

Chesapeake Bay Preservation Area Board Agenda

May 22, 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, May 22, 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 **May 22, 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.

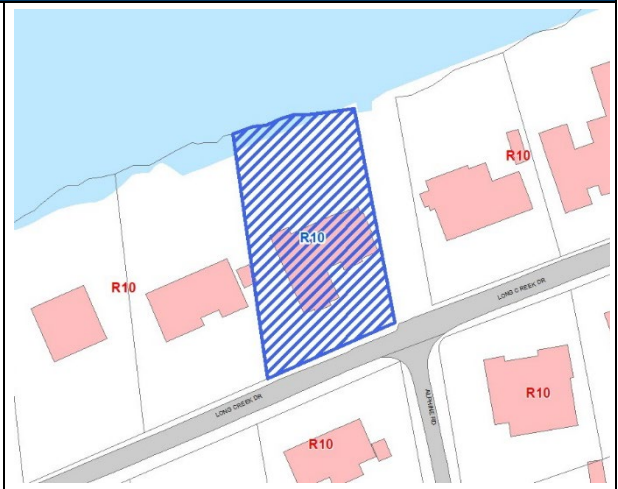
OLD BUSINESS AGENDA ITEMS

1. 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 5



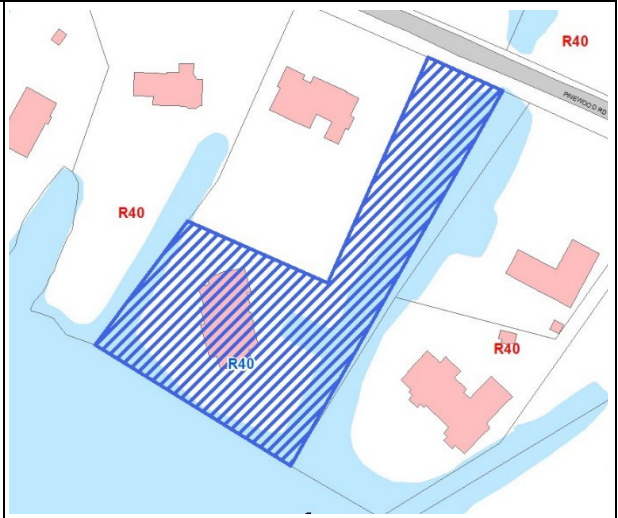
NEW BUSINESS AGENDA ITEMS

2. Jack Ross
[Applicant & Property Owner]

118 Pinewood Road # B
GPIN 2418-62-9745
City Council District: District 6, formerly Bayside
Accela Record: 2023-CBPA-00022

Variance Request – Encroachment into the RPA to construct a swimming pool with associated pool deck, steps, and retaining walls.

Staff Planner – Cole Fisher
Staff Report – page 15



NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Charis Properties, LLC [Applicant & Property Owner]

465 Goodspeed Road

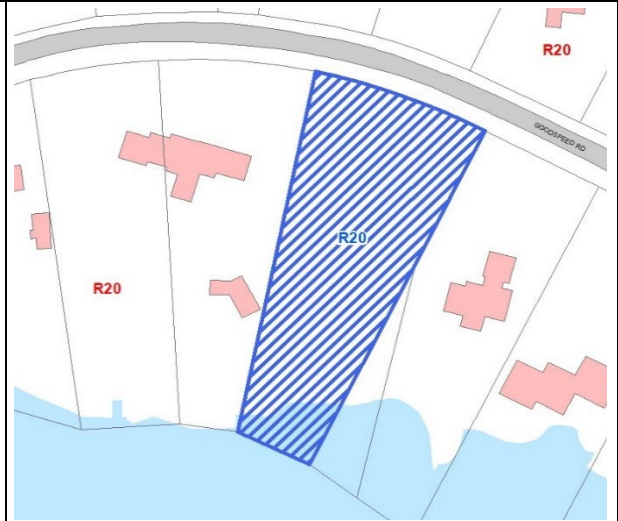
GPIN 2419-41-8184

City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00024

Variance Request – Encroachment into the RPA to construct a rip rap sill with associated fill material.

Staff Planner – Cole Fisher

Staff Report – page 33



4. Cavalier Golf & Yacht Club [Applicant & Property Owner]

1052 Cardinal Road

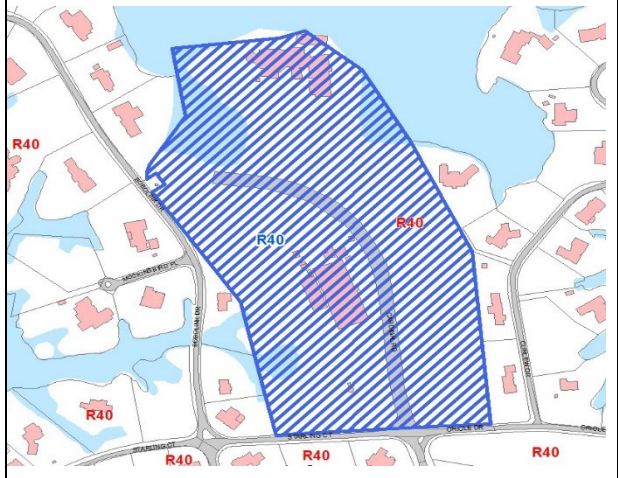
GPIN 2418-24-6584

City Council District: District 6, formerly Lynnhaven
Accela Record: 2023-CBPA-00023

Variance Request – Encroachment into the RPA to construct a pickleball court.

Staff Planner – Cole Fisher

Staff Report – page 45



SHOW CAUSE AGENDA ITEMS

5. Christina Minton [Applicant & Property Owner]

2212 Leeward Shore Drive

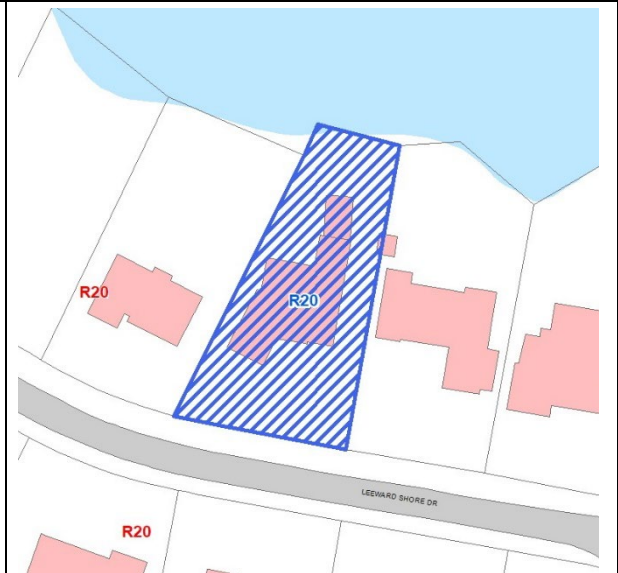
GPIN 2409-29-0640

City Council District: District 8, formerly Lynnhaven
Accela Record: 2023-CBPV-00003 and
2022-CBPV-00005

Statement of Noncompliance – Unauthorized development within the RPA with the redevelopment and expansion of accessory structures.

Staff Planner – Cole Fisher

Staff Report – page 65





Applicant & Property Owner **Steven Kissel**
 Address **2600 Long Creek Drive**
 Public Hearing **May 22, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

1

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

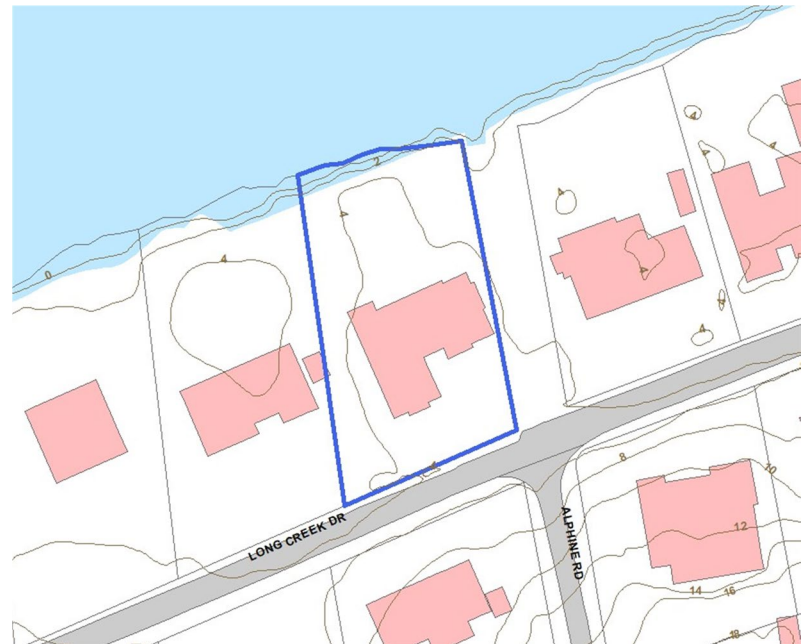
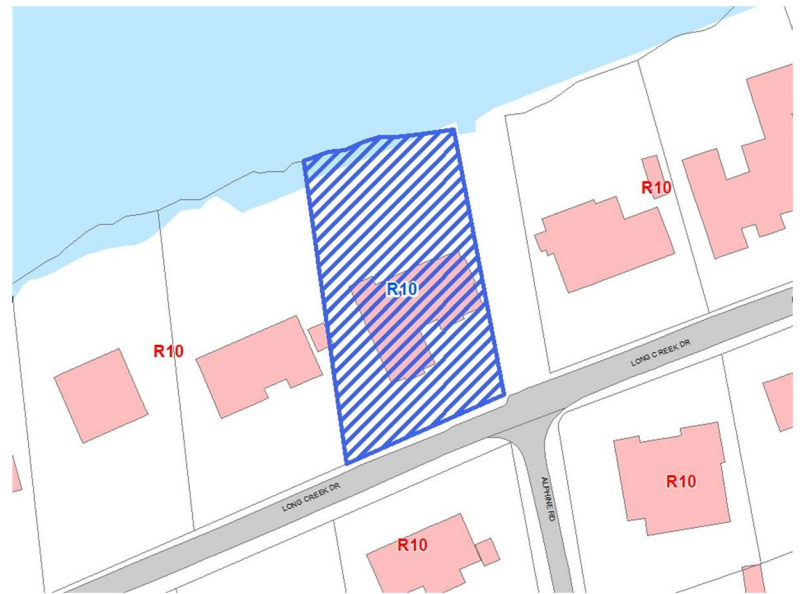
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approve as conditioned



Summary of Proposal

Construction Details

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

CBPA Ordinance Variance History

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

- April 24, 2023 CBPA Board Public Hearing

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

Staff write-up from the April 23, 2023 Chesapeake Bay Preservation Area (CBPA) Board public hearing.

“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 Alpine 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.”

Since the April 2023 CBPA Board public hearing, Staff met with the applicant’s design team to discuss the layout of the proposed improvements being the minimum necessary to afford relief given the extent of encroachment into the RPA feature and the methodology to mitigate on the lot for the proposed improvements. At the meeting, the applicant’s design team stated that it is not their desire to reduce the size of the open-air pavilion. Staff has included the proposed buffer restoration plan submitted by the applicant’s agent showing approximately 1,340 square feet of buffer restoration and bioretention planting beds on the lot. Additionally, the applicant has removed 155 square feet of existing impervious cover by proposing to remove the existing fire pit and paver area that is seaward of the proposed improvements. The applicant is also adding rain gutters on the proposed pavilion and directing them to the proposed bioretention planting beds as well as utilizing rainwater harvesting with a new rain barrel to collect runoff from the proposed pavilion.

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 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. However, the area of the proposed open-air pavilion is approximately 500 square feet and Staff is of the opinion that the average open-air pavilion or gazebo structure typical for a residential lot is approximately 256 square feet or 16 feet by 16 feet.
- 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 acknowledges the statement provided by the

applicant's agent and has provided the recommended conditions below as a means for redevelopment on this lot to be in harmony with the purpose and intent of the CBPA Ordinance.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, Staff offers the recommended conditions below to create planting beds along the eastern property line as a means to provide additional benefit on the lot towards intercepting and infiltration of stormwater runoff.

Should the Board desire to hear this variance request given Staff recommendation, the following **7** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. Remove the proposed stone fire pit and wall. Said area shall be restored to pervious area and incorporated into the required buffer restoration area.
2. Reduce the size of the proposed open-air pavilion to 256 square feet or approximately 16 feet by 16 feet.
3. 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.
4. 1,340 square feet of buffer restoration shall be installed within the RPA on the lot in substantial compliance with the buffer restoration plan submitted with this variance request.

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

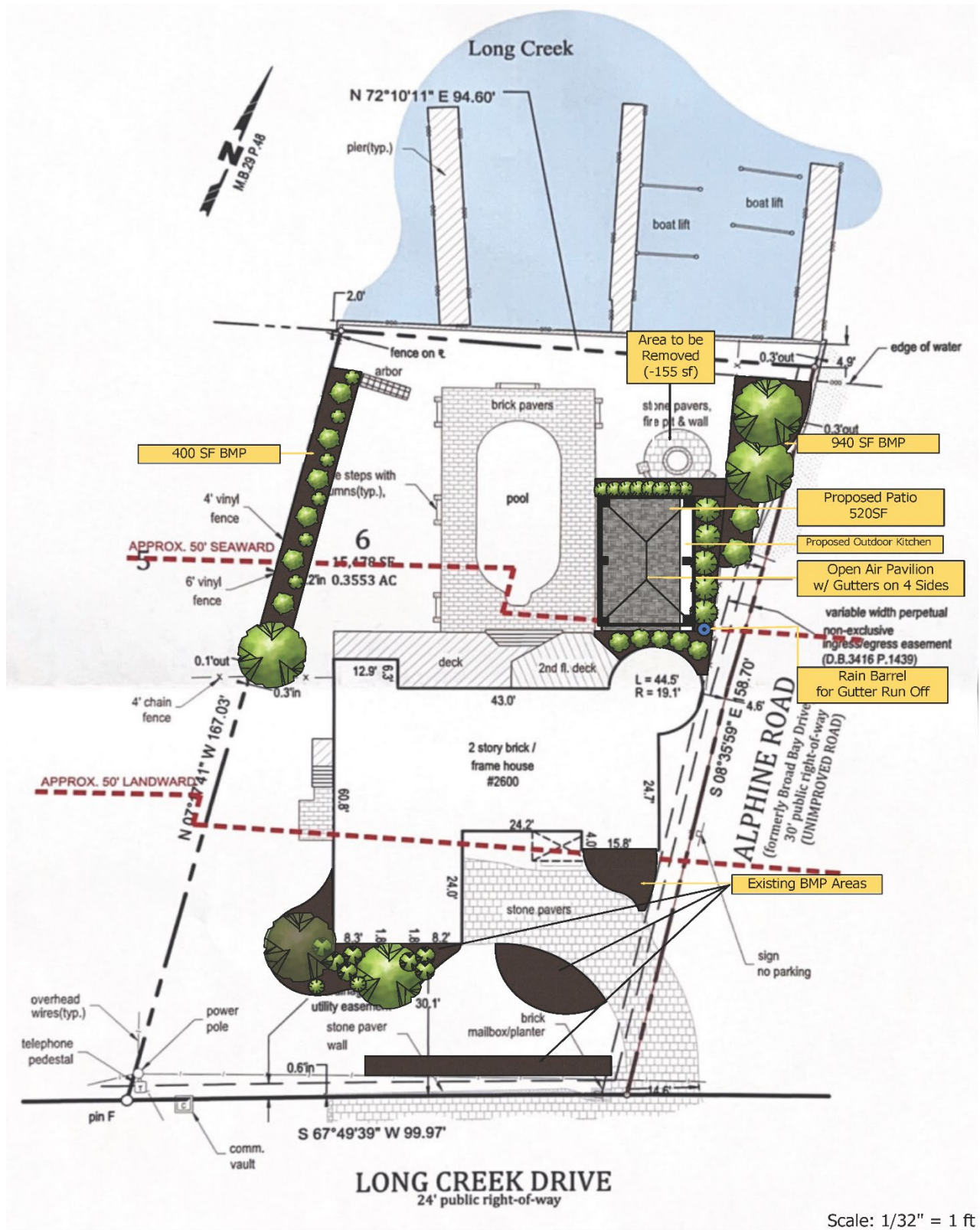
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. It is the opinion of the Board that the approval granted is the maximum impervious cover the 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 – Buffer Restoration Plan



Disclosure Statement

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-subsiary³ 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-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.

⁴ "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



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



Applicant & Property Owner **Jack Ross**
 Address **118 Pinewood Road #B**
 Public Hearing **May 22, 2023**
 City Council District **District 6**, formerly Beach

Agenda Item

2

Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 279, Page 80
 Recorded 8/12/1999

GPIN

2418-63-9745

SMALL PROJECT IN THE RPA

SITE AREA

61,703 square feet or 1.41 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

35,978 square feet or 0.82 acres

EXISTING IMPERVIOUS COVER OF SITE

8,764 square feet or 24.35 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,311 square feet or 28.65 percent of site

Area of Redevelopment in RPA

35 square feet

Area of New Development in RPA

1,015 square feet

Location of Proposed Impervious Cover

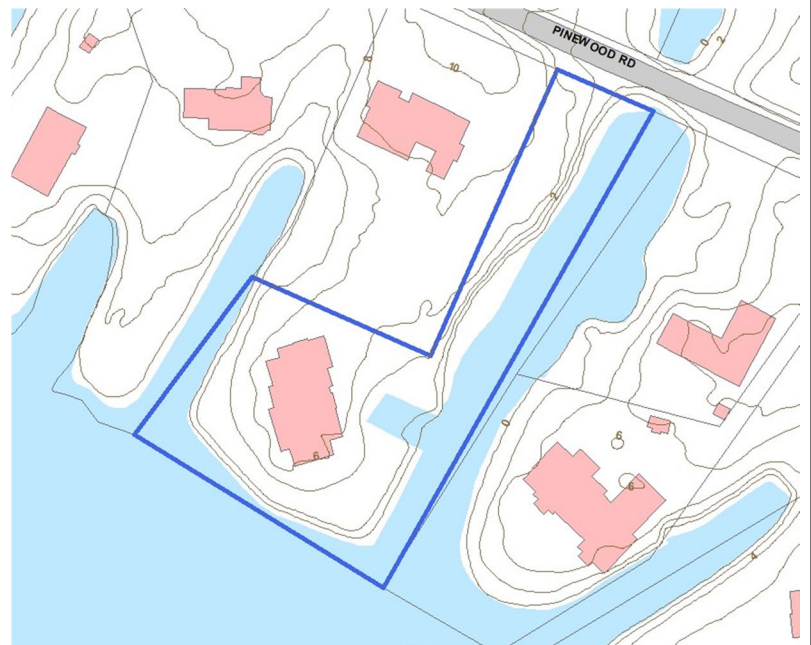
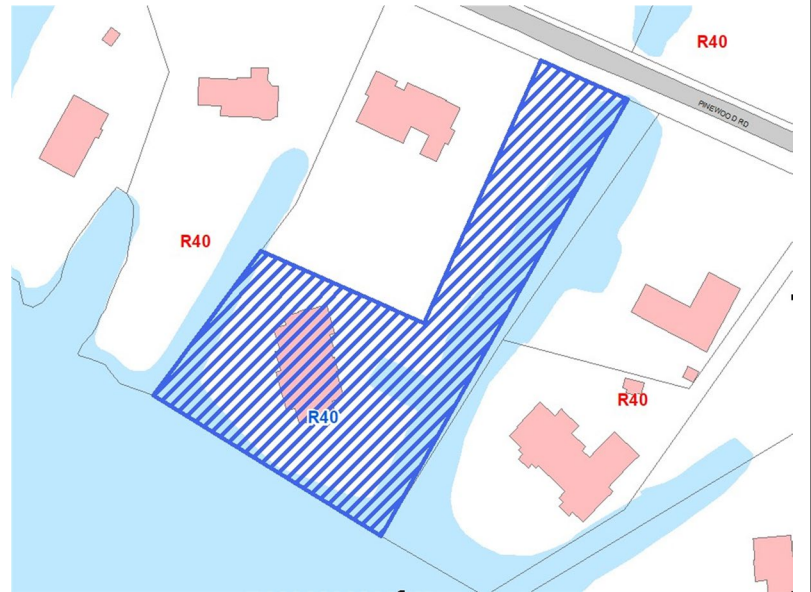
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approve as conditioned



Summary of Proposal

Demolition Details

- Remove existing steps

Construction Details

- Swimming pool with associated stone pool decking at the level of existing porch
- Associated retaining walls with steps

CBPA Ordinance Variance History

On January 25, 1993, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the placement of fill material with the following conditions:

- 1. The applicant shall provide a twenty-foot buffer along the channel ward edge of the southern half of the property. This buffer shall be planted in accordance with the "Buffer area establishment and mitigation Guidelines" available in the Planning Department.*
- 2. A site plan addressing sequence of construction for both the rip-rap and buffer plantings, erosion and sediment control measures and the specific buffer area plantings must be submitted to the Planning Department for review and approval prior to the issuance of a building permit.*
- 3. Said plan shall be submitted within 14 days of Board Action.*

The January 25, 1993 CBPA Board granted variance has been acted upon and the associated improvements constructed.

On November 22, 1999, a CBPA Board variance was granted for construction of a single-family residence with the following conditions:

- 1. The submitted buffer restoration\landscape plan shall be revised to provide for restoration equal to the amount of proposed impervious cover.*
- 2. All stormwater associated with impervious cover shall be conveyed to a structural treatment facility.*
- 3. The proposed structure shall not encroach any further channelward than the existing structure along the southern portion of the project (an approximate 12-foot shift to the north).*
- 4. Dual erosion and sedimentation control measures shall be installed a maximum of 20 feet channelward of the project prior to any land disturbance inclusive of demolition. Said erosion barrier shall be maintained until such time as vegetative cover has been established.*
- 5. A revised site plan shall be submitted to the Planning Department, Development Services Center for review and approval prior to the issuance of a building permit.*

The November 22, 1999 CBPA Board granted variance has been acted upon and the associated improvements constructed.

On October 27, 2008, a CBPA Board variance was denied for the construction of a 28' x 36' swimming pool with a 2' band of concrete decking, 4' x 8' pool equipment pad, retaining wall, and 3,817 square feet conversion of uplands to vegetated tidal wetlands.

June 24, 2013, a CBPA Board variance was granted for construction an elevated patio of the side of the residence with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *If necessary, wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *If necessary, prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*
6. *Construction limits shall lie a maximum of 10' outboard of improvements.*
7. *If and when the shoreline is hardened / rehardened exclusive of the eastern boat basin, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
8. *Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
9. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
10. *No perimeter fill shall be authorized outboard of the proposed improvements.*

11. *The area of existing vegetation (i.e. established planting beds) displaced by the proposed patio shall be restored. Buffer restoration shall be installed equal to the amount of existing vegetation displaced (300 sq. ft.) and shall be located in the Resource Protection Area, in areas currently devoted to turf. The restoration shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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. Said buffer restoration shall be noted on the approved site plan and will be verified in the field by Civil Inspections.*

12. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (300 sq. ft. x 200% = 600 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. Said buffer restoration shall be noted on the approved site plan and will be verified in the field by Civil Inspections.*

13. *This variance and associated conditions, if approved are in addition to the conditions of the variance granted November 22, 1999.*

The June 24, 2013 CBPA Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

The land disturbance associated with the proposed improvements will be less than 2,500 square feet, however, the applicant is proposing bioretention planting beds landward of the proposed retaining walls as best management practices.

Evaluation and Recommendation

The applicant has submitted this Chesapeake Bay Preservation Area (CBPA) variance request for a reconsideration of the October 27, 2008 CBPA Board decision that denied the request to construct a swimming pool on the lot. Cognizant to the CBPA Board's action in 2008, the applicant's consultant team developed a layout of the proposed improvements that reduced the swimming pool by approximately 734 square feet – from approximately 28 feet by 36 feet associated with the 2008 request to approximately 16 feet by 21 feet. The proposed improvements also include approximately 611 square feet of stone pool surround accompanied by 110 linear feet of retaining walls around the proposed improvements. The retaining walls are proposed at three to four feet in height to match the height of the porch off the rear of the residence. The proposed improvements will introduce approximately 1,015 square feet of new impervious cover within the 50-foot seaward buffer of the RPA.

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 new development occurring within the RPA feature, the prior variance request associated with this lot, and existing environmental conditions of the lot consisting primarily of manicured turf within the 50-foot seaward buffer, Staff is of the opinion that the conditions of the previous variance specific to stormwater management and buffer restoration indicatives should be considered with this variance request and evaluated towards this variance request not injurious to the neighborhood and not of substantial detriment to water quality. In an effort to further define the merits of this variance request as submitted, the applicant's consulting team 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 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 *"we have submitted for the proposed improvements to be of minimal size to lessen the impact to the riparian buffer on the lot."* Staff acknowledges the statement provided by that applicant's consulting team and offers that a similar request was denied by the CBPA Board in 2008. While other properties in the neighborhood have not presented as many variance requests to the CBPA Board as this lot has with 4 prior variance requests – 3 approved and 1 denied, to Staff's knowledge the current property owner is only associated with this request and the 2013 CBPA Variance.

The revised swimming pool layout on the lot has been situated and sized to minimize encroachment into the RPA and the 50-foot seaward buffer encompasses the majority of the existing residence and any new development on the lot would be located within this area.

- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the area where the proposed improvements are situated is the only viable area on the lot."* Staff offers that the predecessor in title recorded the lot after the adoption of the CBPA Ordinance therefore placing a hardship on the current property owner's ability to redevelop or improve conditions on the subject lot.

- 3) The variance is the minimum necessary to afford relief because *“the proposed pool is small and the improvements have been situated close to the house.”* Staff is of the opinion that the applicant has brought forth a request with the proposed improvements that represent the minimum size necessary to afford relief and have situated the improvements directly off the primary residence to keep land disturbance within the 50-foot seaward buffer minimal to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“we have situated the improvements directly adjacent to the house and the improvements are similar to those on the surrounding lots.”* Staff has provided the recommended conditions below as a means to prevent the variance request from being injurious to the neighborhood and a substantial detriment to water quality.
- 5) *“The drainage from the pool deck will be directed to the bioretention planting beds that will be installed landward of the proposed retaining walls”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff acknowledges the statement provided by the applicant’s agent and offers that the lot currently provides little benefit to stormwater management and with this request, the applicant will install bioretention planting beds landward of the proposed retaining walls as well as several areas of new buffer restoration as stated in the Water Quality Impact Assessment (WQIA).

Although this variance request situates the new impervious cover entirely within the seaward buffer portion of the RPA, the applicant has demonstrated an awareness to the sensitivity of this variance request by situating the proposed improvements immediately adjacent to the existing residence to limit land disturbance and minimize encroachment further seaward. Staff is of the opinion that while the variance request provides merit towards being the minimum necessary to afford relief a comprehensive review of the previous variances is warranted so that the long-term sustainability of stormwater management requirements and the establishment of a riparian buffer in-lieu of a residentially landscaped lot maintain the intentions of the CBPA Board when granting variances. As such, 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. As offered by the applicant **3,045 square feet** of buffer restoration shall be installed within the 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: **8 canopy trees, 8 understory trees, 10 large shrubs, and 13 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. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the following required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
 - Condition 1 of the January 25, 1993 Chesapeake Bay Preservation Area (CBPA) Variance – *“The applicant shall provide a twenty-foot buffer along the channel ward edge of the southern half of the property. This buffer shall be planted in accordance with the “Buffer area establishment and mitigation Guidelines” available in the Planning Department.”*
 - Condition 2 of the November 22, 1999 CBPA Variance – *“All stormwater associated with impervious cover shall be conveyed to a structural treatment facility.”*
 - Condition 11 and 12 of the June 24, 2013 CBPA Variance requiring *“The area of existing vegetation (i.e., established planting beds) displaced by the proposed patio shall be restored. Buffer restoration shall be installed equal to the amount of existing vegetation displaced (300 sq. ft.) and shall be located in the Resource Protection Area, in areas currently devoted to turf”* and *“Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (300 sq. ft. x 200% = 600 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance.”*
5. Stormwater treatment shall be provided equal to 100 percent of the proposed new impervious cover associated with this variance request.
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. Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area

12. This variance and associated conditions **are in addition to** the conditions of the CBPA Board variances granted January 25, 1993 and November 22, 1999.

***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





NOTE: REFER TO THE VA. EROSION & SEDIMENT CONTROL HANDBOOK FOR SILT FENCE AND TREE PROTECTION DETAILS

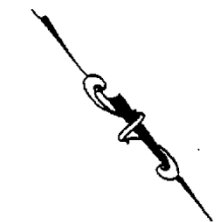
NOTE: SILT FENCE DENOTES LANDWARD LIMITS OF CONSTRUCTION.

COLAPRETE

LINKHORN BAY

 DENOTES FILLED AREA
 DENOTES TREE PROTECTION (SNOW FENCE)

NOTE: INSTALL & MAINTAIN SILT FENCE AT LANDWARD LIMIT OF PROP. RIP RAP.

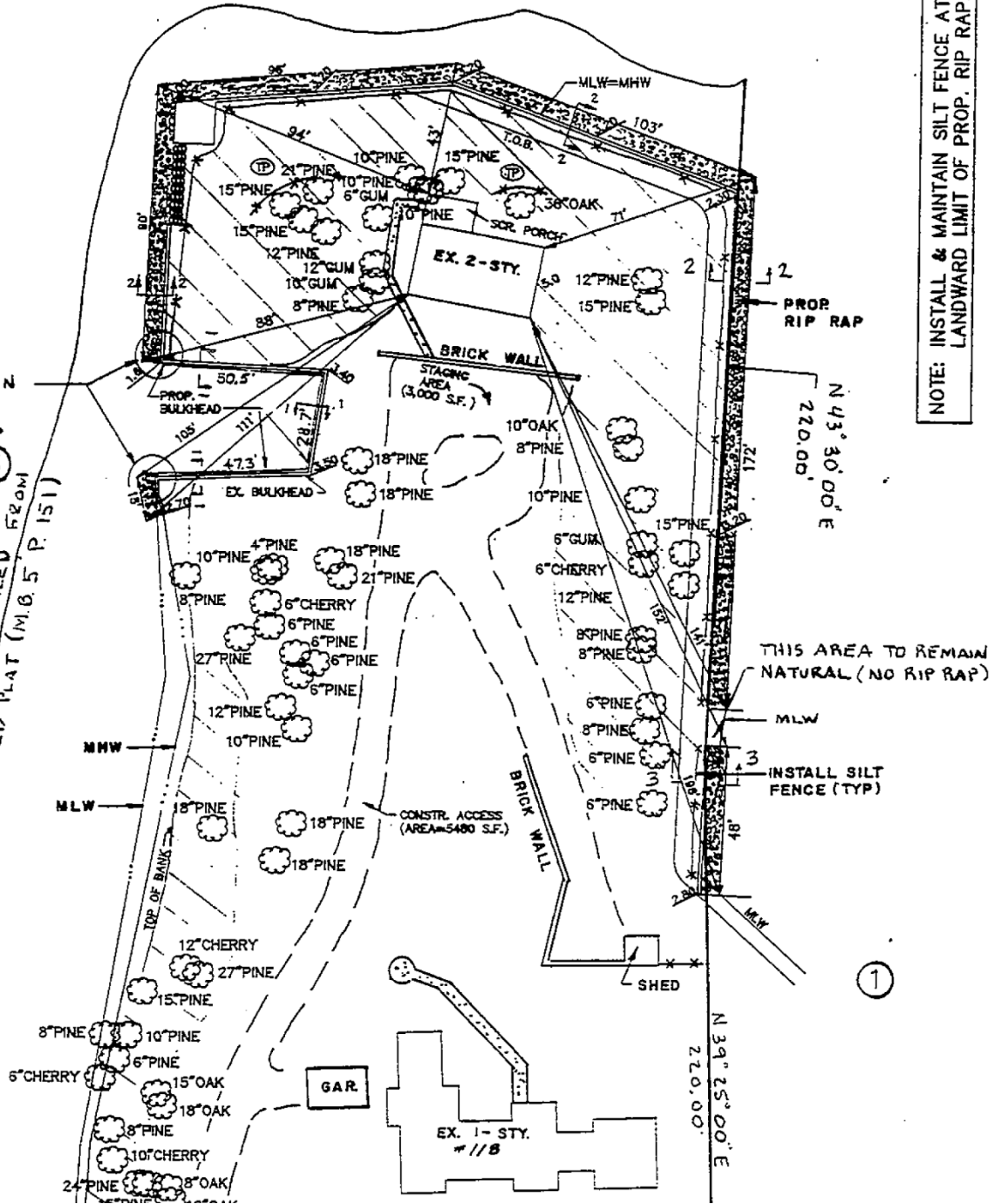


SEE TIE-IN DETAIL SHT. 6 OF 6

NOTE: ENTIRE LOT IS IN AN RPA

NOTE: ALL TIES GIVEN TO TOE OF RIP RAP

BOUNDARY LINE SCALED FROM RECORDED PLAT (M.D. 5 P. 151)

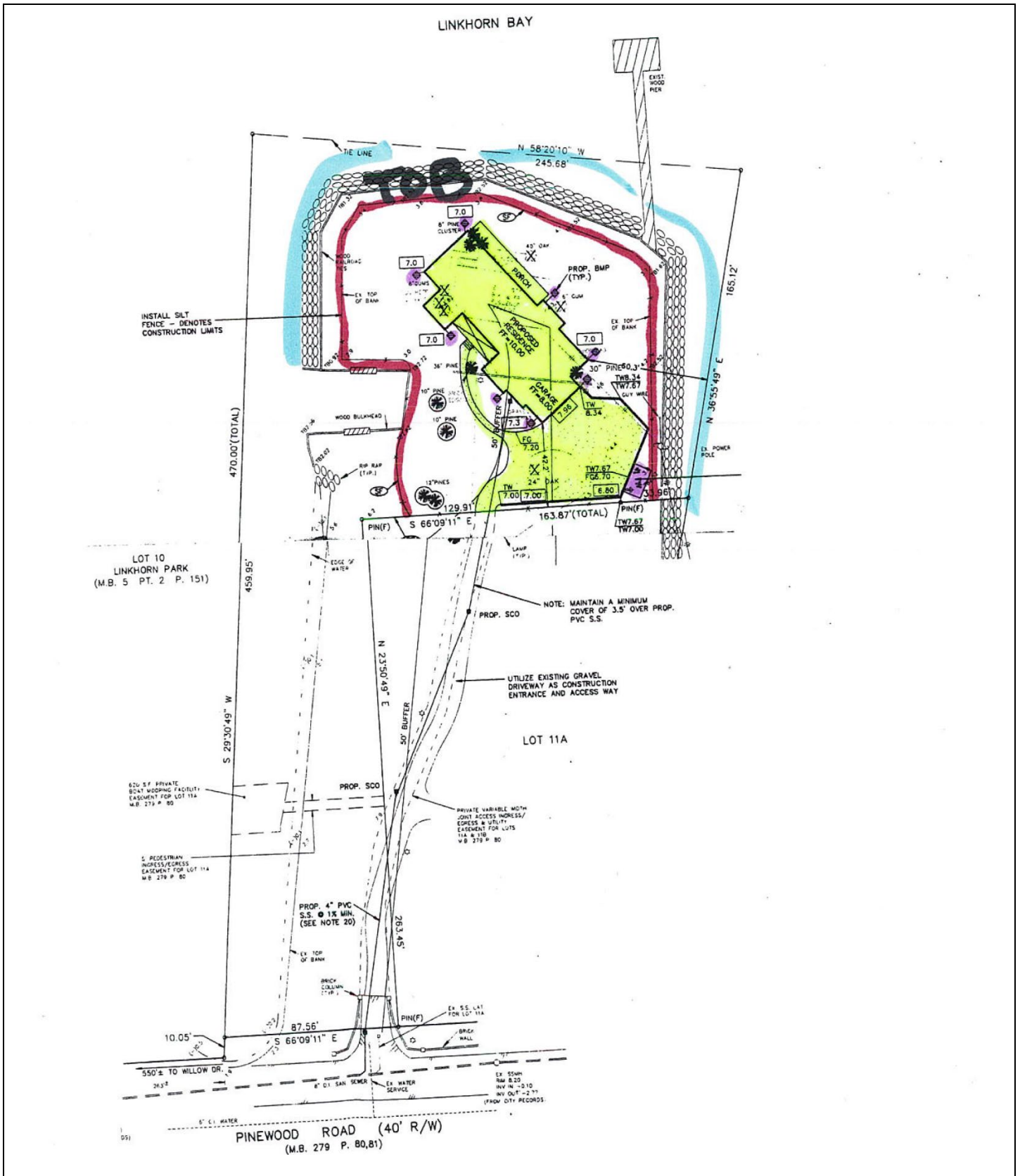


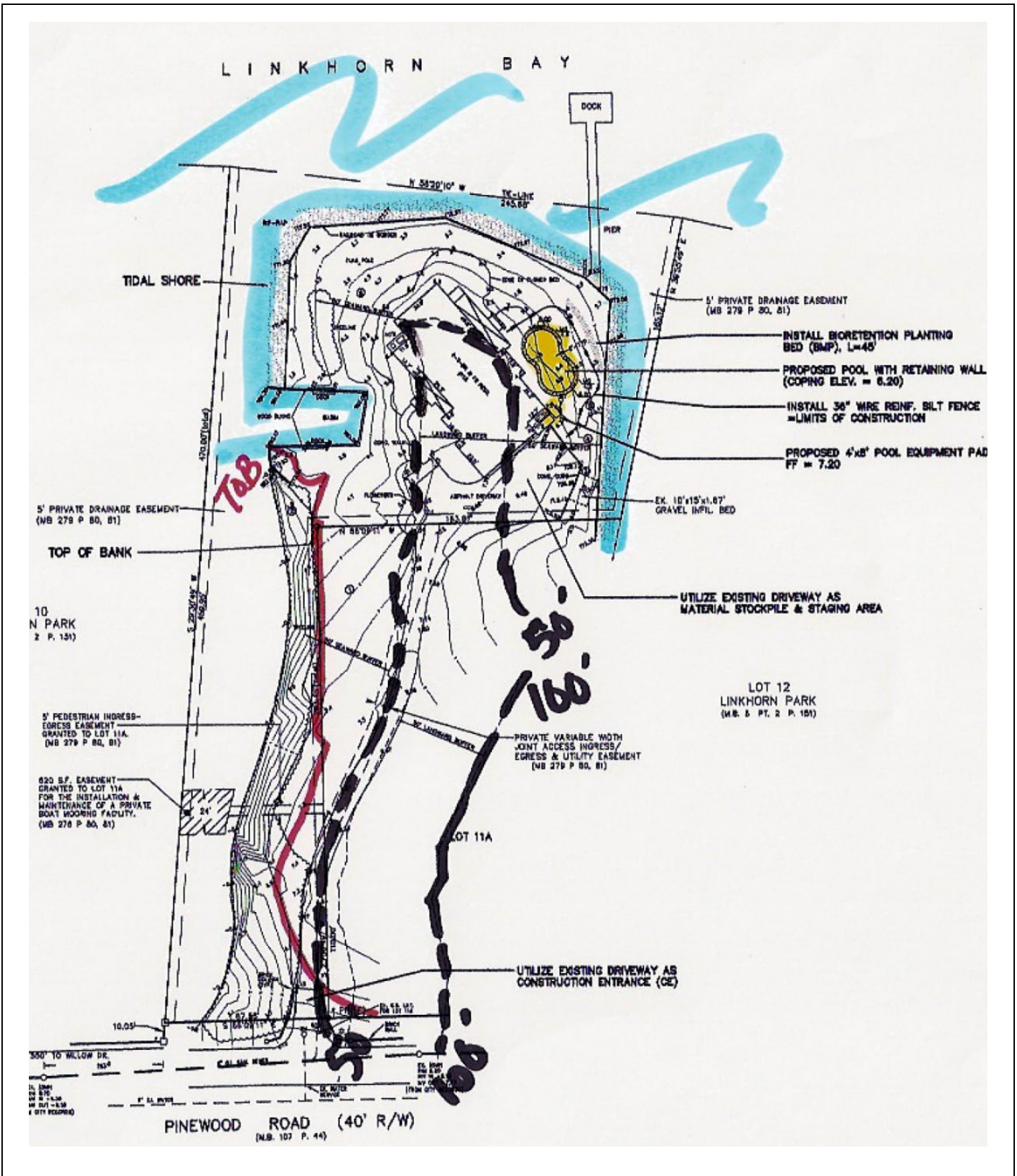
THIS AREA TO REMAIN NATURAL (NO RIP RAP)

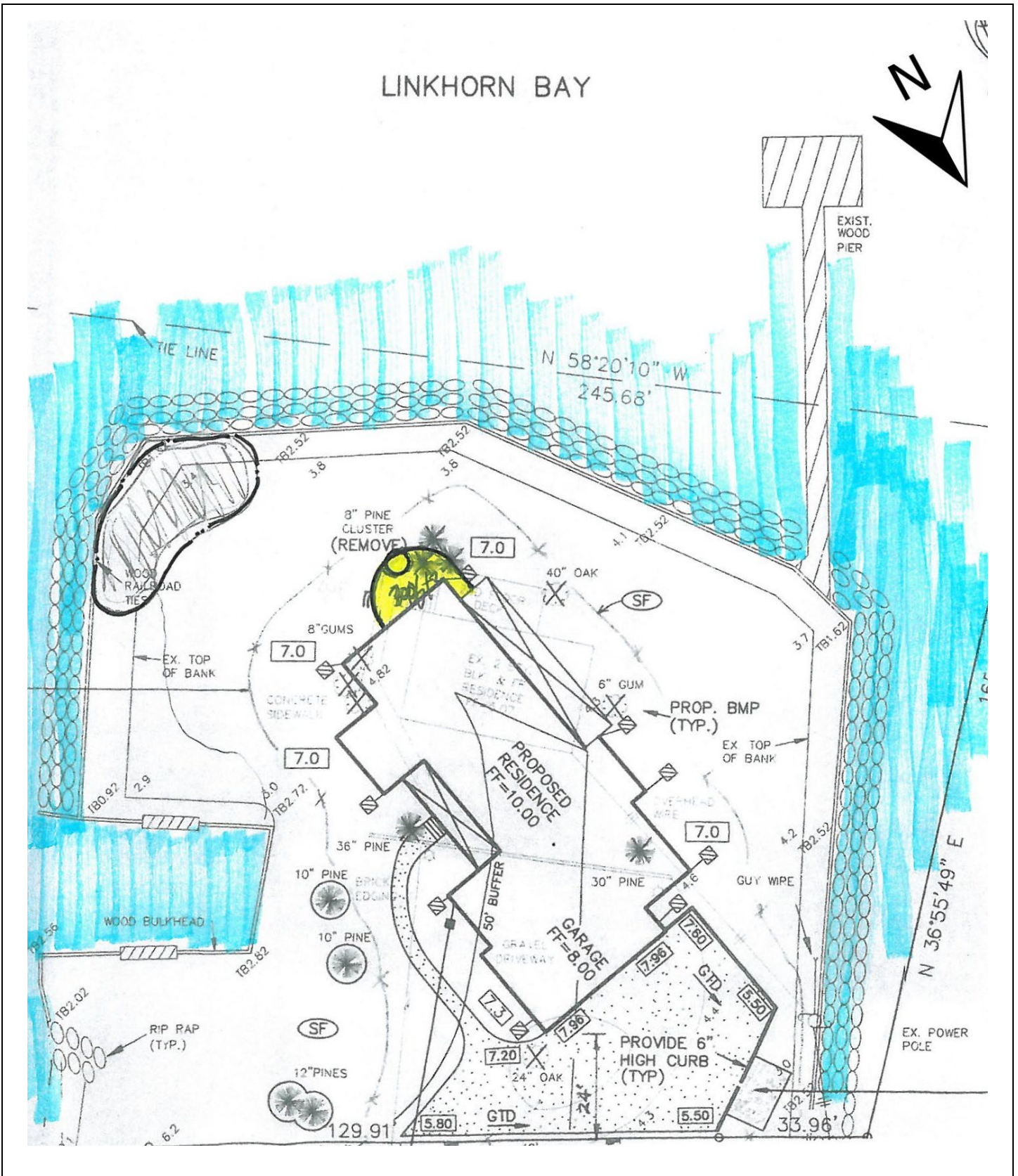
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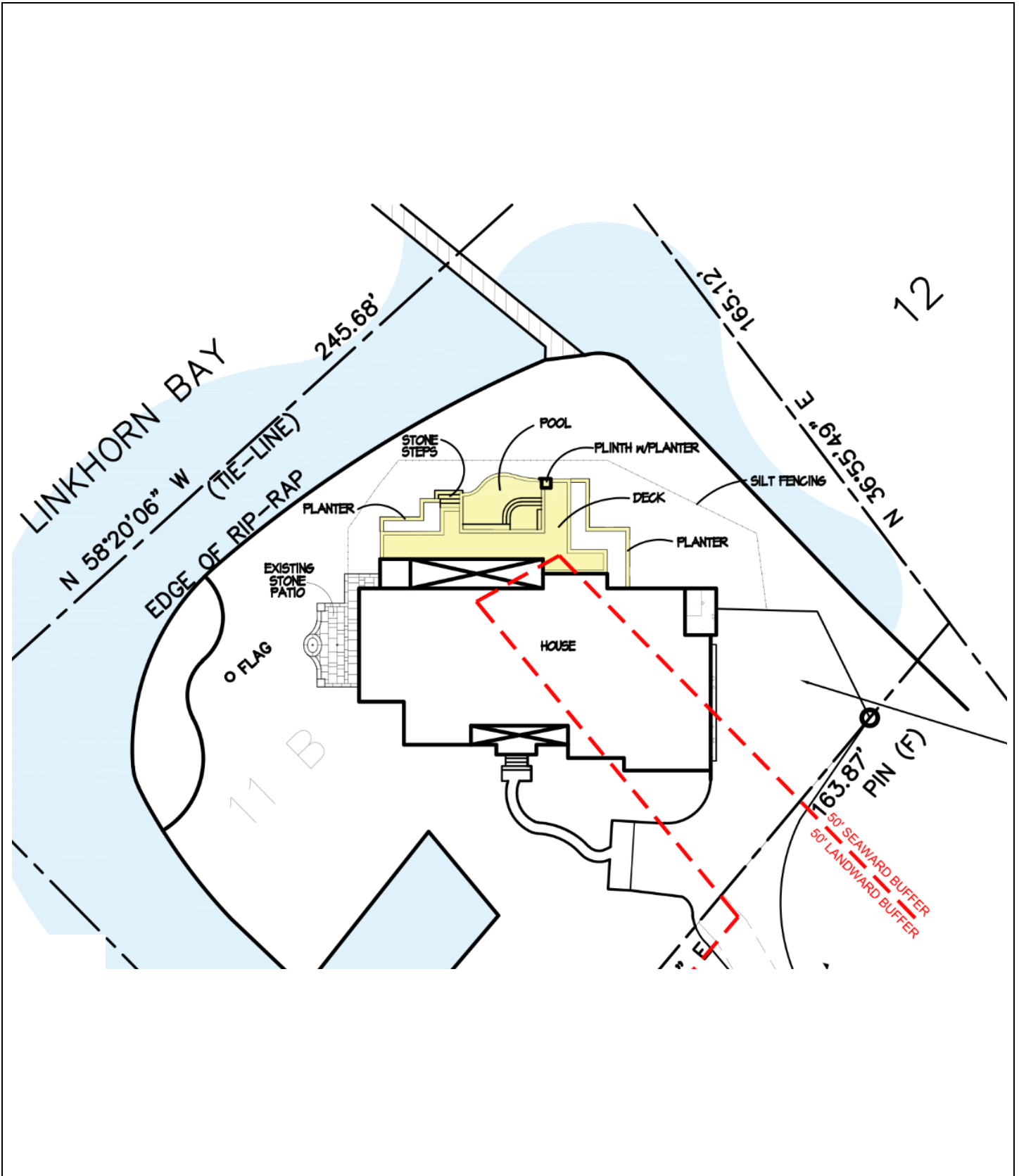
November 22, 1999 CBPA Board Variance Exhibit







CBPA Exhibit – Proposed Improvements, Enlarged View



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 Jack Ross

Does the applicant have a representative? Yes No

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

Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

John Watson, Siska Aurand

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.

Jack Ross
 Applicant Signature

Jack Ross Property Owner
 Print Name and Title

3/30/23
 Date

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

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Charis Properties LLC**
 Address **465 Goodspeed Road**
 Public Hearing **May 22, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) with the placement of fill material.

Applicant’s Agent

Billy Garrington
 Governmental Permitting Consultants

Staff Planner

PJ Scully

Lot Recordation

Map Book 41, Page 2
 Recorded 3/01/1956

GPIN

2419-41-8184

SITE AREA

58,874.7 square feet or 1.35 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

49,496.8 square feet or 1.13 acres

EXISTING IMPERVIOUS COVER OF SITE

14,517.9 square feet or 29.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

14,818 square feet or 30 percent of site

Area of Redevelopment in RPA

2,600 square feet of fill material

Area of New Development in RPA

300 square feet

Location of Proposed Impervious Cover

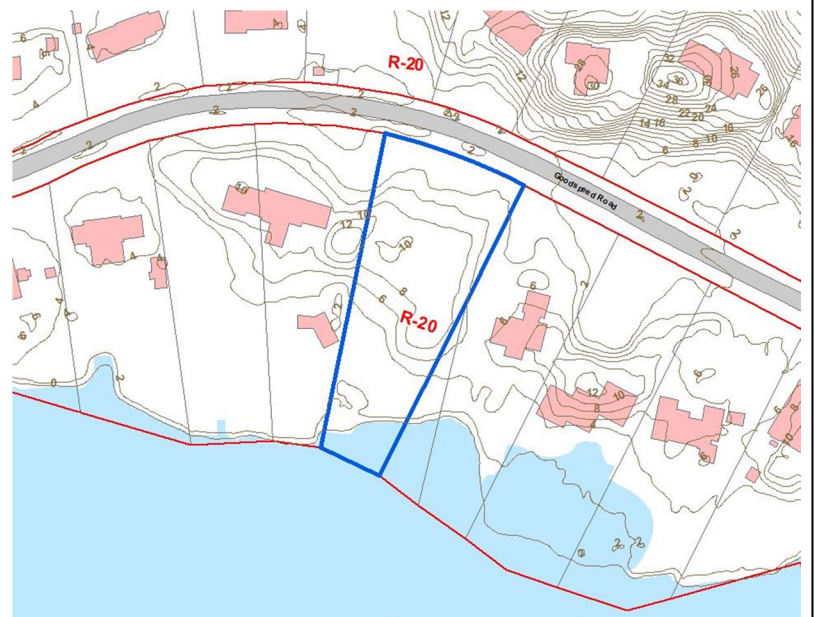
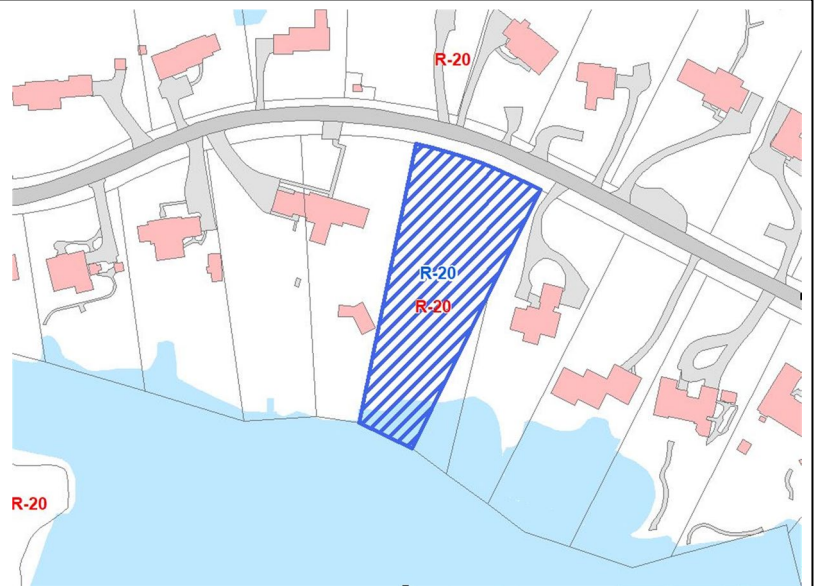
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Upland rip rap sill at elevation 3.5 and landward of existing *Spartina patens*
- Landward extension of existing dock
- 2,600 square feet of fill material in the 100-foot Resource Protection Area (RPA) buffer
- 1,170 square feet of Resource Protection Area (RPA) succession, *Spartina patens* planting

CBPA Ordinance Variance History

A Chesapeake Bay Preservation Area (CBPA) Administrative variance was granted in 2013 for the redevelopment and construction of a new single-family residence with associated accessory structures within the 100-foot CBPA Variable Width Buffer and Resource Management Area (RMA) of the Chesapeake Bay watershed.

A CBPA Variance request was withdrawn July 8, 2021 for the placement of approximately 4,200 square feet of fill material in the Resource Protection Area (RPA) 50-foot seaward buffer.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 6

Soil Type(s)

Lakehurst Series (deep, moderately drained sandy marine and eolian sediment soils)
Psammets Series (well-drained and moderately well-drained soils, sandy material)

Shoreline

Shoreline is hardened by a low-profile rip rap revetment with high marsh vegetation present along the landward edge of the rip rap.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that the existing buffer restoration and best management practices (BMPs) associated with the construction of the single-family residence appear to be present and functioning, however those structures will be evaluated and amended during site plan review as needed. With regard to the placement of the proposed fill material, a layer of Stalite Permatill, an expanded slate lightweight aggregate, will be applied as a base layer varying in depth with an approximate 3-inch top layer of soil as a best management practice for stormwater run-off mitigation and infiltration of rainwater.

Evaluation and Recommendation

The applicant is proposing to construct an upland rip rap sill and place fill material within the 100-foot RPA buffer over an area of existing turf to manage nuisance flooding within a portion of the rear yard of the subject lot. The expansion of existing landscape areas is proposed seaward of the rip rap sill to provide a naturalized riparian high marsh meadow area. The area of proposed fill material is approximately 2,600 square feet, as provided in the Water Quality Impact Assessment (WQIA) and varies in depth to meet existing grade elevation along the perimeter of the fill material area. Approximately 1,170 square feet of *Spartina Patens* shall be planted seaward of the proposed rip rap sill. In conjunction with new high marsh meadow areas on the lot, the fill material is proposed to be placed landward of the rip rap sill to alleviate nuisance flooding issues that this portion of the lot experiences, which has resulted in the recession of the natural lawn area. The applicant's agent also provided in the WQIA that soil amendments will be provided as a best management practice as a means to prevent the variance request from contributing to an increase in nonpoint source pollution load. Staff offers that soil restoration is an environmental site design practice with the intent to provide soil porosity by amending existing soils with compost. When applied, soil composting can provide reduction to upland runoff. Staff is of the opinion, from a site-specific analysis perspective that allowances for activities that adapt or address climate change, impacts may be valid only if the activities provide requirements towards best management practices that reduce runoff, prevent erosion and filter nonpoint source pollution. As submitted, the proposed area of fill material does not propose removal of existing canopy tree cover and would alter the existing slope of this portion of the rear yard by approximately 2 percent.

Staff offers that an allowance towards adaptive activities within the RPA to address current environmental conditions should only be considered if the preservation of existing vegetation, particularly mature canopy trees, is provided and the incorporation of natural measures such as planting of vegetation is conditioned towards reestablishing the ecological benefit of the coastal ecosystem. Providing such measures, water quality has the potential to improve while allowing the RPA to function as intended by not introducing an extensive amount of fill material or severely altering existing topographic conditions.

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

- 1) The applicant's agent provides that granting 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 management of the tidal flooding are in keeping with the waterfront redevelopment in this area, which in addition to the Bay Act, has been impacted by sea level rise causing it to be essential to maintain the land along the shoreline without any negative effects on the environment."* Staff offers that the proposed request limits the amount of fill material to a portion of the existing lot and does not propose to remove any mature canopy trees from the lot.
- 2) The applicant's agent provides that *"the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and prior to the impacts of the subsidence and sea level rise."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *"this application has been modified from the 2021 application to reduce the impacts and fill on the subject property. With the reduced fill and the creation of 1,170 sq. ft. of new wetlands along the shoreline, we feel that the proposed improvements are the minimal necessary to afford relief."* Staff concurs with the statement provided by the applicant's agent and is of the opinion that the depth of the proposed fill material and the attempt to meet existing grade

elevation along the perimeter of the fill material area and minimal alteration to the existing slope within the area provides merit towards being the minimal necessary to afford relief.

- 4) The applicant's agent provides that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"proposed limits of fill have been reduced and adjusted to be well away from the adjoining property owners and with amended fill soils and the creation of the proposed wetland area, the water quality should be enhanced and there will not be a detriment to the adjacent parcels."* Staff concurs.
- 5) The applicant's agent provides that *"the project is proposing soil amendments of topsoil over Stalite Permatill and the creation of the proposed vegetated wetlands area there should not be an increase in the nonpoint source pollution load."* Staff offers that the incorporation of natural measures such as planting of vegetation provides merit towards the ecological benefit and restoration of the coastal ecosystem.

Given the above comments, Staff recommends the following 12 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

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

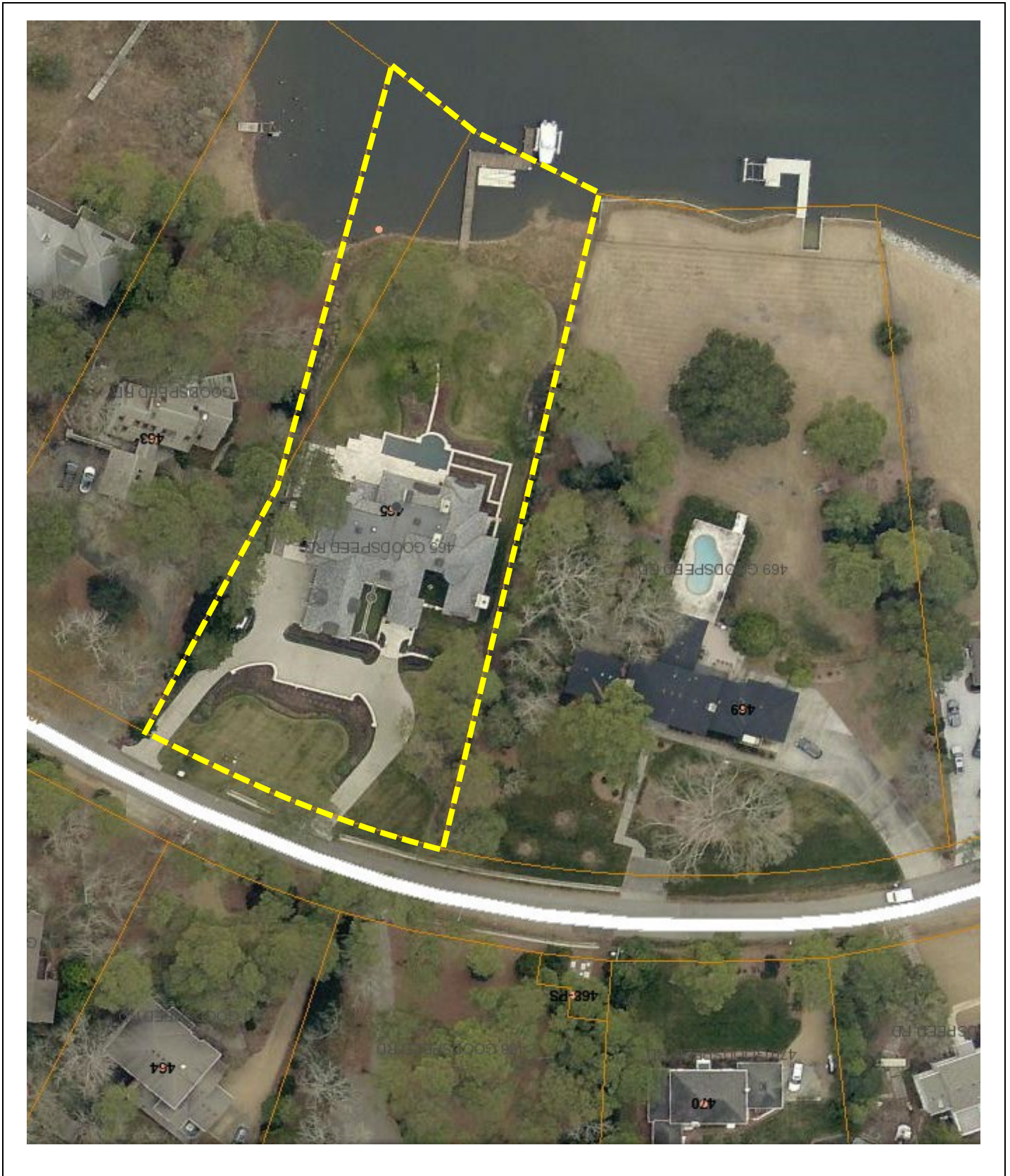
Buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Large canopy trees shall not be planted within 30 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

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

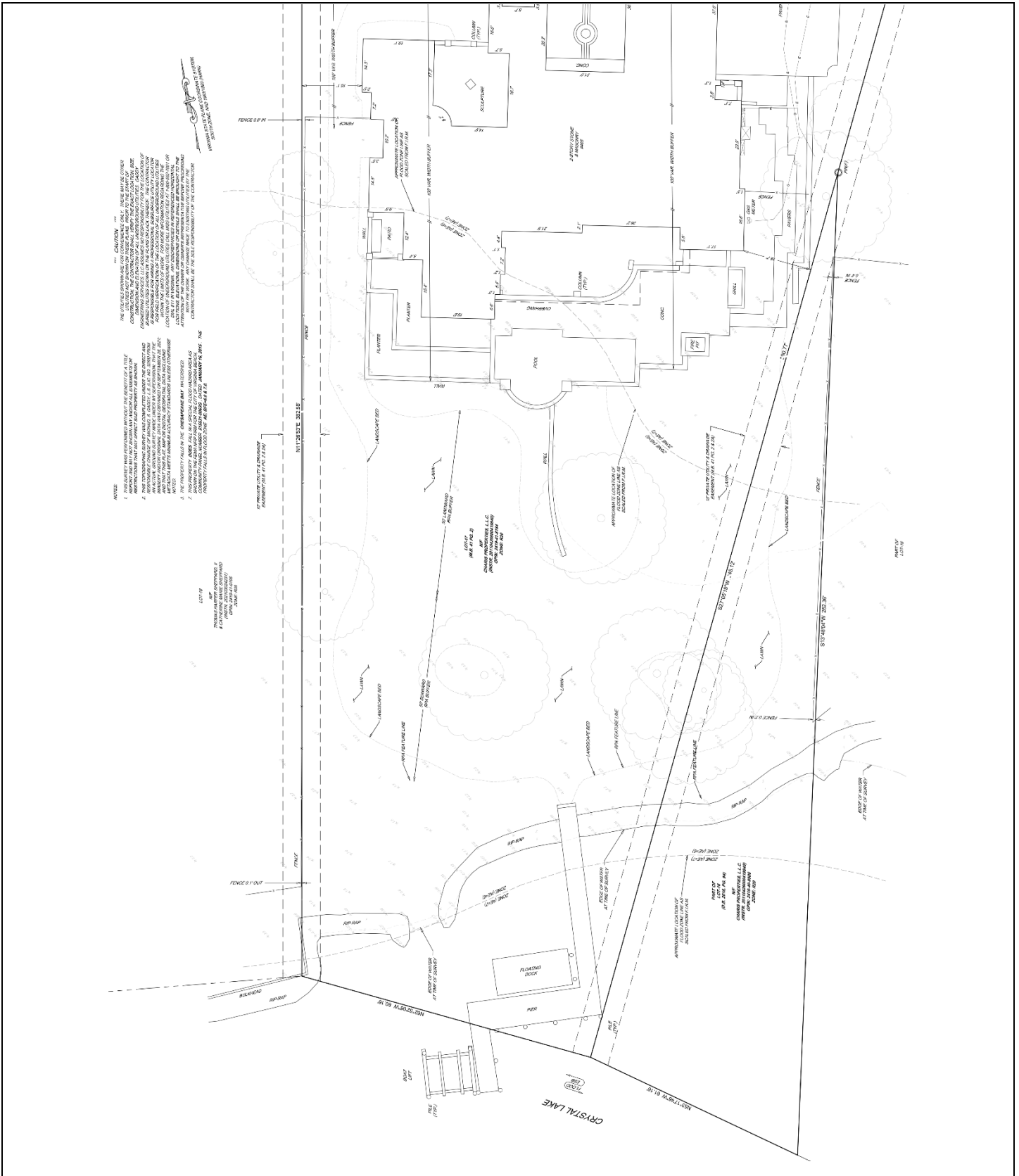
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the landward portion of the existing *Spartina patens* upland marsh area prior to any land disturbance and shall remain in place until such time as vegetative cover is established.
- 9) 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.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated March 14, 2023, prepared by WPL.

***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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

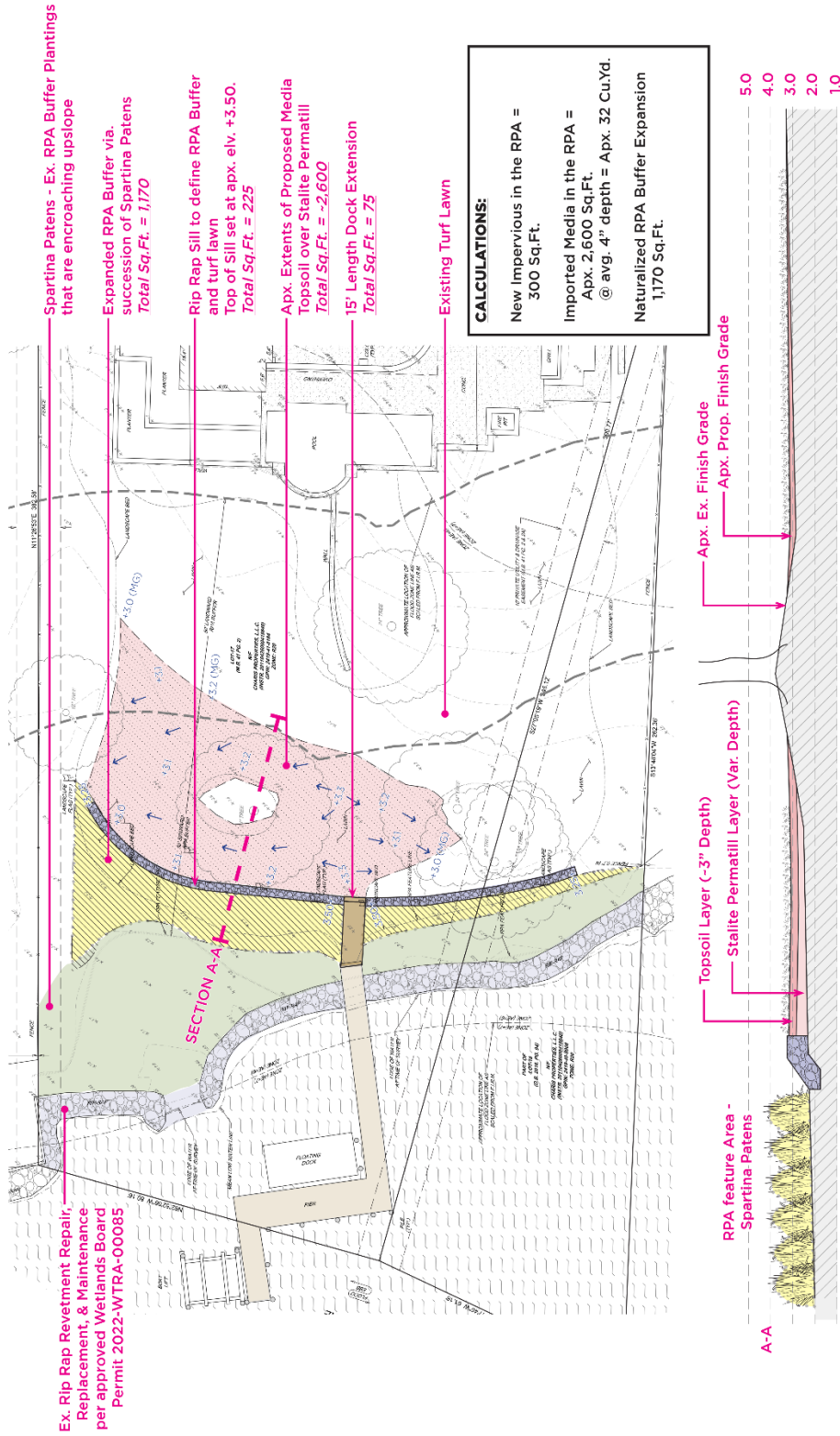
Site Aerial



CBPA Exhibit – Existing Conditions, Topography of Rear Yard



CBPA Exhibit – Enlarged View

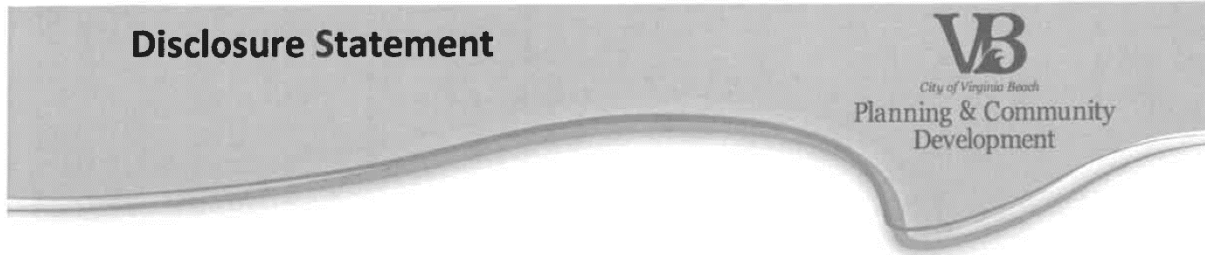


222-03500
March 14, 2023 N.T.S.

PPR Overlay Diagram
FREDRICKSON RESIDENCE
465 Goodspeed Road, Virginia Beach, Virginia
WPL | LANDSCAPE ARCHITECTS - LAND SURVEYORS - CIVIL ENGINEERS

wpl

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 Charis Properties, L.L.C. a Virginia limited liability company

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**

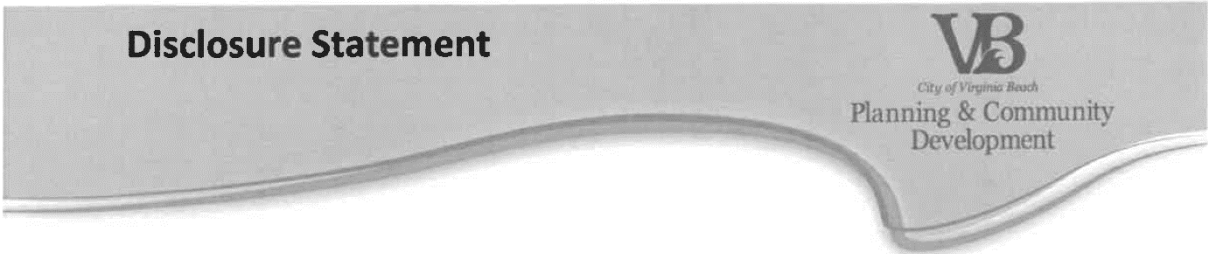
- If **yes**, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

Lewis W. Webb, III (Managing Member)

- 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.

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

Yes **No**

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

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

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

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

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

WPL - Landscape Architect

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

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

Disclosure Statement



6. Does the applicant have a **construction contractor** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the construction contractor.
- L Hill Cox Builder Inc
-
7. Does the applicant have an **engineer/surveyor/agent** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the engineer/surveyor/agent.
- WPL & Gaddy Engineering Services, LLC
-
8. Is the applicant receiving **legal services** in connection with the subject of the application or any business operating or to be operated on the property? **Yes** **No**
- If **yes**, identify the name of the attorney or firm providing legal services.
-

Applicant Signature

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

[Handwritten Signature]
 Applicant Signature

Lewis W. Webb, III, Manager
 Print Name and Title

3/21/23
 Date

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

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Cavalier Golf & Yacht Club**
 Address **1052 Cardinal Road**
 Public Hearing **May 22, 2023**
 City Council District **District 6**, formerly Lynnhaven

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct pickleball courts.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 292, Pages 23 and 24
 Recorded 01/10/2001

GPIN

2418-24-6584

SITE AREA

4,531,963.35 square feet or 104.03 acres - Total
 1,061,536 square feet or 24.3 acres - Clubhouse

SITE AREA OUTSIDE OF WATER/WETLANDS

4,434,843.6 square feet or 101.81 acres – Total
 967,978 square feet or 22.2 acres - Clubhouse

EXISTING IMPERVIOUS COVER OF SITE

167,249 square feet or 17.2 percent of site
 *Percent taken from site area of Clubhouse

PROPOSED IMPERVIOUS COVER OF SITE

172,457 square feet or 17.8 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

5,208 square feet

Location of Proposed Impervious Cover

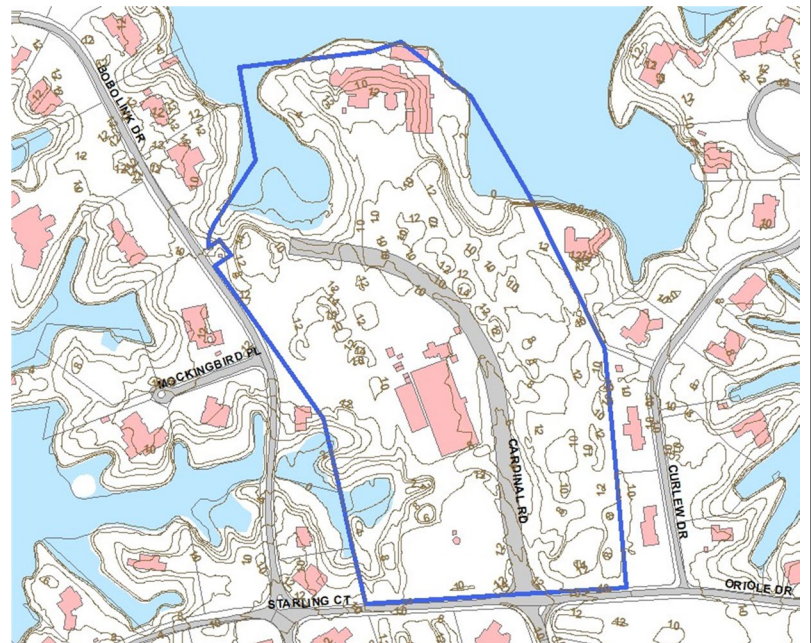
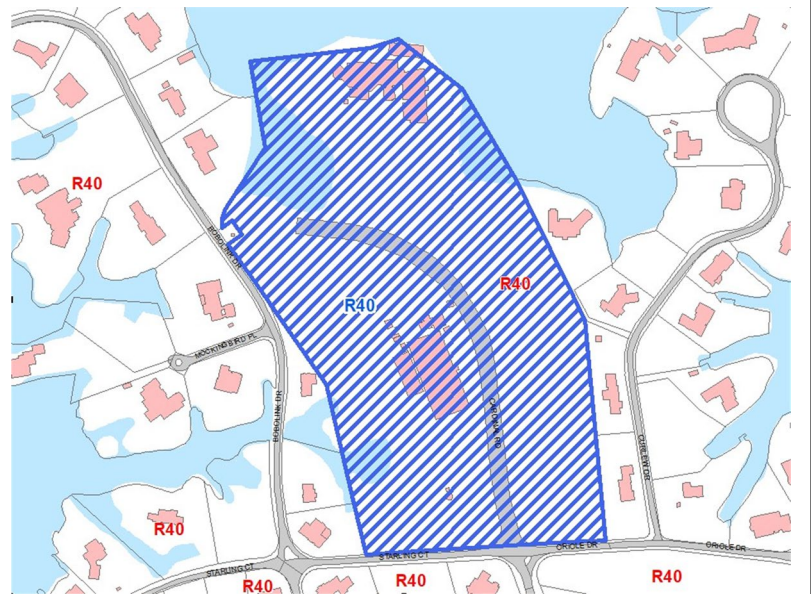
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Expand existing tennis court area to reconfigure court layout for additional pickleball courts
- Retaining wall with associated backfill

CBPA Ordinance Variance History

November 25, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the demolition of two single family dwellings for the construction of four additional tennis courts, maintenance building and associated parking with the following conditions.

- 1. A tidal fringe marsh shall be established channelward of the 30' x 18' sediment trap depicted on the plan. The applicant shall meet with Planning Department staff to determine the limits of the wetlands area, grades, and side slope stabilization. And a planting plan prior to the submittal of detailed plans.*
- 2. A double barrier of erosion and sedimentation controls shall be provided along all construction limits. The applicant shall meet with City staff to develop an erosion control strategy for the entire project prior to submission of the site plan.*
- 3. The applicant shall file an application with the Virginia Beach Wetlands Board for any fill/cut activities proposed within tidal wetlands.*
- 4. Detailed plans shall be revised to depict the width of the proposed berm and the number of trees equal to or greater than 6" in diameter at breast height (DBH) which are removed from the site. All trees equal to or greater than 6" DBH which are removed from the site shall be replaced at a ratio of one tree planted for each removed. Native trees should be utilized to meet mitigation requirements. Trees provided for mitigation purposes shall not be credited towards meeting any other landscaping requirements pursuant to other City ordinances.*
- 5. Detailed plans shall be revised to address positive drainage between the new tidal marsh, located east of the cart path and channelward of the sediment trap pursuant to condition #1, and the existing tidal pond.*
- 6. The applicant shall meet with City staff at the time of the site plan review to discuss maintenance requirements associated with the 30' x 18' sediment trap and stormceptor. Access to these facilities must also be addressed.*
- 7. A revised site plan shall be submitted to the Planning Department, Development Services Center, for a full development review prior to the issuance of a building permit.*

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

April 22, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the renovation of the golf course. The proposed activities consisted of approximately 41 acres of land disturbance associated with the reshaping of the golf course playing field, with all cut and fill activities being balanced on site with the following conditions.

1. *A pre-construction meeting shall be convened with Civil Inspections to discuss proposed Erosion and Sedimentation Control practices and monitoring inspections.*
2. *Tree compensation shall be at a 3:1 ratio (102 trees) and shall be so noted on the site plan. Said trees may be installed throughout course properties.*
3. *E & S controls shall be in substantial compliance with the submitted site plan.*
4. *Low maintenance grass levels shall be no less than 6 inches, not 3 to 6 inches.*
5. *Low maintenance grass filters shall border the three existing drop inlets south of the tennis court facilities and shall be so noted on the site plan.*
6. *Grass filters, just north of hole #13, shall be enlarged per in-field discussions.*
7. *Grass filters shall be added to hole #9 per in-field discussions.*
8. *A revised site plan shall be submitted to the Development Services Center for review and approval prior to the issuance of a building permit.*
9. *The applicant shall coordinate stormwater management methodology to include the parking lot north of the swimming pool with Staff during review of this project.*

The April 22, 2002 CBPA Board granted variance has been acted upon and the associated improvements constructed. Please note with this variance request, no impervious cover was proposed.

May 23, 2005, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a second-floor addition over an existing building with an associated wood deck and steps with the following conditions.

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
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. *Stormwater BMPs shall be as shown.*
8. *Under deck treatment of sand and gravel shall be installed.*

9. *Buffer restoration totaling 370 sq. ft. shall be installed which is equal to 200% of the proposed impervious cover. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the final building inspection and shall be so noted on the site plan.*
10. *A minimum of six (6) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*
11. *The conditions and approval associated with this variance are based on the site plan dated February 2, 2005, prepared by Gallup Surveyors and Engineers Ltd.*
12. *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 May 23, 2005 CBPA Board granted variance has been acted upon and the associated improvements constructed.

May 24, 2010, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a sidewalk along northern and western side of clubhouse, second floor deck on northern and western side of clubhouse, building addition on western and southern side of clubhouse, relocation of cooling tower, grease recycle container, recycle container, loading dock, cart path on western side of clubhouse, dumpster pad with retaining wall on eastern side of clubhouse / marina parking lot, 4 inflatable tennis court enclosures, and synthetic turf on northern side of clubhouse with the following conditions.

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed along the kick plate of the bulkhead. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
3. *Permanent and / or temporary soil stabilization measures as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final civil / building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 10' outboard of improvements on the western, eastern, and southern portions of the project. The limits of construction on the northern portion of the site shall lie at the kick plate of the bulkhead (installation of synthetic turf area).*
5. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
6. *Under deck treatment of sand and gravel shall be installed.*
7. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
8. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized (trees, landscaping, and mulched organic surfaces) areas, planting beds, and turf zones.*
9. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

10. *The conditions and approval associated with this variance are based on the site sealed April 19, 2010 by Bruce W. Gallup, prepared by Gallup Surveyors and Engineers Ltd.*
11. **Stormwater runoff from proposed new impervious cover shall be conveyed to stormwater management facilities. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
12. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$825.00 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 900 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
13. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (7,202 sq. ft.) and shall install the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
14. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (8,625 sq. ft.) and shall install the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.*
15. *The applicant shall convene with a structural engineer to determine if the existing vertical wood bulkhead is capable of accommodating the proposed introduction of additional stormwater landward of the bulkhead.*

The May 24, 2010 CBPA Board granted variance has been acted upon and the associated improvements constructed.

November 22, 2017, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the expansion of accessory structures – parking lot, indoor practice/storage building, and tennis facilities with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.*
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as*

vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.

5. *Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
8. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
9. *A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
10. *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.*
11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
12. *The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variances, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.*
13. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 18,313 square feet x 200 percent = 36,626 square feet plus 3,200 square feet for the temporary tent structure totaling 39,826 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: 92 canopy trees, 92 understory trees, 184 large shrubs and 276 small shrubs, groundcovers, or ornamental grasses.

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.

14. *The proposed parking stalls within the 100' RPA shall be constructed of a permeable pavement system.*
15. *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
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 \$4,196.50 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 4,578 square feet, 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
17. *This variance and associated conditions are in addition to the conditions of the Board variances granted November 25, 1996; April 22, 2002; May 23, 2005 and May 24, 2010.*
18. *The conditions and approval associated with this variance are based on the exhibit plan dated September 30, 2017, prepared by MSA, P.C., signed September 30, 2017 by Nathan A. Lahy. 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.*

The November 22, 2017 CBPA Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is partially hardened with a wood bulkhead that transitions into a natural state.

Riparian Buffer

Sparsely to moderately wooded within the RPA. The majority of the area, subject to this variance request, is open golf course with minimal understory vegetation along the course fringe. Several areas of “no-mow” zones are present with tidal fringe marsh along the natural shorelines of the golf course.

- Number of existing canopy trees requested for removal within the RPA: 6
- Number of existing understory trees requested for removal within the RPA: 6
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction and within the footprint of the proposed expanded court area or best management practices (BMPs).

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

Much of the existing improvements within the Resource Protection Area (RPA), on this parcel, are devoted to recreational uses, their associated facilities, and vehicle parking areas. Staff met with the applicant's Engineer of Record to walk the site area and discuss the proposed improvements for this parcel associated with the variance request, which consists of expanding the existing pickleball and tennis court area. Within the expanded area, a new pickleball court and new tennis court will be utilized to meet membership needs and accommodate for the increased interest in recreational sports at the club. As shown on the proposed site plan, the existing court area will be expanded within both the 50-foot seaward buffer and 50-foot landward buffer of the RPA. The expansion, as submitted will introduce 5,208 square feet of new impervious cover within the RPA. The CBPA Exhibit shows bioretention planting beds seaward of the proposed improvements as a means to treat stormwater runoff before entering the adjacent cove of Linkhorn Bay.

To further define the merits of this variance request as submitted, the applicant's consulting team 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 ordinance for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff offers that the applicant has demonstrated an understanding to the finds of the CBPA Ordinance by working within the constraints of the site with regard to the existing conditions – golf course, parking, and maintenance facilities while keeping the overall impervious cover of the parcel under 18 percent.
- 2) The original parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, and the encroachment into the RPA on this parcel is based upon circumstances that are or have been created by the applicant. However, Staff is of the opinion, given the recommended conditions below that the request meets the performance standards set forth in Section 106(B) of the CBPA Ordinance, as the associated land disturbance would be the minimum necessary to provide for the proposed use or development.
- 3) As for the variance being the minimum necessary to afford relief the applicant's agent provides that *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff acknowledges the statement provided by the applicant's agent and offers the recommended conditions below, reducing the overall encroachment within the 50-foot seaward buffer as the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare

because *“the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* Staff offers the purpose of the CBPA regulations is to protect water quality and is of the opinion that reducing the amount of new impervious cover is the appropriate vehicle coupled with the applicant’s agent’s layout of erosion and sediment control measure for determining whether water quality will be adequately protected.

- 5) *“Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff provides the recommended conditions below to ensure, among other things, that water quality is protected, and that the function of the undisturbed RPA remains to the greatest extent practicable.

Given the above comments, Staff recommends the following **18** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) The proposed pickleball court seaward of the existing hard surface court area shall be removed and the only portion of encroachment into the Resource Protection Area (RPA) buffer shall be associated with the area necessary to rotate the layout of the existing tennis court as depicted in the Chesapeake Bay Preservation Area (CBPA) Exhibit.
- 2) A Commercial 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) The conditions of the existing CBPA variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 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: **3,516 square feet x 200 percent = 7,032 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: **18 canopy trees, 18 understory trees, 36 large shrubs, and 54 small shrubs.**

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

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

- 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 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.
- 11) 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.**
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) **** 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 \$805.75 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 25, 1996; April 22, 2002; May 23, 2005 and May 24, 2010 and November 22, 2017.

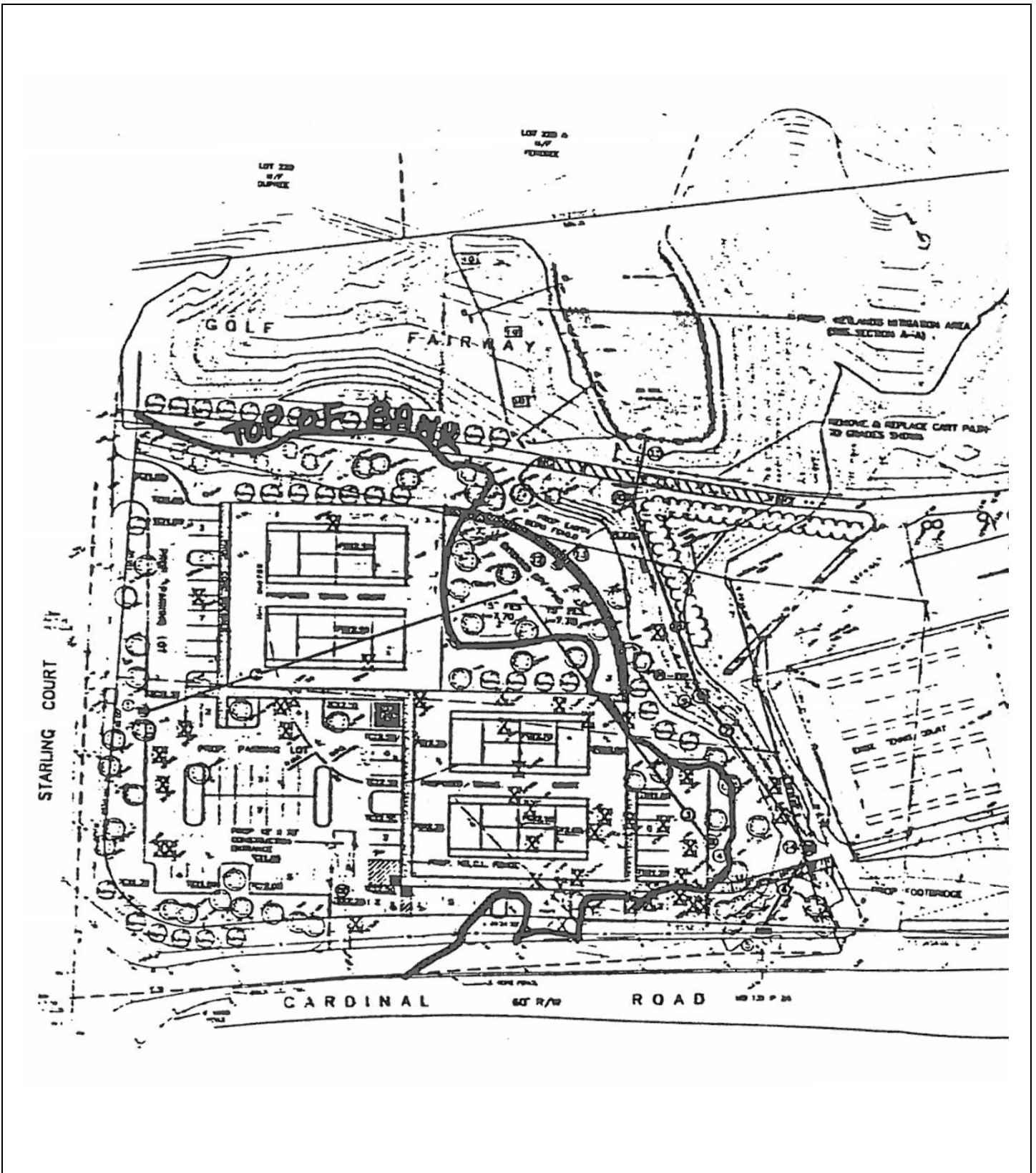
18) The conditions and approval associated with this variance are based on the exhibit plan dated March 20, 2023, prepared by Gallup Surveyors & Engineers, signed March 30, 2023 by David R. Butler. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

** 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.

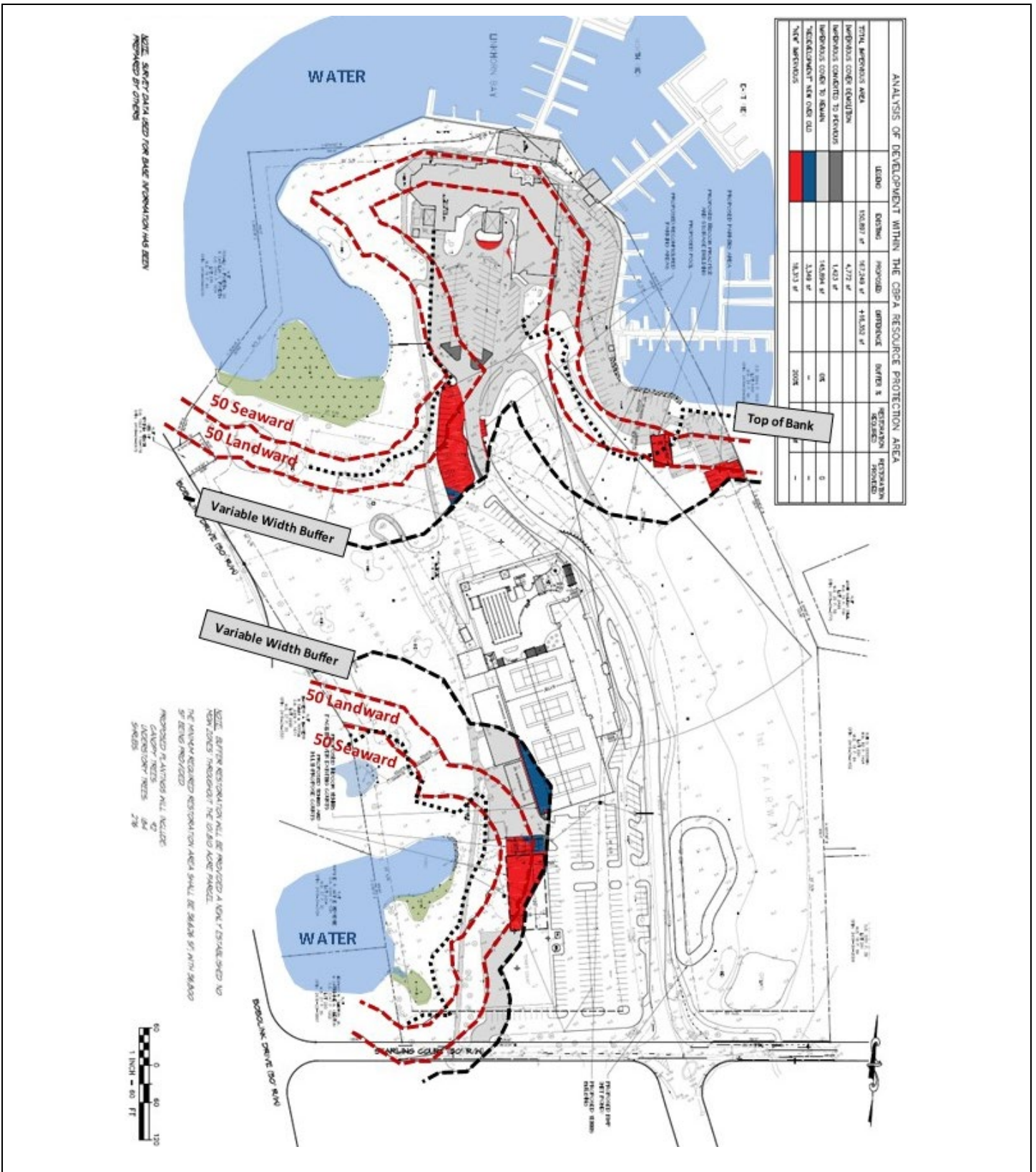
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

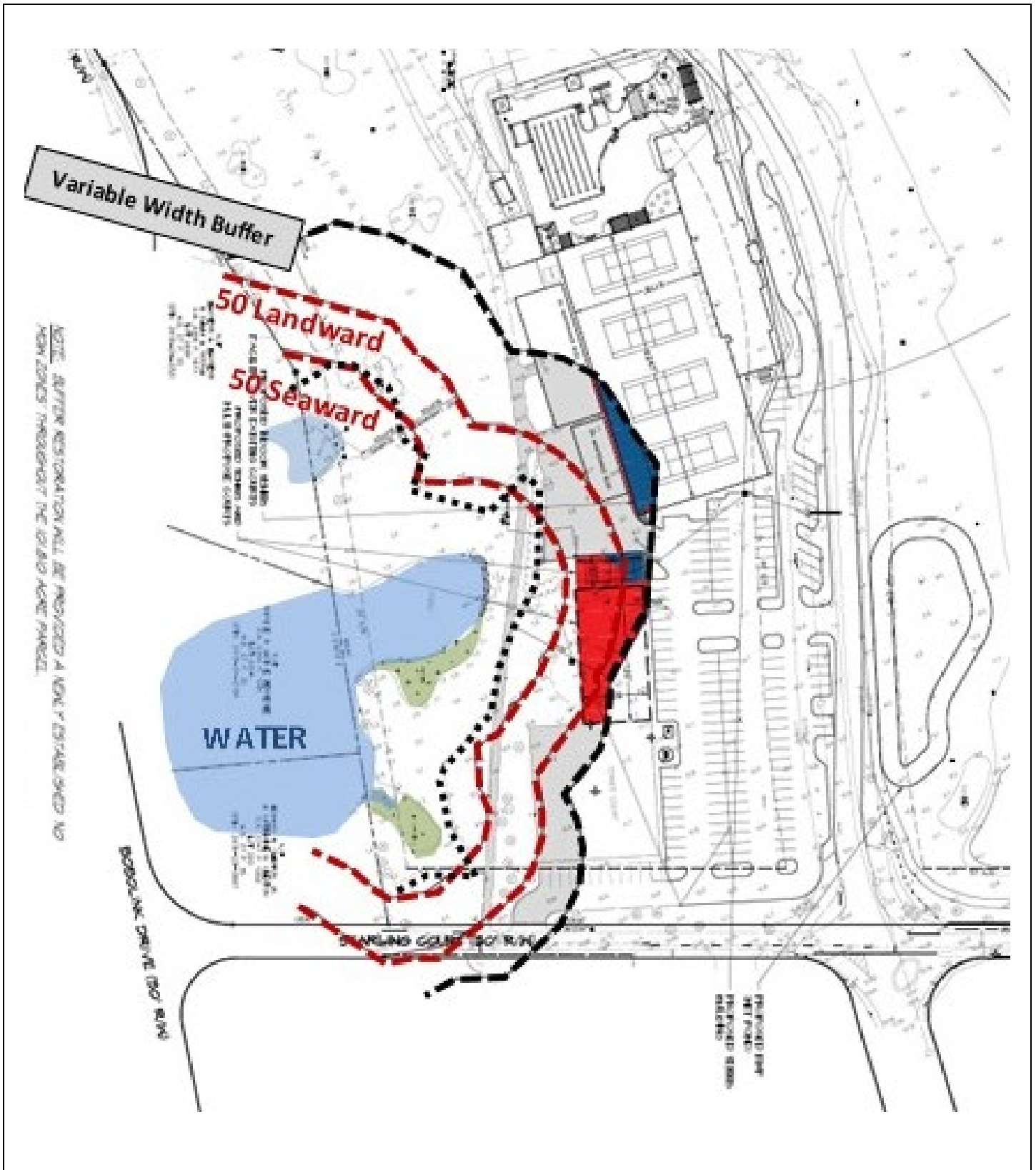
Site Aerial



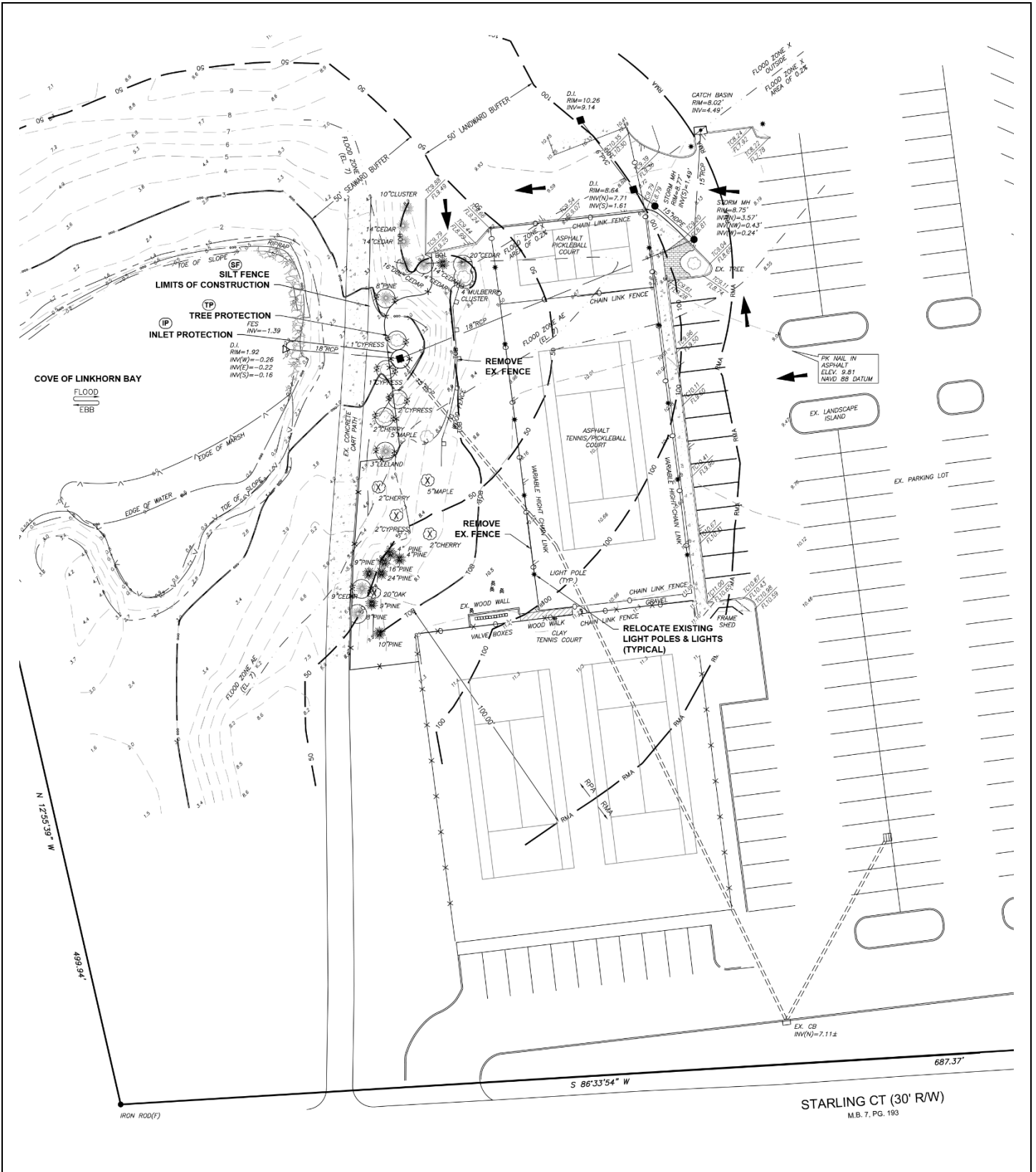


November 2017 CBPA Board Variance Exhibit





CBPA Exhibit – Existing Conditions



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 Cavalier Golf and Yacht Club

- F. Joseph Anzures, GM/COO

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Mr. 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)
President, Ted Hand; VP of Ops, Ed Augustine; VP of Admin, Bobby Collenberg; Treasurer, Scott Saal; Secretary, Mimi Boseman; John Norris, Legal Counsel; Board Members: Alex Bradley, Jackie Turner, David Hodgson, Jason Murphy, Owen Thornton, Ryan Ferguson, Andy Hilbert.

- If yes, list the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

N/A

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?

Bill Burnette, Member of the Cavalier Golf & Yacht Club

Applicant Services Disclosure

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

Yes **No**

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

Towne Bank

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

Yes **No**

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

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

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

Cherry Bekaert

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

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

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

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

Disclosure Statement



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

Applicant Signature

A handwritten signature in black ink that reads 'P. Joseph Andrew'.

Print Name and Title

P. Joseph Andrew, General Manager/COO

Date 3/30/2023

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

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

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

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



Applicant & Property Owner **Christina Minton**
 Address **2212 Leeward Shore Drive**
 Public Hearing **May 22, 2023**
 City Council District **District 8**, formerly Lynnhaven

Agenda Item

5

Property Owner’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 74, Page 2
 Recorded 11/30/1967

Lot Description

Lot 289, Bay Island, Section 2, 2212 Leeward Shore Drive

GPIN

2409-29-0640

Current Property Owner

Christina Minton

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Unauthorized development within the Resource Protection Area (RPA)

Location of Unauthorized Improvements

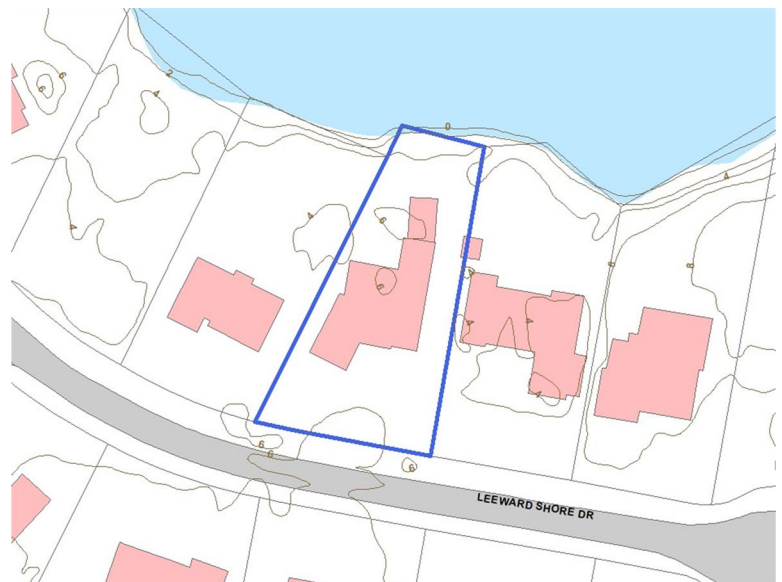
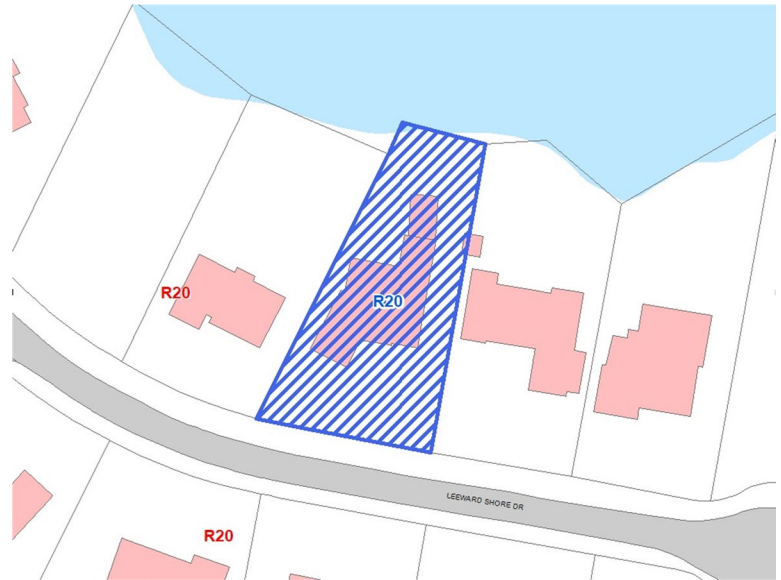
50-foot Seaward Buffer
 50-foot Landward Buffer

CBPA Ordinance

- The unauthorized improvements constitute a noncompliance to Section 106 specific to permitted encroachments into the RPA buffer area and 107 specific to the plan of development process of the Chesapeake Bay Preservation Area Ordinance.

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet



CBPA Ordinance Variance History

There is no known prior Chesapeake Bay Preservation Area (CBPA) Board variance history for this lot.

History of Noncompliance

To Staff's knowledge, Christina Minton has no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

Chronology of Noncompliant Event

- July 27, 2022 A Stop Work Order (SWO) was placed on the property for unauthorized work being performed without a building permit and erosion & sediment control measures installed.
- August 1, 2022 Staff received a citizen inquiry regarding construction work being performed at the property. Permits & Inspections (P&I) Staff visited the property located at 2212 Leeward Shore Drive to investigate a citizen inquiry regarding construction activity occurring on the property. At that time, no additional work had been performed.
- August 22, 2022 Staff sent a Notice to Comply letter to the property owner stating, *"this letter shall serve as written notice that you have thirty (30) days from the date of this letter to provide Staff with documentation that the unauthorized improvements do not represent an increase in impervious cover or a further encroachment within the RPA on the property."*
- August 29, 2022 Staff received an email from the property owner seeking clarity on the requirements of the Notice to Comply letter specific to the physical survey. The property owner stated in the email that no additional work has been performed. The property owner will be out of town dealing with a family matter.
- August 30, 2002 Staff replied to the property owner stating, *"your property is within the Resource Protection Area (RPA) of the Chesapeake Bay watershed and subject to the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance. If you are working within the footprint of existing improvements (i.e., patios, pool decks, etc.) then Staff may be able to review the redevelopment of those surfaces administratively. If those areas were expanded, then a variance to the CBPA Ordinance will be required. Do you have an existing physical survey of the property, in addition to the new one that your surveyor is working on?"*
- September 6, 2022 Staff met with the property owner at the Department of Planning and Community development to discuss the activity that had occurred on the property and the future desires of the property owner to redevelop the lot. The Chesapeake Bay Preservation Area (CBPA) process was discussed and the necessity for a current up-to-date physical survey to be performed to determine what, if any, encroachment into the Resource Protection Area (RPA) buffer had occurred.
- October 11, 2022 Permits & Inspections performed a site compliance check for the SWO placed July 27, 2022. No further progress or activity had occurred.

- May 4, 2023 Staff received a citizen inquiry regarding construction work being performed at the property.
- May 5, 2023 A second SWO was placed on the property for unauthorized work being performed without a building permit. At that time, it was determined by Staff that additional work had been performed post-issuance of the July 27, 2022 SWO.
- May 5, 2023 The property owner visited the Department of Planning and Community Development after the SWO was placed on the property. The purpose of the visit was to obtain a fence permit to rebuild the property fence, damaged by the tornado and sure the rear of the property which contains an inground swimming pool. Staff informed the property owner that the only work permitted on the property is for the installation of the fence, no other work is authorized, and that the property owner will be receiving a Notice to Comply letter to attend a CBPA public hearing as a Show Cause.
- May 9, 2023 A Notice to Comply letter was sent to the property owner as written notice that you are to appear before the CBPA Board at the public hearing scheduled Monday, May 22, 2023.
- May 10, 2023 Staff received an email from the property owner asking if topsoil could be placed on the lot.
- May 11, 2023 Staff replied to the property owners request to place topsoil on the lot stating, *"at this time, I would advise you not to perform any work on the lot until the Chesapeake Bay Preservation Area (CBPA) Board show cause hearing is complete."*

Evaluation and Recommendation

Relative Degree of Deviation

Staff is of the opinion that the subject activity of noncompliance, expanding existing accessory structures on the lot, specifically the existing swimming pool surround within the 100-foot Resource Protection Area (RPA), is without appropriate Staff review, approval or permitting. Said expansion of the swimming pool surround occurred along the seaward side of the existing structure and the associated land disturbance with the unauthorized improvements appears to be greater than 2,500 square feet. Expansions of accessory structures within the 100-foot RPA of the Chesapeake Bay watershed require a variance to the City's CBPA Ordinance and construction activities that disturb more than 2,500 square feet of land within a property require site plan review and approval by the Department of Planning & Community Development's, Development Services Center (DSC).

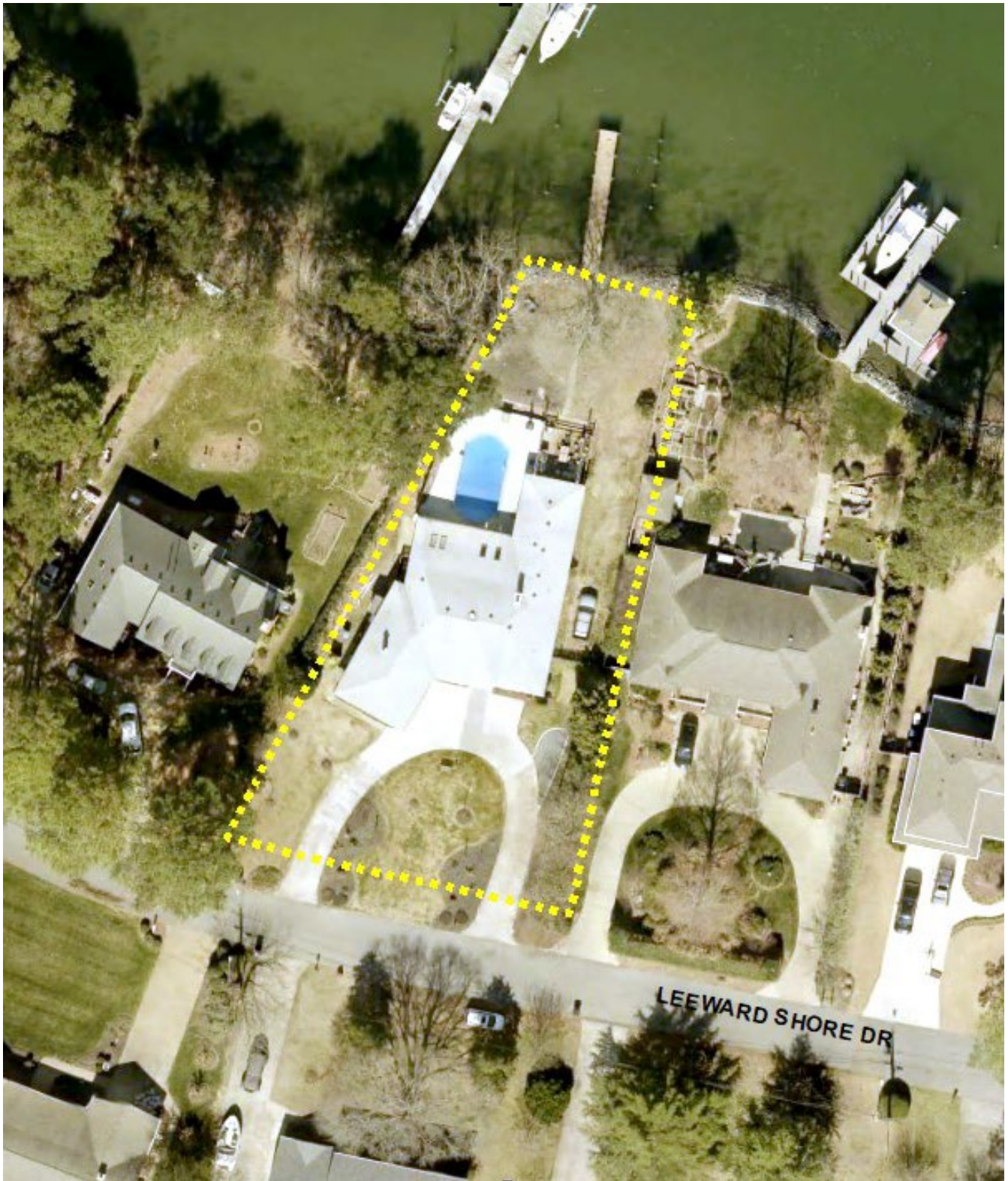
Environmental Impact

Staff is of the opinion that the subject area of noncompliance lies within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area (CBPA) RPA adjacent to the tidal shores of the Lynnhaven River. Although there are no signs of sediment migration associated with the land disturbance on the lot into the adjacent tidal waterbody, a portion of the unauthorized improvements appear to encroach into the 50-foot seaward buffer. These encroachments may not be handled administratively by Staff and require that the property owner comply with City Code, Appendix F, Sec. 110(A) and (C) of the CBPA Ordinance.

Recommendation

It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been high, and the environmental impact has been medium.

Circa 2021 Site Aerial



Circa 2023 Site Aerial



