

Chesapeake Bay Preservation Area Board Agenda

April 24, 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, April 24, 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 **April 24, 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. Romeo Spino

[Applicant & Property Owner]

2021 Thomas Bishop Ln

GPIN 1499-56-4825

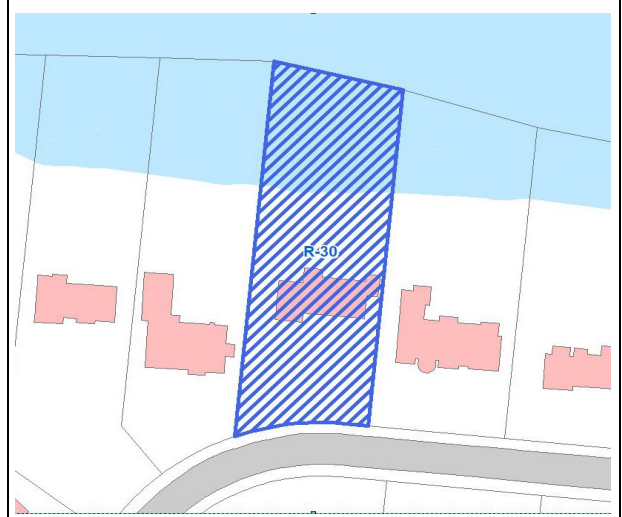
City Council District: District 8, formerly Lynnhaven

Accela Record: 2022-CBPA-00065

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

Staff Planner – Cole Fisher

Staff Report – page 7



NEW BUSINESS AGENDA ITEMS

2. Alex & April Reichmeider

[Applicants & Property Owners]

2713 River Road

GPIN 1499-61-3832

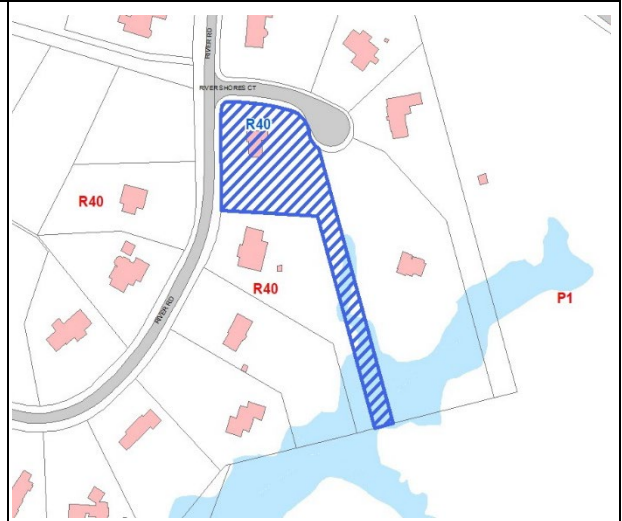
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00016

Variance Request – Encroachment into the RPA to construct a patio, steps, and retaining walls with associated fill material.

Staff Planner – Cole Fisher

Staff Report – page 27



NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Richard & Carmen Cellon [Applicants & Property Owners]

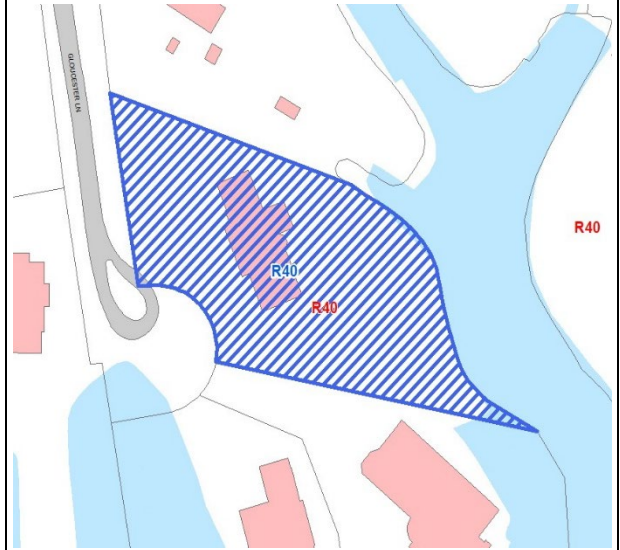
1204 Gloucester Lane

GPIN 2408-87-4576

City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00017

Variance Request – Encroachment into the RPA to construct a swimming pool with patio and pool house, building addition, concrete walkway, shed and generator pad.

Staff Planner – Cole Fisher
Staff Report – page 39



4. Pete & Sarah Kotarides [Applicants & Property Owners]

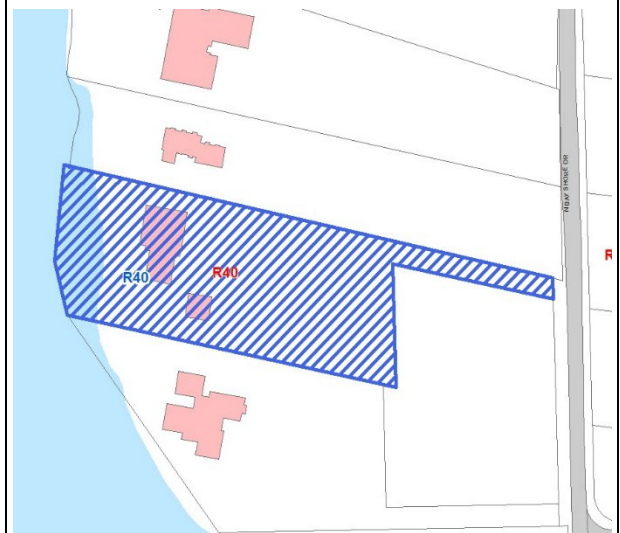
1407 N. Bay Shore Drive

GPIN 2419-10-3587

City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00018

Variance Request – Encroachment into the RPA to construct a two-story single-family residence with associated outdoor patio, swimming pool/hot tub, deck, walkways, and driveway.

Staff Planner – Cole Fisher
Staff Report – page 53



5. Lisa Barr & Kelly Hayes [Applicants & Property Owners]

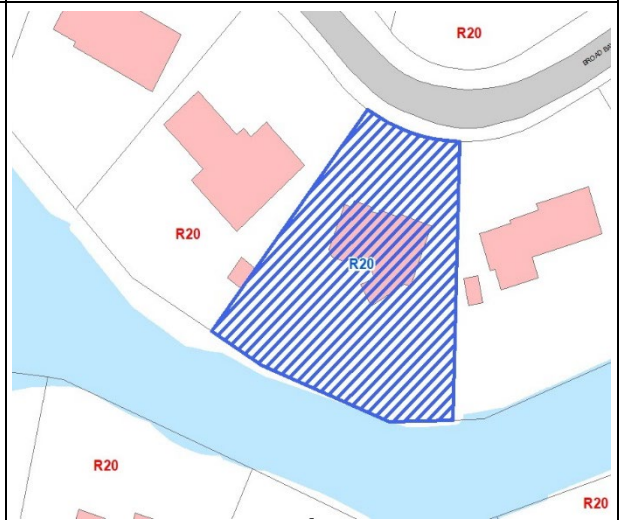
2409 Broad Bay Road

GPIN 1499-98-2733

City Council District: District 8, formerly Lynnhaven
Accela Record: 2023-CBPA-00019

Variance Request – Encroachment into the RPA to construct step pathway, patio expansion, and block retaining wall.

Staff Planner – Cole Fisher
Staff Report – page 67



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Steven Kissel

[Applicant & Property Owner]

2600 Long Creek Drive

GPIN 1499-78-2845

City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00020

Variance Request – Encroachment into the RPA to construct an open-air pavilion.

Staff Planner – Cole Fisher

Staff Report – page 81



7. Geoff & Pamela Fout

[Applicants & Property Owners]

2312 Windward Shore Drive

GPIN 1499-98-9874

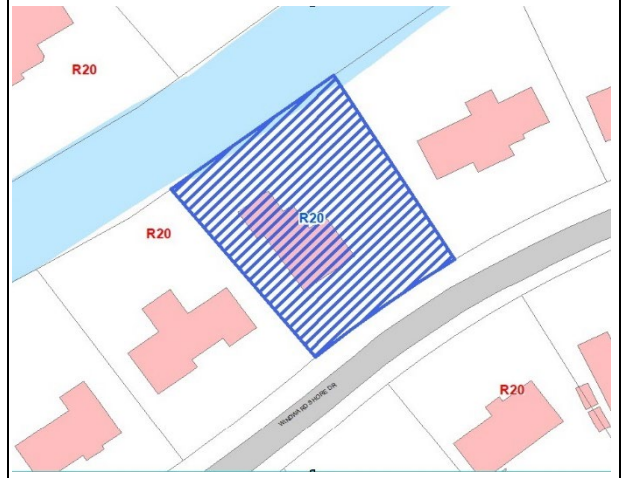
City Council District: District 8, formerly Lynnhaven

Accela Record: 2023-CBPA-00021

Variance Request – Encroachment into the RPA to construct a gazebo and concrete pad.

Staff Planner – Cole Fisher

Staff Report – page 91



8. Eli Nidam & Mazal Sibony

[Applicants & Property Owners]

1104 Lady Ginger Lane

GPIN 1478-86-4316

City Council District: District 9, formerly Bayside

Accela Record: 2023-CBPA-00025

Variance Request – Encroachment into the RPA to expand a pool surround and construct a sport court.

Staff Planner – Cole Fisher

Staff Report – page 99



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Applicant & Property Owner **Romeo Spino**
 Address **2021 Thomas Bishop Lane**
 Public Hearing **April 24, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

1

Variance Request

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

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1499-56-4825

SITE AREA

37,802 square feet or 0.868 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

25,845 square feet or 0.593 acres

EXISTING IMPERVIOUS COVER OF SITE

9,851 square feet or 38.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,095 square feet or 42.9 percent of site

Area of Redevelopment in RPA

6,053 square feet

Area of New Development in RPA

2,038 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

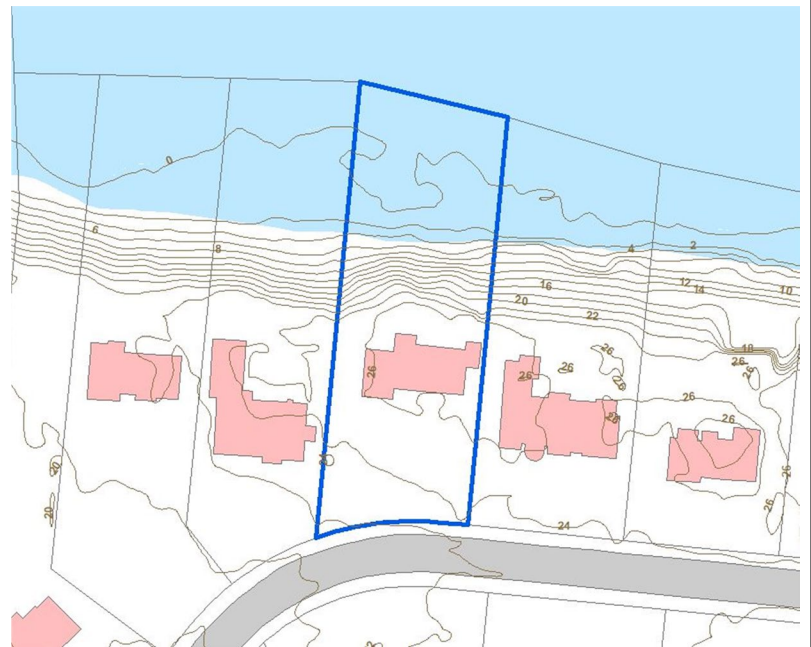
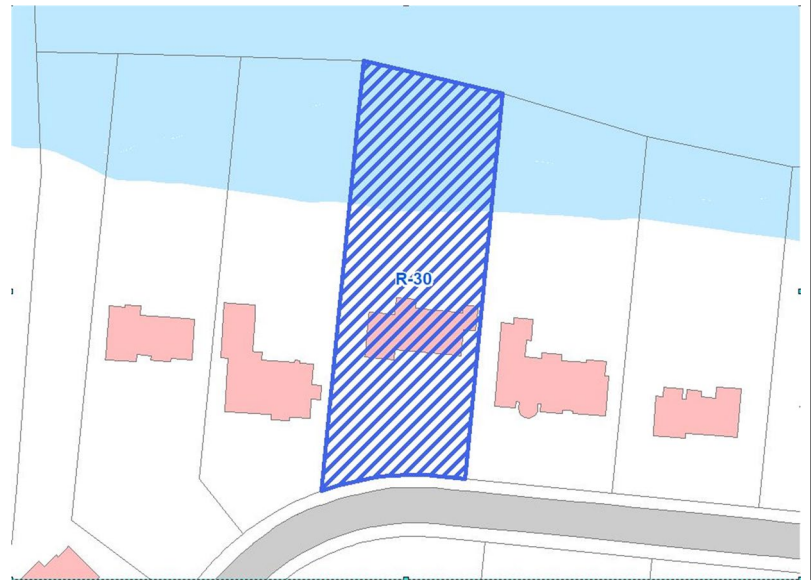
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Deny as submitted



Summary of Proposal

Demolition Details

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

Construction Details

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

CBPA Ordinance Variance History

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

- December 5, 2022, CBPA Board Public Hearing
- January 23, 2023, CBPA Board Public Hearing
- February 27, 2023, CBPA Board Public Hearing

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

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

The November 25, 1996, Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Rappahannock Series (deep and poorly drained soils)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff write-up from the February 27, 2023 Chesapeake Bay Preservation Area (CBPA) Board public hearing.

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

During the deferral process, the applicant's agent revised the layout of the proposed improvements to provide an approximate 168 square foot reduction of new impervious cover within the 100-foot RPA buffer and has removed the encroachment of the proposed swimming pool from the 50-foot seaward buffer. However, a substantial portion of the new impervious cover associated with the proposed swimming pool encroaches beyond the top of bank feature. To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the performance standards of the CBPA Ordinance and believes that the proposed improvements will not be injurious to the neighborhood or of substantial detriment to water quality."

Since the February 2023 CBPA Board public hearing, Staff met with the applicant's design team in the field to discuss the layout of the proposed improvements with concern over the extent of encroachment into the RPA feature given the redevelopment proposed along the top of bank feature. As a result of the meeting the following revisions were made to the submitted CBPA Exhibit:

- A reduction in the overall proposed impervious cover of the site from 11,390 square feet or 44.1 percent of the site above water and wetlands to 11,095 square feet or 42.9 percent of the site above water and wetlands.
- The layout of the proposed swimming pool has been shifted approximately 5 feet landward from the 50-foot seaward buffer. This modification to the layout reduced the encroachment of new impervious cover in the RPA associated with the swimming pool from approximately 558 square feet to 310 square feet.

Staff acknowledges the modifications made by the applicant's design team as a means to minimize the encroachment request into the RPA feature associated with this variance request for the lot. Given the extent of redevelopment occurring within the RPA feature and existing topographic conditions of the lot within this area, Staff remains of the opinion that the extent of grading and land disturbance should be considered with this variance request and those activities evaluated towards this variance request not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare in the absence of a grading plan. Therefore, in an effort to further define the merits of this variance request as submitted, the applicant's design provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this property is similar to others in the neighborhood - redevelopment of these older homes and accessory improvements allow an improvement to runoff."* Staff acknowledges the statement provided by the applicant's agent and offers that while in keeping with the neighborhood, most requests to improve existing built conditions on these lots along Long Creek occurs as redevelopment with little to no further encroachment seaward. The request presented by the applicant expands the existing impervious cover on the lot within the 50-foot seaward buffer and relocates the swimming pool over the top of bank feature. Staff is of the opinion that the privilege to encroach into the RPA feature was afforded with the 1996 Chesapeake Bay Preservation Area (CBPA) buffer and to further encroach given the past CBPA variance history and existing environmental conditions would be a convenience to the applicant.
- 2) The applicant's agent provides that *"the property was created, and the home was built before the CBPA Act. Improvements and redevelopment allow for the stormwater management on a previously developed property."* Staff offers that a hardship exists in that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. However, a variance was granted after the adoption of the City's CBPA Ordinance for an encroachment into the RPA feature.
- 3) The applicant's agent provides that the variance is the minimum necessary to afford relief because *"the property owner is requesting a reasonable amount of outdoor living space, commensurate with the prior improvements and mostly in the same footprint."* Staff offers that the redevelopment of the proposed swimming pool increases in size from 479 square feet (existing) to 623 square feet (proposed), approximately 144 square feet. While the applicant's design team has reduced the amount of new impervious cover in the RPA with this variance request, Staff remains of the opinion that the minimum necessary to afford relief should also take into consideration the extent of land disturbance associated with the proposed improvements. To address this concern, Staff provides the recommended conditions below for the Board's consideration.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this redevelopment project is similar to other improvement projects in the neighborhood and will improve water quality since stormwater management is required."* Staff acknowledges the statement provided by the applicant's agent and reiterates that most requests to improve existing built conditions on these lots along Long Creek occurs as redevelopment with little to no further encroachment seaward. As for water quality improvements, while required given the amount of land disturbance associated with the proposed improvements, Staff is of the opinion that the location of the best management practices in conjunction with the proposed buffer restoration is critical given the amount of encroachment proposed with this request and the existing environmental features on the lot.

- 5) The applicant's consultant provides that *"the stormwater runoff will be directed to and treated by bioretention planting beds which will reduce pollution in the post-development stormwater runoff"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the applicant's consultant should comment to the impact construction activities will have on the existing bank feature and how the velocity of stormwater run-off will be mitigated as run-off sheet flows from the proposed improvements through the 50-foot seaward buffer.

Should the CBPA Board consider granting a variance, Staff recommends the following **17** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) The proposed landscape planters located seaward of the artificial turf area shall be moved landward and aligned with the seaward edge of the proposed swimming pool. Said artificial turf area shall be adjusted accordingly.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a detailed Sequence of Construction (SOC) provided on the site plan. Said SOC shall address but is not limited to marking of proposed improvements layout in the field, bank protection during construction, management of stormwater run-off during construction, excavation associated with the construction of the proposed improvements inclusive of ground compaction, stabilization of grade and phases to which stabilization will occur and long-term evaluation and management of any future erosion that occurs due to construction.
- 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, inclusive of the City's 100-foot variable width buffer. Said restoration shall achieve the full complement of vegetation consisting of 1 canopy trees, 1 understory trees, 2 large shrubs and 3 small shrubs or groundcovers per every 400 square feet of buffer restoration required.

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

- 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 Planning Staff, CBPA Civil Inspector and Engineer of Record collectively prior to any land disturbance, including demolition

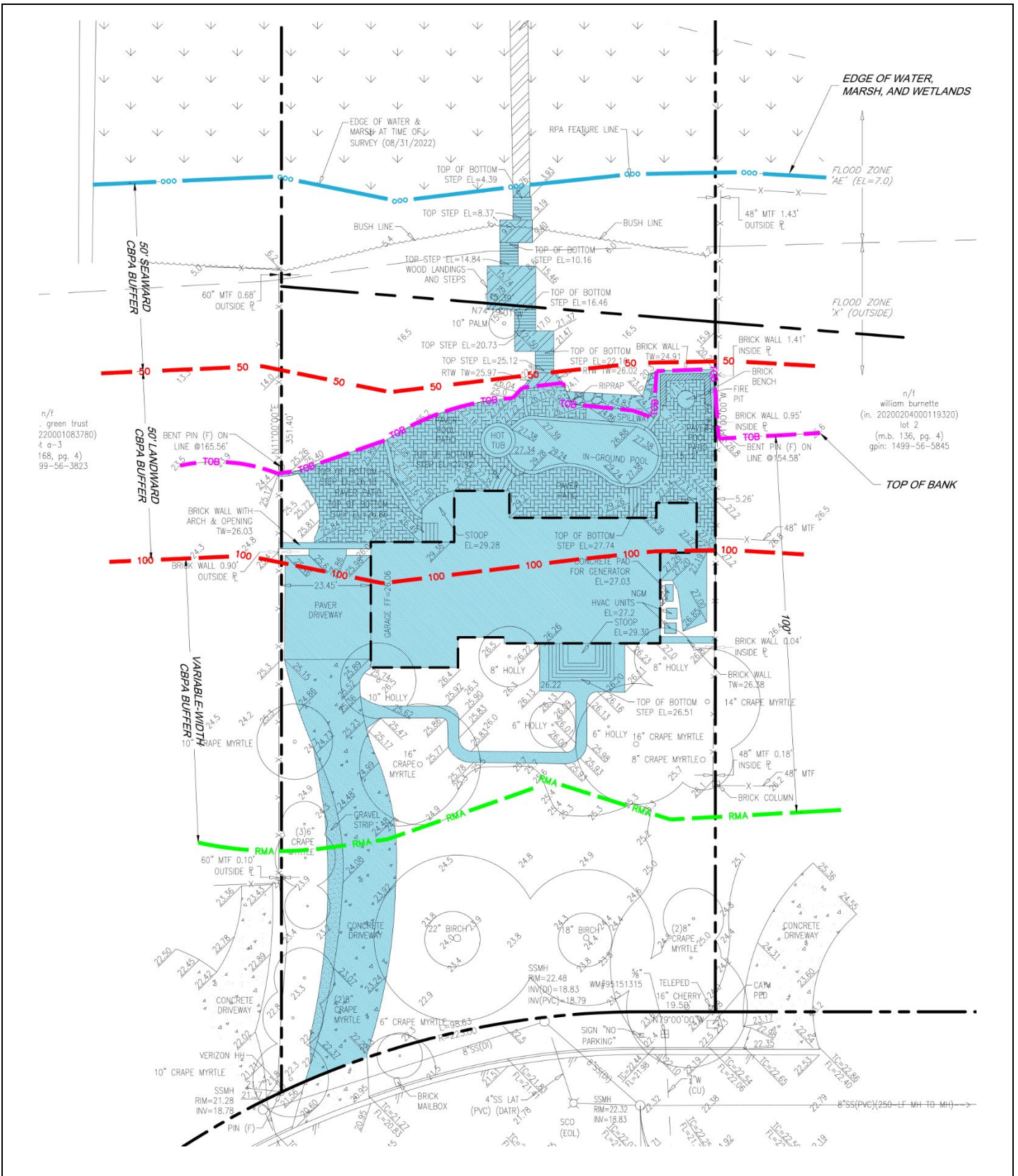
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals. For all portions of the existing bank that are denuded daily by construction activity a temporary soil stabilization measures shall be applied at the end of each working day. All disturbed or denuded areas shall utilize temporary stabilization measures in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 9) For all portions of the existing bank that are regraded, and the final grade established, an erosion and sediment control blanket, suitable for areas that require higher flow rates, steeper slopes, or longer-term use shall be installed over all areas of disturbed land both seaward and landward of the retaining wall. Said material shall be secured using a peg, staple, or stake per manufacturer recommendations and a vegetive cover provided so that the areas of disturbance have a complete vegetive cover post-construction.
- 10) The area of land seaward of the proposed improvements shall remain in a “cover crop” vegetative cover such as grasses or perennial legumes that provides and active root system in the soil that holds the soil from water erosion while above ground growth shields soil movement from wind erosion and rainfall splatter to minimize soil movement.
- 11) 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.**
- 12) A double row of 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 staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 13) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 14) 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.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted November 25, 1996.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 3, 2023, prepared by WPL. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.
- 17) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

***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.

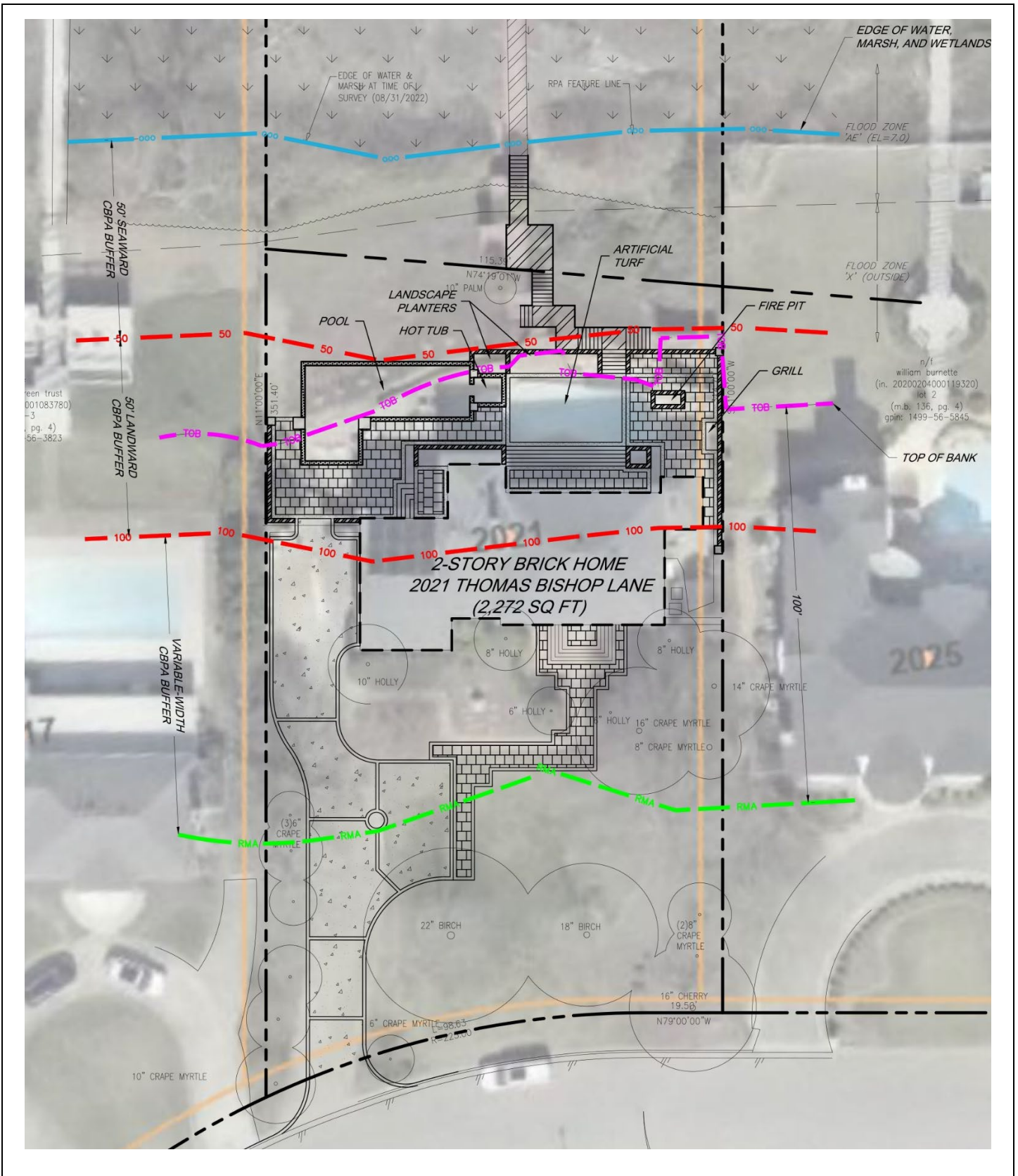
Site Aerial



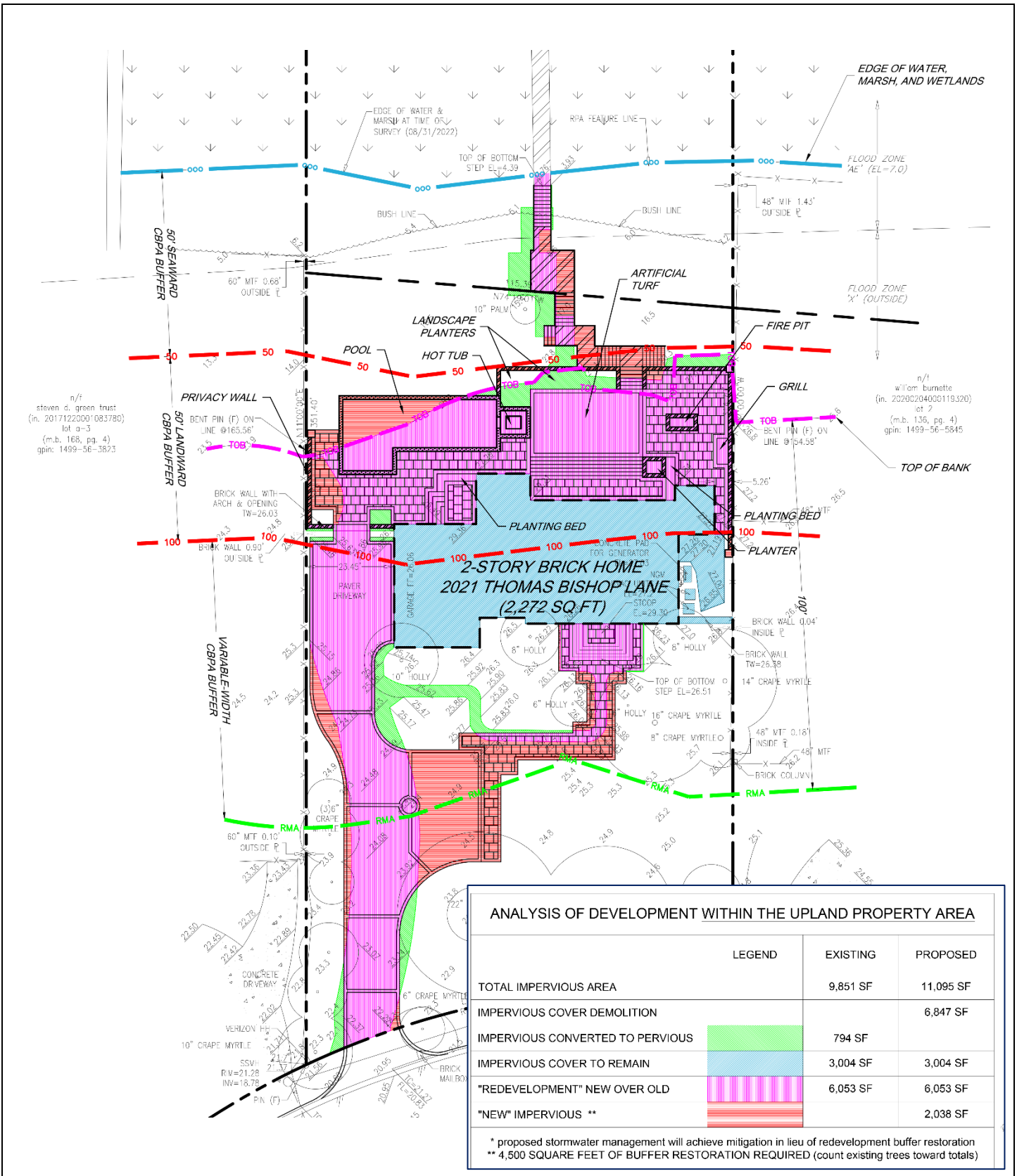
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements, presented at the February 27, 2023 Public Hearing

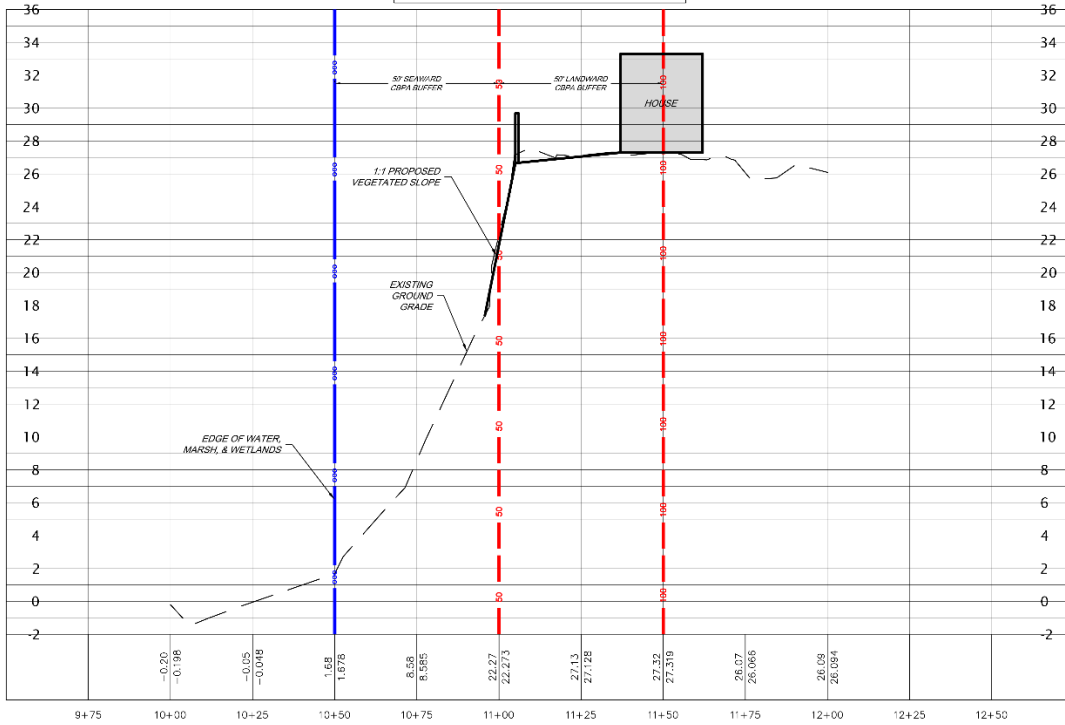


CBPA Exhibit – Color Analysis

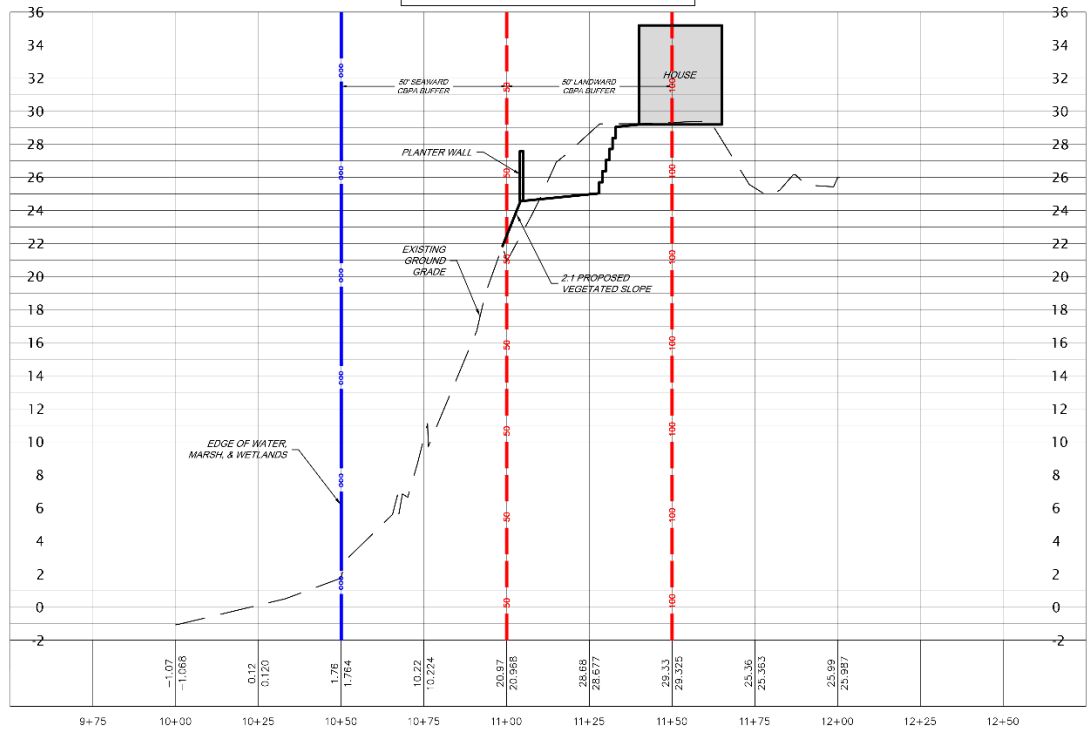


CBPA Exhibit – Cross Section Alignment, Profile 1 and Profile 2

Alignment - (1) PROFILE

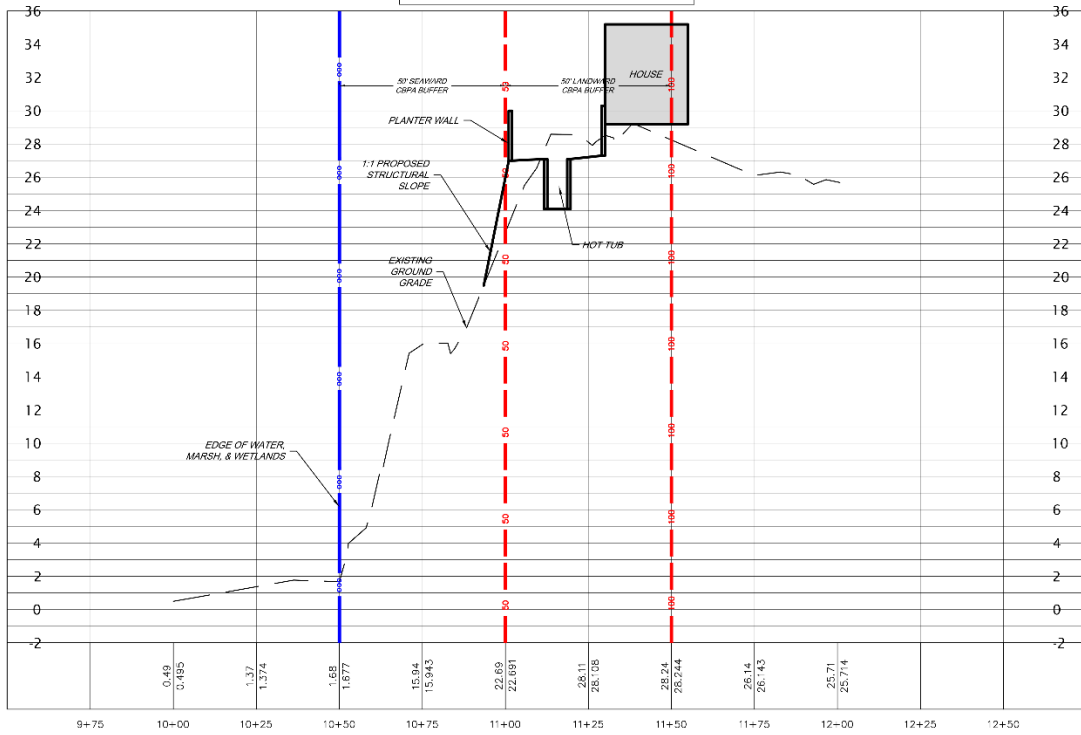


Alignment - (2) PROFILE

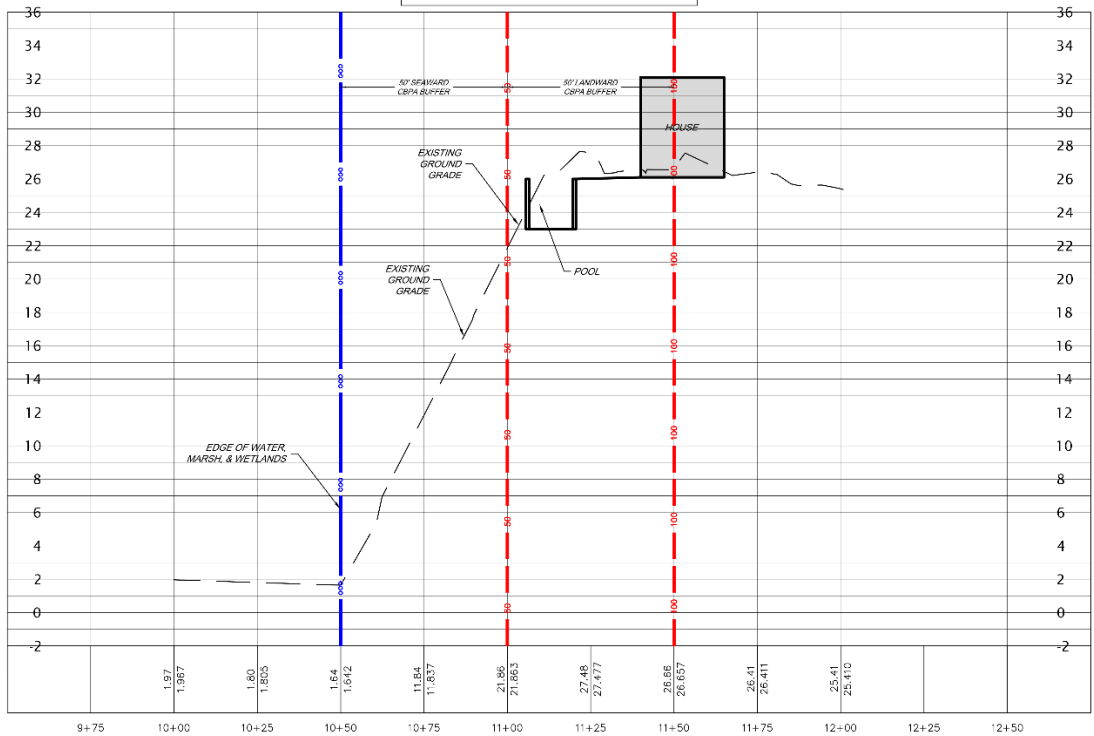


CBPA Exhibit – Cross Section Alignment, Profile 3 and Profile 4

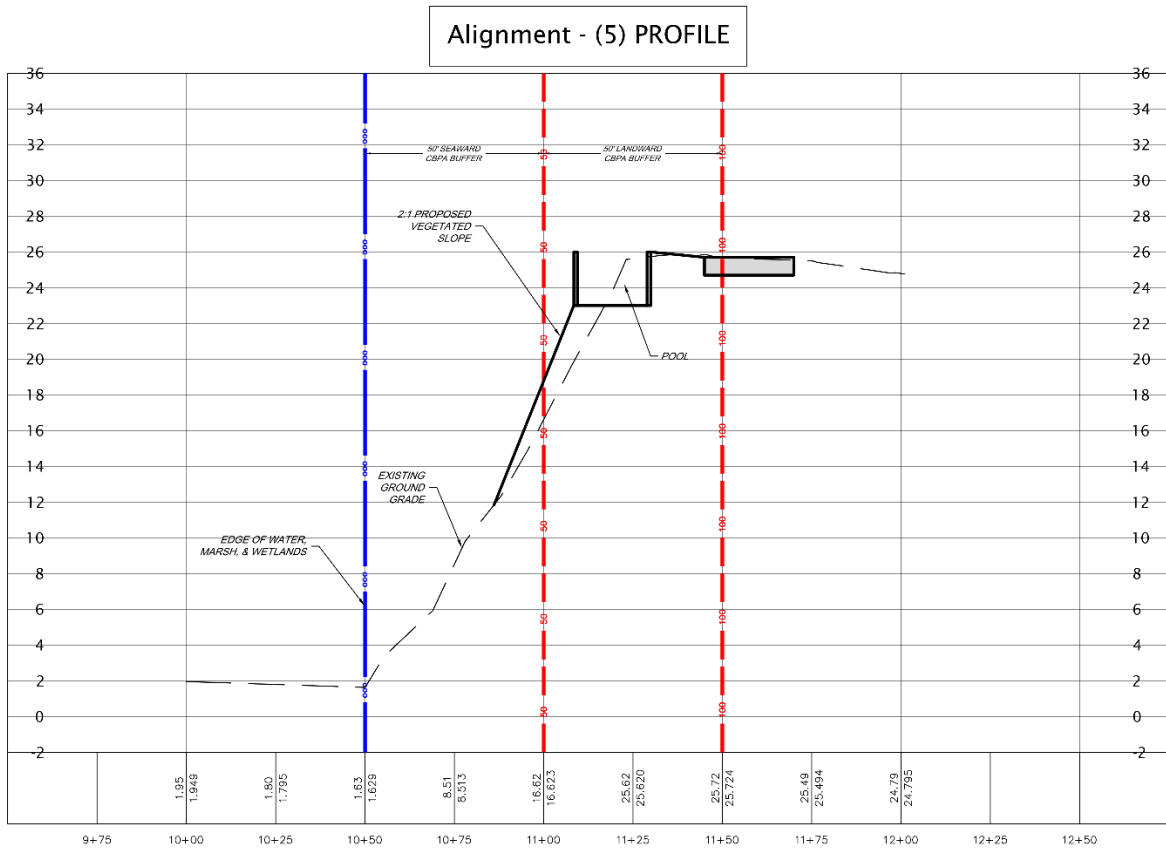
Alignment - (3) PROFILE



Alignment - (4) PROFILE



CBPA Exhibit – Cross Section Alignment, Profile 5



Disclosure Statement

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

Disclosure Statement



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

Applicant Disclosure

Applicant Name Romeo Spino

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

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

WPL Site

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

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

- 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 providing the service.
Bank of America
-

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

Yes No

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

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

- If **yes**, identify the firm and individual providing the service.
Wall Einhorn & Chernitzer
-

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

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

Siska Aurand Landscape Architects

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

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

Disclosure Statement



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

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

Axis Global Enterprises

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

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

WPL Site

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

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

Applicant Signature

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

DocuSigned by:
Romeo Spino
712574DE280E402...

Applicant Signature

Romeo Spino CEO

Print Name and Title

11/1/2022

Date

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

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

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

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

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Applicant & Property Owner **Alex & April Reichmeider**
 Address **2713 River Road**
 Public Hearing **April 24, 2023**
 City Council District **8**, formerly Lynnhaven

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a patio with steps and retaining walls with fill material.

Applicant’s Agent

David Chewey
 David Chewey Landscape Architect

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 96, Page 10
 Recorded 4/2/1975

GPIN

1499-61-3832

SITE AREA

67,940 square feet or 1.56 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

41,858 square feet or 0.96 acres

EXISTING IMPERVIOUS COVER OF SITE

4,487 square feet or 10.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,963 square feet or 11.8 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

476 square feet

Location of Proposed Impervious Cover

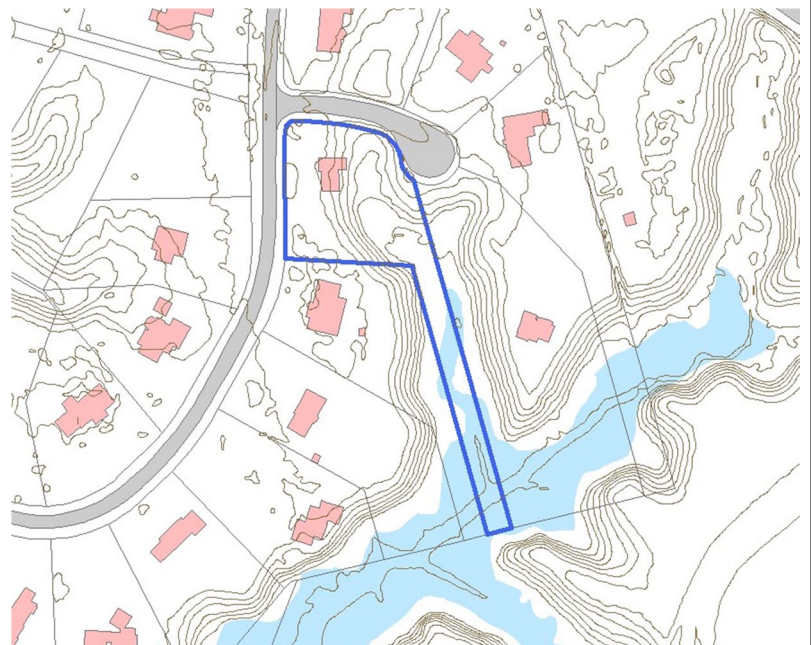
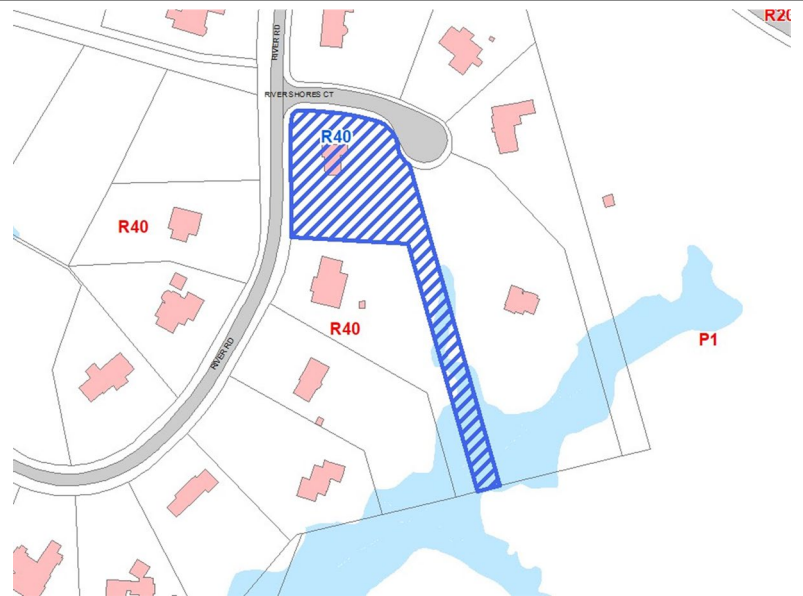
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Retaining wall with associated backfill material
- Patio area with garden area and associated steps

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

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

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of the proposed patio area and proposed lawn area behind the proposed retaining wall.

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 100-foot Resource Protection Area (RPA) buffer on this lot consists primarily of canopy trees within an established forest floor overgrown with non-native invasive vine species, specifically *Hedera helix* (English Ivy). Given the condition of the 100-foot RPA buffer most of the rear yard is unusable for the homeowners to enjoy without maintenance and modification to these existing conditions.

Alex & April Reichmeider

Agenda Item 2

Page 28

The request to encroach into the RPA buffer with the proposed improvements was initially submitted through the Preliminary Project Request (PPR) process and depicted a curvilinear retaining wall extending off the rear of the residence approximately 40 feet with a width of approximately 50 feet. As submitted, this layout extending the proposed improvements within 20 feet of the edge of wetlands.

Working with Staff, the encroachment has been modified to be in harmony within the existing topography, shifting the proposed improvements substantially landward and more mindful of the 50-foot seaward buffer on the lot. Staff's analysis of the existing site conditions and opinion of the project is that the RPA buffer has been degraded over time by upland development stress and lack of management and maintenance to the existing woody vegetation. With the construction of the proposed improvements utilizing existing grade elevations with a retaining wall and steps, the introduction of vegetative cover within the RPA buffer, and the conditioned management of the existing riparian buffer ecosystem, Staff offers that the structural elements (bioretention planting beds are proposed along the landward side of the retaining wall) and non-structural elements of the variance request provide merit towards reestablishing the ecological benefit of the 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 *"compared to other homeowners with similar sites, this applicant needs to obtain a variance to allow a place for their children to play safe when outside and the only space available is in the backyard, which is in the RPA."* Staff understands the desire to have a usable yard space and 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) 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 *"this design provides the minimum amount of space the owners need to have and their children should play in the back yard and furthest away from the road."* Staff is of the opinion that the applicant has brought forth a request that is the minimum necessary to afford relief due to the minimal impacts to the functioning riparian buffer on the lot. The proposed yard area is currently overgrown with English Ivy to the point where the area is unusable by the property owners.
- 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 request provides a 50' long planted bmp that the proposed lawn area and patio will drain into and all down spouts from the back of the house as well. This ensures any drainage from the proposed improvements on site will intercept the runoff as it heads to the river. The proposed wall and turf area are nestled in the backyard surround by the proposed plantings to soften any views from the neighbors and keeping the wooded feel of the neighborhood."* Staff is of the opinion that the new BMP installed with the proposed retaining wall will slow the rainwater sheet flow from the higher elevations on the lot. The riparian buffer on the lot is currently very overgrown and moderate maintenance to ensure the health of the buffer composition is needed in urban settings.

- 5) *“Downspouts from the back of the home and grading of the proposed lawn area will be directed towards the new BMP planting beds at the top of the wall. Elevating the ground with the wall will ensure runoff is slow as it enters the BMP”* 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 **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) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) 4,323 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) in substantial compliance with the Proposed Landscape Development Plan prepared by David Chewey Landscape Architect, dated February 28, 2023.

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. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 9) Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.

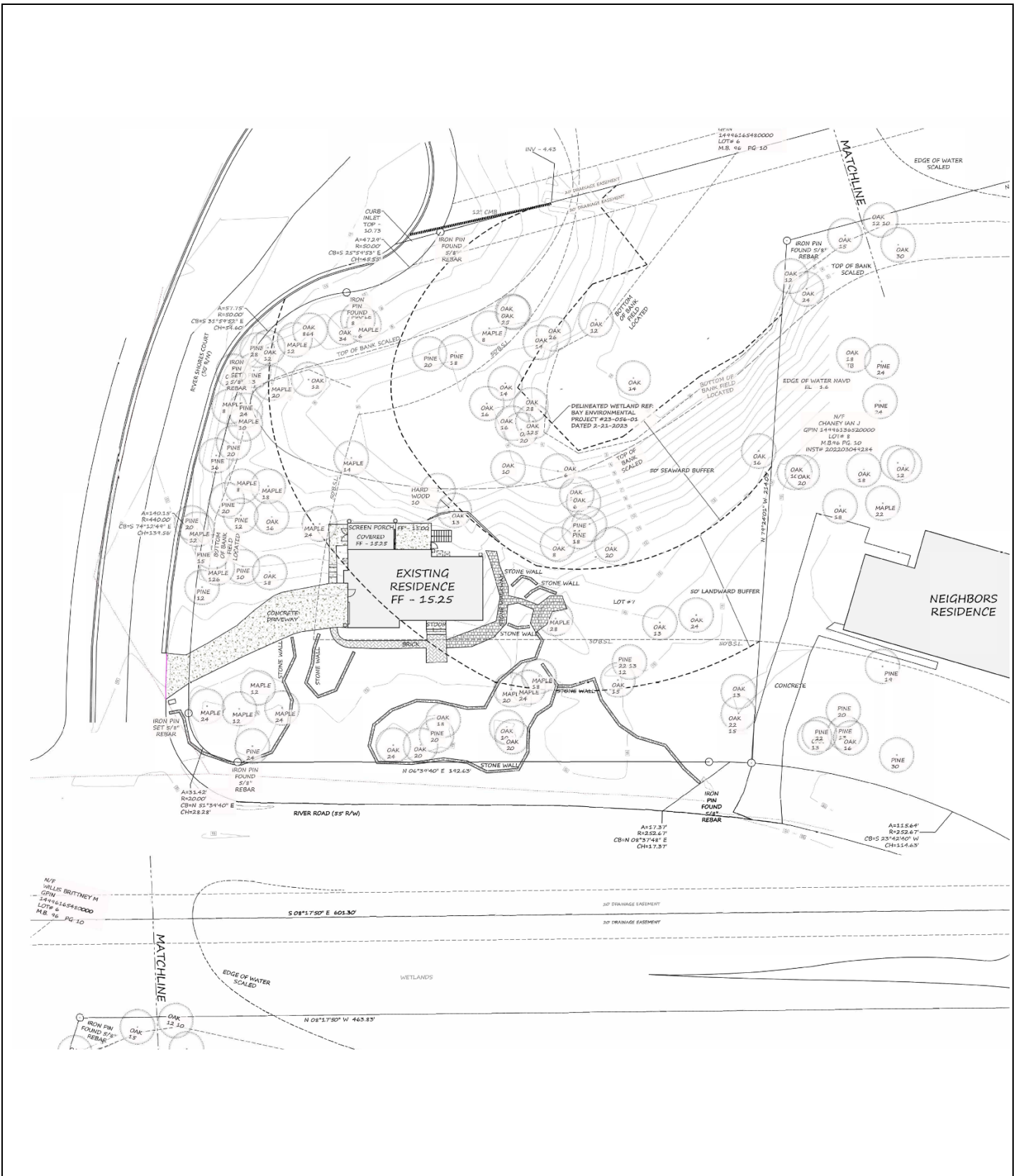
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated February 28, 2023, prepared by David Chewey, signed February 28, 2023 by David Chewey. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

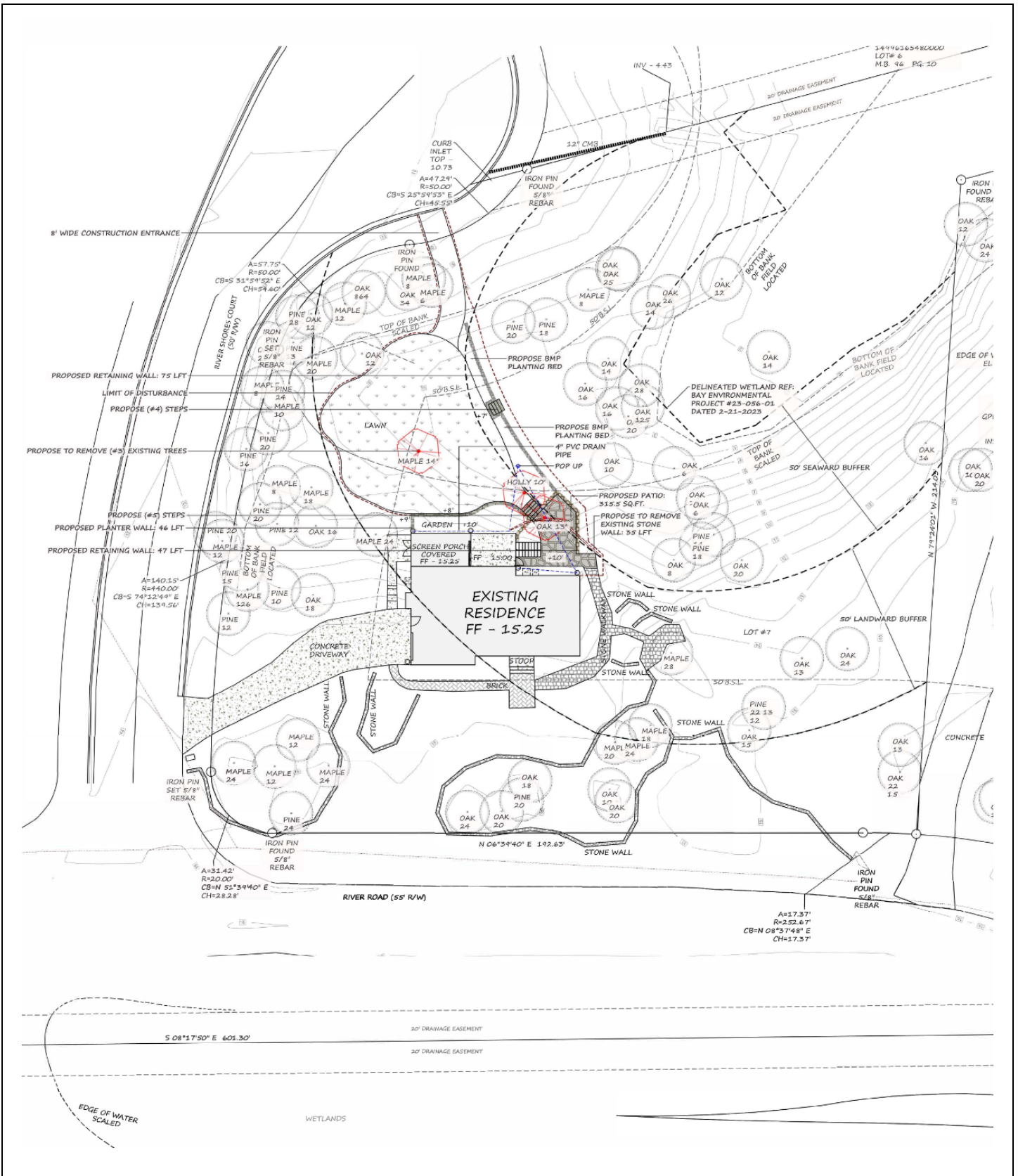
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Landscape Development 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 Alex and April Reichmeider

Does the applicant have a representative? Yes No

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

David Chewey Landscape Architect

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 providing the service.

Old Point 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.

Zuckerman and Associates; Ted Colna - Yearly tax returns

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.

David Chewey -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 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.

Jim Cahoon Bay Environmental, INC. -wetland delineation

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.**

Alex Reichmeider *April Reichmeider*

Applicant Signature

Alex Reichmeider, MD; April Reichmeider

Print Name and Title

2/26/2023

Date

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

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

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

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



Applicant & Property Owner **Richard & Carmen Cellon**
 Address **1204 Gloucester Lane**
 Public Hearing **April 24, 2023**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with patio and pool house, building addition, concrete walkway, shed, and generator pad.

Applicant's Agent

Billy Garrington
 Governmental Permitting Consultants, Inc

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 36, Page 26
 Recorded 12/16/1953

GPIN

2408-87-4576

SITE AREA

41,690 square feet or 0.957 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

41,666 square feet or 0.957 acres

EXISTING IMPERVIOUS COVER OF SITE

7,269.8 square feet or 17.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,813.7 square feet or 23.6 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

2,543.9 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

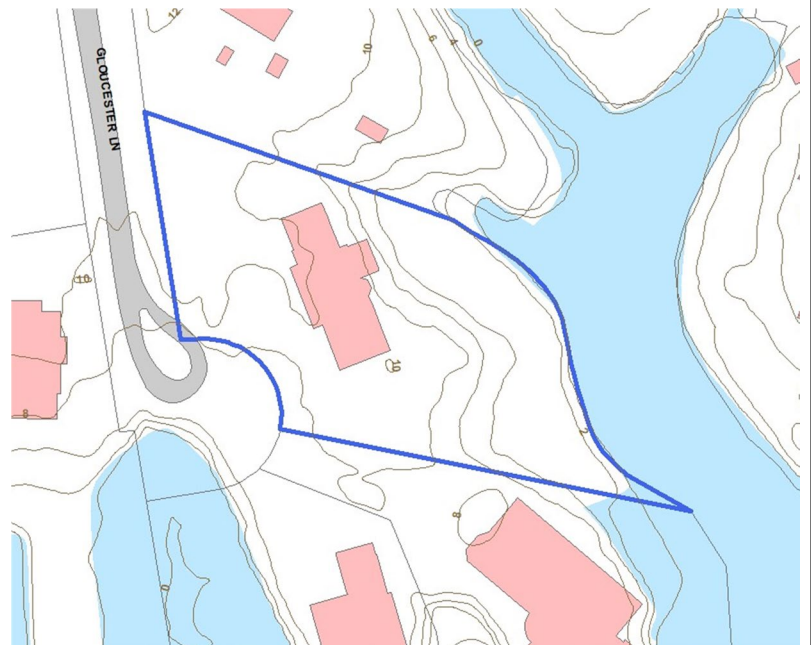
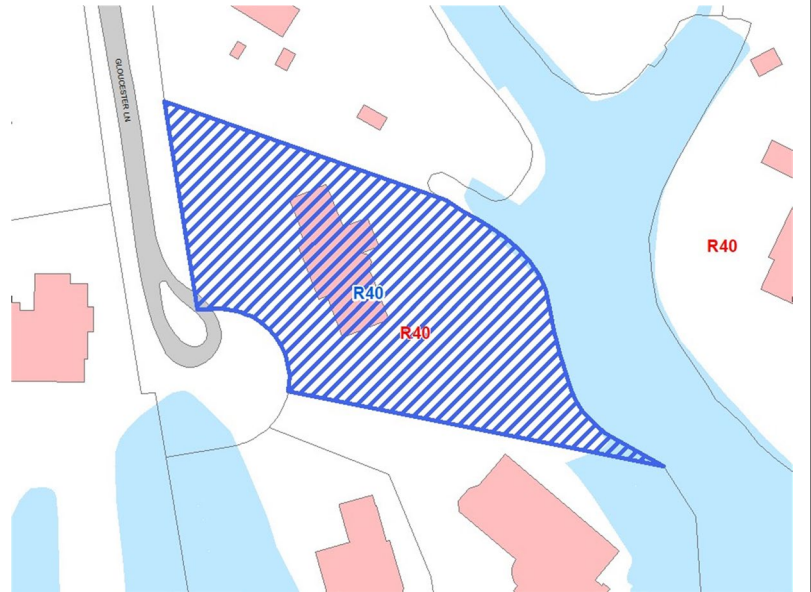
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Building addition off the southern side of residence
- Swimming pool with associated pool surround and pool house
- Concrete walkway with steps
- Storage shed

CBPA Ordinance Variance History

On July 23, 2007, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a second floor over the existing residence, a swimming pool with associated concrete decking, generator pad and pool equipment pad with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 10' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area. The construction access way shall be modified to prevent damage to existing shrubs and trees.*
6. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
7. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
8. *The pool / pool decking shall lie a minimum of 5 ft. from the top-of-bank and pool decking shall be a maximum of 18 x 36 pool (diving board end). 4' wide organic stepping stones path from house to pool decking.*
9. *The pool shall be constructed prior to or concurrent with the residential addition.*
10. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$164.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 179 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*

11. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
12. *Buffer restoration totaling 1,820 sq. ft. (includes pool surface) shall be installed which is equal to 125% of the proposed impervious cover and shall utilize bayscape landscaping principles. 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 as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of eighteen (18) 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 final building inspection. Said condition shall be so noted on the site plan.*
13. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
14. *The conditions and approval associated with this variance are based on the site plan dated June 13, 2007, prepared by Gallup Surveyors and Engineers Ltd.*
15. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The July 23, 2007 Board granted variance has been acted upon and portions of the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 9
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as within the approximate footprint of the proposed improvements on the lot.

Stormwater Management Methodology

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

Evaluation and Recommendation

As provided above a Chesapeake Bay Preservation Area (CBPA) Variance was granted for this lot to construct a swimming pool along with other improvements in July of 2007. At this time, the applicant is asking for reconsideration of the following conditions associated with the 2007 CBPA Variance.

- Condition 6 of the 2007 CBPA Variance – *“Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.”*
- Condition 8 of the 2007 CBPA Variance – *“The pool / pool decking shall lie a minimum of 5 feet from the top-of-bank. The pool shall be a maximum of 18’ x 36’, and the pool decking shall be a maximum of 4’ x 4’ x 4’ x 8’ (diving board end). A 4’ wide steppingstone path from house to pool decking is approved.”*
- Condition 9 of the 2007 CBPA Variance – *“The pool shall be constructed prior to or concurrent with the residential addition.”*

In addition to the improvements associated with the 2007 CBPA Variance, this variance request, as submitted by a new property owner not associated with said prior variance, proposes to construct the following additional improvements.

- Building addition off the southern side of the residence,
- Walkway along the rear of the residence from the proposed swimming pool to the existing screened porch,
- Pool house located landward of the top of bank feature and within the variable width buffer of the Resource Protection Area (RPA) buffer,
- Hot tub,
- Storage shed adjacent to the existing driveway within the variable width buffer of the RPA; and
- Swimming pool. The proposed swimming pool deviates from the 2007 CBPA Variance in size (18’ x 36’ approved and 18’ x 40’ proposed). Staff offers that although the dimensional size of the proposed swimming pool increases, given the shape of the proposed swimming pool there is a reduction in overall impervious cover by approximately 48 square feet.

The request will add approximately 2,544 square feet of new impervious cover in the RPA with all new impervious cover located within the 50-foot landward and variable width buffers. Staff is of the opinion that the applicant has taken measures to provide a layout cognizant of the 2007 CBPA Variance conditions while laying out the addition to the residence to fit their needs. With regard to the proposed improvements that deviate from the conditions of the 2007 CBPA Variance, Staff offers the following comments.

- *“Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.”* Staff has provided the recommended conditions below that addresses stormwater treatment for the proposed improvements in compliance with City Code, Appendix D, Stormwater Management Ordinance.
- *“The pool / pool decking shall lie a minimum of 5 feet from the top-of-bank. The pool shall be a maximum of 18’ x 36’, and the pool decking shall be a maximum of 4’ x 4’ x 4’ x 8’ (diving board end). A 4’ wide stepping stone path from house to pool decking is approved.”* As stated above, while the dimensional size of the proposed swimming pool has increased, the overall impervious cover has been reduced given the shape of the swimming pool. Staff is of the opinion that the top of bank feature, while present on the lot is not as pronounced as other top of bank features within the city. As such, Staff recommends that a 3-foot-wide pool surround be provided continuously around the south, east, and north side of the swimming pool to provide a safe means of travel around the proposed improvement.
- *“The pool shall be constructed prior to or concurrent with the residential addition.”* Staff offers that this variance request comes from a new owner of the property not associated with the 2007 CBPA Variance. Staff is of the opinion that the applicant has provided a layout of proposed improvements that address their needs with regard to the addition to the primary structure, has worked in harmony with the layout of the proposed swimming pool to be in substantial compliance with the layout of the swimming pool granted with the 2007

CBPA Variance, and has located other accessory structures (shed and pool house) within the City' Variable Width RPA 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 have been granted, so the approval of this request will in no way confer any special privilege to the current owners."* Staff acknowledges the statement provided by the applicant's agent and offers that the property owner is following the variance process for an exception to the CBPA Ordinance given the location of the proposed improvements and past variance request history of the previous owner of the property.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"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."* As stated above, Staff is of the opinion that the applicant has provided a layout of proposed improvements that address their needs with regard to the addition to the primary structure, has worked in harmony with the layout of the proposed swimming pool to be in substantial compliance with the layout of the swimming pool granted with the 2007 CBPA Variance, and has located other accessory structures (shed and pool house) within the City' Variable Width 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 purpose and intent of the ordinance is to ensure water quality is not depleted and to prevent pollution of the bay. Most of these homes currently have no stormwater treatment on site. As a result, this variance request will install bioretention planting beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program."* Staff is of the opinion that the layout of the proposed improvements is mindful of the existing site conditions and situated on the lot so that substantial amount of land disturbance is not necessary to construct the proposed improvements as submitted.
- 5) *"Strict erosion and sedimentation controls measures to halt non-point source pollution, stock piling materials on existing hard surfaces, single point accessway and revegetating any denuded areas all help to limit pollution from entering the waterway"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers the following 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) A 3-foot-wide pool surround be provided continuously around the south, east, and north side of the swimming pool to provide a safe means of travel around the proposed improvement.
- 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) 2,554 square feet of buffer restoration shall be installed within the RPA. 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 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.

- 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) 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) ** 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 \$585.29 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) This variance and associated conditions **shall supersede** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted July 23, 2007 with exception to condition 12 that states the following
 - *“Buffer restoration totaling 1,820 sq. ft. (includes pool surface) shall be installed which is equal to 125% of the proposed impervious cover and shall utilize bayscape landscaping principles. 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 as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of eighteen (18) 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 condition shall be documented on the revised site plan. Documentation shall describe the health and functionality of said condition requirement. Prior restoration requirements shall be installed if not present.

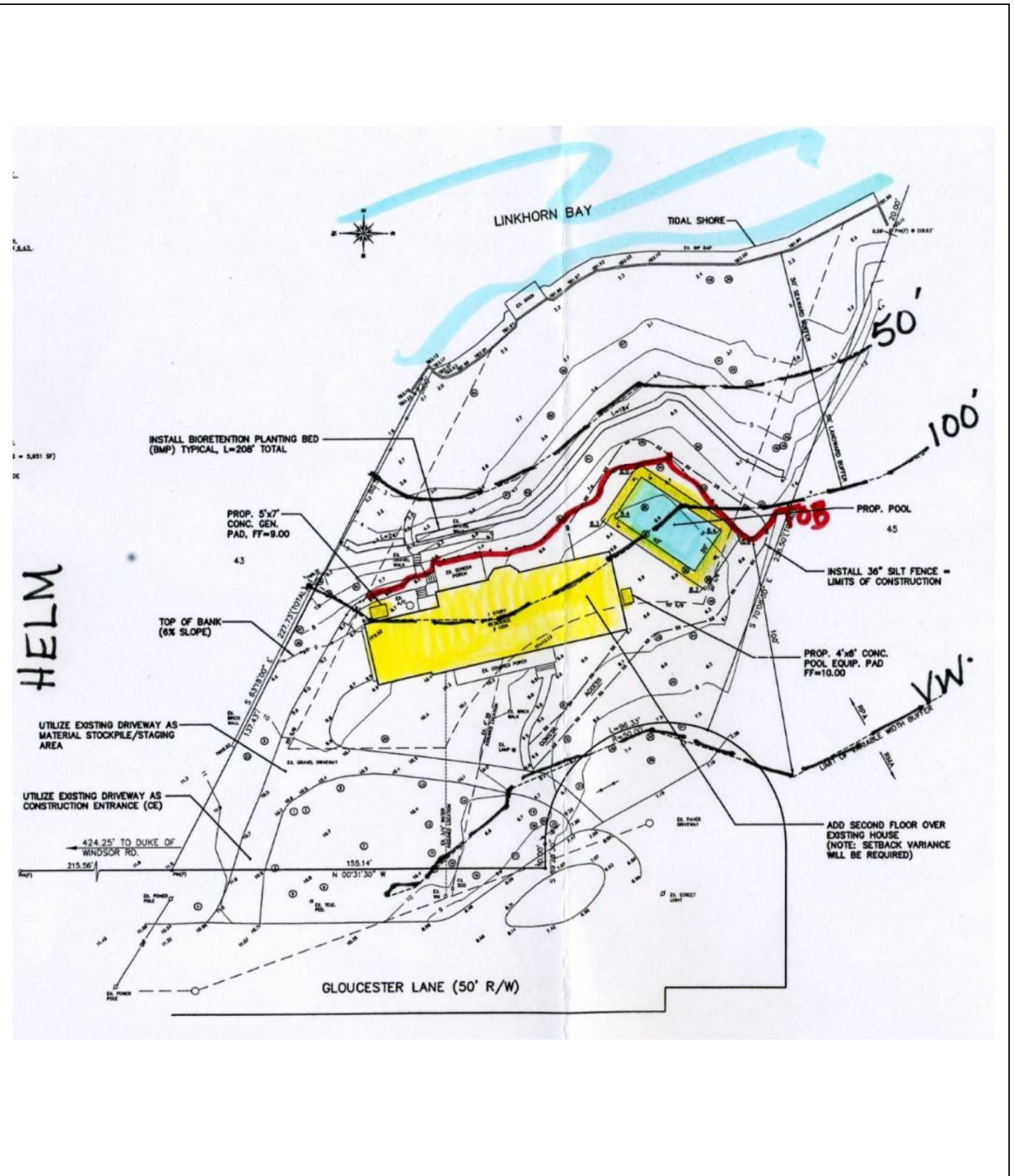
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated February 21, 2023, prepared by Gallup Surveyors and Engineers, signed February 21, 2023 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit 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.

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

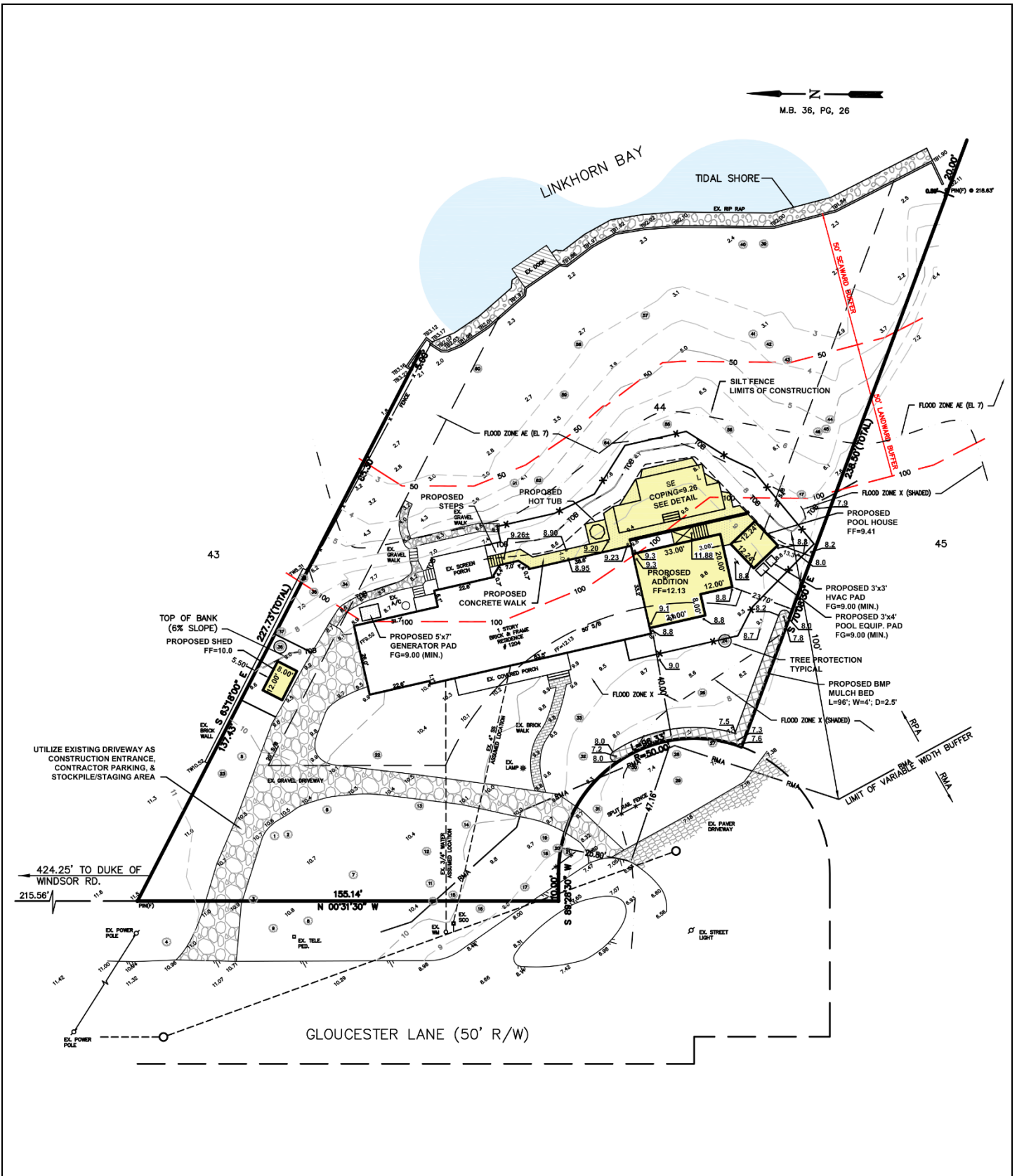
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Richard and Carmen Cellon

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-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.

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.

Williams, Rice, Wyatt and Co., PLLC

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.

Wermers Design and 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.
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 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.

Richard Cellon *Carmen Cellon*

Applicant Signature
Richard and Carmen Cellon

Print Name and Title
February 23, 2023

Date

- is the applicant also the owner of the subject property? Yes No
 - If **yes**, you do not need to fill out the owner disclosure statement.

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

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



Applicant & Property Owner **Pete & Sarah Kotarides**

Agenda Item

Address **1407 N. Bay Shore Drive**

Public Hearing **April 24, 2023**

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

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story single-family residence with associated outdoor patio, swimming pool/hot tub, deck, and driveway.

Applicant's Agent

Billy Garrington
Governmental Permitting Consultants, Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 78, Page 33
Recorded 11/12/1968

GPIN

2419-10-3587

SITE AREA

61,907 square feet or 1.42 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

54,150 square feet or 1.24 acres

EXISTING IMPERVIOUS COVER OF SITE

19,642 square feet or 36 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

20,766 square feet or 38 percent of site

Area of Redevelopment in RPA

3,673 square feet

Area of New Development in RPA

4,351 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

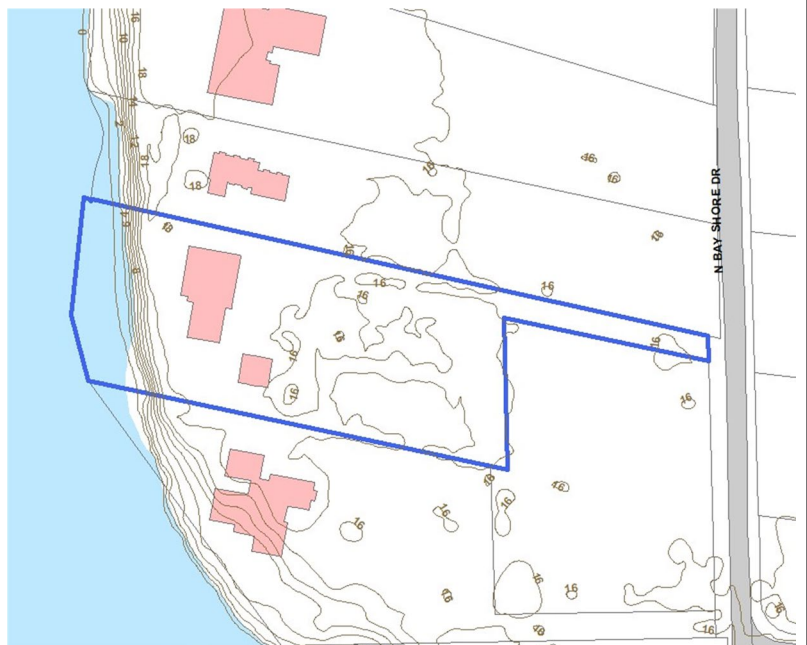
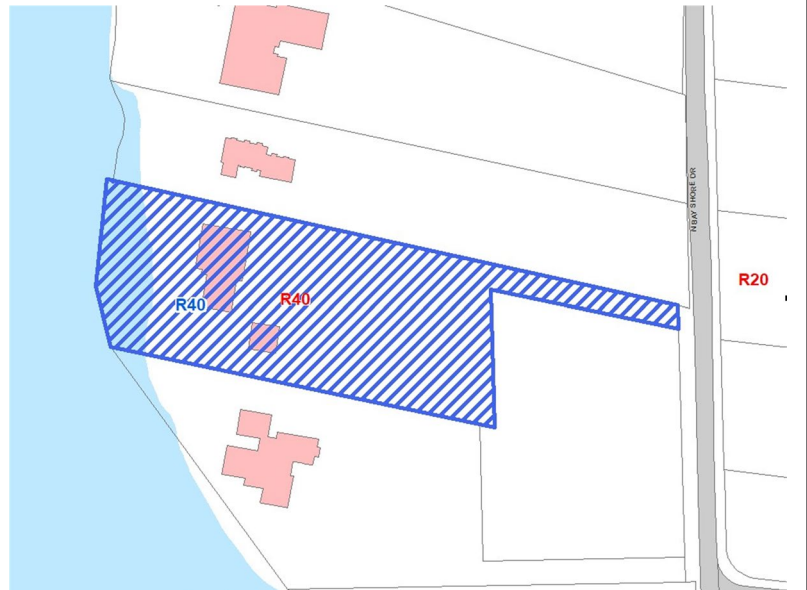
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Single-family residence with associated accessory structures
(complete demolition of primary structure)

Construction Details

- Single-family residence with attached garage
- Concrete driveway with concrete entry court adjacent to residence
- Swimming pool with terrace, outdoor kitchen area, pergola, and porch

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of existing understory trees requested for removal within the RPA: 1
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: TBD
- Evaluation of existing canopy tree removal request: Within the 100- Resource Protection Area (RPA) buffer, 1 canopy is requested to be removed and within the City's 100-foot Variable Width buffer, 1 understory tree is requested to be removed. The remaining trees requested to be removed fall within the Resource Management Area (RMA) of the Chesapeake Bay watershed. Within the RMA approximately 20 canopy trees will be removed and an additional 29 understory trees to accommodate for the landward retreat of the proposed improvements from the 100-foot RPA buffer. The applicant's agent provided to Staff that 32 existing canopy trees and 123 understory trees will be removed with 158 existing trees to remain.

Stormwater Management Methodology

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

Pete & Sarah Kotarides

Agenda Item 4

Page 54

Evaluation and Recommendation

This variance request proposes to demolish the existing single-family residence with the associated accessory structures, in addition to the gravel driveway and entry court. A new two-story dwelling with an attached garage, new entry court/parking area, concrete driveway, swimming pool with associated terrace, pavilion and pergola for an outdoor kitchen, and porch are proposed to be constructed and shifted landward from what currently exists on the lot. The redevelopment of this lot proposes approximately 4,351 square feet of new impervious cover in the Resource Protection Area (RPA) and will increase the overall impervious cover of the lot from 19,642 square feet to 20,766 square feet or 36 percent to 38 percent of the site above water and wetlands. To better understand the allocation of new impervious cover on the lot, the applicant's agent provided the following breakdown of redevelopment of this lot with the exhibit provided on page 64 below.

- Total Impervious Pre-development 19,642 square feet
- Total Impervious Post-development 20,766 square feet
- Existing Impervious to Remain 503 square feet
- Redevelopment in the RPA 3,625 square feet
- New Development in the RPA 5,218 square feet
- Removed Impervious 9,418 square feet
(Of which 540 square feet inside the 50-foot seaward buffer)

To support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements will not confer upon the applicant any special privilege and is the minimum necessary to afford relief given the proposed location of the improvements within the RPA buffer and RMA of the Chesapeake Bay 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 *"the proposed dwelling and associated improvements are in keeping with similar redevelopment projects in the Bay Colony Subdivision."* Staff acknowledges the statement provided by the applicant's agent and offers that CBPA Variance request along North Bay Shore typically offer a retreat within the RPA to alleviate improvements from being adjacent to the existing top of bank.
- 2) The applicant's agent 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 originally platted in 1968, prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been relocated landward on the site (approximately 28' to the east) to remove the improvements from the 50' seaward RPA Buffer, to minimize site impacts, and to avoid new impervious area in the 50' seaward portion of the site."* Staff offers that the terms "minimum necessary to afford relief" is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. When considering the minimum necessary to afford relief, things such as the size of the structure, the types of proposed structures, and the placement of the structures in relation to the size, layout and location of the lot are important considerations.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed dwelling and improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay.”* Staff acknowledges the statement provided by the applicant’s agent and offers that the average increase in impervious cover for redeveloped lots ranges from 10 to 12 percent increase. With regard to this variance being in harmony the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality Staff offers the recommended conditions below.

- 5) *“The existing planting beds will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds that gravel downspout intercepts, coupled with bioretention planting beds and the require buffer restoration, will provide viable rainwater infiltration on the lot.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **4,351 square feet x 200 percent = 8,702 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **11 canopy trees, 28 understory trees, 52 large shrubs, and 78 small shrubs.**

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

- 4) A certified arborist report shall be provided for review and approval during the site plan review process. Said report shall provide written verification as to the disposition of the residual canopy trees adjacent to the proposed improvements and methods taken to preserve the health and longevity of said trees during construction with regard to site monitoring and post-construction maintenance. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining canopy trees before, during and after the project is complete.
- 5) The proposed driveway, exclusive of the auto forecourt shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction in compliance with the Virginia Stormwater Best Management Practice (BMP) Clearinghouse – Practice 7: Permeable Pavement shall be provided site plan submitted to the Development Services Center for review and approval.
- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.

16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$997.10 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

17) The conditions and approval associated with this variance are based on the exhibit plan dated December 28, 2022, prepared by WPL, signed March 1, 2023, by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

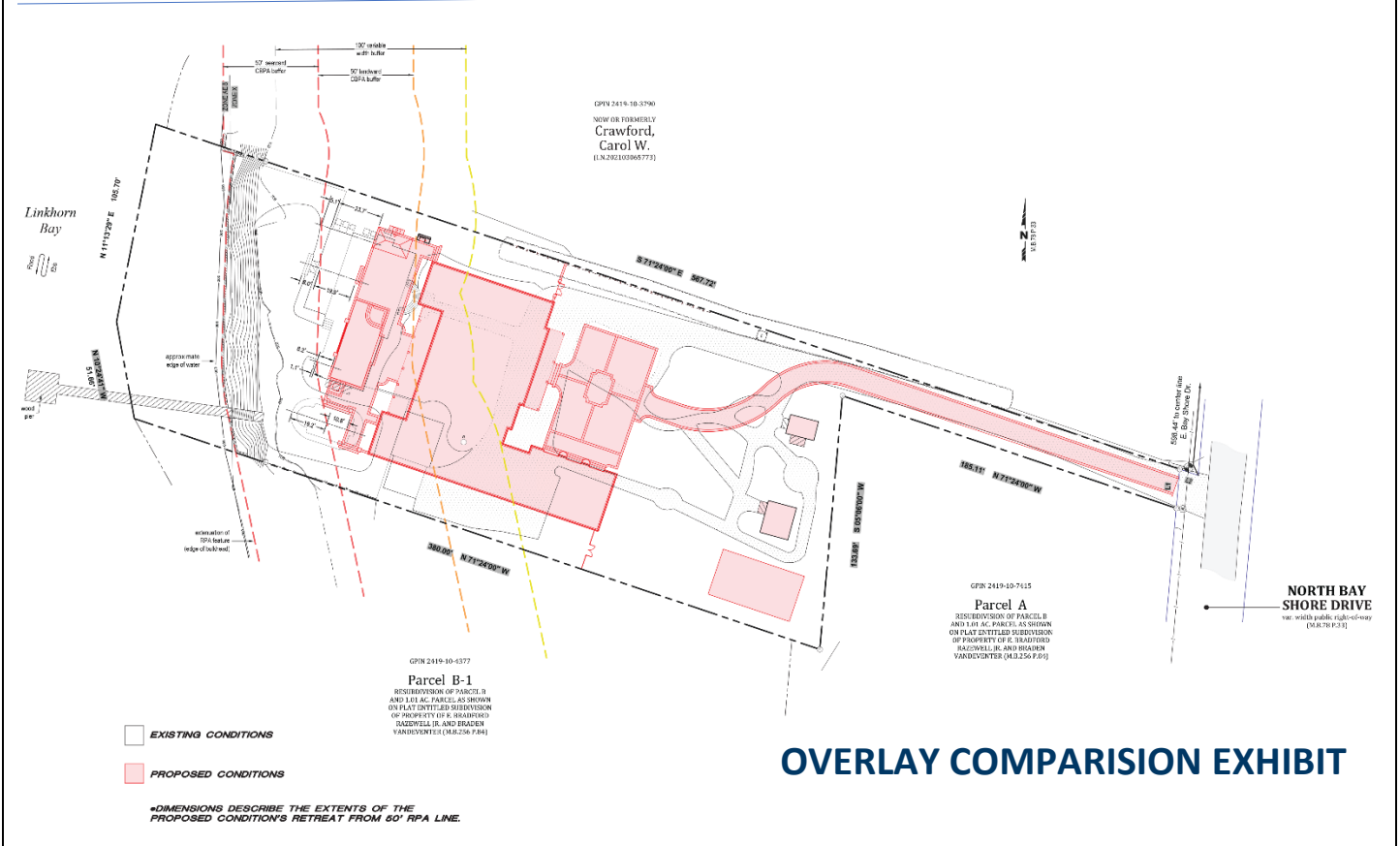
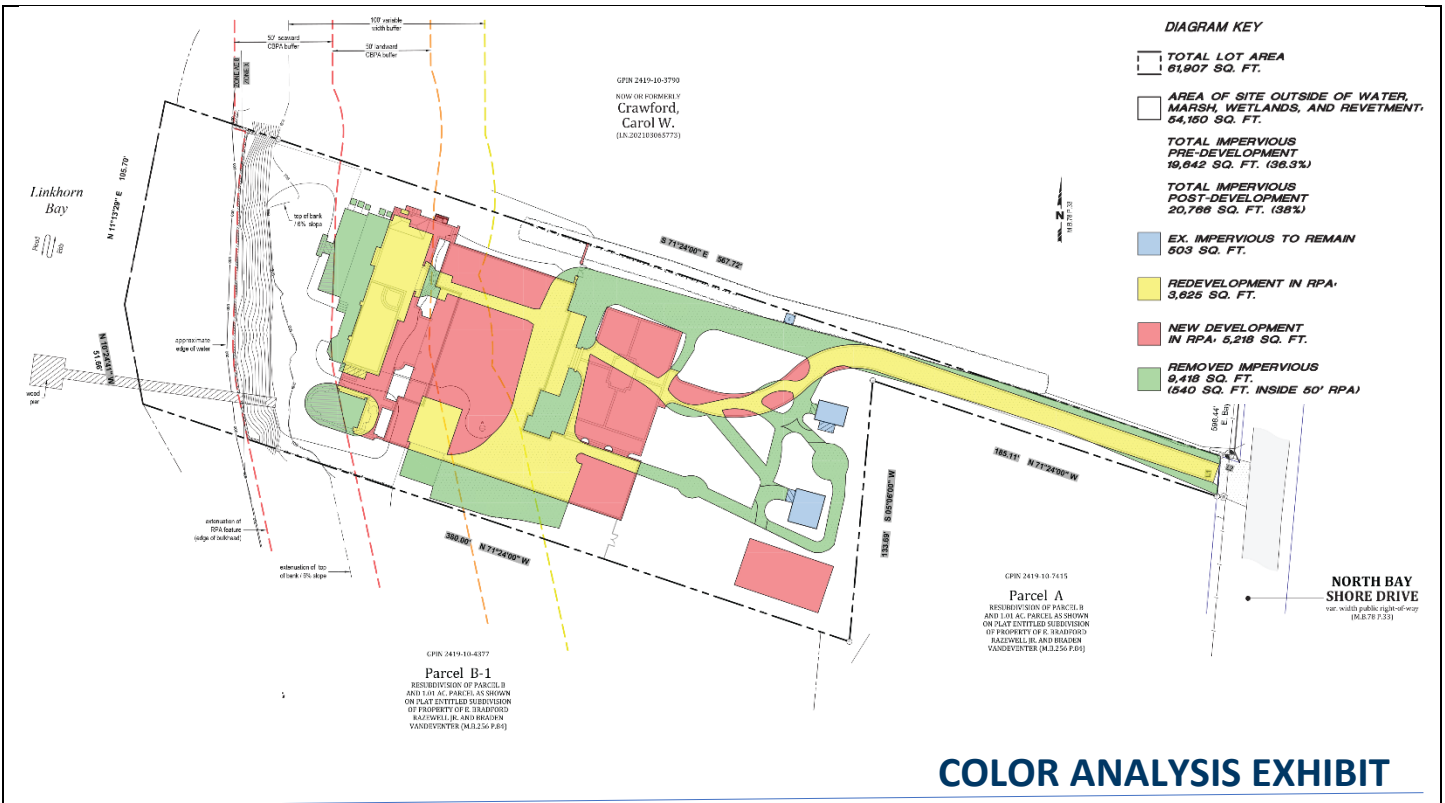
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

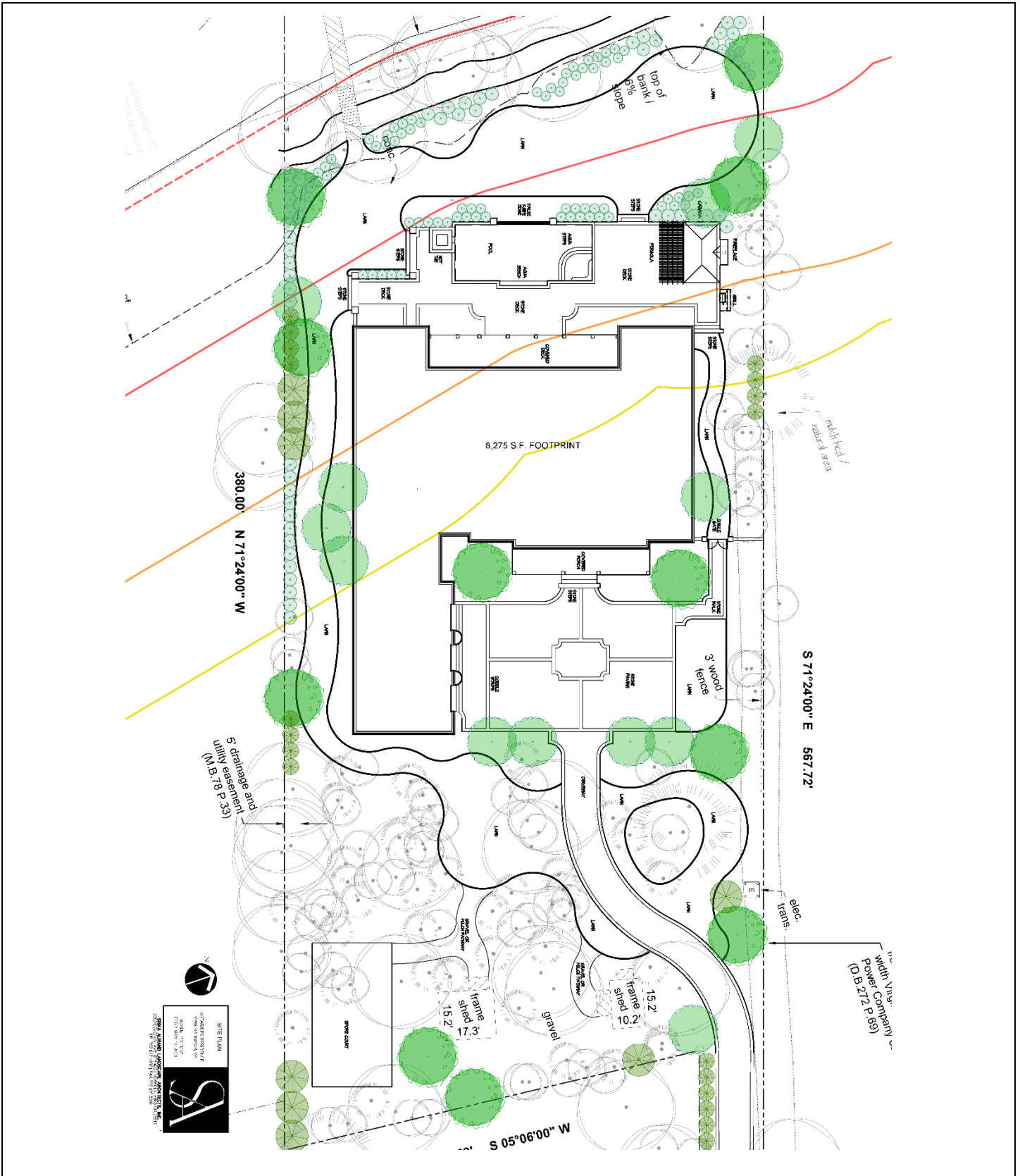
Site Aerial



CBPA Exhibit – Color Analysis & Overlay Comparison



CBPA Exhibit – Conceptual Planting Plan



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Pete Alex Kotarides & Sarah I Kotarides

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.

Truist 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.

Siska Aurand - Landscape Architects

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

Pete Alex Kotarides, Owner

Print Name and Title

2/28/2023

Date

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

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

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

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



Applicant & Property Owner **Lisa Barr & Kelly Hayes**
 Address **2409 Broad Bay Road**
 Public Hearing **April 24, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a step pathway, patio expansion, and block retaining wall.

Applicant’s Agent

Jason Thomas, PLA
 Painted Fern Landscape Architecture

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 45, Page 37
 Recorded 8/15/1968

GPIN

1499-98-2733

SITE AREA

26,388 square feet or 0.606 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

25,258 square feet or 0.580 acres

EXISTING IMPERVIOUS COVER OF SITE

5,934 square feet or 23.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,140 square feet or 24.3 percent of site

Area of Redevelopment in RPA

98 square feet

Area of New Development in RPA

218 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

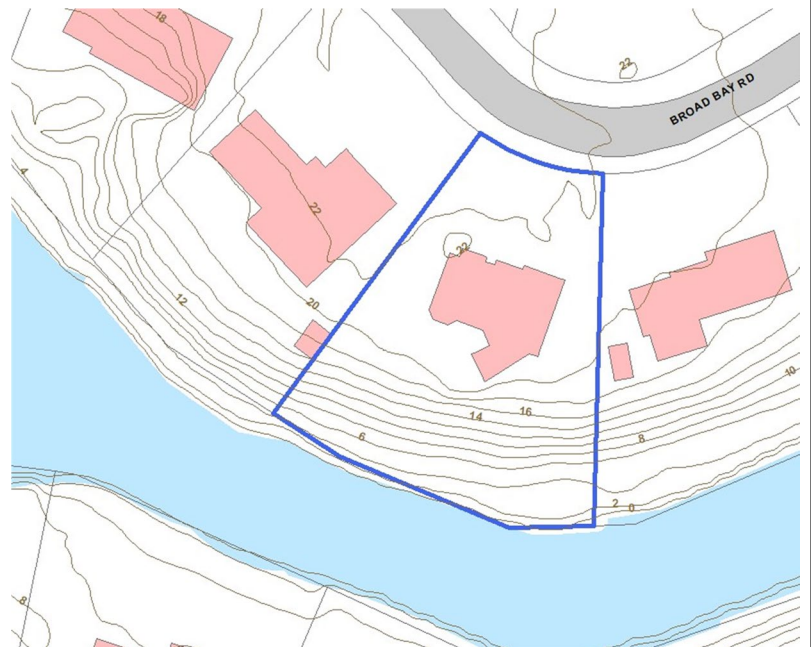
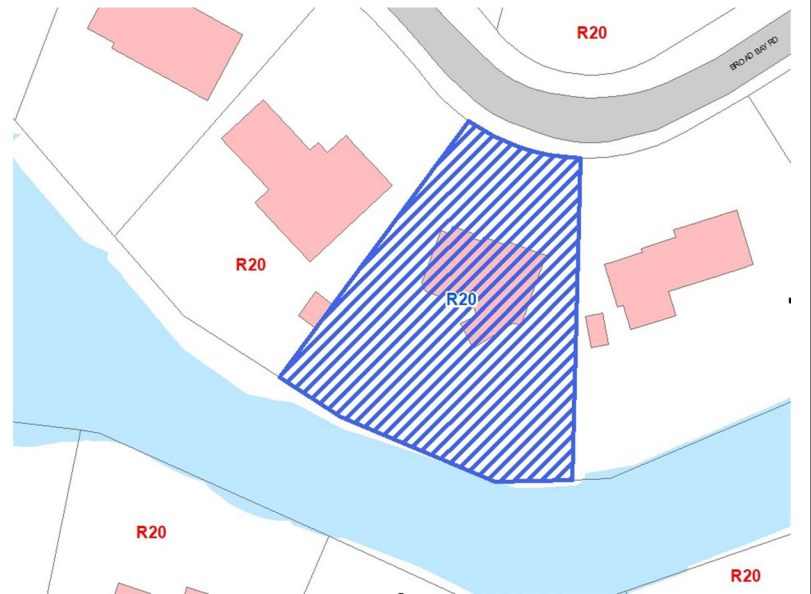
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portion of existing paver walkway at rear of residence

Construction Details

- Timber steps with associated retaining walls
- Block retaining wall for mulch seating area
- Patio expansion

CBPA Ordinance Variance History

On April 25, 2005, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family home and associated accessory structures 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 top-of-bank prior to any land disturbance, inclusive of demolition, and shall be maintained until such time as vegetative cover is established.*
3. *A heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 10' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *All stormwater from proposed impervious cover shall be conveyed to structural stormwater management facilities*
8. *If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan.*
9. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
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. ***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 \$1,282.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 1,399 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*

13. *Buffer restoration totaling 5,594 sq. ft. shall be installed which is equal to 100% 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 issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
14. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
15. *A minimum of twenty (20) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*
16. *The conditions and approval associated with this variance are based on the site plan dated March 10, 2005, with a revision date of April 13, 2005, prepared by Gallup Surveyors & Engineers Ltd.*
17. *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 April 25, 2005, Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a rip rap revetment

Riparian Buffer

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The Chesapeake Bay Preservation Area (CBPA) variance request includes the construction of a timber stepped walkway off the rear of the residence down the steep slope of the backyard to provide access to the existing garden area and wood dock for the homeowners. Staff is of the opinion that this portion of the variance request is in harmony with the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance providing access to the water dependent

facility (existing wood dock) in a manner that minimizes land disturbance and provides a single point of access. Additionally, the applicant desires to construct a patio expansion off the rear walkway with a timber step walkway connecting to a new mulched seating area encompassed by a 25 linear foot long retaining wall. Given the existing topography in the rear yard – grade elevations ranging from approximately twenty (20) feet above sea level at the top of the proposed timber walkway to approximately four and a half (4.5) feet above sea level at the bottom of the walkway, Staff is of the opinion that the request is reasonable and creates a more functional backyard for the homeowners and the proposed improvements would not cause a substantial detriment to water quality of the Chesapeake Bay.

- 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 *“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 District in this area.”* 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 *“the 100-foot RPA encumbers a large area of the lot while much of the remaining lot lies within the Variable Width Buffer (all but 1,570 SF). Despite the proposed improvements encroaching into the 50’ Seaward & Landward Buffers, the proposed placement of improvements are due to the topography & proximity of their home within the RPA. While the proposed improvements increase their overall impervious surface in the RPA, all take place in areas that are currently dedicated to lawn or overgrown shrubbery. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot.”* Staff concurs and adds that the improvements are warranted given the slope of the existing backyard and have been designed to have the least impact on the RPA 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 existing RPA buffer on this lot is comprised primarily of turf grass, ornamental landscaping, canopy trees, and modest amount of impervious cover (23.5%). All proposed improvements inside the 50’ Seaward Buffer are designed as mulched paths or terraces which will improve site circulation and promote the slowing of the velocity of stormwater while also promoting infiltration. This request will require the establishment of additional vegetation within the buffer to help address 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. The proposed request is not expected to be injurious to the public welfare and is not of substantial detriment of water quality.”* Staff is of the opinion that the proposed improvements are minimal and provide much needed functionality to the backyard of this lot for the homeowners and 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 the landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscape that should aid in slowing the velocity of stormwater leaving the site while the also allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan (proposed areas of Buffer Restoration) that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs*

within the RPA buffer” as a means to manage towards a no net increase in nonpoint source pollution load. The integration of mulch, instead of an impervious surface, throughout the proposed improvements with this request as well as the addition of buffer restoration on the lot ensure that this request will not result in an increase in nonpoint source pollution load.

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. A conditions and approval associated with this variance are based on the exhibit plan dated March 3, 2023, prepared by Painted Fern Landscape Architecture, signed March 3, 2023, by Jason M. Thomas. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal and approval prior to the issuance of a building permit. 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. 615 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) on the lot.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 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.

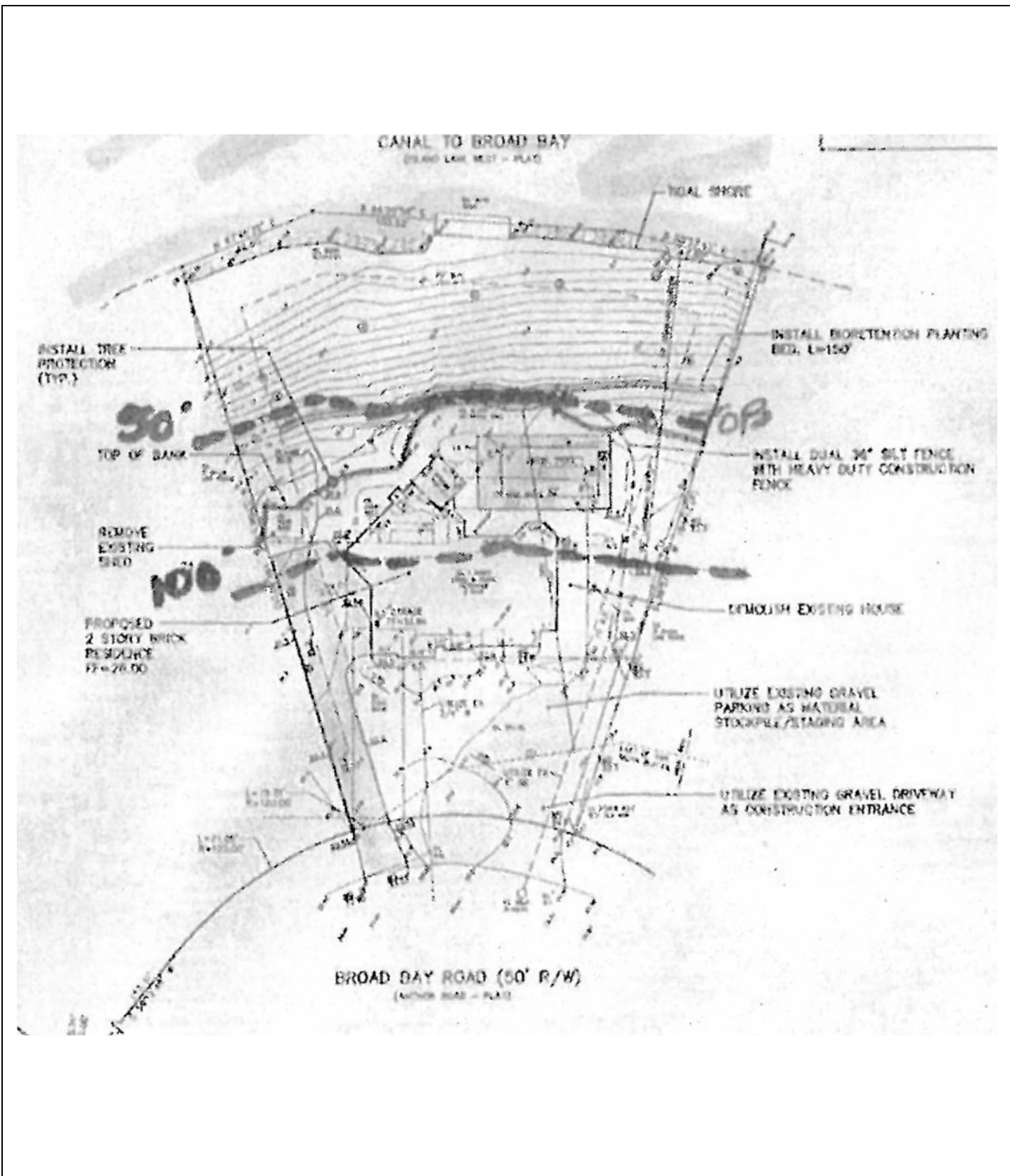
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**

6. 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 Chesapeake Bay Preservation Area (CBPA) Board variance granted April 25, 2005.

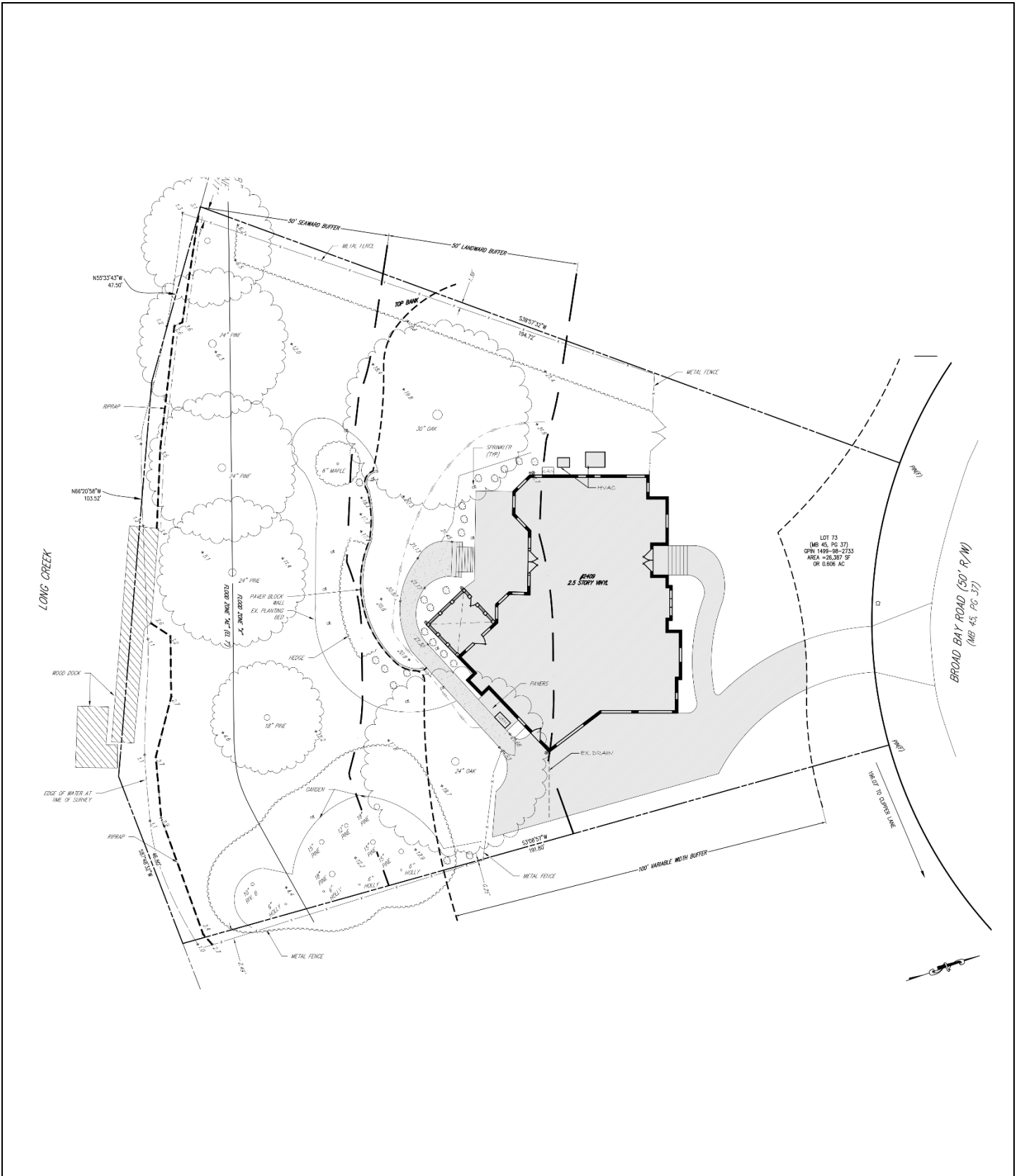
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA

| | LEGEND | EXISTING | PROPOSED | DIFFERENCE | BUFFER % | RESTORATION REQUIRED | RESTORATION PROVIDED |
|----------------------------------|--------|----------|----------|------------|----------|----------------------|----------------------|
| TOTAL IMPERVIOUS AREA | | 5,718 | 5,925 | +207 | | | |
| IMPERVIOUS COVER DEMOLITION | | | 101 | | | | |
| IMPERVIOUS CONVERTED TO PERVIOUS | | | 3 | | | | |
| IMPERVIOUS COVER TO REMAIN | | | 5,619 | | 0% | 0 | 0 |
| "REDEVELOPMENT" NEW OVER OLD | | | 98 | | - | - | - |
| "NEW" IMPERVIOUS | | | 218 | | 200% | 436 | 615 |

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 Lisa Barr

Does the applicant have a representative? Yes No

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

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

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

Lisa B. Barr Revocable Trust (Members: Lisa Barr, Joshua Barr, Rebecca Barr)

- 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 providing the service.

Towne Bank

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

Yes No

- If **yes**, identify the 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

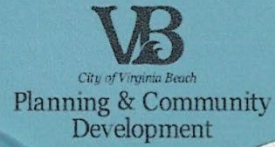
- If **yes**, identify the firm and individual providing the service.

Jason Thomas, PLA with Painted Fern

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

Applicant Signature

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

LBarr

Applicant Signature

Lisa B. Barr

Print Name and Title

3/3/23

Date

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

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

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

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

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Applicant & Property Owner **Steven Kissel**
 Address **2600 Long Creek Drive**
 Public Hearing **April 24, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct an open-air pavilion.

Applicant's Agent

Sean Wheaton
 Virginia Beach Patios Inc.

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 29, Page 48
 Recorded 3/27/1952

GPIN

1499-78-2845

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

504 square feet

Location of Proposed Impervious Cover

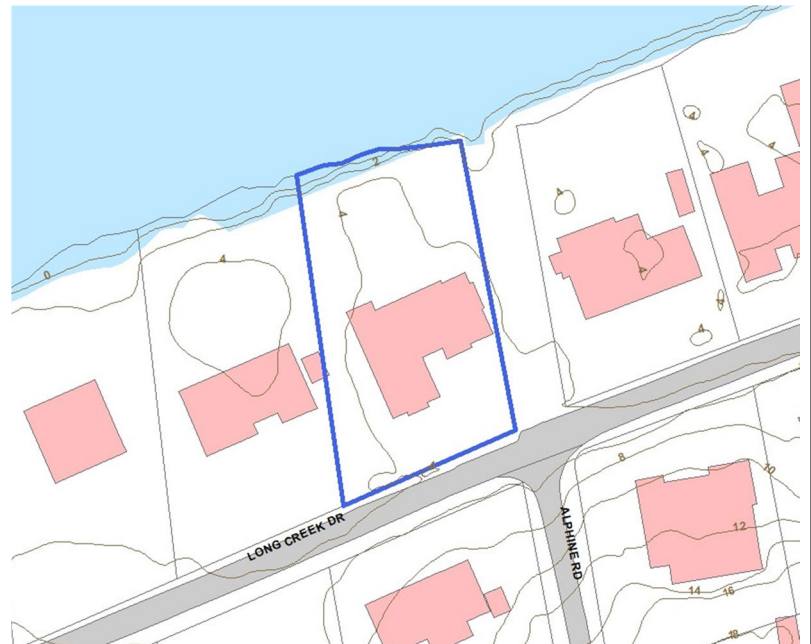
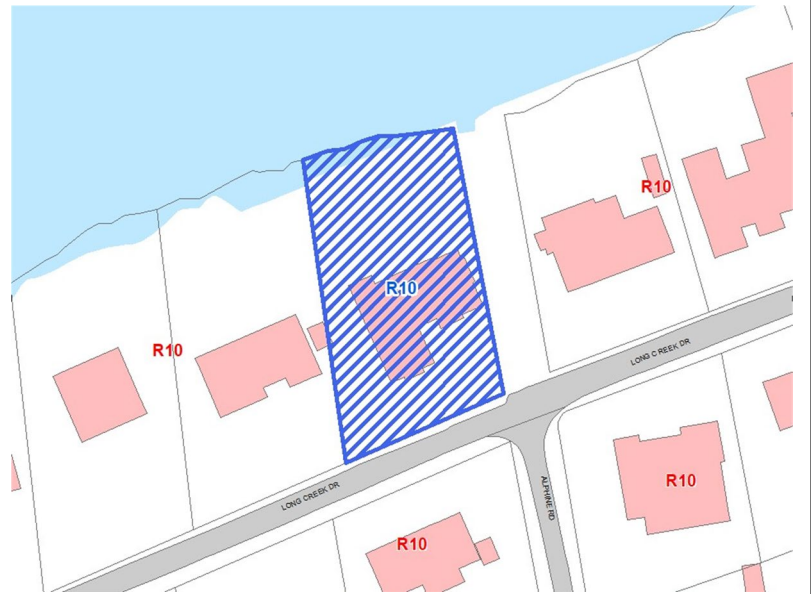
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Open-air pavilion
(Board of Zoning Appeals Variance required)

CBPA Ordinance Variance History

No 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)

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

Shoreline

Shoreline is hardened by a bulkhead.

Riparian Buffer

The existing lot does not have canopy tree coverage

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to construct an open-air pavilion that would expand the existing swimming pool surround to provide the property owner an area of shade when recreating at the existing swimming pool and entertaining in the back yard. Staff is of the opinion that the location of the proposed improvement is ideal for the site given the zoning setbacks for accessory structure off the Alphine Road (unimproved) and situating the proposed improvement landward as possible in the Resource Protection Area (RPA) buffer and directly adjacent to the residence.

With the performance standards set forth within the CBPA Ordinance intended to prevent a net increase in nonpoint source pollution from new development and redevelopment, as well as to promote infiltration of stormwater into the ground, Staff is of the opinion, that the underlying soil condition being a moderately well drained sand soil and flat topography of the lot aids in slowing the rate of run-off down from existing impervious cover. Staff offers that the introduction of canopy trees on the lot, which currently does not have canopy cover with offer an opportunity to

intercept rainwater and further aid towards the lot reducing the potential for producing a nonpoint source pollution discharge into the adjacent waterways.

Given the challenges of this lot due to setback, dimensions, and environmental features the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 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 *"as the redevelopment of this lot is similar to other lots within this neighborhood that have expanded accessory structures within the RPA due to the location of existing improvements – most of which were constructed prior to the adoption of the CBPA Ordinance and delineation of the 100 foot RPA buffer."* Staff concurs and offer that the R-10 zoning for this lot limits the space available to construct improvements within the lot without encroaching into the RPA feature on a pre-Chesapeake Bay Act lot.
- 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 this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief *"given the location of the proposed improvements will be within an area currently devoted to turf and within close proximity to existing upland improvements."* Staff acknowledges the statement provided by the applicant's agent and understands the needs of the property owner to construct the proposed improvements as stated above. Staff is of the opinion that the recommended conditions below, specifically the buffer restoration is a needed addition to the lot lacking an established canopy cover.
- 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 being located in an area of relatively flat topography, and the construction access being off of an adjacent hard surface. These are similar to several redevelopment projects on adjacent parcels that have encroached into the 100-foot RPA buffer with improvements on lots that were developed prior to the adoption of the CBPA Ordinance."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, Staff provides the recommended conditions below to create planting beds along the eastern property line provide additional benefit on the lot towards intercepting and infiltration of stormwater runoff.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

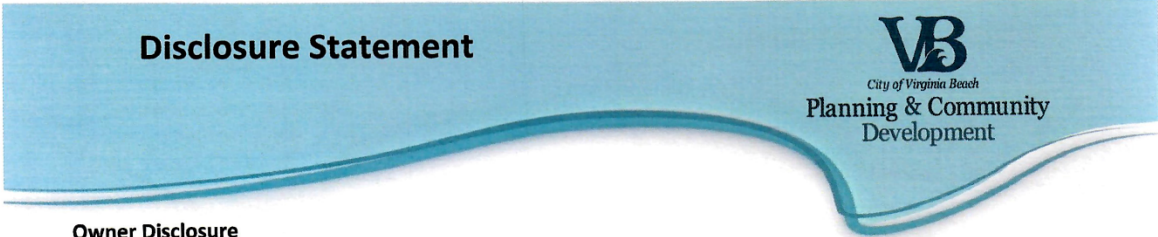
2. **3 canopy trees and 5 understory trees** shall be planted along the eastern property line within the Resource Protection Area, in areas currently devoted to turf. The plantings shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. No perimeter fill is authorized outboard or seaward of the proposed improvements.
5. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

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

Site Aerial



Disclosure Statement



Owner Disclosure

Owner Name Steve Kissel

Applicant Name Virginia Beach Patios

Is the Owner 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-sub subsidiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

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?

³ "Parent-sub subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, VA. Code § 2.2-3101.

⁴ "Affiliated business entity relationship" means "a relationship, other than parent-sub subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

Disclosure Statement



Owner Services Disclosure

1. Does the Owner 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 Owner 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 Owner 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 Owner 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.

6. Does the Owner 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 Owner 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.

Disclosure Statement



8. Is the Owner 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 legal the service.

Owner 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.

Owner Signature

Print Name and Title

Date

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Geoff & Pamela Fout**
 Address **2312 Windward Shore Drive**
 Public Hearing **April 24, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a gazebo and concrete pad.

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 45, Page 37
 Recorded 8/15/1958

GPIN

1499-98-9874

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

56 square feet

Area of New Development in RPA

244 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Gazebo with concrete pad

CBPA Ordinance Variance History

No 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)

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

Shoreline

Shoreline is hardened by a bulkhead.

Riparian Buffer

The existing lot does not have canopy tree coverage

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to construct a 15' x 20' gazebo adjacent to the existing wood deck. The proposed improvements are within the 50-foot landward buffer of the Resource Protection Area (RPA) buffer in an area currently devoted to turf. Staff is of the opinion that the location of the proposed improvement is ideal for the site given the layout of the existing improvement, proximity of the proposed gazebo to the existing residence, and the applicant's effort to situate the structure within the upper reach of the 100-foot RPA buffer.

For the Board's consideration the applicant provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 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 request is similar to adjacent properties that have accessory structures.*" Staff concurs and offer that the applicant's request is in harmony with the

neighborhood and other variances that gave granted encroaching into the RPA feature on a pre-Chesapeake Bay Act lot.

- 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 this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the location of the gazebo on the property is the only area available on property with the least amount of land disturbance."* Staff acknowledges the statement provided by the applicant and concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the request is small, the proposed gazebo is approximately 40' from the property line, and will be built in a professional manner."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, Staff provides the recommended conditions below regarding buffer restoration to provide additional benefit on the lot towards intercepting and infiltration of stormwater runoff.

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

Recommended Conditions

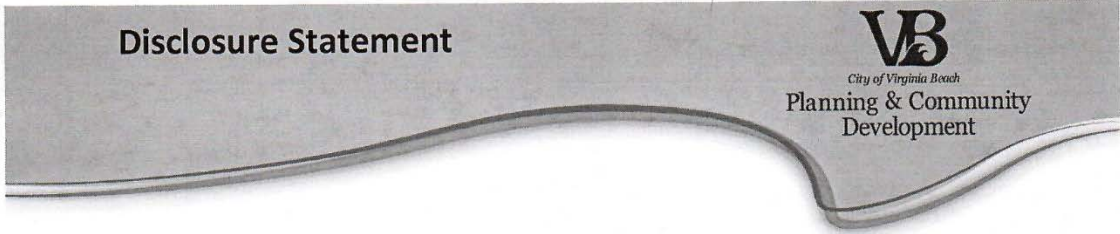
1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. **1 canopy tree, 2 understory trees, and 6 small shrubs** shall be planted within the Resource Protection Area, in areas currently devoted to turf. The plantings shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

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

Site Aerial



Disclosure Statement



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 Geoff Fout

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



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

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

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

Applicant Signature

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

Geoff Fout
Applicant Signature
Geoff Fout
Print Name and Title
3-8-23
Date

- Is the applicant also the owner of the subject property? Yes No
- If yes, you do not need to fill out the owner disclosure statement.

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

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



Applicant & Property Owner **Eli Nidam & Mazal Sibony**
 Address **1104 Lady Ginger Lane**
 Public Hearing **April 24, 2023**
 City Council District **District 9**, formerly Bayside

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to expand the pool surround and construct a sport court.

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Instr No. 200309050141955
 Recorded 9/5/2005

GPIN

1478-86-4316

SITE AREA

30,016 square feet or 0.689 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

30,016 square feet or 0.689 acres

EXISTING IMPERVIOUS COVER OF SITE

7,441 square feet or 24.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,349 square feet or 31.1 percent of site

Area of Redevelopment in RPA

453 square feet

Area of New Development in RPA

387 square feet

Location of Proposed Impervious Cover

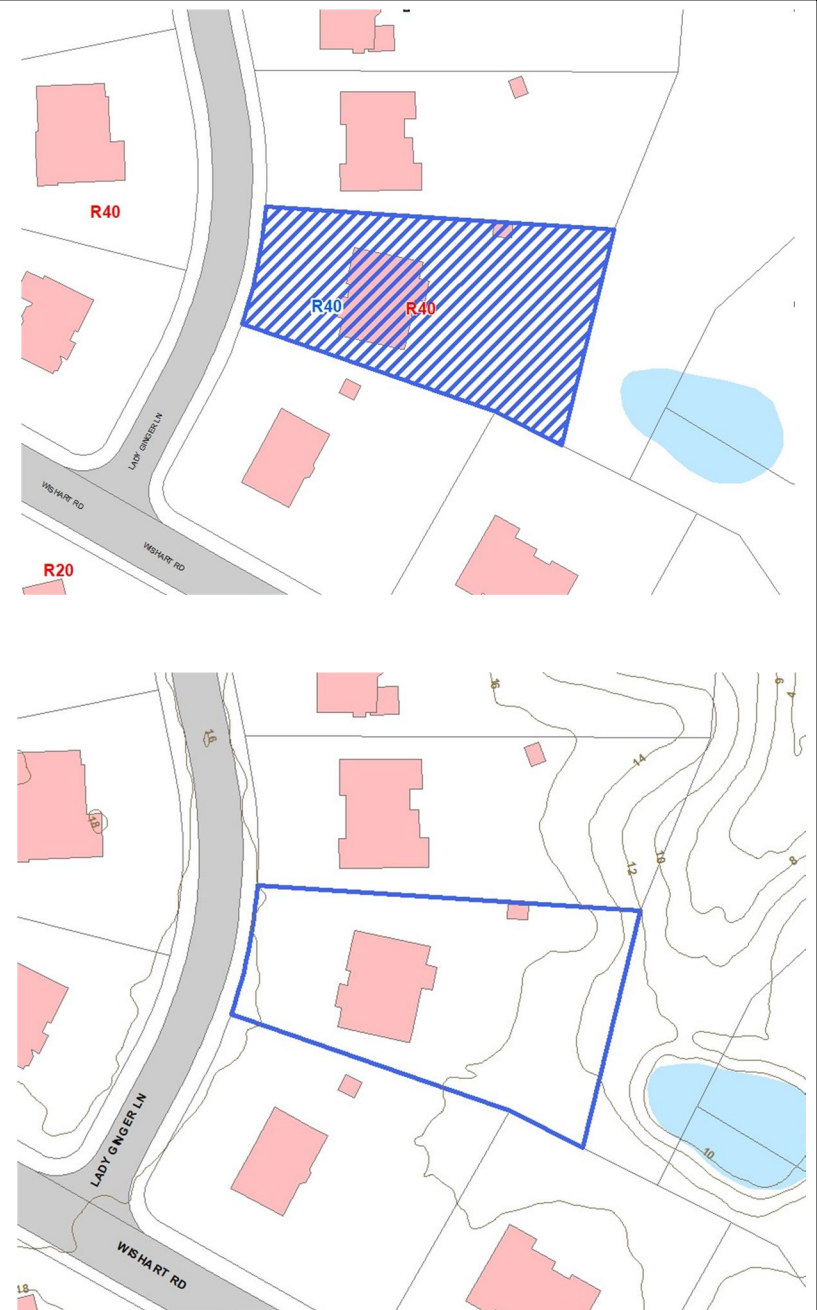
100-foot Variable Width Buffer
 Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Concrete pool surround

Construction Details

- Concrete pool surround – expand footprint of existing layout
- Sport Court

CBPA Ordinance Variance History

February 25, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of an approximate 21.2 acre parcel into a 23 lot subdivision with the following conditions:

1. *Lots 8 through 14, 16, 18, 20, 22, and 23 shall be a maximum 24,000 square feet.*
2. *The limits of construction shall be in substantial conformance with the site rendering dated February 15, 2002, prepared by MSA and Porterfield Design Center. Said limits shall be noted on the subdivision plat and each applicable site plan.*
3. *A minimum of 25% of the remaining pervious area on each lot (including those lots within the RMA) shall incorporate mulched planting beds and be so noted on each site plan. Bayscape landscape principals are encouraged.*
4. *Tree compensation shall be double the canopy requirements espoused by the City Tree Preservation and Replacement Ordinance. Said condition shall be so noted on each individual site plan. This condition applies to both RMA and RPA lots.*
5. *Those lots, whose rear yards are impacted by the 100' buffer **and** proposed limits of construction, shall be enhanced with buffer restoration, inclusive of trees, shrubs, and mulch. The applicant may desire to co-mingle this initiative with aforementioned conditions 3 and 4. Said condition shall be noted on the subdivision plat and each applicable site plan.*
6. *The limits of construction shall lie a maximum of 20 feet outboard of improvements on proposed Lot 7. Triple erosion and sedimentation control measures, inclusive of one row of straw bales shall lie adjacent to prescribed limits of construction. A temporary chain link fence shall also lie adjacent to prescribed limits of construction and shall remain in-place throughout the construction phase of the project. Improvements shall lie within the general vicinity of existing impervious cover, shall not exceed existing impervious cover, and shall be positioned equidistant of top-of-banks. In no case shall any improvement lie within 15 feet of the top-of-bank.*
7. *The southern lot line for Lot 7 shall lie no further than 50' south of the residence.*
8. *Buffer restoration of all open space pasture land shall be in substantial conformance with the site rendering dated February 15, 2002, prepared by MSA and Porterfield Design Center. Said restoration plan shall be coordinated with CBPA staff prior to submission. As a guide, trees shall be a minimum of 1" caliber and shall be installed on 25' centers. Shrubs shall be in 3-gallon containers - grasses 1 gallon. Native species shall dominate pasture land. If the*

applicant envisions a series of trails, bridges, gazebo overlook area, etc., said design features shall be shown on the restoration plan.

9. *The existing driveway and residence within the open space area to the northeast shall be removed.*
10. *Payment shall be provided into the Lynnhaven River Oyster Heritage Fund, as offered by the applicant, for those portions of impervious cover within the buffer. Payment is intended to provide the equivalent of a 12" oyster shell plant within the Lynnhaven River for an equal amount of displaced buffer. Payment shall be based on the square footage of impervious cover divided by 27 = cubic yards X 15 (bushels per cubic yard) X \$1.65 (installed price). Said payment shall be made prior to approval of applicable site plans.*
11. *A revised site plan shall be submitted to the DSC for review and approval prior to the issuance of a building permit.*
12. *The existing tree canopy along the projects western boundary shall remain intact to the greatest extent practicable. Specifically for Lots 1 and 3-6.*
13. *All efforts shall be made to convey the majority of public stormwater to the proposed bioretention facility. Any residual public stormwater runoff shall be conveyed to an additional structural facility.*

June 24, 2002, a CBPA Board variance was granted for the subdivision of an approximate 21.2 acre parcel into a 21 lot subdivision with the following conditions:

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

8. *Buffer restoration of all open space pasture land shall be in substantial conformance with the site rendering dated May 29, 2002, prepared by MSA and Porterfield Design Center. Said restoration plan shall be coordinated with CBPA staff prior to submission. As a guide, trees shall be a minimum of 1" caliber and shall be installed on 25' centers. Shrubs shall be in 3-gallon containers - grasses 1 gallon. Native species shall dominate pasture land. If the applicant envisions a series of trails, bridges, gazebo overlook area, etc., said design features shall be shown on the restoration plan.*
9. *The existing driveway and residence within the open space area to the northeast shall be removed (the area east of Lot 21).*
10. *Payment shall be provided into the Lynnhaven River Oyster Heritage Fund for those portions of impervious cover within the buffer. Payment is intended to provide the equivalent of a 12" oyster shell plant within the Lynnhaven River for an equal amount of displaced buffer. Payment shall be based on the square footage of impervious cover divided by 27 = cubic yards X 15 (bushels per cubic yard) X \$1.65 (installed price). Said payment shall be made prior to or concurrent with approval of applicable site plans.*
11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The June 24, 2002, CBPA Board granted variance has been acted upon and the associated improvements constructed.

September 27, 2004, a CBPA Board variance was granted for the construction of a swimming pool with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance.*
2. *A 36" erosion and sedimentation control measure (silt fence) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *A heavy-duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained daily during construction.*
4. *Construction limits shall lie a maximum of 15' seaward of improvements associated with the pool decking.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *All stormwater from the proposed impervious cover shall be conveyed to structural stormwater management facilities.*
7. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end). Portions of the proposed pool deck must be modified.*
8. *Buffer restoration shall be installed equal to 25% (6,028 sq. ft.) of the remaining pervious area. All required restoration shall be installed within areas currently devoted to turf and shall utilize bayscape landscaping principles. Amend the site plan to define the limits of turf as it exists today. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
9. *Trees shall be comprised of 50% evergreen and 50% deciduous species.*

10. The conditions and approval associated with this variance are based on the site plan dated June 6, 2003, prepared by WPL.

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.

Environmental Conditions

Flood Zone

Zone X

Soil Type(s)

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

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

Shoreline

The property does not have a shoreline.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant has recently purchased the property. All the proposed improvements fall within the upper limits of the variable width buffer of the Resource Protection Area (RPA) and the Resource Management Area (RMA); however, the lot is subject to the conditions of the June 2002 Chesapeake Bay Preservation Area (CBPA) Board variance for the development of a twenty-one (21) lot subdivision which necessitated the September 2004 CBPA Variance to be heard by the Board. At this time the applicant is asking for reconsider of the following conditions associated with the 2004 CBPA Variance.

- Condition 7 – *“Pool decking shall be a maximum of 4’X4’X4’X8’ (diving board end). Portions of the proposed pool deck must be modified.”*

In addition to expanding the existing swimming pool decking to accommodate additional space for family size and needs, the applicant desires to construct a sport court area for their children. The applicant stated that they do not intend to construct the court with the expansion of the swimming pool deck but desire to in the future. Collectively the request will add approximately 1,908 square feet of new impervious cover on lot of which approximately 387 square feet of new impervious cover is proposed within the City’s Variable Width buffer. With regard to the proposed improvements that deviate from the conditions of the 2004 CBPA Variance Staff offers the following comments.

- *“Pool decking shall be a maximum of 4’X4’X4’X8’ (diving board end). Portions of the proposed pool deck must be modified.”* Staff offers that the majority of the redevelopment proposed for this lot occurs within the Resource

Management Area (RMA) of the Chesapeake Bay watershed, approximately 1,521 square feet or 80 percent of the proposed new impervious cover associated with this request.

The applicant provides the following comments for the Board's deliberation as merit towards the variance request being in harmony with 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 *"other property owners along Lady Ginger have gone before the Board for similar requests since the original CBPA Variance application for the neighborhood did not include accessory structure allowances."* Staff concurs and offers that similar requests have been presented to the CBPA Board for additional use of property associated with the creation of these lots by the 2002 CBPA Variance. Majority of those improvements are located within the City's Variable Width buffer of Resource Management Area (RMA) of the Chesapeake Bay watershed.
- 2) This variance request *"is not based upon conditions or circumstances that are or have been created by the applicant rather the predecessor in title of which those previous owners sought variance applications based off their needs and we are seeking to expand the pool surround to meet our needs as well as keep those improvements limited to the variable width buffer and RMA."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"while we are increasing the overall impervious cover of the lot those improvements are limited to the variable width buffer."* Staff acknowledges the statement provided by the applicant and concurs with regard to the applicant's layout of the proposed improvements whereas approximately 80 percent of the new impervious cover is located within the RMA. In addition, the layout of the proposed improvements is applicable to the needs of the family while maintaining the existing canopy tree cover 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 lot will be maintained and landscaped, and the proposed improvements are approximately 380 feet away from the nearest marsh land or edge of tidal feature."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *"the lot will be vegetated, and any denuded areas covered with planting beds or with vegetative cover such as sod."* Staff offers that the applicant's statement above regarding the proposed improvements being approximately 380 feet away from the nearest edge of the tidal feature provides merit towards the proposed improvements not contributing to an increase in nonpoint source pollution loading. With the majority of the lot sloping to the rear of the property, the distance from the tidal feature and mature riparian buffer ecosystem present is deemed to provide approximately 75 percent reduction of sediment and approximately 40 percent reduction in nutrients.

Given the above comments, Staff recommends the following 9 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior

to the issuance of a building permit for all flat work on the lot. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

2. Buffer restoration for the proposed improvements shall be as follow.

- Swimming pool surround expansion – 800 square feet of buffer restoration.

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, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

The required restoration shall be located in areas currently devoted to turf. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth and 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.

- Sport court - **4 canopy trees, 4 understory trees, 8 large shrubs, and 16 small shrubs.** Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

3. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration requiring a minimum of 25% of the remaining pervious area on each lot (including those lots within the RMA) shall incorporate mulched planting beds shall be installed if removed from the lot.
4. A landscape plan shall be submitted to the Department of Planning & Community Development, Development Service Center for review and approval for all required buffer restoration.
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
7. 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.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. This variance and associated conditions are in addition to the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted June 24, 2002, and September 27, 2004, with the exception of condition 7.

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

Site Aerial



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Eli Nidam & Mazal Sibony

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Mortgage company: Langley FCU

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.

Personal accountant: Tyler & company, LLC. located in Ocean City, MD.

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.
A.H.V Contractor LLC

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

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

Applicant Signature

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



Applicant Signature
Mazal Sibony Home Owner

Print Name and Title
4/3/23

Date

- Is the applicant also the owner of the subject property? **Yes** **No**
- If **yes**, you do not need to fill out the owner disclosure statement.

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

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