89



8. McGoff Revocable Living Trust
[Applicant & Property Owner]

1371 W. Little Neck Road

GPIN 1488-38-9075

City Council District: District 8, formerly Beach
Accela Record: 2023-CBPA-00015

Variance Request – Encroachment into the RPA to construct a driveway expansion, spa area, and steppingstone walkways with steps.

Staff Planner – Cole Fisher

Staff Report – page 103



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

Agenda Item

1

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

Cole S. Fisher

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

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of existing paver driveway
- Retaining wall along the southern property line

Construction Details

- Patio area adjacent of the retaining wall located northeast of the existing swimming pool
- Patio expansion with covered gazebo adjacent to the existing residence
- Tiered retaining wall system along the southern property line
- Driveway redevelopment with expansions located adjacent to the front of the existing residence

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): 9

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to make several improvements on the lot consisting of redeveloping the existing driveway and expanding to provide an additional parking area, construct a new paver patio area adjacent to the existing swimming pool surround, expand the patio area adjacent to the existing residence to construct a gazebo with associated walkway

and redevelop the existing brick retaining wall located west of the existing swimming pool to construct a low profile 3 tiered retaining wall system, totaling approximately 86 linear feet.

As submitted, most of the proposed new impervious cover within that Resource Protection Area (RMA) associated with this variance request is from the proposed driveway redevelopment and parking expansion area located at the front of the residence and the proposed walkway along the south side of the residence. These improvements are located within the City's 100-foot variable width buffer and Resource Management Area (RMA) of the Chesapeake Bay watershed in areas primarily devoted to turf with minimal topographic elevation change. As for the proposed gazebo area adjacent to the residence and patio area adjacent of the retaining wall located northeast of the swimming pool Staff is of the opinion that these proposed improvements do not represent the minimum necessary to afford relief. The existing pool surround provides ample area to recreate around the swimming pool and expansion of impervious cover seaward with the proposed patio area adjacent to the existing retaining wall does not appear to be in harmony with the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance. However, 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.

- 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 applicant is only requesting a variance to resolve pertinent issues, described herein, that are associated with the purchased property. The applicant is also making considerable effort to alleviate runoff by using suggested bioretention techniques that are costly but effective."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the redevelopment of existing impervious cover and expansions within the City's variable width buffer will not confer upon the applicant any special privilege, however, provides the recommended conditions below regarding further encroachment into the 100-foot RPA in harmony with similar improvements on other lots within the neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the new driveway configuration will allow for family and one guest to park in the driveway without blocking each other in and prevent daily curbside parking on the street. It should also allow vehicles to make a 2-point turn in order to safely exit the long driveway."* Staff concurs and adds that if not for the proposed improvements in the rear portion of the lot, this request would be handled by Staff through the CBPA Administrative Variance process. To address Staff concerns regarding *"the minimum necessary to afford relief"* Staff is of the opinion that the proposed patio area adjacent to the existing retaining wall should be removed given the ample area that exists around the swimming pool.
- 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 this project is replacing and repairing impervious space. The additional impervious area should more than offset by the addition of the bioretention beds created by the retaining walls."* Staff concurs and adds that this variance request utilizes heavy redevelopment over existing impervious cover on the lot with minimal encroachment within the 100-foot RPA buffer.
- 5) *"As mentioned previously the extensive retaining wall portion of the project will create bioretention beds that will dramatically decrease nonpoint source pollution load."* as a means to manage towards a no net

increase in nonpoint source pollution load. Staff acknowledges the statement provided by the applicant and provides that most of the proposed new impervious cover on the lot occurs within the City's variable width buffer. This area is relatively flat and provides viable infiltration of rainwater given the existing topography and underlying soil conditions.

Given the above comments, Staff recommends the following **16** reasonable and appropriate conditions to address their concerns with the variance request as submitted and to provide merit towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The proposed patio area adjacent of the retaining wall located northeast of the existing swimming pool shall be eliminated and said area remain in a natural state.
- 3) The proposed patio area with gazebo shall be shifted to the northeast, towards the existing residence or reduced by 80 square feet.
- 4) 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.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,050 square feet x 200 percent = 2,100 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs, and 18 small shrubs.**

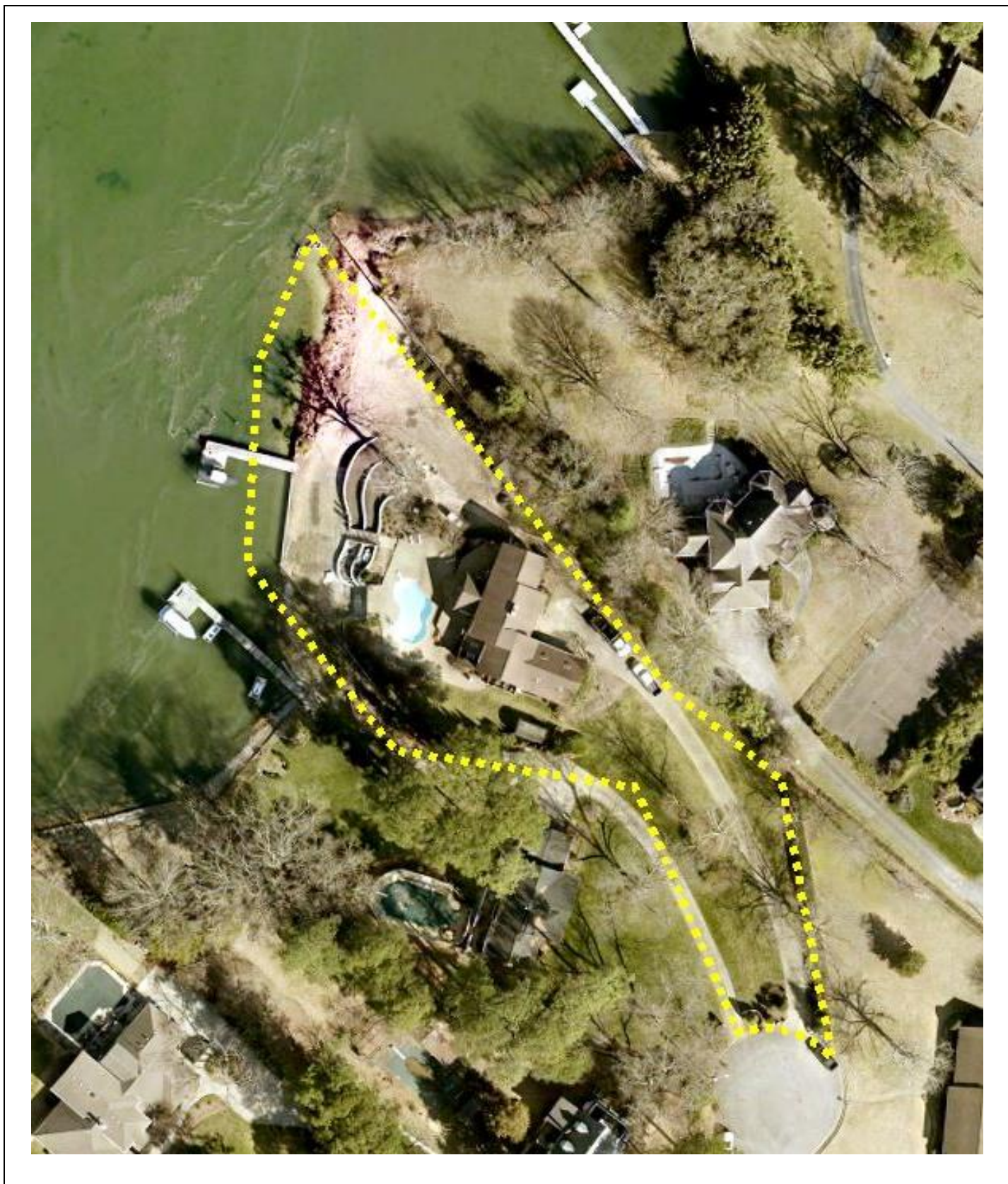
The required restoration shall be located in the 100-foot Resource Protection Area buffer, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained 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.

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

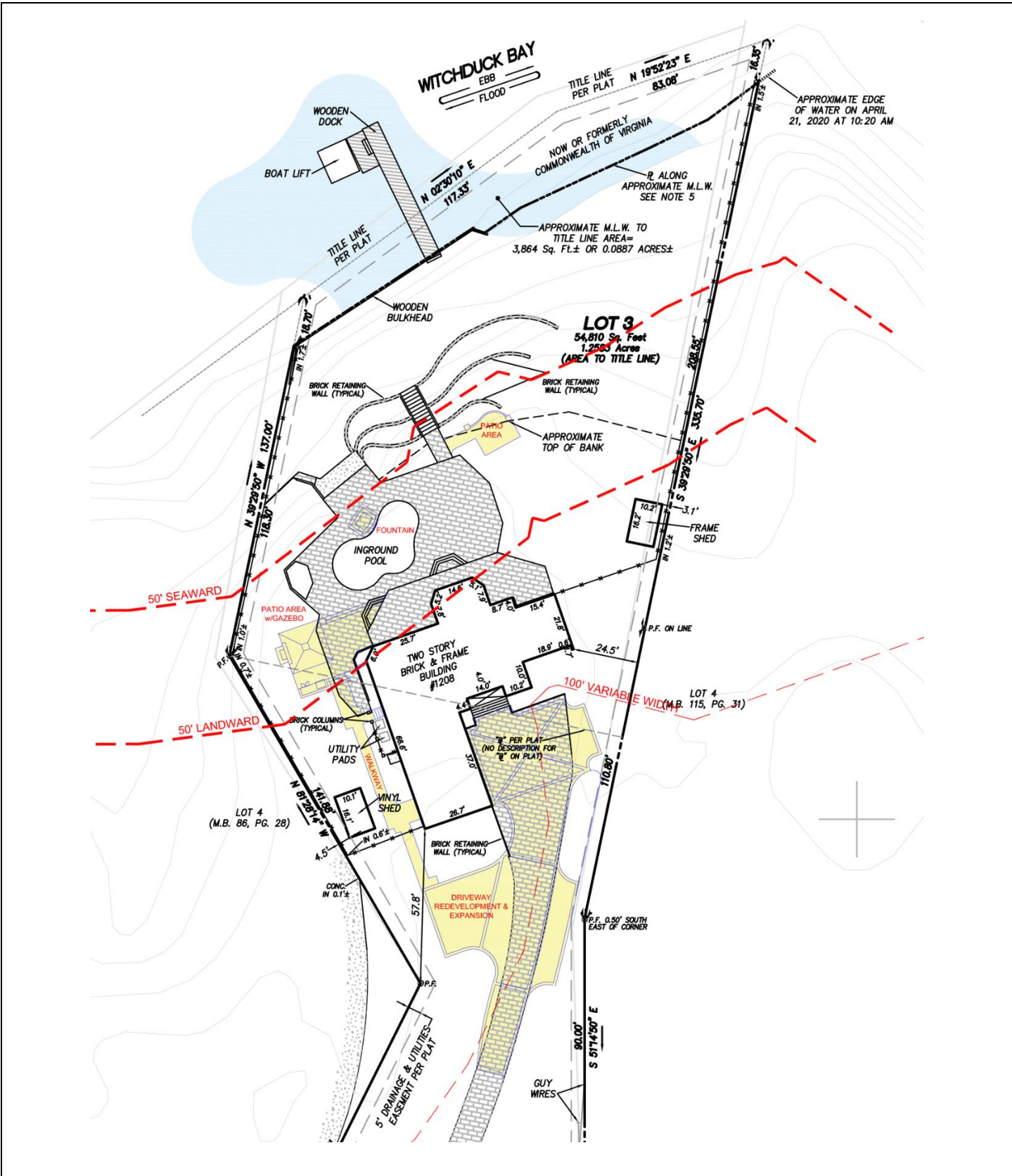
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) 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.

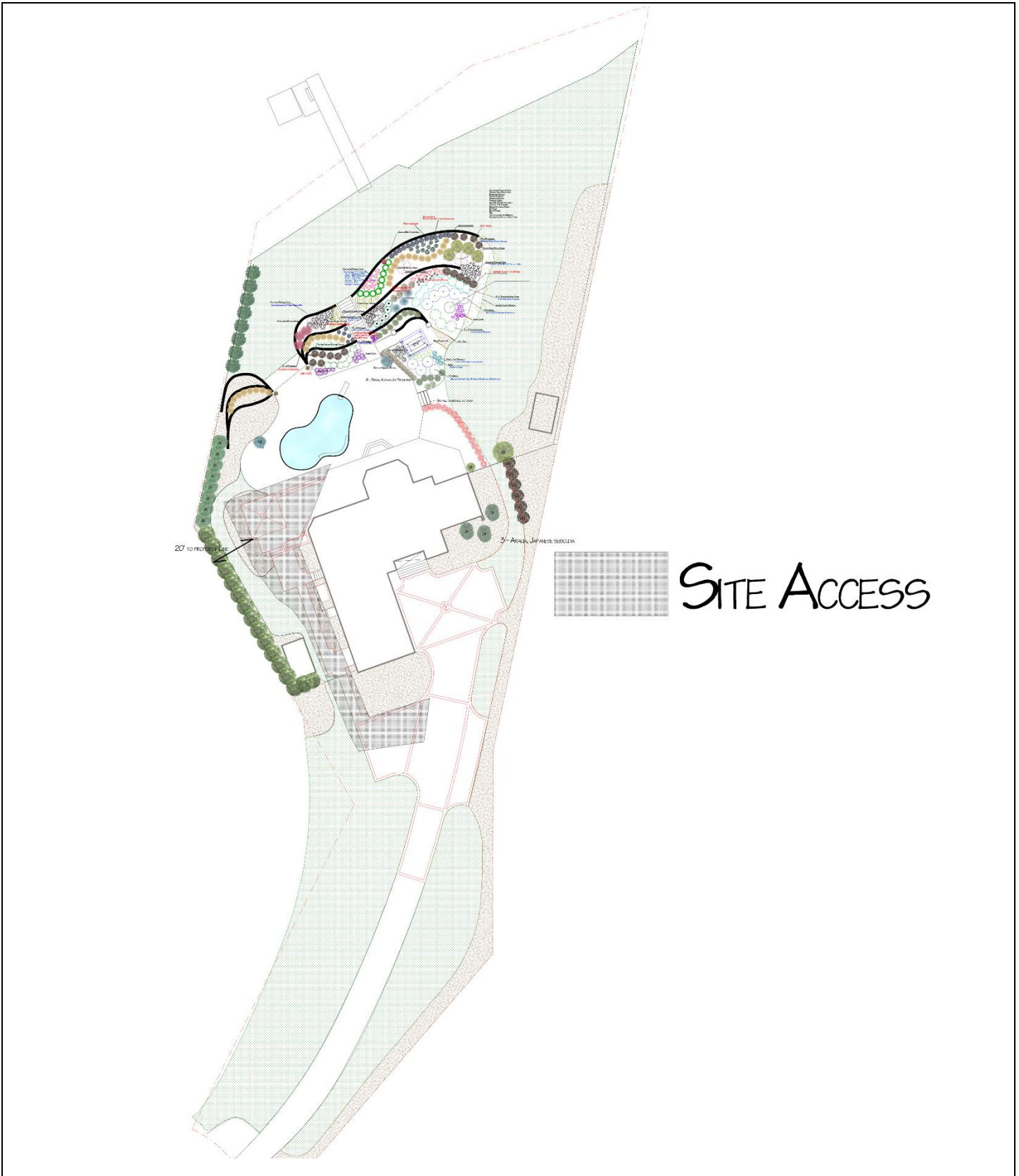
Site Aerial



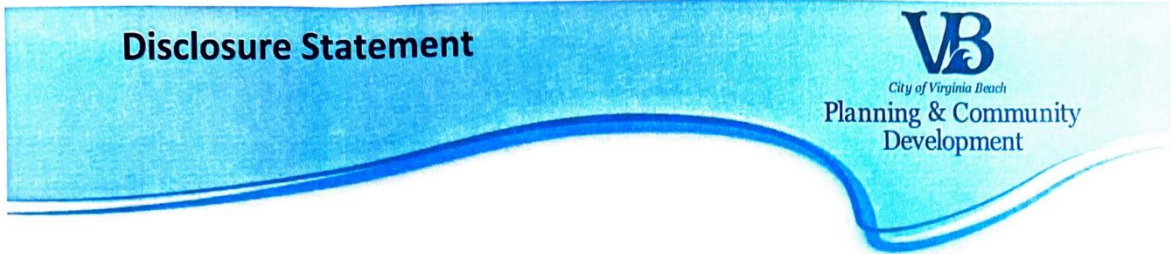
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Site Access & Conceptual Planting Layout



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 Edward Anderson

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Daniel Van Dyke - McDonald Garden Center

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-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

² "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

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.

PEN FED (HOME MORTGAGE)

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

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

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

- If **yes**, identify the firm and individual providing the service.
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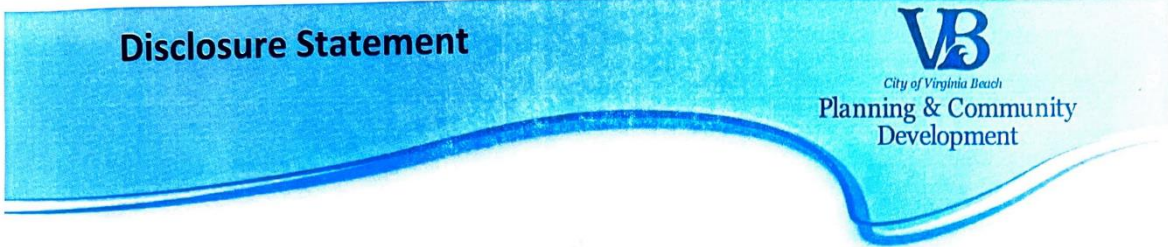
4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

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

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.
McDONALD GARDEN CENTER

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.

[Handwritten Signature]

Applicant Signature
EDWARD M ANDERSON

Print Name and Title

Date
09/11/22

- 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 **Dwight Wolf**
 Address **3129 Lynnhaven Drive**
 Public Hearing **March 27, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

2

Variance Request

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

Applicant’s Agent

Billy Garrington
 Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1499-08-2691

SITE AREA

10,300 square feet or 0.236 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

10,300 square feet or 0.236 acres

EXISTING IMPERVIOUS COVER OF SITE

5,395 square feet or 52.4 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

5,616 square feet or 54.5 percent of site

Area of Redevelopment in RPA

2,238 square feet

Area of New Development in RPA

737 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer
 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

Demolition Details

- Wood deck
- Concrete driveway

Construction Details

- Swimming pool with associated deck area and outdoor kitchen
- Steppingstone walkway
- Driveway redevelopment with expansion

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

- **Number of existing canopy trees requested for removal within the RPA:** 1
- **Evaluation of existing canopy tree removal request:** One 48-inch deciduous tree is proposed for removal within the RPA and within the footprint of the proposed swimming pool and associated deck. The applicant also wishes to remove three live oak trees in the front yard landward of the 100-foot RPA buffer.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds, rooftop disconnects, rainwater harvesting, and sand/gravel underdeck treatment 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 an associated pool deck, walkway, and driveway redevelopment/expansion within the 100-foot buffer of the Resource Protection Area (RPA). A steppingstone walkway is proposed around the side of the residence to connect the proposed improvements in the rear yard to the redeveloped and slightly expanded driveway in the front yard. The 100-foot buffer encompasses the majority of the lot with the 50-

foot seaward buffer comprising the entirety of the back yard and portions of the primary structure. As submitted, this proposal introduces 737 square feet of new impervious cover on the lot with approximately 2,238 square feet of redevelopment over existing impervious cover. 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 516 square feet of impervious cover on the lot by reverting an existing walkway and portions of the existing driveway 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 heavily utilize redevelopment in the RPA and are situated directly off the rear of the residence. To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the performance standards of the CBPA Ordinance and believes that the installation of the synthetic turf will not be injurious to the neighborhood or of substantial detriment to water quality.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this property is similar to others in the neighborhood some of which have recently permitted similarly situated pools."* Staff concurs that adjacent properties have similar improvements within the RPA.
- 2) The applicant's agent provides that the variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the property was created, and the home was built before the CBPA act. new improvements and redevelopment allow for beneficial stormwater management on a previously developed property."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the property owner is requesting a reasonable amount of outdoor living space, in the proposed deck area around the proposed pool."* Staff adds that this request includes utilizing 2,238 square feet of redevelopment over existing impervious cover with a minimal increase of new impervious cover being introduced within the 100-foot 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 *"this redevelopment project is similar to other properties in the neighborhood, and will result in improved water quality since stormwater management is required."*
- 5) *"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.

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. The circular portion of the redeveloped driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
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: **737 square feet x 200 percent = 1,474 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

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

5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
7. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
8. 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.
9. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
10. Under deck treatment of sand and gravel shall be installed.

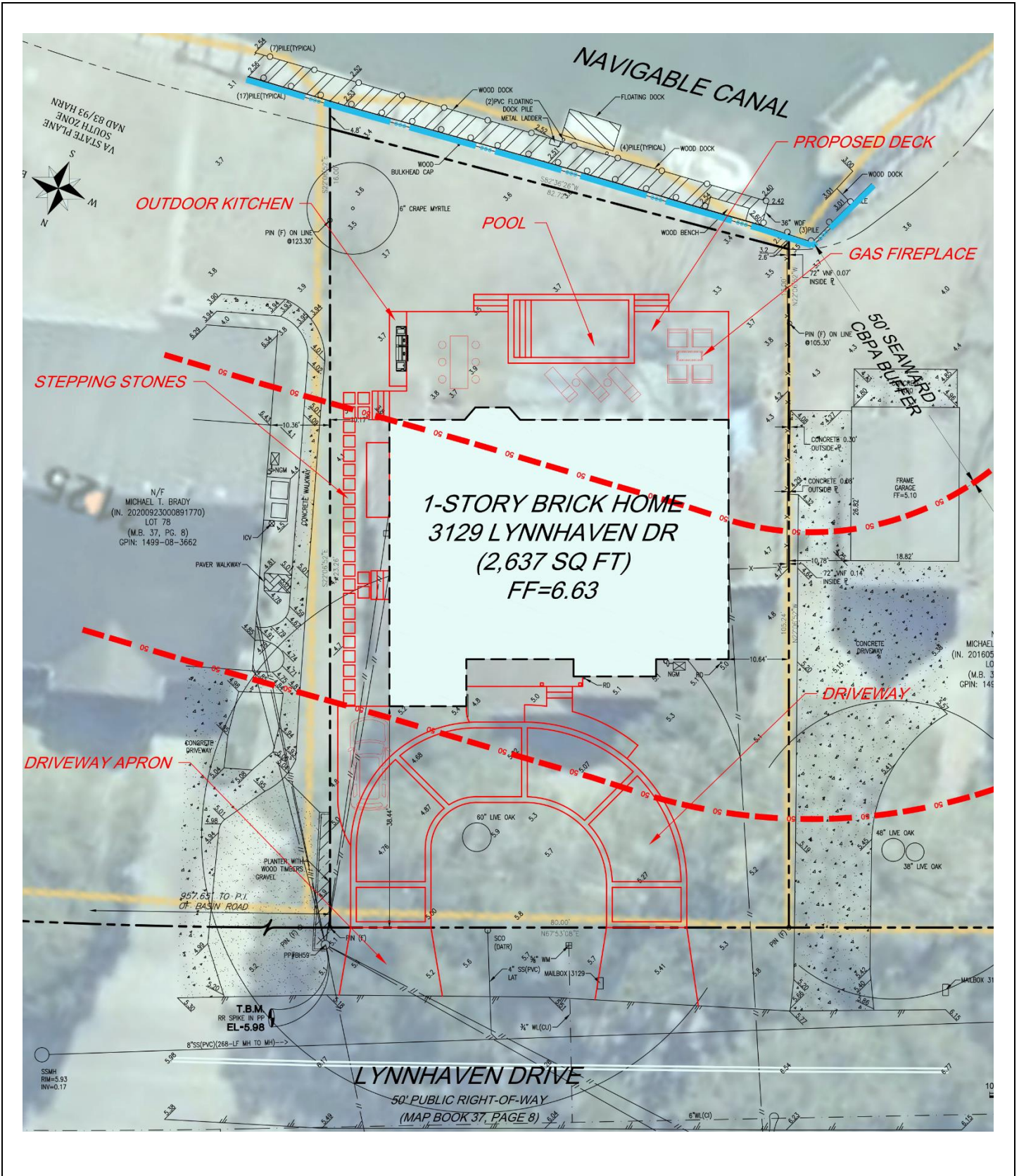
11. No perimeter fill is authorized outboard or seaward of the proposed improvements.
12. The conditions and approval associated with this variance are based on the exhibit plan dated January 31, 2023, prepared by WPL, signed January 31, 2023 by Brad Martin. The conditions and approval associated with 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



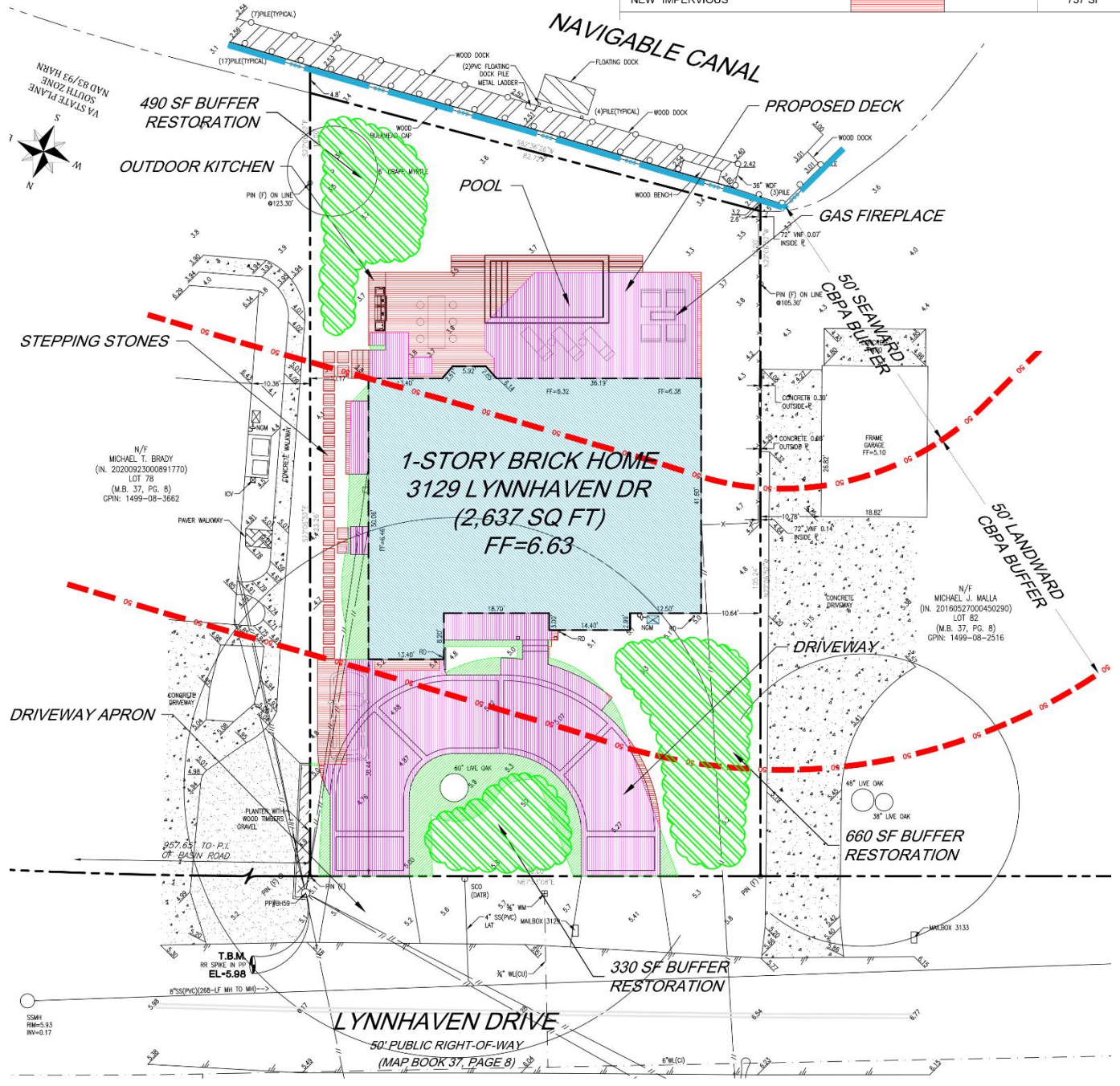
CBPA Exhibit – Proposed Improvements



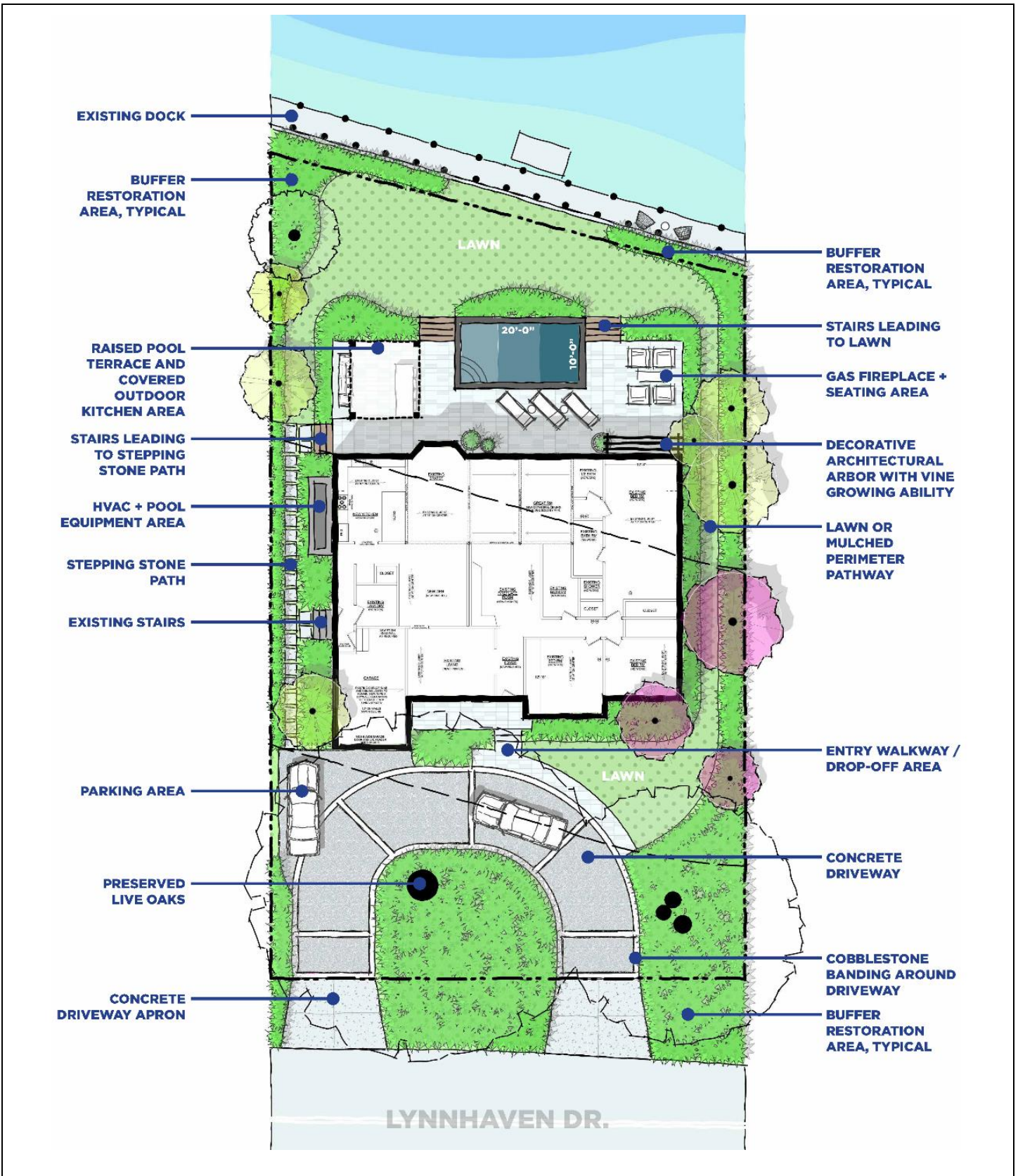
CBPA Exhibit – Color Analysis

ANALYSIS OF DEVELOPMENT WITHIN THE ENTIRE PROPERTY AREA

	LEGEND	EXISTING	PROPOSED
TOTAL IMPERVIOUS AREA		5,395 SF	5,616 SF
IMPERVIOUS COVER DEMOLITION			2,755 SF
IMPERVIOUS CONVERTED TO PERVIOUS		516 SF	
IMPERVIOUS COVER TO REMAIN		2,640 SF	2,640 SF
"REDEVELOPMENT" NEW OVER OLD *		2,238 SF	2,238 SF
"NEW" IMPERVIOUS **			737 SF



CBPA Exhibit – Master Plan



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 Dwight S Wolf II

Does the applicant have a representative? Yes No

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

WPL

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-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

² "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.

Monarch Mortgage

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

Yes No

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

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

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

Carmines and Robbins, Dillon Revelle

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

Dwight S Wolf II

Print Name and Title

Dwight S Wolf II

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 **Christian & Tara Carpenter**
 Address **356 E. Chickasaw Road**
 Public Hearing **March 27, 2023**
 City Council District **District 1**, formerly Kempsville

Agenda Item

3

Variance Request

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

Applicant’s Agent

Billy Garrington
 Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1456-99-2969

SITE AREA

50,527 square feet or 1.59 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

43,776 square feet or 1.01 acres

EXISTING IMPERVIOUS COVER OF SITE

6,944 square feet or 15.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,501 square feet or 17 percent of site

Area of Redevelopment in RPA

90.4 square feet

Area of New Development in RPA

604 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

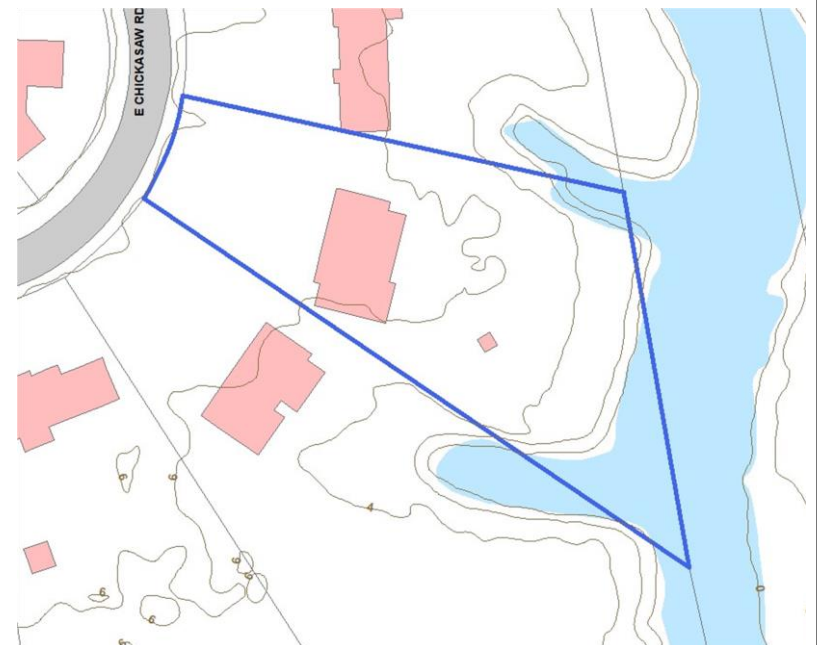
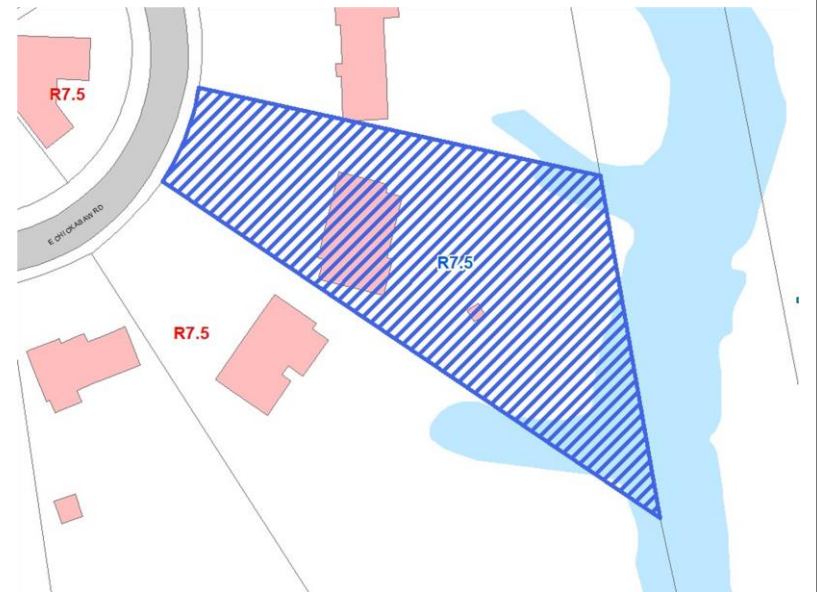
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Above ground swimming pool with two-foot-wide gravel apron
- Relocate existing sheds

CBPA Ordinance Variance History

On April 27, 2009, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the after-the-fact decks and screened porch with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *36" orange re-enforced silt fence, for erosion and sedimentation control measures, shall be installed along the seaward limits 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 10 ft. from proposed improvements.*
3. *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*
4. *Construction limits shall lie a maximum of 10' outboard of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area*
6. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit*
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, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment. Said condition shall be so noted on the site plan*
8. *Under deck treatment of sand and gravel shall be installed.*
9. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact. Where existing natural areas lack three trophic layers of vegetation, said areas shall be infilled as needed*
10. *Buffer restoration of 1,700 sq. ft. shall be installed which is equal to 200% of the proposed impervious cover and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers. The required restoration shall be in areas currently devoted to turf 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. A minimum of sixteen (16) 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 or final building inspection.*
11. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*

12. *The conditions and approval associated with this variance are based on the site plan dated January 23, 2009, with a sealed date of 3-31-09, prepared by Gallup Surveyors and Engineers Ltd.*
13. *Upon granting of a variance, a revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval within 45 days. Once the plans have been approved, a building permit must be obtained within 30 days. All required restoration must be installed or in the process of installation within 45 days after issuance of the building permit.*

The April 27, 2009 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 8

Soil Type(s)

Udorthents Series (moderately well-drained soils altered by excavation)
Chapanoke Series (deep, poorly drained soils)

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- 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 24-foot diameter above ground swimming pool with a two-foot-wide gravel pool apron and to obtain approval for two plastic sheds on the property. As situated, the proposed improvements encroach within the 50-foot landward buffer and variable width buffer of the Resource Protection Area (RPA). Staff is of the opinion that the proposed improvements are situated on the lot in close proximity to the primary residence to avoid excessive encroachment. Staff offers that the applicant has provided a design that is respectful to the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance and the applicant does not wish to disturb the existing canopy cover on the lot. As such, the applicant has situated the proposed improvements on the lot to sit adjacent to the existing wood deck and to preserve the existing riparian buffer.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.”* Staff agrees that the request does not confer any special privilege or convenience to the applicant.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds.”* Staff acknowledges the applicant’s statement and notes that the proposed improvements are situated in a location that least impacts the riparian buffer on 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 purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install infiltration beds and buffer restoration in areas currently devoted to turf.”* Staff is of the opinion that the request will not be of substantial detriment to water quality of the Chesapeake Bay.
- 5) The applicant’s agent provides that *“strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the variance request is minimal given the proposed improvements and do not require extensive excavation for introduction of fill material to be installed.

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 plan dated January 18, 2023, prepared by Gallup Surveyors & Engineers, signed January 19, 2023 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.
- 2) Buffer restoration consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **4 understory trees and 12 large shrubs**. A planting plans with specifications shall be submitted to the Department of Planning & Community Development, Chesapeake Bay Board team for review and approval prior to obtaining a building permit.

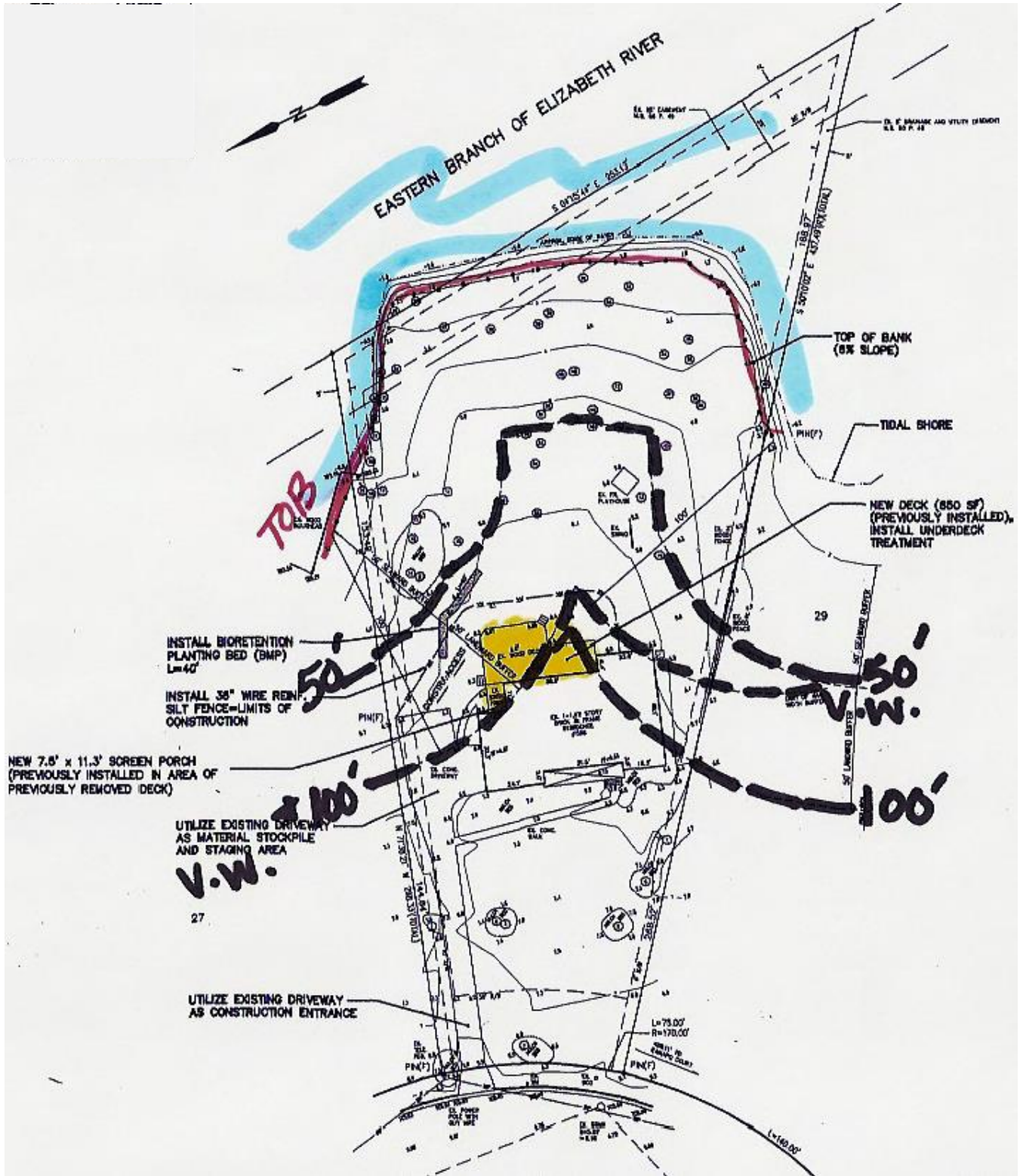
The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity 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.
- 4) 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.
- 5) 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.
- 6) This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 27, 2009.

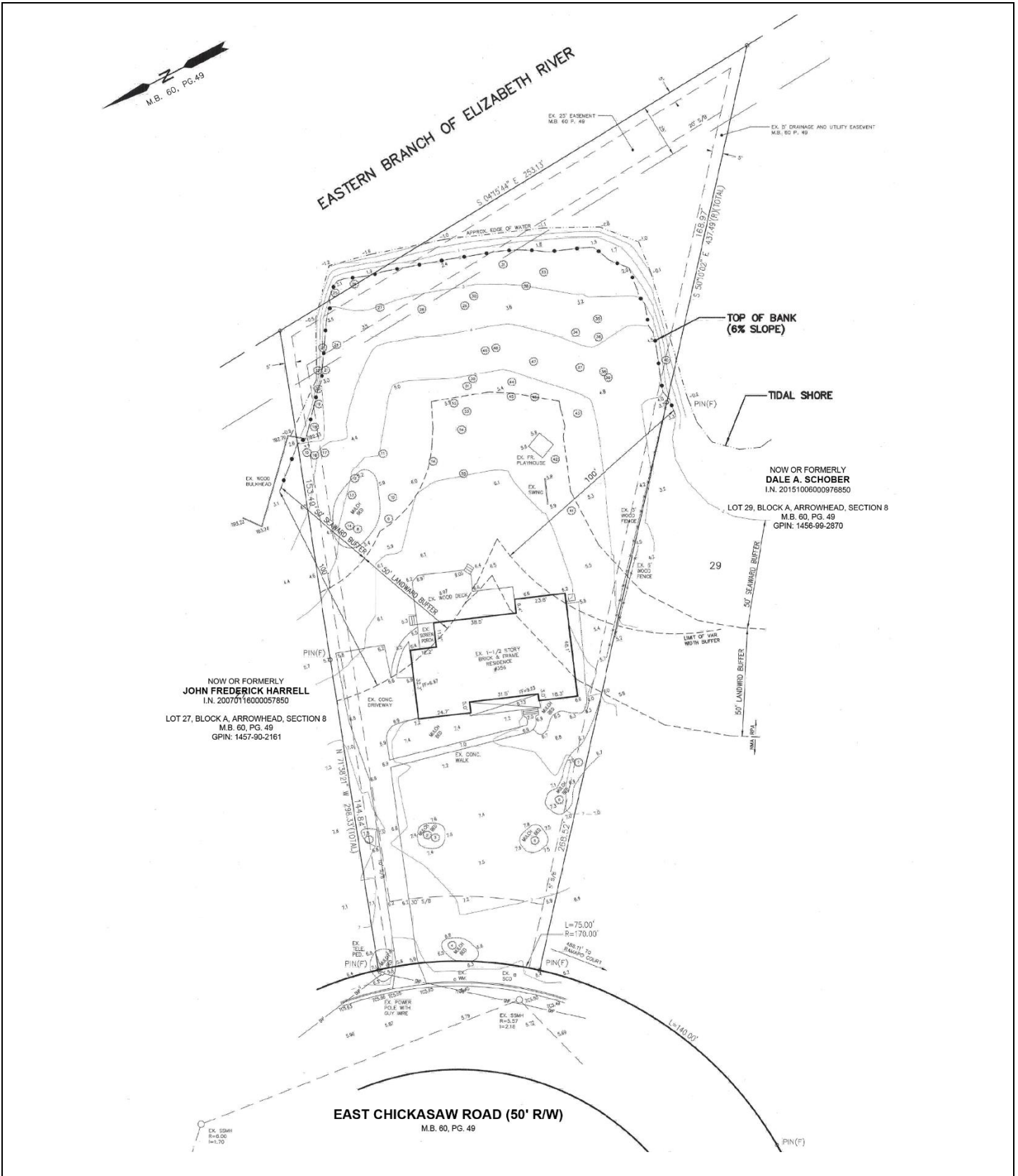
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

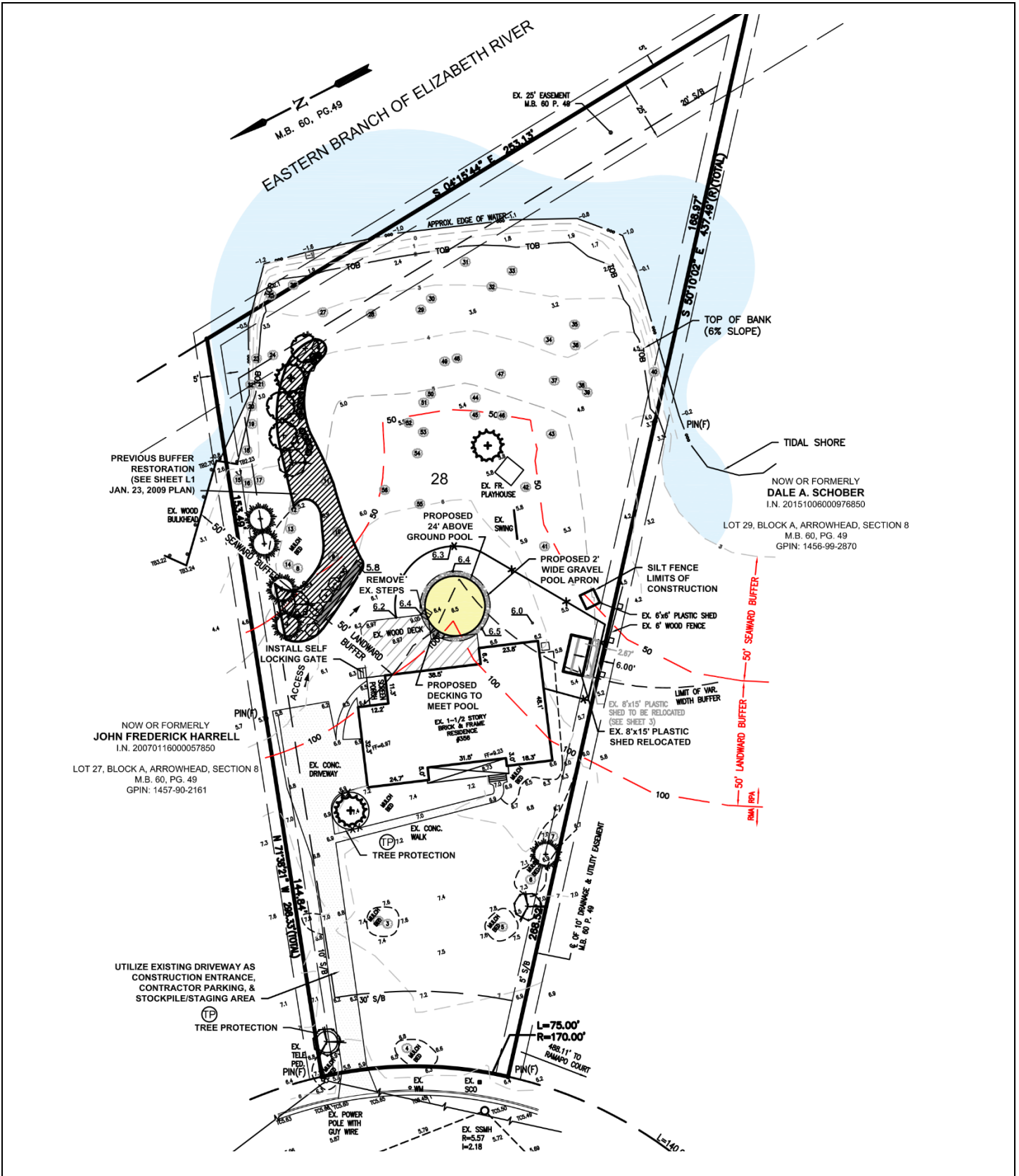




CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Christian Carpenter

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Billy Harrington

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-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

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.

David Butler, Gallup Surveyors & Engineers

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

Print Name and Title

Christian Carpenter, Applicant and Owner

Date 1-31-23

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 **Sara Hewitt**
 Address **1108 Caton Drive**
 Public Hearing **March 27, 2023**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a retaining wall with associated grading and fill.

Applicant's Agent

Billy Garrington
 Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 291, Page 70
 Recorded 11/3/2000

GPIN

2408-85-4699

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

83 square feet

Location of Proposed Impervious Cover

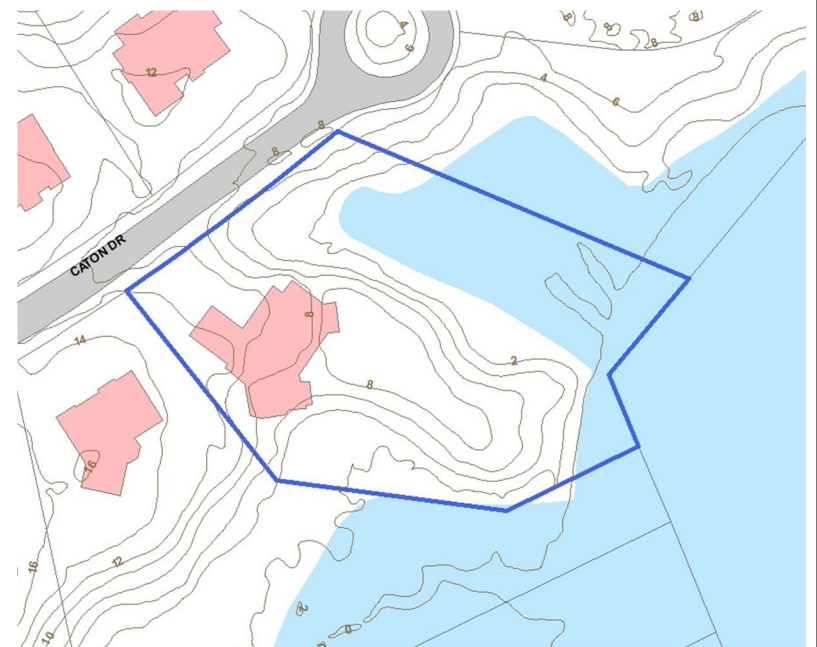
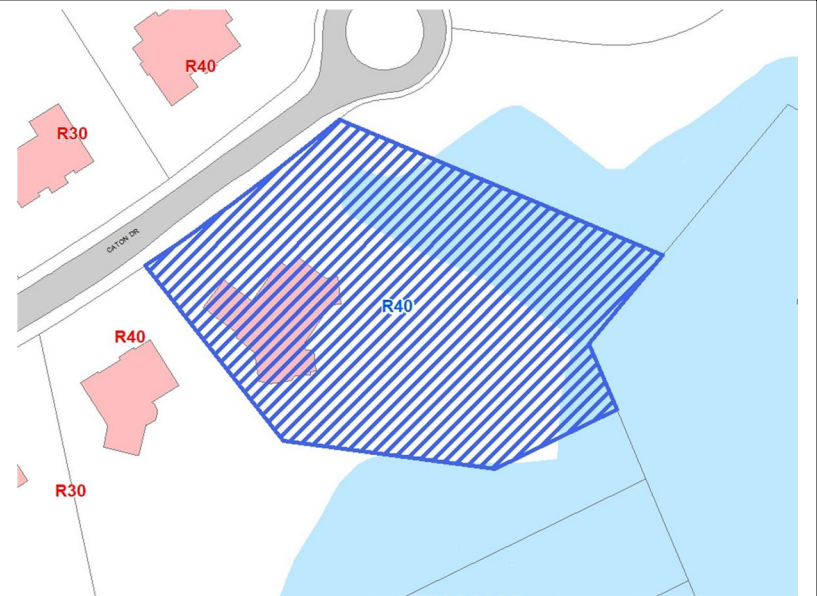
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Retaining wall with associated backfill material and minor upland grading

CBPA Ordinance Variance History

On November 17, 1992 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the development of the Linkhorn Oaks subdivision with the following conditions:

1. *The property owner of each affected lot must contact the Planning Department at 426-5790 to set up a meeting, prior to the submittal of a site plan, to discuss the design and location of the residence.*
2. *The meets and bounds of the "Building Envelope" on each of the affected sites must be identified and approved by city staff prior to the recordation of the plat.*
3. *The applicant shall clearly mark the area outside the building envelopes in the affected lots as a "Preservation Area".*
4. *The applicant or developer shall establish covenants for maintenance and protection of the "Preservation Area". Such covenants shall be approved by the City Attorney's Office and recorded at the Office of the Clerk of the Circuit Court, City of Virginia Beach.*
5. *No dwelling will have a setback more than the minimum required by the city Zoning Ordinance except Lots 20, 21, 42 and 43.*
6. *On site BMP's will be required for all affected lots which drain entirely or partially to Linkhorn Bay. Property owners will be encouraged to use nonstructural BMPs on site.*
7. *A maximum of six inches of clean fill shall be allowed within the II building envelopes for home construction purposes. Building foundations will have to accommodate the topography of the affected lot.*
8. *Once construction is complete, the denuded area within the construction footprint shall be restored with vegetation according to a landscape plan to be submitted with the final site plan.*
9. *Appropriate stormwater, erosion and sediment control and landscape bonds must be posted with the Planning Department prior to issuance of a building permit.*

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

On March 25, 2013 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story residence and accessory structures with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*

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 10 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 10' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
8. *If and when the shoreline is hardened, a rip-rap revetment or living shoreline 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, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
9. *The pool shape, size, and location shall be as shown on the submitted plan.*
10. *The pool shall be constructed prior to or concurrent with the residence.*
11. *Under deck treatment of sand and gravel shall be installed.*
12. *All areas outside limits of construction shall be left in a naturalized state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
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. *The conditions and approval associated with this variance are based on the site plan prepared by Gallup Surveyors and Engineers dated January 25, 2013 and sealed February 4, 2013 by Bruce Gallup.*
15. *Post construction turf limits shall lie a maximum of 10' outboard of improvements (providing for approximately 4,000 sq. ft.).*
16. *****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.*
17. *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 prior to the certificate of occupancy.*
18. *Eliminate the rear portion of the driveway within the 50-foot seaward buffer.*

19. *There shall be no perimeter fill authorized seaward of proposed improvements.*
20. ***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 \$2,846. 25 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 3,105 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
21. *A separate landscape / buffer restoration plan shall be submitted concurrent or prior to submission of 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. To a reasonable extent, buffer restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers and be applied to areas devoid of a forest layer(s) (i.e., canopy layer, understory tree layer, understory shrub layer (large to small), herbaceous layer, etc.)). The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. 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.*
22. *Where areas to be preserved (i.e., outside of the limits of construction) are encroached upon, replacement of existing trees and other vegetation shall be achieved at a ratio of three (3) to one (1) for vegetation removed.*
23. *This variance supersedes the previously approved variance granted May 22, 2000.*
24. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*

The March 25, 2013 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)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to 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 layout of the proposed retaining wall will require minimal excavation. The excavation required for the retaining wall will occur within the critical root zone of two

Sara Hewitt

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canopy trees located adjacent to the proposed retaining wall. The applicant's agent has indicated in the Water Quality Impact Assessment (WQIA) that said trees will be removed; however, final determination will be decided in the field and based off the extent of impact to the primary root system of each tree.

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 is proposing bioretention planting beds to be placed landward of the proposed retaining wall to filter rainwater before discharging into the wetlands on the property.

Evaluation and Recommendation

The applicant is proposing to construct a 100 linear foot long segmented block retaining wall adjacent to the residence as a means to abate minor erosion occurring at the southern corner of the existing single-family residence, slow the velocity of rainwater sheet flow from higher elevations on the lot, and stabilize the existing bank. The proposed retaining wall will vary in height that transitions from meeting existing grade at both ends to approximately 3 feet above grade at its highest point. Minimal fill material will be placed landward of the proposed retaining wall and a bioretention planting bed is proposed along the landward side of the retaining wall along the entire length of the wall. Staff is of the opinion that the desired use to amend the slope of the existing bank and stabilize the area landward of the retaining wall with turf proposed by this variance request provides merit towards being in harmony with the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance, will not prevent wetland migration from sea level rise impacts on the natural resource present, and promotes the infiltration of rainwater by softening the existing slope of the yard to reduce runoff velocity rates.

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 is in line with the intent of the CBPA and adjacent parcels."* Staff is of the opinion that the request is similar to other owners of property that have request to construct retaining walls within the RPA to correct grading and drainage issues without significantly impacting the riparian buffer resource.
- 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 house was built per approved site plan, but the nature of some of the undisturbed areas of the site have denuded."* The applicant has indicated that this area of the property is experiencing erosion, henceforth why this variance request is being brought before the board. Staff is of the opinion that this variance request is based off the desire to correct and abate any future detriment.
- 3) *"The variance is the minimum necessary to afford relief because we are proposing to install a retaining wall instead of proposing larger amounts of land disturbance that would be required if proposing to entirely regrade this area."* Staff is of the opinion that the proposed improvements provide merit towards the variance request being the minimum necessary to afford relief given the location of the proposed retaining wall adjacent to the existing residence and ability for the natural shoreline to migrate landward, if needed to adapt to future changes in sea level elevations.

- 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 will improve water quality by lessening erosion and sedimentation runoff into the seaward buffer and all future runoff will be filtered through the upgraded BMP on the landward side of the retaining wall.”* Upon Staff’s site visit, Staff noticed that the existing BMP is showing signs of erosion and consisted of mainly denuded mulch area. Staff is of the opinion that the new BMP installed with the proposed retaining wall will halt the erosion this portion of the property is experiencing as well as provide more benefit to water quality than the BMP currently on the lot.
- 5) *“This request will reduce runoff by lessening erosion and sedimentation into the CBPA buffer and will upgrade the BMP to ensure a no net increase in nonpoint source pollution load into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **7** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated January 31, 2022, prepared by Siska Aurand Landscape Architects, Inc. Land disturbance associated with the proposed improvements at any given time shall not exceeds 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 consisting of trees and shrubs shall be installed within the RPA. Said restoration shall be installed at the following rate: **6 understory trees and 18 large shrubs**. A planting plans with specifications shall be submitted to the Department of Planning & Community Development, Chesapeake Bay Board team for review and approval prior to obtaining a building permit.

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.

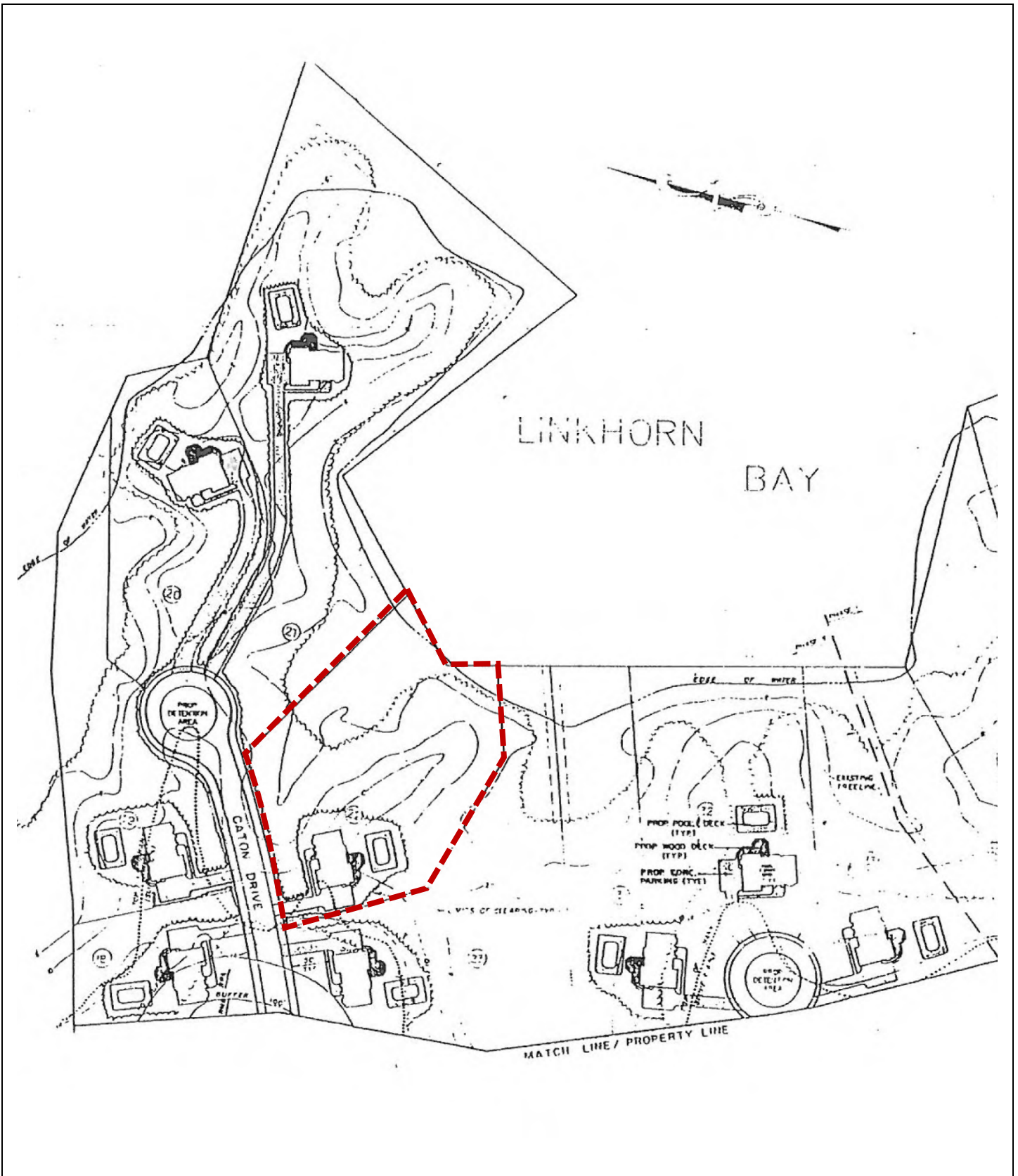
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and 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 5 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.

6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.

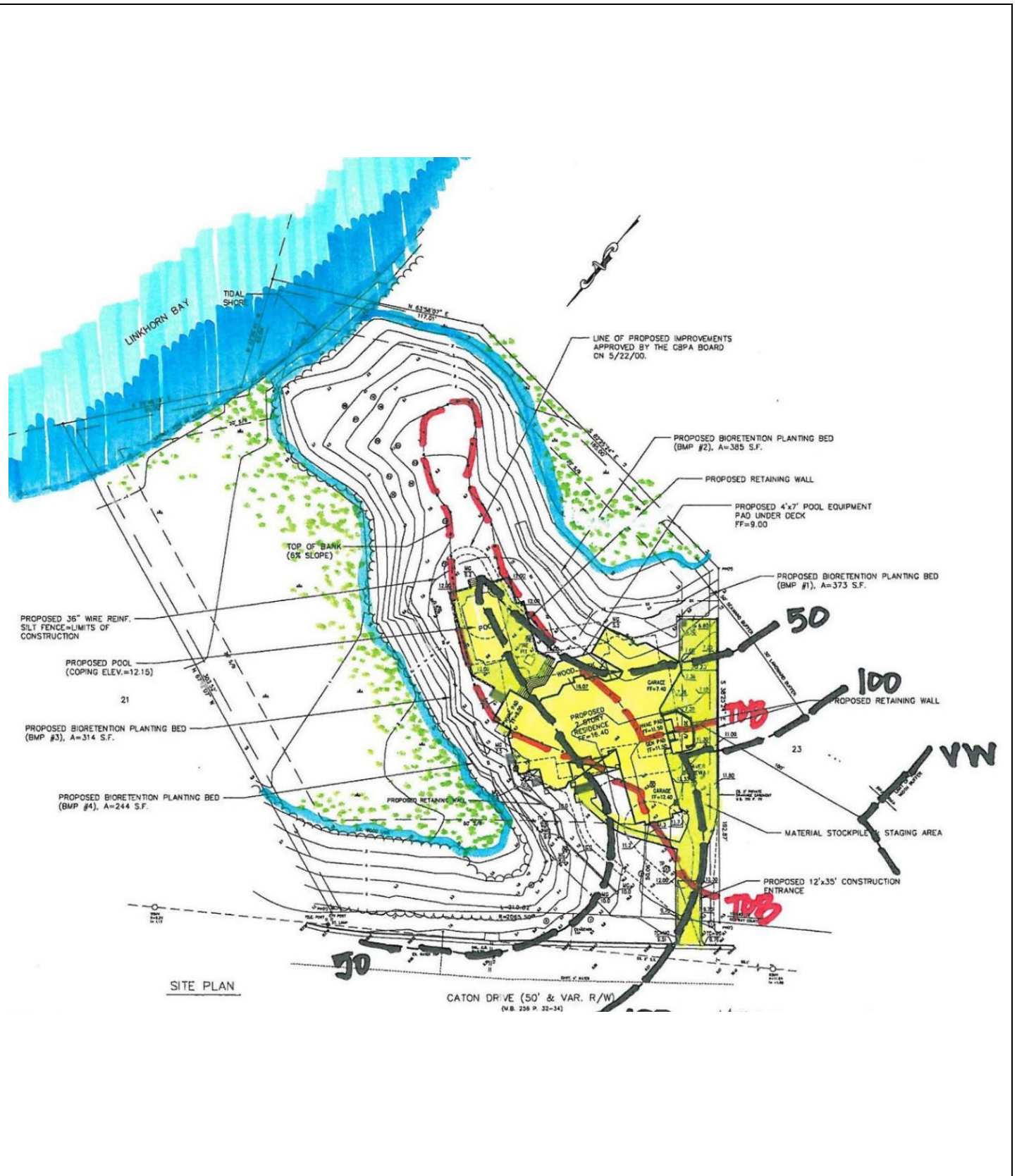
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

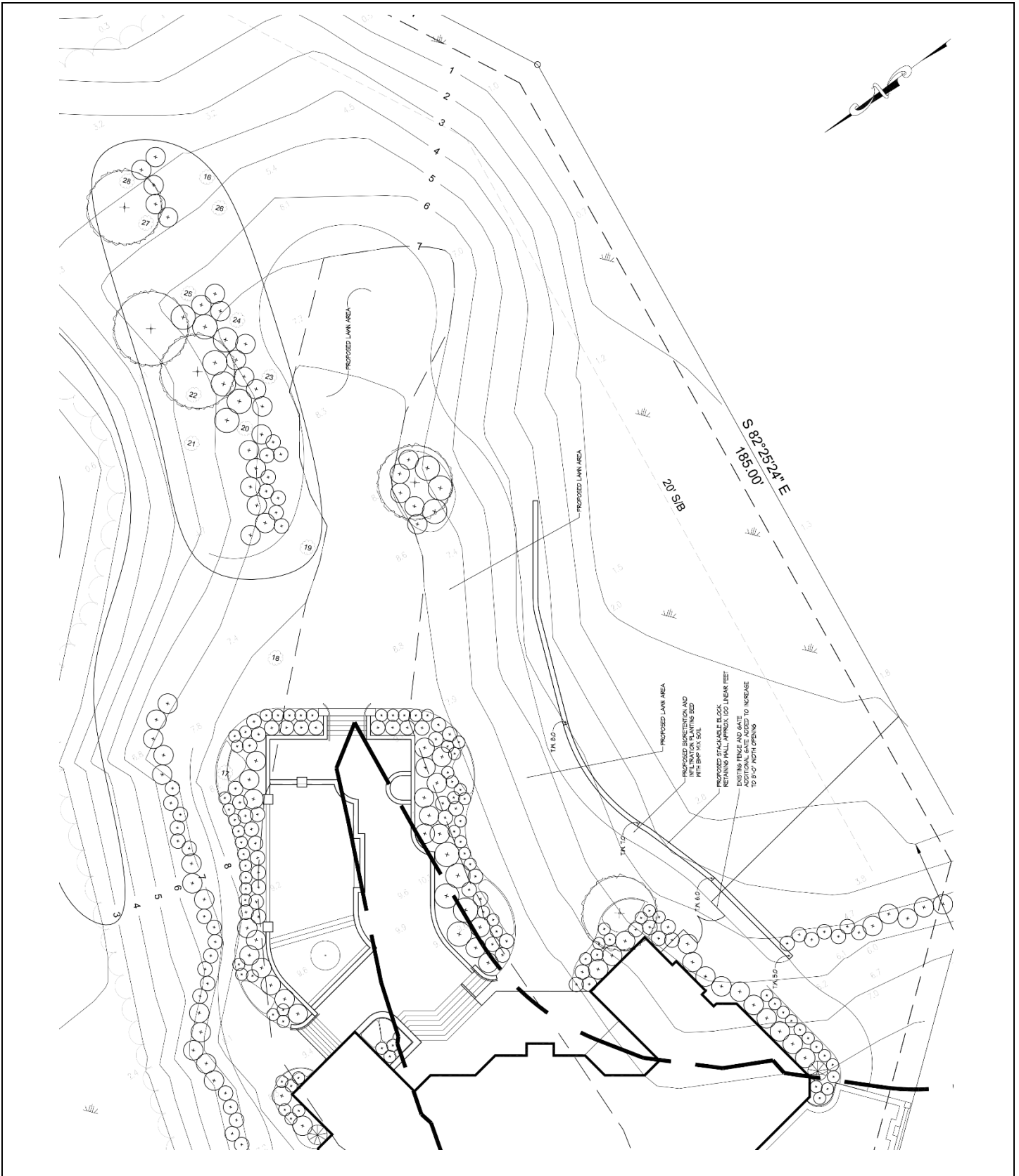




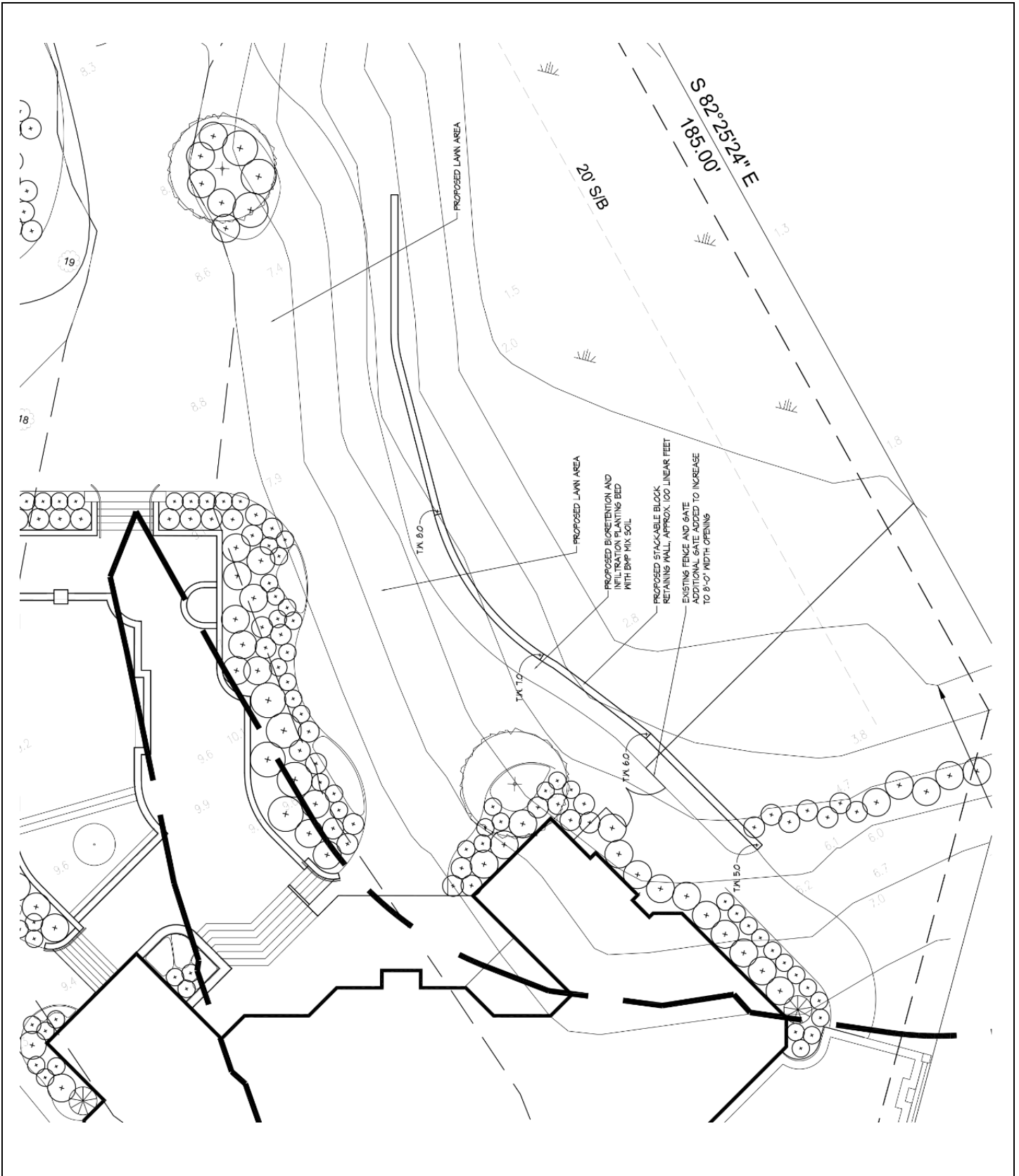
March 25, 2013 CBPA Board Variance Exhibit



CBPA Exhibit – Proposed Improvements



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 Sara Hewitt

Does the applicant have a representative? Yes No

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

Billy Garrington

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

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

- If **yes**, list the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

² "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.

John Watson

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.
RCA Paving or Cornerstone Site Works
-
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.
Siska Aurland Landscape Architects, survey provided by Gallup Surveyors and Engineers
-
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
 Sara Hewitt
Print Name and Title
 Sara Hewitt
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 **Martha M. Glasser Revocable Trust**

Agenda Item

Address **521 Wilder Road**

Public Hearing **March 27, 2023**

City Council District **District 6**, formerly Lynnhaven

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story building addition and replace driveway.

Applicant’s Agent

Billy Garrington
Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 74, Page 20
Recorded 11/15/1967

GPIN

2418-69-4221

SITE AREA

13,205 square feet or 0.303 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

13,134 square feet or 0.302 acres

EXISTING IMPERVIOUS COVER OF SITE

5,275 square feet or 40.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

5,562 square feet or 42.4 percent of site

Area of Redevelopment in RPA

2,151 square feet

Area of New Development in RPA

639 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

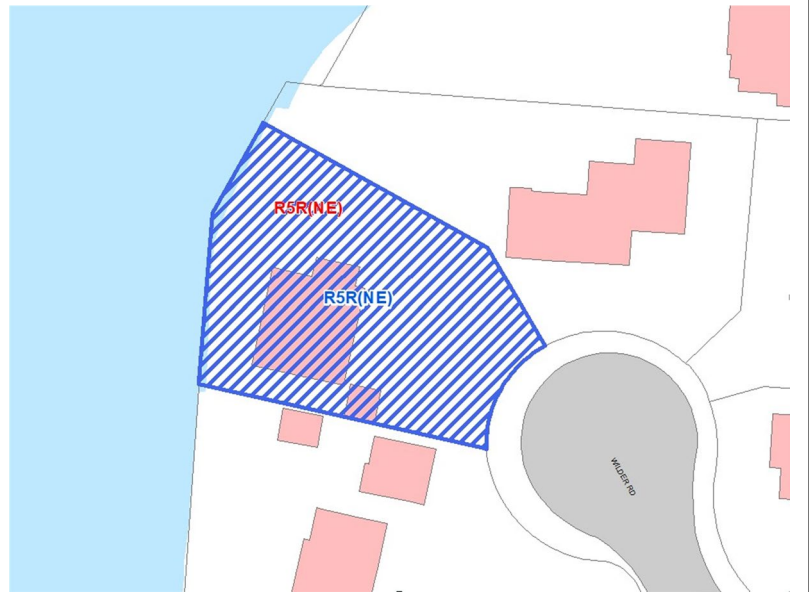
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete driveway and paver patio

Construction Details

- Permeable paver driveway – redevelopment of existing driveway
- Two-story addition with steppingstones

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The existing 12" Oak tree is within the footprint of the proposed two-story addition. Staff has accounted for the tree within the buffer restoration measures.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that permeable pavers with the driveway replacement will be provided as a best management practice for stormwater runoff mitigation.

Evaluation and Recommendation

The applicant is proposing to remove portions of the existing paver patio and paver walkway to construct an addition to the existing single-family residence as well as replace the existing concrete driveway with permeable pavers. This request constitutes approximately 2,151 square feet of redevelopment over existing impervious cover and an additional 639 square feet of new impervious cover within the Resource Protection Area (RPA). The existing dilapidated driveway is in need of repair and instead of replacing with concrete or pavers, the applicant is proposing to replace with permeable pavers to further aid stormwater runoff as well as safeguarding water quality on the lot. As for the new impervious

Martha M. Glasser Revocable Trust

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cover with this request, portions of the proposed building addition expand over existing turf area within both the seaward and the landward buffers of the RPA.

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 the Lynnhaven River watershed.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff concurs and offers that a portion of the addition to the existing single-family residence occurs within the 50' seaward buffer therefore requiring that the variance request be heard by the CBPA Board for a variance to the CBPA Ordinance.
- 2) The applicant's agent provided that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created by the applicant but necessitated by the lot being platted prior to the City's CBPA Ordinance, therefore portions of this lot are within the RPA."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover does not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff acknowledges the statement provided by the applicant's agent and offers that the encroachment of the RPA would be a permitted encroachment into the RPA buffer by administrative variance however, the encroachment may not extend into the seaward fifty (50) feet of the buffer area therefore requiring that the exception to the CBPA Ordinance be granted by the CBPA Board.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. as a result of this variance request the owner will install permeable pavers and buffer restoration in areas currently devoted to turf and even off-site treatment via the lynnhaven oyster heritage program all to benefit water quality."* Staff is of the opinion that the proposed improvements would not pose a substantial detriment to water quality given layout on the lot within the RPA of the Chesapeake Bay watershed. Although permeable pavers are treated as impervious cover, Staff is of the opinion the use of permeable pavers instead of concrete with the driveway redevelopment benefit the water quality of the Chesapeake Bay.
- 5) *"Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and offers the following recommended conditions below.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **639 square feet x 200 percent = 1,278 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 5 understory trees, 6 large shrubs, and 9 small shrubs.**

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

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.

- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided, and a site plan submitted to the Development Services Center for review and approval.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated November 4, 2022, prepared by Gallup Surveyors & Engineers, signed November 4, 2022 by David R. Butler. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

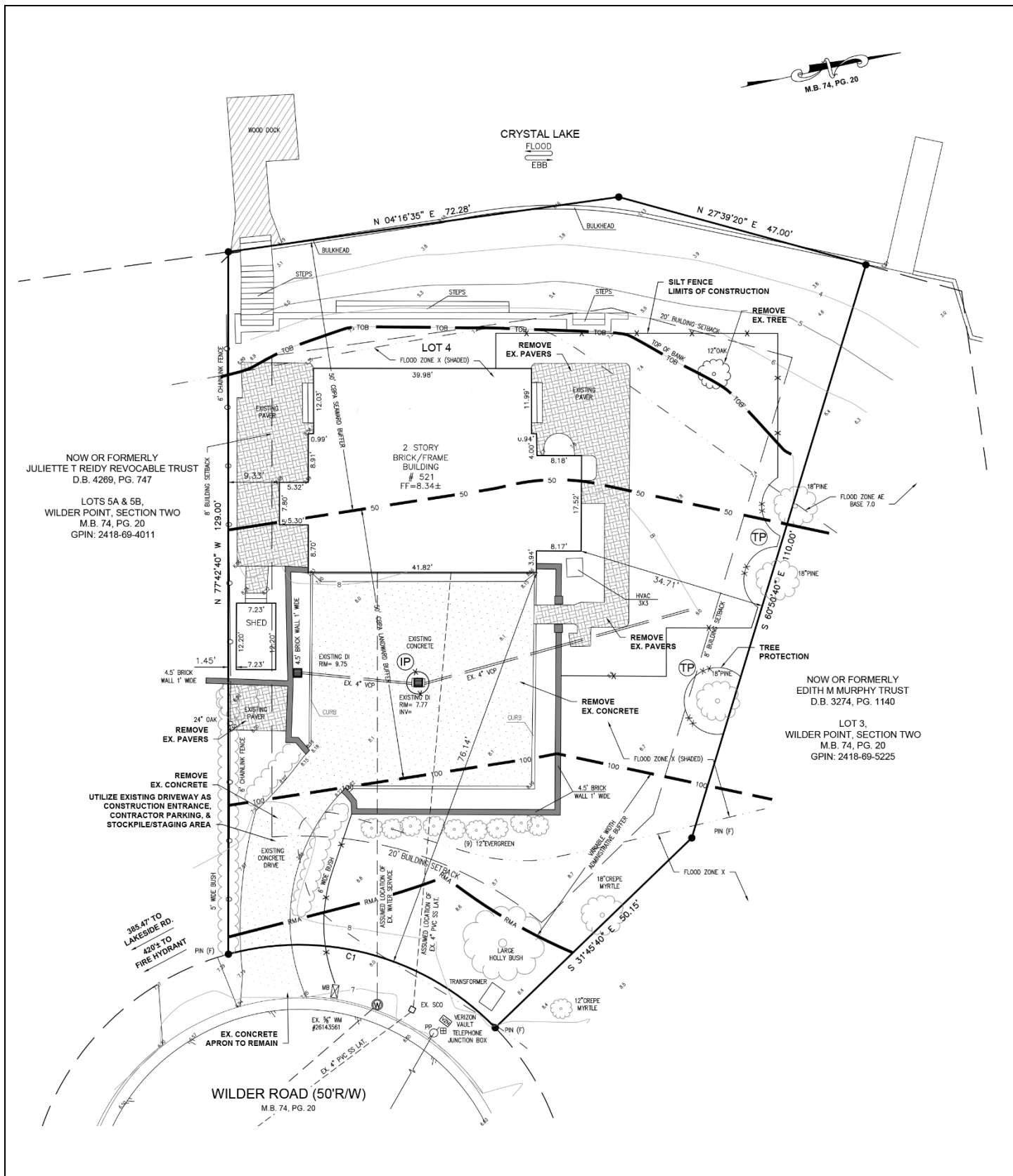
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

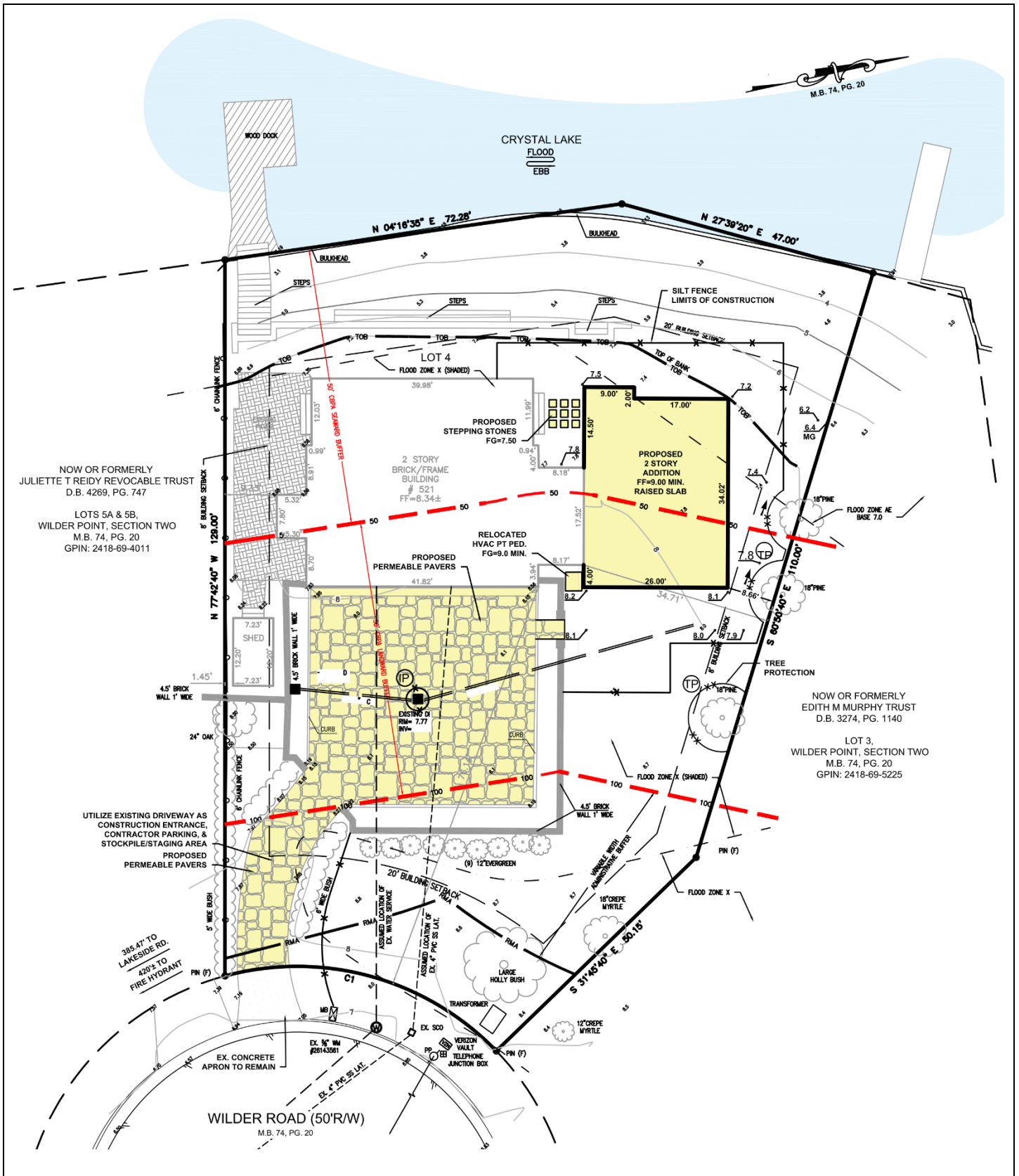
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement

VB
City of Virginia Beach
Planning & Community
Development

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 MARTHA GLASSER

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.
Billy Garriington

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-subsidiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

² "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.

Revised 11.09.2020 1 | Page

Disclosure Statement

Disclosure Statement

VB
City of Virginia Beach
Planning & Community
Development

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.

Steve Walters

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.

Revised 11.09.2020 2 | Page

Disclosure Statement

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.

Gallop Surveyors

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

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

Applicant Signature

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

Martha Glasser

Applicant Signature _____

Print Name and Title MARTHA GLASSER

Date JANUARY 31, 2023

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

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

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

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

Revised 11.09.2020

3 | Page

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Applicant & Property Owner **Alyson & Michael Yaary**
 Address **1360 Penguin Circle**
 Public Hearing **March 27, 2023**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, swimming pool and deck, retaining walls with steps, and driveway reconfiguration.

Applicant's Agent

Billy Garrington
 Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 7, Page 192
 Recorded 10/13/1926

GPIN

2418-31-4438

SITE AREA

36,063 square feet or 0.828 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

33,853 square feet or 0.777 acres

EXISTING IMPERVIOUS COVER OF SITE

9,550 square feet or 28.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,416 square feet or 33.9 percent of site

Area of Redevelopment in RPA

3,124 square feet

Area of New Development in RPA

2,642 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

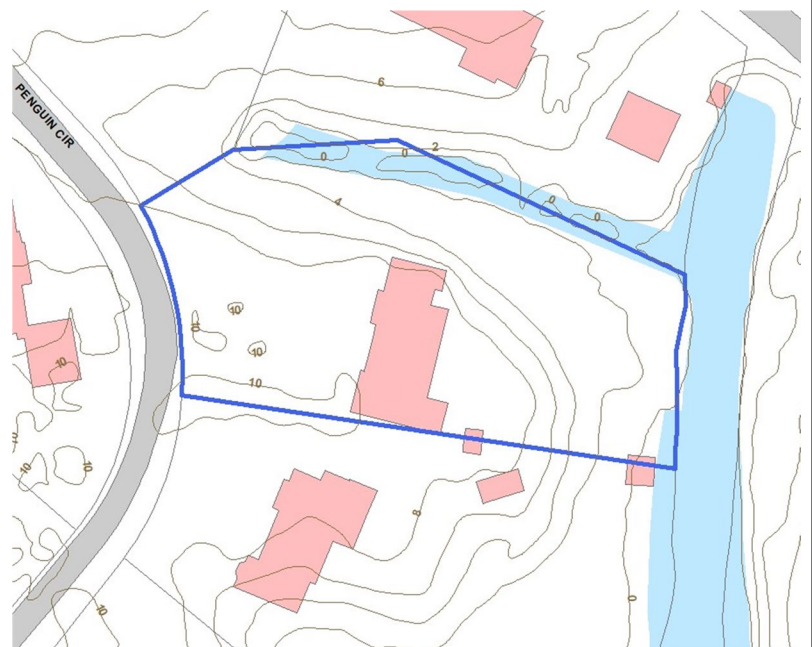
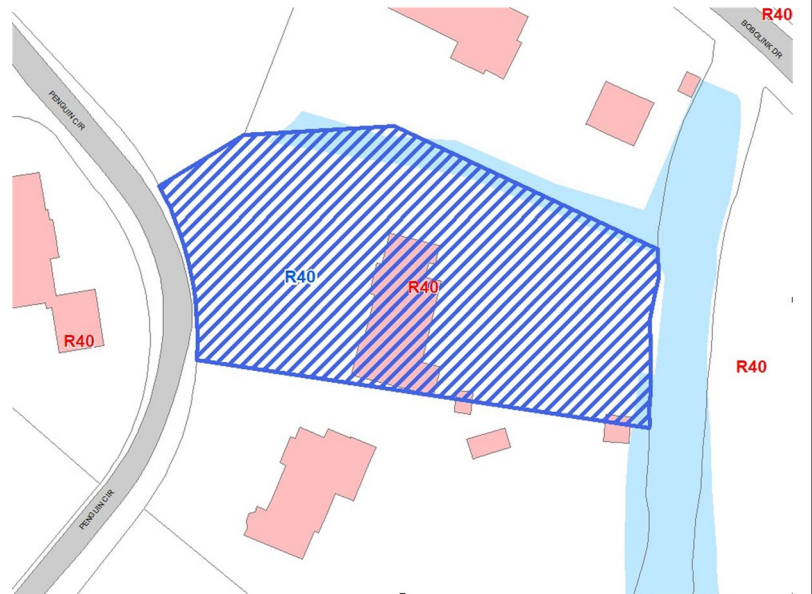
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Asphalt driveway
- Retaining walls, planting beds, and portion of deck
- Framed shed

Construction Details

- Building addition off the southern portion of the residence
- Tiered retaining walls with steps
- Swimming pool with deck surround
- New front entry with steps
- Reconfigured asphalt driveway

CBPA Ordinance Variance History

On July 26, 2004, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of swimming pool with concrete decking and retaining wall with the following conditions:

- 1. A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
- 2. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
- 3. Construction limits shall lie a maximum of 15' seaward of improvements.*
- 4. The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
- 5. All stormwater from existing and proposed impervious cover shall be conveyed to structural stormwater management facilities*
- 6. If and when the shoreline is rehardened, 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 no further than 4 ft. seaward of the existing bulkhead. Said condition shall be so noted on the site plan.*
- 7. Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
- 8. **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 \$84.00 and is based on 25% of the proposed new impervious cover. Said payment shall provide for the equivalent of an approximate 91 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
- 9. Buffer restoration shall be installed equal to 200% of new impervious cover (1,092 sq. ft.) and shall utilize bayscape landscaping principles. The restoration shall be installed along the area of highly erodible soils at and above the 5 ft. contour. Said restoration shall be installed prior to final building inspection. 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. *A minimum of ten (10) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*
12. *The conditions and approval associated with this variance are based on the site plan dated June 16, 2004, prepared by Gallup Surveyors and Engineers Ltd.*
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 October 24, 2005, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story garage, covered front entrance addition, one story addition in rear of residence, two-story addition in rear of residence, 20' x 40' pool with associated concrete decking, wood deck, and first and second story covered deck with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *A wire reinforced silt fence shall be installed along the seaward portions of this project prior to any land disturbance, inclusive of demolition. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed elsewhere on the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent or temporary soil stabilization 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 existing and 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) on the eastern portion of the site. 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. *The existing top-of-bank shall be shown on the revised site plan.*
9. *All improvements shall be built into the slope with no perimeter fill permitted.*
10. *A retaining wall will be required for the pool and shall be shown on the revised plan. Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
11. *The pool shall be constructed prior to or concurrent with the residential additions.*
12. *Under deck treatment of sand and gravel shall be installed.*
13. ***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 \$232.00 and is based on 25% of the*

proposed impervious cover. Said payment shall provide for the equivalent of an approximate 253 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.

- 14. Buffer restoration totaling 3,039 sq. ft. shall be installed which is equal to 300% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
- 15. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
- 16. A minimum of twenty-six (26) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species. The required trees shall be spaced over the entire lot and not grouped along the sides of the property.*
- 17. The conditions and approval associated with this variance are based on the site plan dated September 14, 2005, prepared by Site Improvement Associates Inc.*
- 18. The 19 conditions associated with this variance approval will supersede the conditions of July 26, 2004 CBPA variance.*
- 19. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The October 24, 2005 Board granted variance has been acted upon and portions of the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

Shoreline

The 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

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 an expanded footprint area to two building additions, previously approved by the Chesapeake Bay Preservation Area (CBPA) Board off the southern portion of the existing single-family residence as well as construct two retaining walls and a new swimming pool with associated pool decking off the rear of the residence. Additionally, the applicant desires to redevelop and slightly reconfigure the existing driveway and front entry area.

The redevelopment of the lot decreases the overall impervious cover within the 100-foot RPA buffer by approximately 1,159 square feet from the 2005 approved variance. The majority of new impervious cover associated with this variance request occurs due to the expanded footprint of the building additions, new retaining walls, and portions of the proposed swimming pool and pool decking that has been reoriented from what was initially approved in 2005, resulting in approximately 2,642 square feet of new impervious cover. Staff offers that the redevelopment and reduction of impervious cover on the lot provides merit towards meeting the performance standards set forth in the Chesapeake Bay Preservation Area (CBPA) Ordinance to promote infiltration of stormwater and a means of minimizing impervious cover [City Code, Appendix F, Sec. 106 (A)(3)(c)(3)].

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1926 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement in keeping with the previous 2005 variance (over proposed improvements) and retreating the pool and patio area upland of the 50' Seaward Buffer."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding towards the findings of the CBPA Ordinance with regard to impervious cover and encroachment within the 100' 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offer stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be added to facilitate treatment from the new improvement for the betterment of the bay."* Staff is of the opinion that the proposed improvements would not pose a substantial detriment to water quality given the location and layout of the proposed improvements on the lot within the RPA. In addition, this variance request utilizes redevelopment to the greatest extent practicable over areas previously approved by the Board and with the proposed mitigation methods, this project provides additional benefits to the water quality of the Chesapeake Bay.
- 5) *"The proposed buffer mitigation will enhance and compliment the site. Bioretention beds will be installed between the improvements and the waterway to meet the stormwater management regulations and will be*

placed to capture and treat runoff prior to discharging into the river” as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant’s approach to ensure a no net increase in nonpoint source pollution load is acceptable as stated in the Water Quality Impact Assessment (WQIA). The applicant has provided a preliminary landscape plan showing extensive landscaping and buffer restoration throughout the most environmentally sensitive portions of the lot.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,642 square feet x 200 percent = 5,284 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: **13 canopy trees, 13 understory trees, 13 large shrubs, and 40 small shrubs.**

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

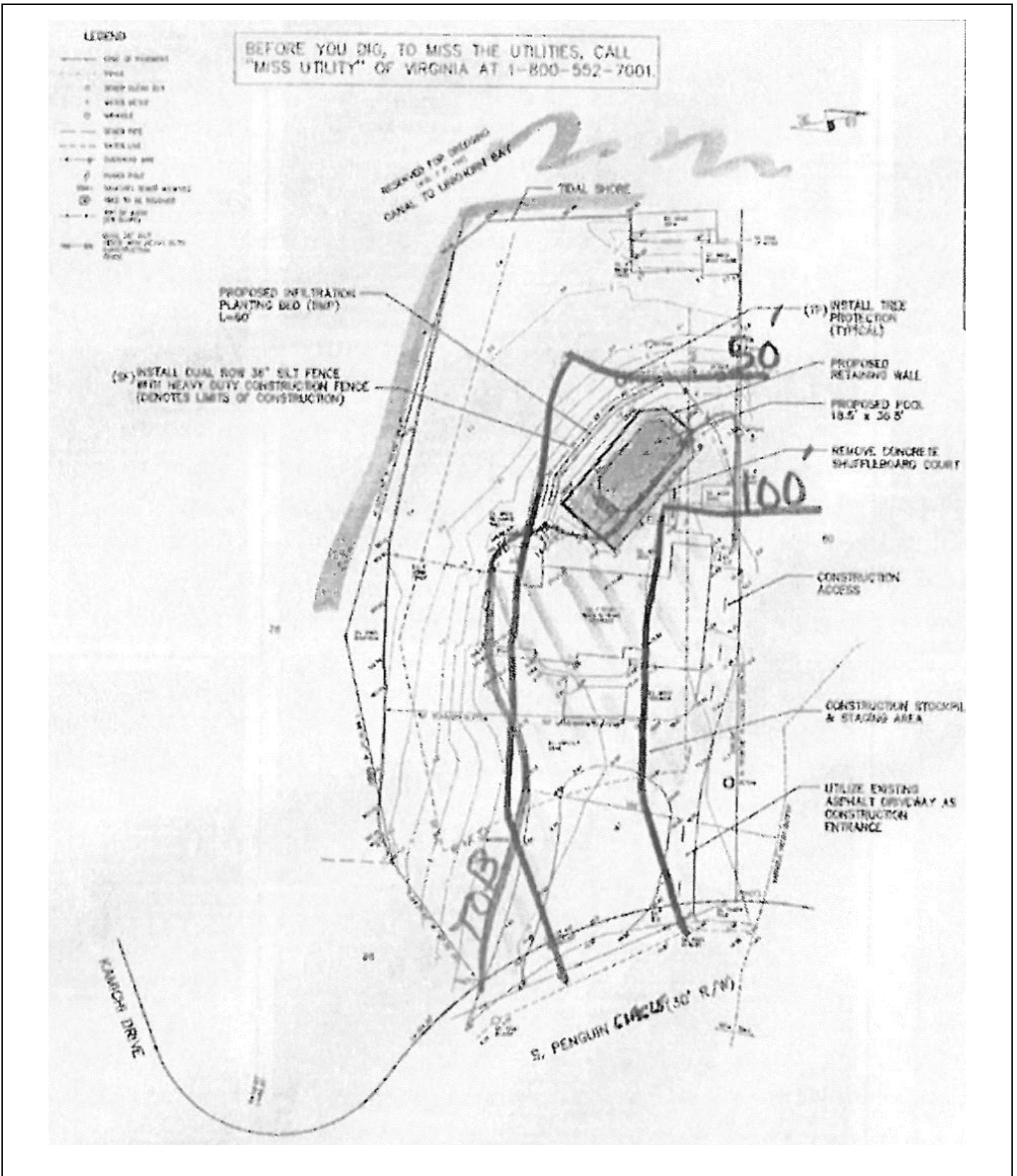
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

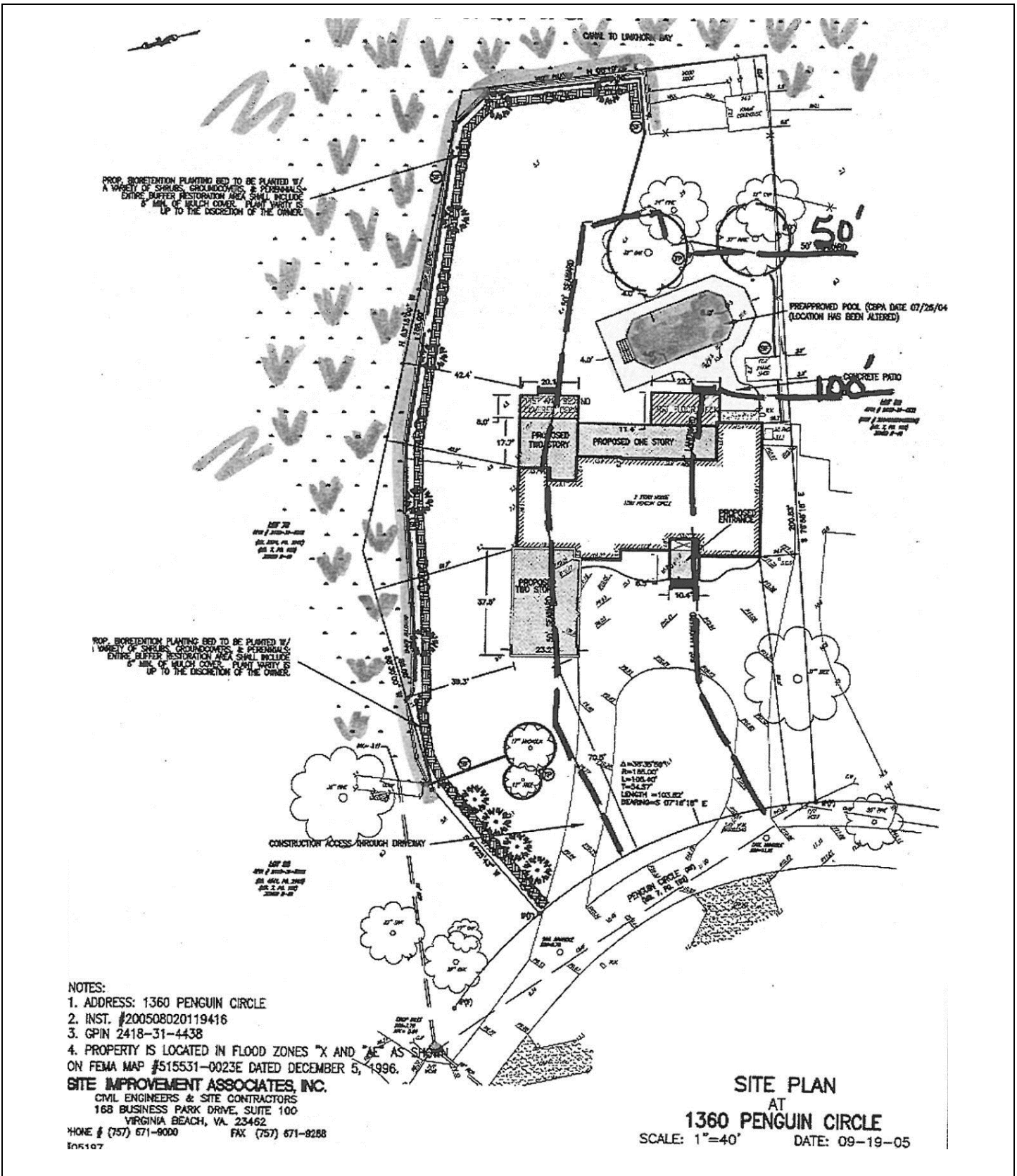
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation 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.
- 10) Construction limits shall be contained within the limits of the delineated silt fence. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted October 24, 2005 with exception to the following conditions.
 - *Condition 6: Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
 - *Condition 14: Buffer restoration totaling 3,039 sq. ft. shall be installed which is equal to 300% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
 - *A minimum of twenty-six (26) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species. The required trees shall be spaced over the entire lot and not grouped along the sides of the property.*
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated June 28, 2022, prepared by WPL, signed January 27, 2023 by Eric A. Garner. 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







NOTES:

1. ADDRESS: 1360 PENGUIN CIRCLE
2. INST. #200508020119416
3. GPIN 2418-31-4438
4. PROPERTY IS LOCATED IN FLOOD ZONES "X" AND "AE" AS SHOWN ON FEMA MAP #515531-0023E DATED DECEMBER 5, 1996.

SITE IMPROVEMENT ASSOCIATES, INC.

CIVIL ENGINEERS & SITE CONTRACTORS
 168 BUSINESS PARK DRIVE, SUITE 100
 VIRGINIA BEACH, VA. 23462

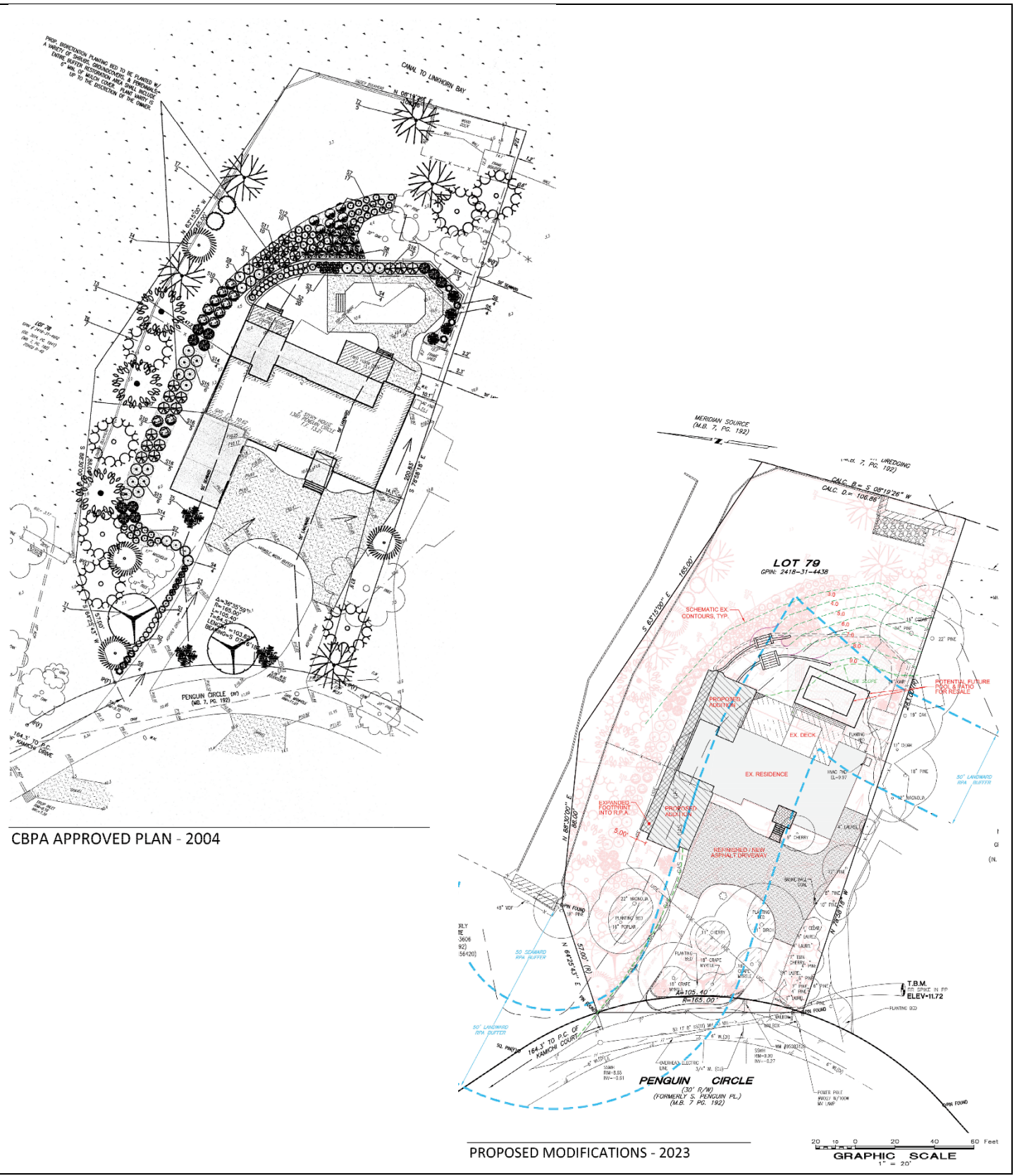
PHONE # (757) 671-9000 FAX (757) 671-9288

10K107

SITE PLAN
 AT
1360 PENGUIN CIRCLE

SCALE: 1"=40' DATE: 09-19-05

CBPA Exhibit – Improvements Comparison with 2004 CBPA Exhibit



CBPA APPROVED PLAN - 2004

PROPOSED MODIFICATIONS - 2023

Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Alyson Gross & Michael Yaary

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-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

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.

Independent Trustees, Inc, a Virginia corporation

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.


Aaron Cooper - Architect / WPL - Landscape Architect

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

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.

M G Matthews Construction, 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.

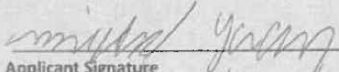
WPL

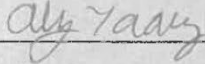
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**

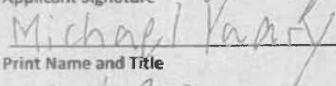
- If **yes**, identify the name of the attorney or firm providing legal services.

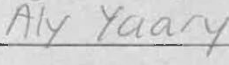
Applicant Signature

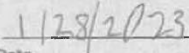
I certify that all of the information contained in this Disclosure Statement Form is complete, true, and accurate. I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein two weeks prior 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


 Applicant Signature


 Print Name and Title


 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	

3 | Page



Applicant & Property Owner **Rebecca C. Provost**
 Address **909 Muller Lane**
 Public Hearing **March 27, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool, patio, and pool house with pavilion.

Applicant’s Agent

Billy Garrington
 Government Permitting Consultant, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 69, Page 43
 Recorded 12/03/1965

GPIN

1498-13-2616

SITE AREA

49,004 square feet or 1.125 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

44,890 square feet or 1.031 acres

EXISTING IMPERVIOUS COVER OF SITE

8,775 square feet or 19.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,632 square feet or 24 percent of site

Area of Redevelopment in RPA

1,438 square feet

Area of New Development in RPA

2,782 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

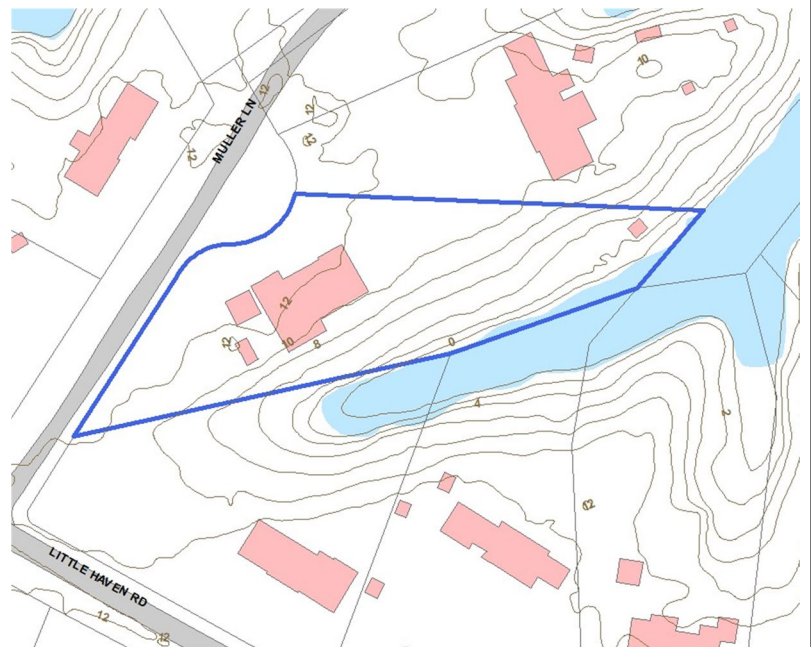
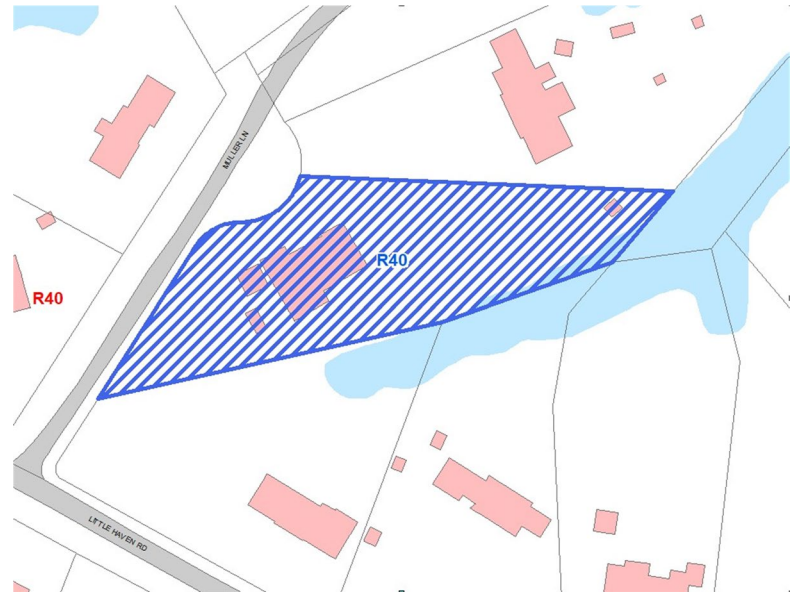
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood deck

Construction Details

- Replace deck in the same footprint and relocate hot tub area
- Swimming pool with paver patio surround and fire pit area
(Board of Zoning Appeals variance required)
- Pool house with covered pavilion

CBPA Ordinance Variance History

On June 27, 2011, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the expansion of the existing deck and steps 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 10 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 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.*
5. *Construction limits shall lie a maximum of 10' outboard of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
7. *If and when the shoreline is hardened / rehardened, 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, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
8. *Within the RPA, 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, may not be removed.*
9. *Where 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.*

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 sealed May 19, 2011 by Stephen A. Romeo, L.S., prepared by Vanasse Hangen Brustlin, Inc.*
13. *The revised site plan must provide the existing impervious cover and post impervious cover figures for the site, both in square footage and percentage of the site area above water, marsh, and wetlands. All RPA features shall be shown on the revised plan.*
14. *Under deck treatment of sand and gravel shall be installed, along with timber ties, for the proposed deck expansion and installed beneath the existing deck if applicable.*
15. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
16. ***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 \$237.00 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 259 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
17. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (2,068 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located 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" – 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 within 180 days from this date of approval, June 27, 2011.*

The June 27, 2011 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated footprint of the proposed pool house and sit immediately adjacent to the proposed structure.

Stormwater Management Methodology

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

Evaluation and Recommendation

This variance request includes the construction of a new swimming pool with a paver patio surround and associated pool house and covered pavilion. Additionally, the applicant proposes to redevelop the existing deck in the same footprint. As proposed, the request will add approximately 2,782 square feet of new impervious cover in the Resource Protection Area (RPA) with all new impervious cover located within the 50-foot landward and variable width buffer with the overall impervious cover of the lot increasing from 8,775 square feet to 10,632 square feet or 19.6 percent to 24 percent of the total lot area above water and wetlands. Although the dimensions of the proposed swimming pool (18 feet x 36 feet) are slightly larger than the average residential swimming pool (16 feet x 32 feet), Staff is of the opinion that the applicant has situated the swimming pool on the lot in the most practical location given the presence of the RPA feature, existing natural features of the shoreline topography, and platted shape of the property.

Staff is of the opinion that the applicant has taken measures to provide a layout cognizant of the CBPA Ordinance by keeping all major improvements out of the seaward buffer portion of the RPA and has indicated that bioretention planting beds will be constructed as a means to prevent an increase in nonpoint source pollution load in the Chesapeake Bay Watershed. Given the buffer restoration measures proposed and the measures taken by the applicant to situate the proposed improvements outside of the seaward buffer, Staff supports the encroachment as conditioned below. Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1965 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.

- 3) The variance is the minimum necessary to afford relief because *“we have designed the new improvement upland of the resource to the avoid impacts below the 6 slope and outside of the 50' seaward buffer.”* Staff concurs with the statement provided by the applicant’s agent and adds that all new impervious cover with this request is situated in the landward and variable width buffer portions of the RPA primarily in areas currently devoted to turf.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site does not offer stormwater mitigation for the bay. If approved, the proposed stormwater mitigation will be added to facilitate treatment from the new improvement for the betterment of the bay.”* Staff is of the opinion that the location and the size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief. The applicant has provided a layout cognizant of the environmental factors posed on the entirety of the lot completely encumbered by the RPA.
- 5) *“The proposed buffer mitigation will enhance and compliment the site. Bioretention beds will be installed between the improvements and the waterway to meet the stormwater management regulations and will be placed to capture and treat runoff prior to discharging into the river”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the bioretention planting beds and buffer restoration on this heavily wooded lot and minimal tree removals proposed with this request will further ensure a no net increase in nonpoint source pollution load in the bay.

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

Recommended Conditions

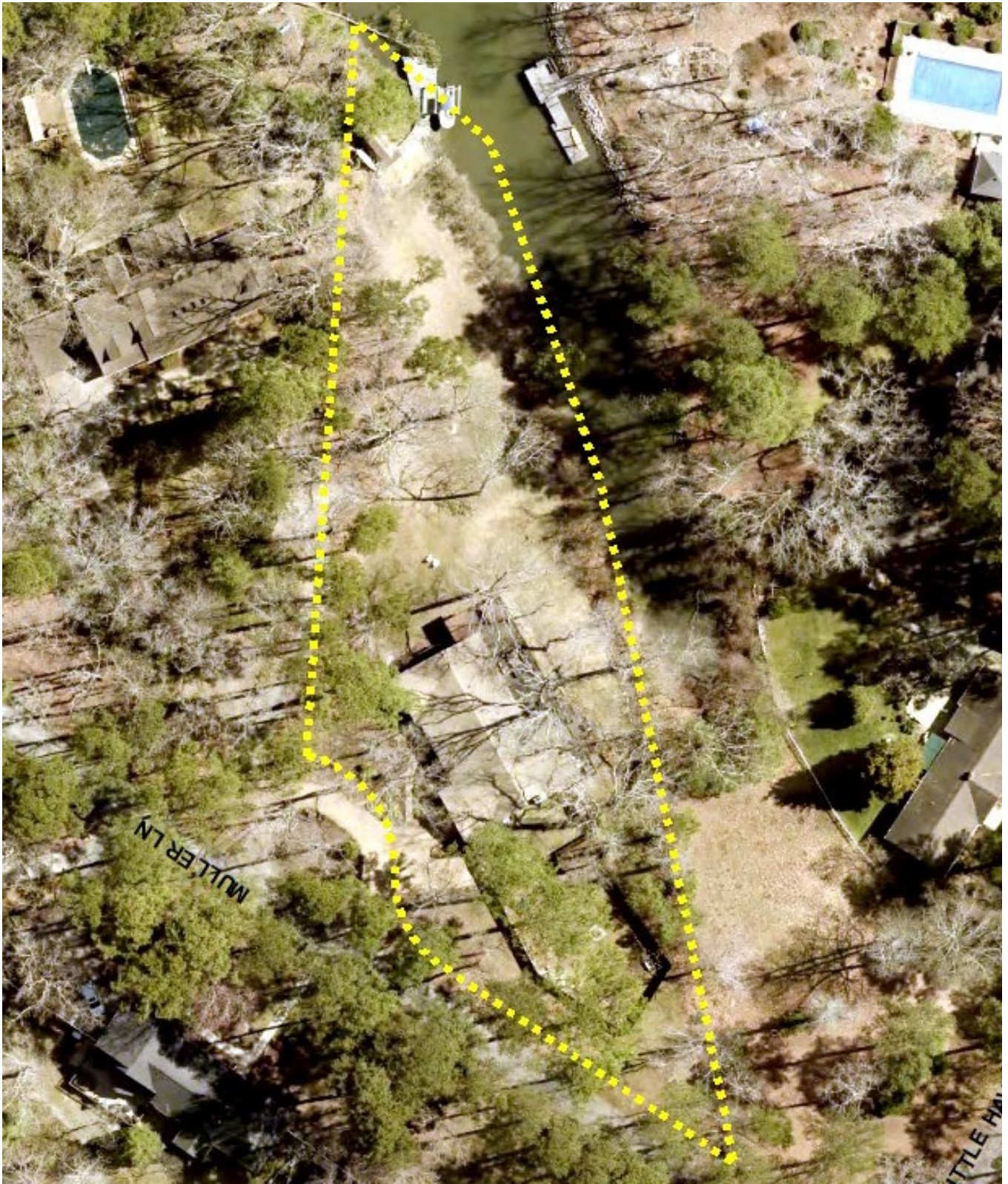
- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,512 square feet x 200 percent = 5,024 square feet.**

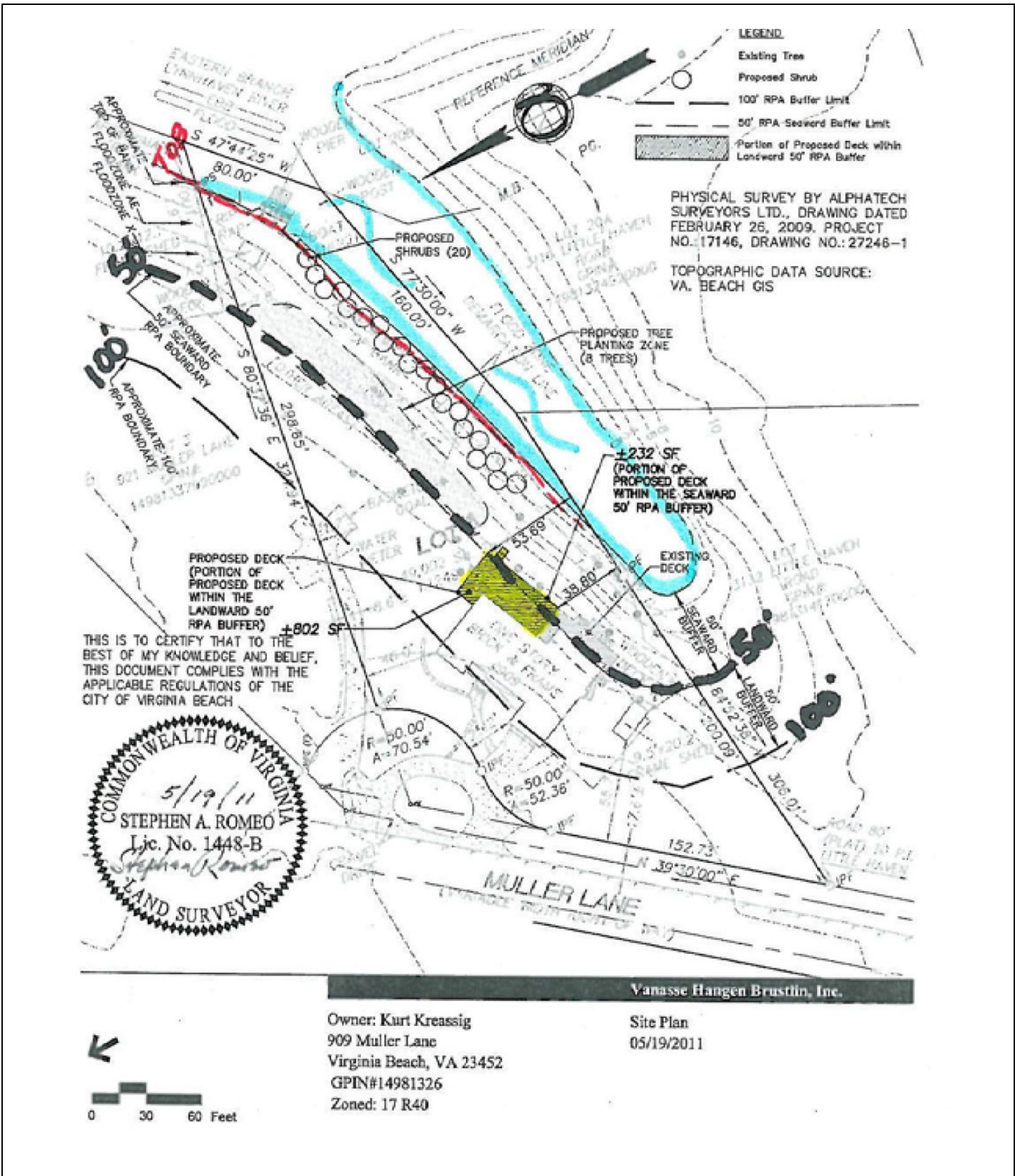
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs.**

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

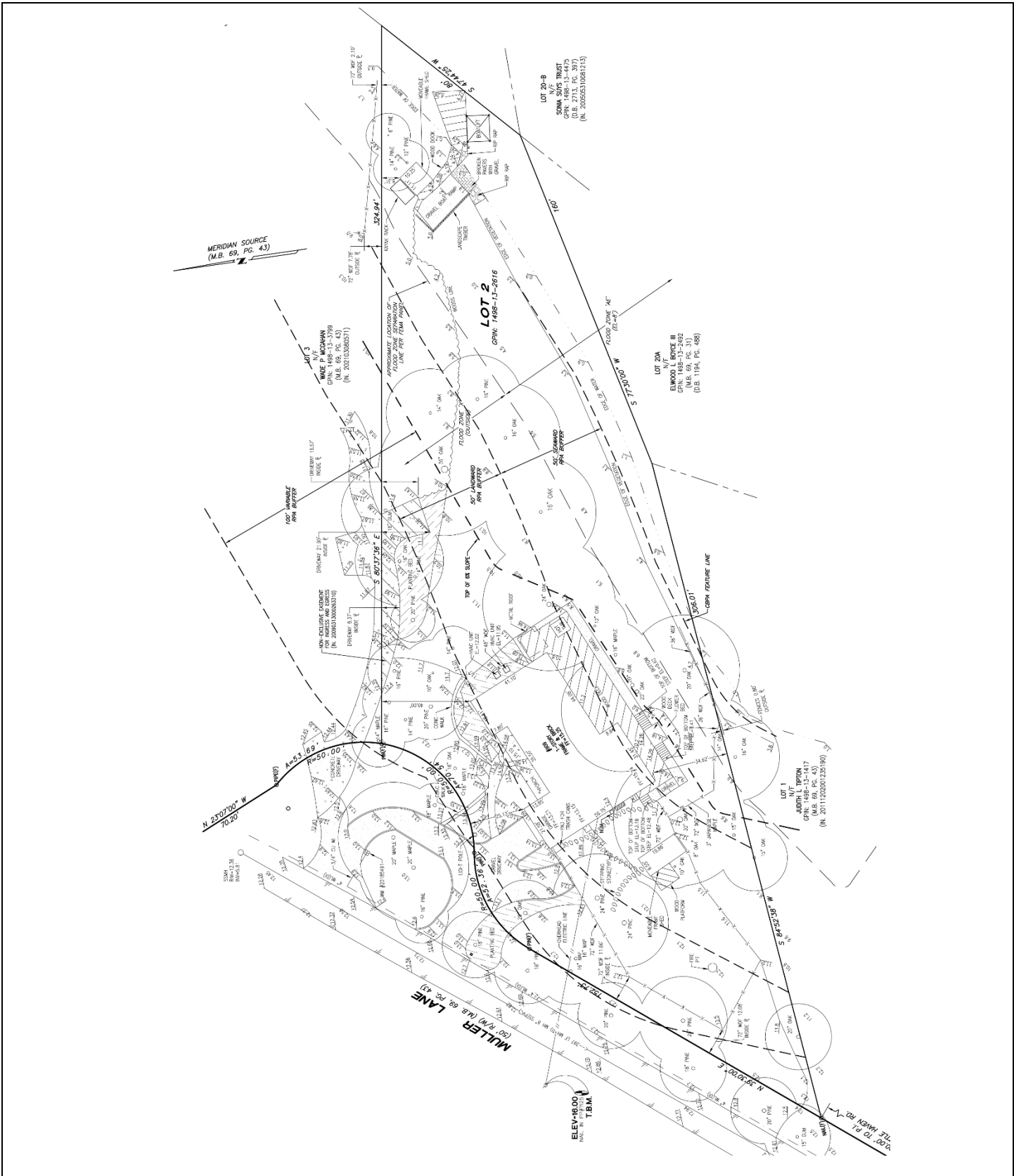
- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited 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 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) This variance and associated conditions **are in addition** to the conditions of the Board variance granted June 27, 2011.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated August 12, 2022, prepared by WPL, signed February 1, 2023 by Eric A. Garner. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

Site Aerial

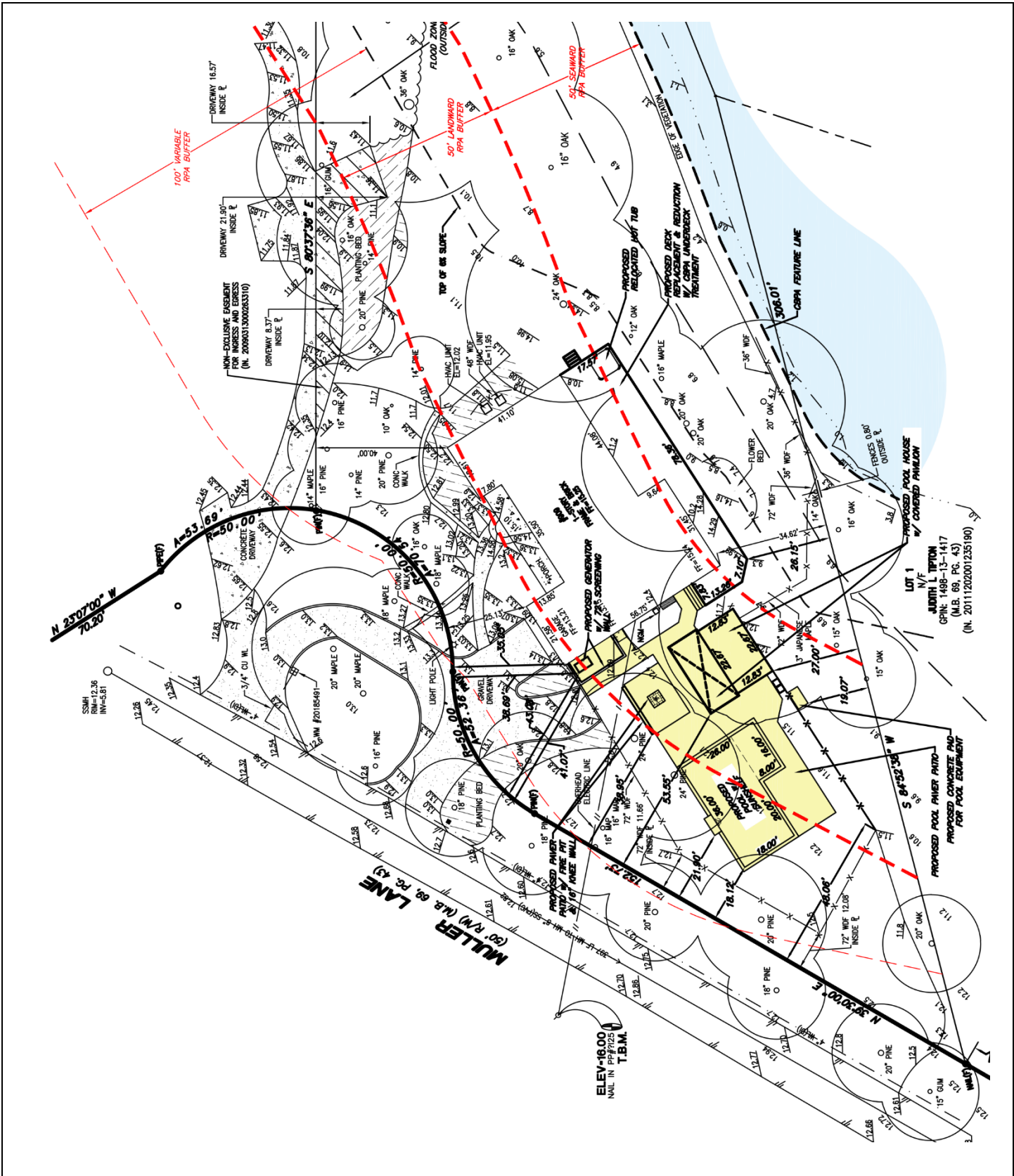




CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement



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

Applicant Disclosure

Applicant Name Rebecca C Provost

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-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

² "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.

Monarch Bank

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

Yes **No**

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

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

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

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

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

WPL - Landscape Architect

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.

Visionscapes Land Design, Inc. - Shawn Anderson

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.

Rebecca C. Provost

Applicant Signature

Rebecca C. Provost

Print Name and Title

1/31/23

Date

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

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **McGoff Revocable Living Trust**
 Address **1371 W. Little Neck Road**
 Public Hearing **March 27, 2023**
 City Council District **District 8**, formerly Beach

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a driveway expansion, spa area, and steppingstone walkways with steps.

Applicant’s Agent

Jess Nelson, PLA
 Painted Fern Landscape Architects

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 91, Page 16
 Recorded 05/1971

GPIN

1488-38-9075

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

133 square feet

Area of New Development in RPA

780 square feet

Location of Proposed Impervious Cover

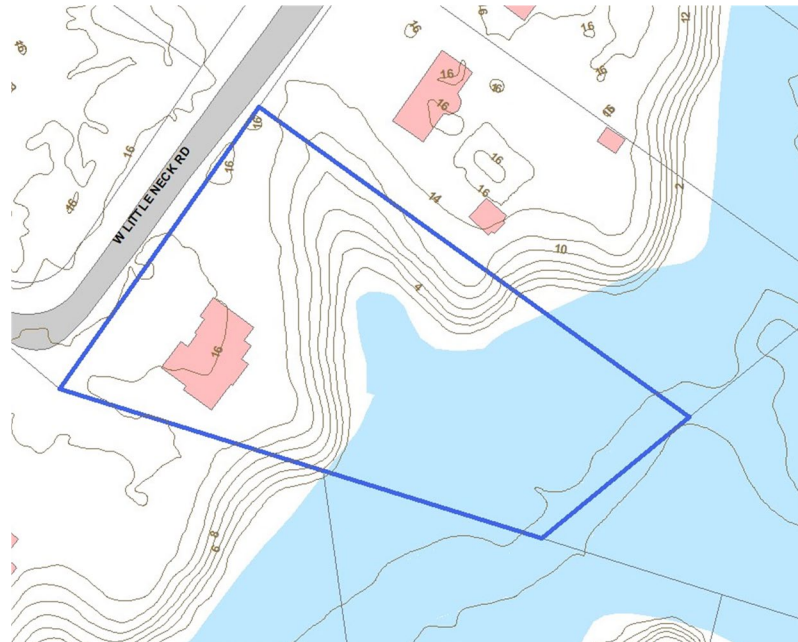
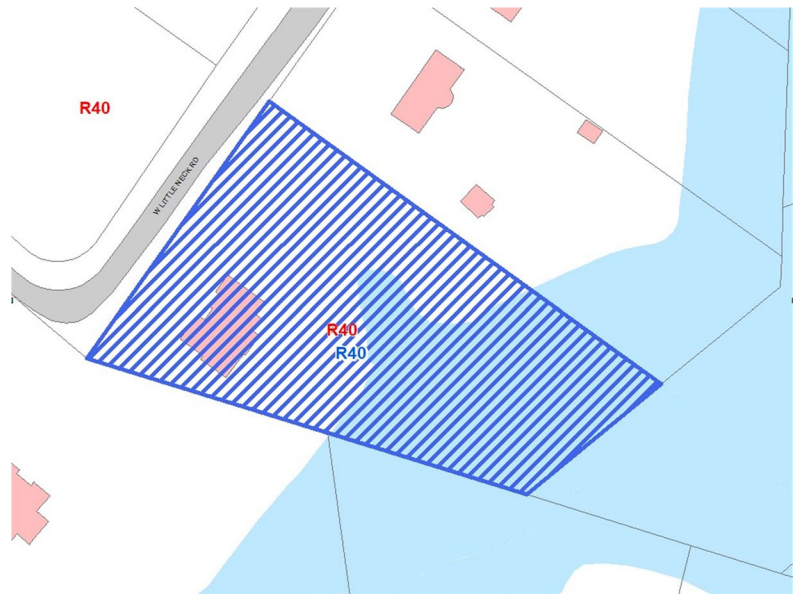
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Driveway expansion area with steppingstone walkway to existing deck with new steps
- Steppingstone walkway to new wood steps for dock access

CBPA Ordinance Variance History

On November 26, 2001, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence, concrete driveway, and wood deck with the following conditions:

1. *Dual erosion and sedimentation controls shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover is established. In addition, a temporary chain link fence shall be installed adjacent to said E & S controls. The chain link fence shall remain in place during the duration of construction.*
2. *All stormwater associated with impervious cover shall be conveyed to structural stormwater management facilities.*
3. *Tree compensation shall be at a 2:1 ratio.*
4. *All area outside limits of construction shall remain in a natural state, including the forest floor (leaf litter) left intact, and shall be so noted on the site plan.*
5. *Construction limits shall lie a maximum of 15 feet outboard of all improvements. No portion of any limits of construction shall lie below the top-of-bank.*
6. *Under deck treatment of sand and gravel shall be installed.*
7. *Buffer restoration shall incorporate bayscape landscaping principles and a separate landscape plan shall be submitted at the time of site plan review. Said restoration shall be equal to the amount of impervious cover. Restoration may be inclusive of the area seaward of the limits of construction.*
8. *If and when the shoreline is hardened, a rip-rap revetment shall be installed in lieu of a vertical retaining structure (timber bulkhead) and shall be so noted on the site plan.*
9. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The November 26, 2001 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)

Rappahannock Series (deep and poorly drained soils)

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

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

McGoff Revocable Living Trust

Agenda Item 8

Page 104

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily 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 Chesapeake Bay Preservation Area (CBPA) variance request expands the existing driveway to provide easier parking and maneuverability when entering and leaving the property. In addition to the driveway expansion, a steppingstone walkway is proposed along the side of the residence to connect the new driveway area to the existing wood deck off the rear and side of the deck. The existing wood deck will remain, but new steps and an elevated planter will be constructed along the seaward side of the structure. Given the existing topography in the rear yard – grade elevations ranging from approximately fifteen (15) feet above sea level at the existing deck to approximately four (4) feet above sea level along the shoreline, the applicant proposes a steppingstone path and wooden step walkway to the existing dock for safety. As a result, this variance request introduces approximately 783 square feet of new impervious cover within the Resource Protection Area (RPA) on the lot and Staff is of the opinion that the proposed improvements would not cause a substantial detriment to water quality of the Chesapeake Bay.

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) The applicant's agent provides that *"granting a variance request in this circumstance would not confer privileges to the applicant which have been denied to other property owners within the CBPA Overlay."* Staff concurs and offers that the proposed improvements address safety concerns regarding access to the existing residence and a single accessible accessway to the water.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is necessitated by the fact that this lot was platted prior to the adoption of the City's CBPA Ordinance."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"aside from modest dock access, proposed improvements are outside the Seaward Buffer. The proposed placement of improvements is minimal and due to the proximity of their home within the RPA. While the proposed improvements increase their overall impervious surface in the RPA, they are only at 12% coverage for their lot, and they are maintaining the natural negated state of their entire shoreline."* Staff acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding towards the findings of the CBPA Ordinance with the proposed size and layout of the improvements.
- 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 existing RPA buffer on this lot is comprised of canopy trees, forest floor and a small amount of eroding soil. All proposed improvements inside the 50' Seaward Buffer are the minimal amount to afford*

safe passage to existing dock. This request will require the establishment of additional vegetation within the buffer to help address minor amount of erosion and bare soil as well as mature and treatment of runoff from the proposed improvements. This request will not be injurious to the neighborhood and with the addition of vegetation, will not be a detriment to water quality as the applicant is mitigating impacts within the buffer to help with the increase in runoff generated by the proposed improvements.” Staff is of the opinion that the proposed improvements would not pose a substantial detriment to water quality given the location and layout of the proposed improvements within the RPA on the lot.

- 5) *“It is expected that City Staff will work with the applicant to ensure that landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with creative drainage solutions which include additional landscaping to aid in slowing the velocity of stormwater leaving the site while also allowing for the absorption of any additional runoff”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated January 31, 2023, prepared by Painted Fern Landscape Architecture, signed January 31, 2023 by Jessica L. Nelson. 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. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **780 square feet x 200 percent = 1,560 square feet**. Said buffer restoration plan shall be submitted to the Department of Planning and Community Development Chesapeake Bay Board team for review and approval prior to obtaining a building permit.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees, 8 large shrubs, and 12 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.

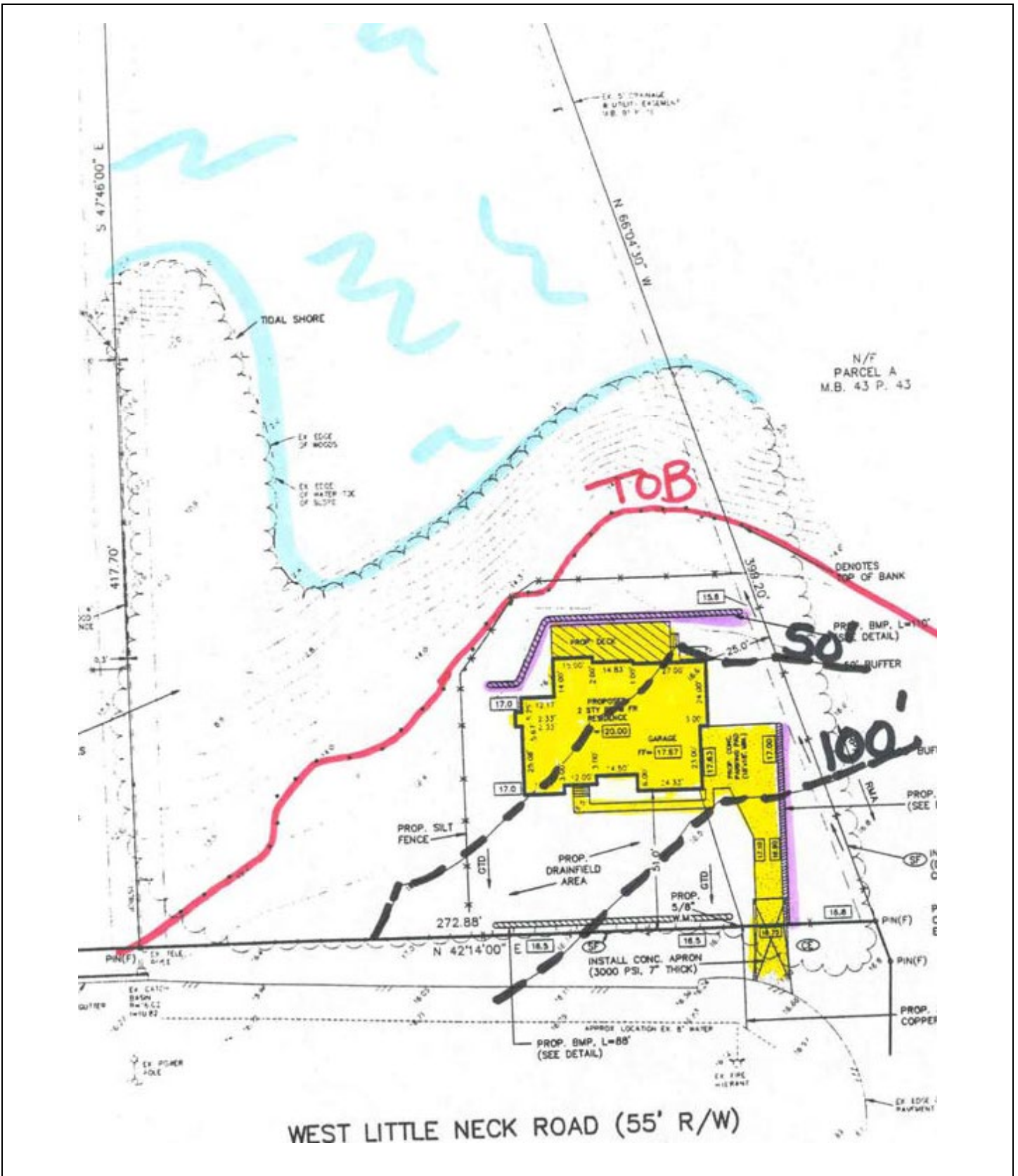
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

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 10 feet from improvements.
5. Construction limits shall be contained within the limits of the silt fence. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 26, 2001.

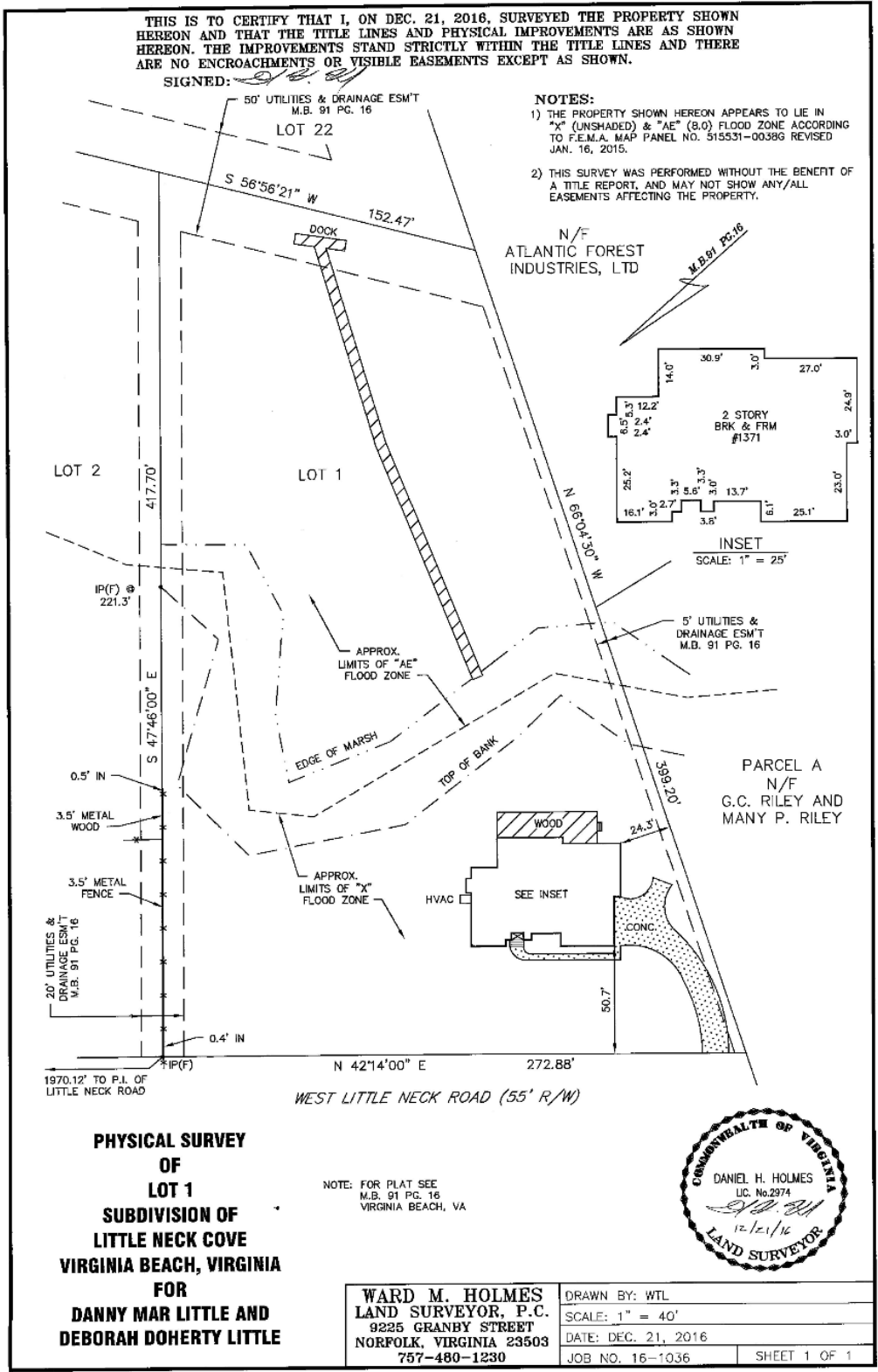
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





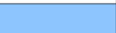
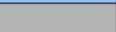

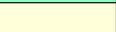
CBPA Exhibit – Existing Conditions

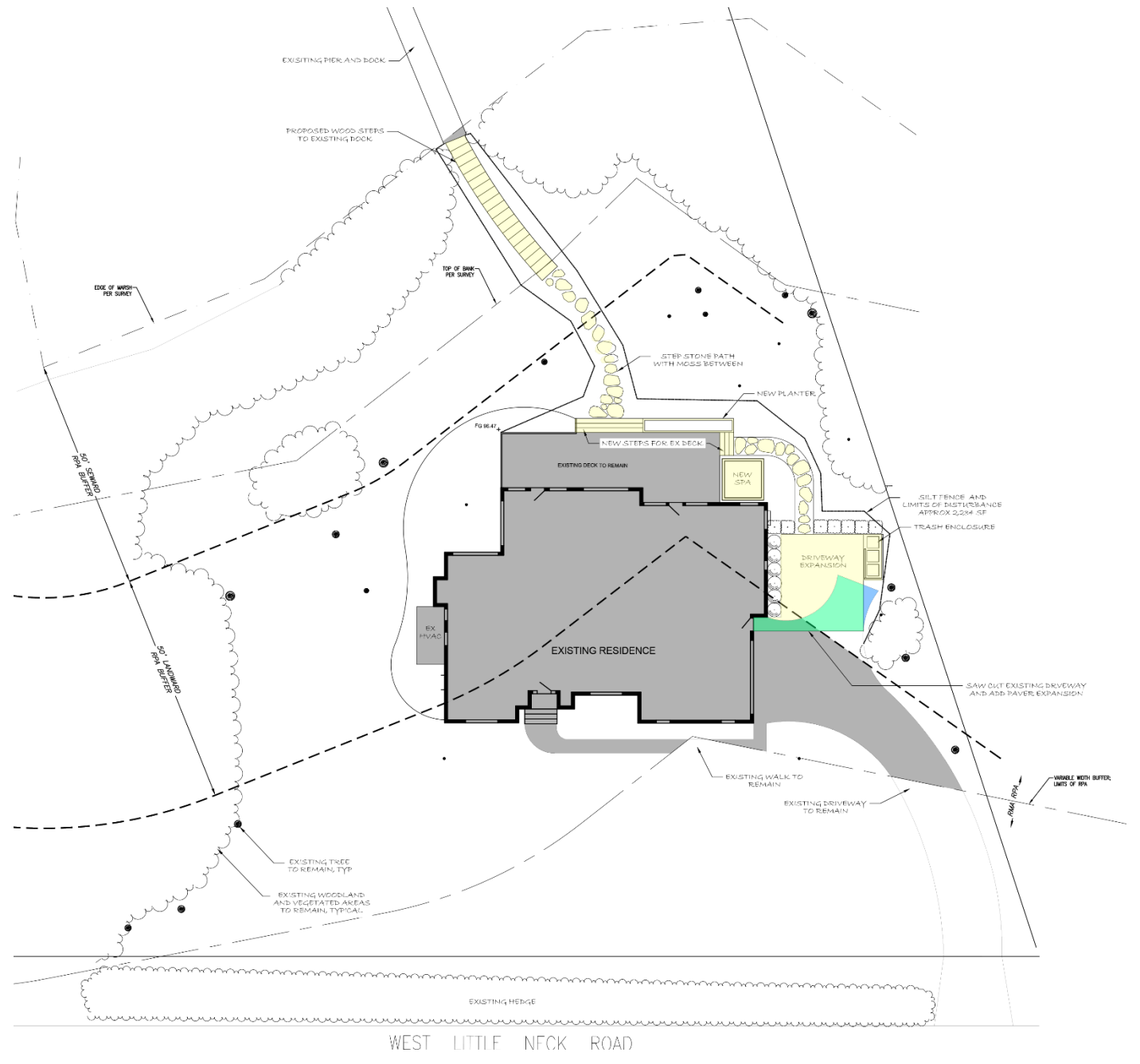


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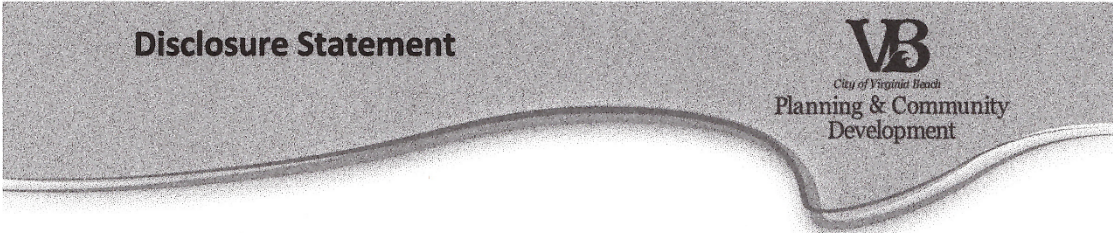
(1419)

CBPA Exhibit – Proposed Improvements & Color Analysis

ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA						
	LEGEND	EXISTING	PROPOSED	DIFFERENCE	BUFFER %	RESTORATION REQUIRED
TOTAL IMPERVIOUS AREA		4,915	5,689	+774		
IMPERVIOUS COVER DEMOLITION			145			
IMPERVIOUS CONVERTED TO PERVIOUS			12			
IMPERVIOUS COVER TO REMAIN			4,776			
"REDEVELOPMENT" NEW OVER OLD			133		–	–
"NEW" IMPERVIOUS			780		200%	1,560



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 Michael and Anna McGoff

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

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

Billy Garrington

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

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

- If **yes**, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

¹ "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.

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

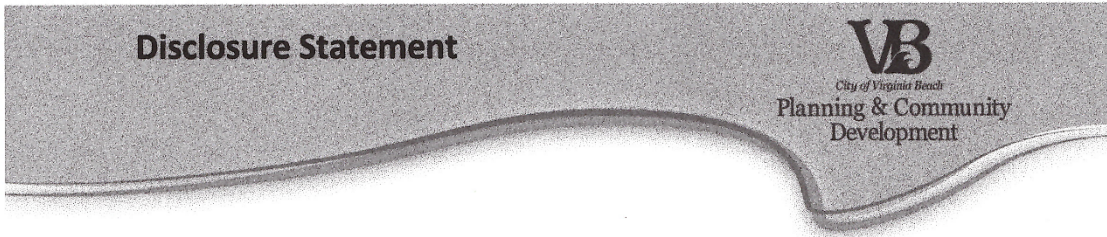
- If **yes**, identify the firm or individual providing the service.

Jessica Nelson, Painted Fern Landscape Architecture

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.

The original survey was completed for the previous owner by Daniel Holmes on 12/21/16

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

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

Applicant Signature

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

Applicant Signature

Michael and/or Anna McGoff

Print Name and Title

2/2/23

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