

Chesapeake Bay Preservation Area Staff Report

February 26, 2024



CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, February 26, 2024** at 10:00 a.m. in the City 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 virginiabeach.gov/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.



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **February 26, 2024**

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 virginiabeach.gov/cbpa. For information call (757) 385-4621.

OLD BUSINESS AGENDA ITEMS

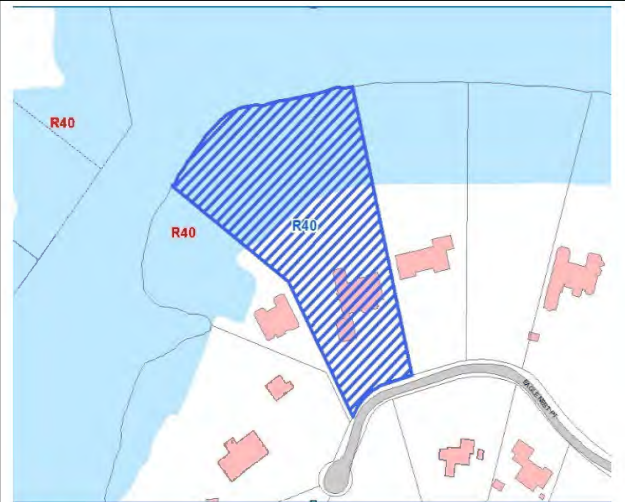
1. John & Maria Motta
[Applicants & Property Owners]

3380 Eagle Nest Point
GPIN 1489-81-4025
City Council District: District 8

Accela Record: 2023-CBPA-00057

Variance Request – Encroachment into the RPA to construct tiered retaining walls.

Staff Planner – Cole Fisher
Staff Report – page 7



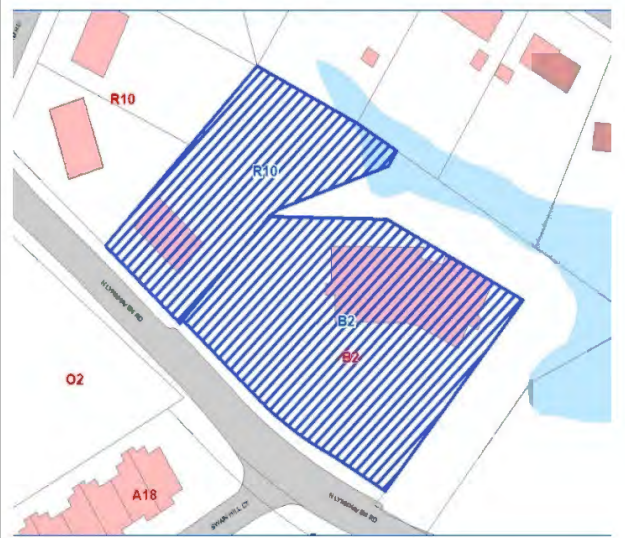
2. Stewart Investments, LLC
[Applicant & Property Owner]

2940 & 2950 N. Lynnhaven Road
GPINs 1497-26-4306 & 1497-26-2489
City Council District: District 8

Accela Record: 2023-CBPA-00056

Variance Request – Encroachment into the RPA to construct a two-story commercial office building with associated accessory structures & sidewalks.

Staff Planner – Cole Fisher
Staff Report – page 23



NEW BUSINESS AGENDA ITEMS

3. Henry & Kimberly Artime [Applicants & Property Owners]

408 Behl Court

GPIN 1457-30-3208

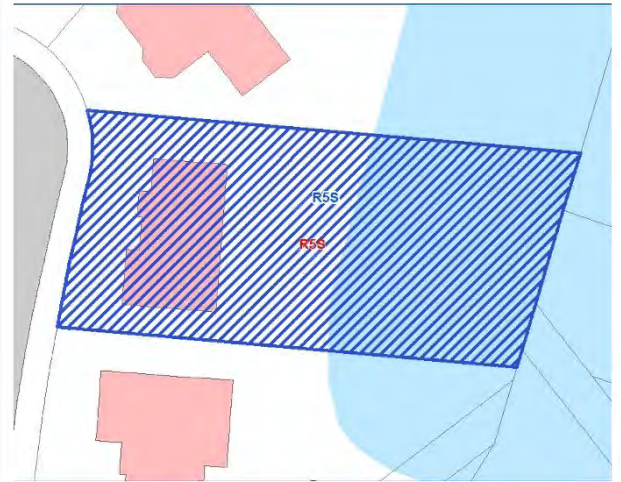
City Council District: District 1

Accela Record: 2023-CBPA-00074

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

Staff Planner – Cole Fisher

Staff Report – page 39



4. Carter & Justin Griffin [Applicants & Property Owners]

1333 N. Bay Shore Drive

GPIN 2419-10-6234

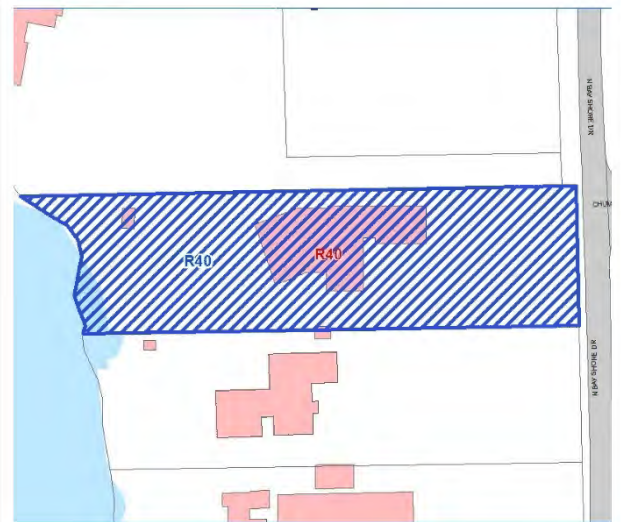
City Council District: District 6

Accela Record: 2024-CBPA-00001

Variance Request – Encroachment into the RPA to construct a swimming pool with paver patios, pool house, walkways, & parking area.

Staff Planner – Cole Fisher

Staff Report – page 49



5. Tyler Family Trust [Applicant & Property Owner]

816 Gilbert Circle

GPIN 1498-51-3135

City Council District: District 8

Accela Record: 2024-CBPA-00007

Variance Request – Encroachment into the RPA to construct a shed.

Staff Planner – Cole Fisher

Staff Report – page 63



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Michael Remington
[Applicant & Property Owner]

605 Ben Bow Drive
GPIN 1466-37-4579
City Council District: District 1

Accela Record: 2024-CBPA-00008

Variance Request – Encroachment into the RPA to construct a paver patio & shed.

Staff Planner – Cole Fisher
Staff Report – page 73



7. Nilkanth & Kalpana Patel
[Applicants & Property Owners]

909 Hall Haven Drive
GPIN 1498-42-6983
City Council District: District 8
Accela Record: 2022-CBPV-00004

Variance Request – Encroachment into the RPA for an after-the-fact outdoor kitchen area and walkway.

Staff Planner – Cole Fisher
Staff Report – Page 83



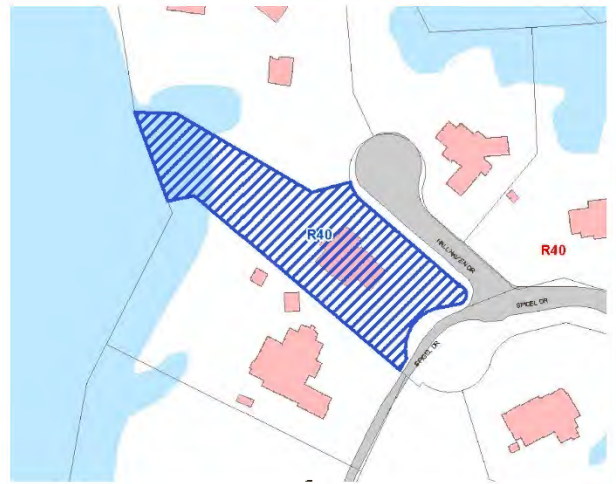
RESTORATION HEARING

8. Nilkanth & Kalpana Patel
[Applicants & Property Owners]

909 Hall Haven Drive
GPIN 1498-42-6983
City Council District: District 8
Accela Record: 2022-CBPV-00004

Statement of Noncompliance – Encroachment into the RPA for an after-the-fact deck and patio area.

Staff Planner – Cole Fisher
Staff Report – Page 99



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Applicant & Property Owner: **John & Maria Motto**
 Address: **3380 Eagle Nest Point**
 Public Hearing: **February 26, 2024**
 City Council District: **District 8**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct tiered retaining walls and a permeable paver patio.

Applicant's Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 23, Page 31
 Recorded 09/20/1948

GPIN

1489-81-4025

SITE AREA

103,807 square feet or 2.38 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

58,098 square feet or 1.34 acres

EXISTING IMPERVIOUS COVER OF SITE

13,211 square feet or 23 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

13,532 square feet or 23 percent of site

Area of Redevelopment in RPA

83 linear feet of retaining wall

Area of New Development in RPA

321 square feet

Location of Proposed Impervious Cover

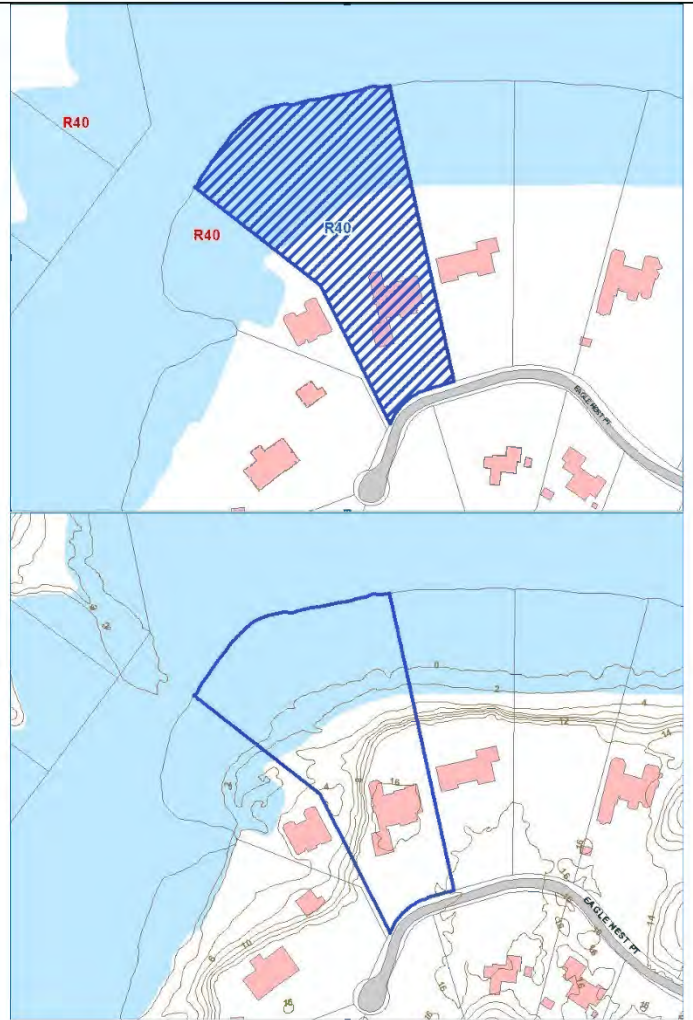
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Three-tiered retaining wall system
- Redevelopment of existing retaining wall along west side of residence

CBPA Ordinance Variance History

January 28, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family dwelling and deck with the following conditions:

1. *Dual erosion and sedimentation control measures shall be installed prior to any land disturbance. Said controls shall be maintained until such time as vegetative cover is established. In addition, a temporary chain link fence shall be installed adjacent to said controls.*
2. *Construction limits shall lie a maximum of 15 feet outboard of improvements, exclusive of the corner of the residence that lies near the top-of-bank. Construction limits on said corner shall be 10 feet.*
3. *Fifteen (15) trees shall be installed.*
4. *If and when the shoreline is hardened, a rip-rap revetment shall be installed in lieu of a vertical retaining structure (bulkhead) and be so noted on the site plan.*
5. *All stormwater from impervious cover shall be conveyed to structural stormwater management facilities.*
6. *Buffer restoration equal to the impervious cover shall be provided. Said restoration shall incorporate bayscape landscaping principles and be so noted on the site plan. A separate landscape plan shall accompany the revised site plan. All restoration shall be installed prior to the issuance of an occupancy permit.*
7. *Payment into the Lynnhaven Oyster Heritage Fund in the amount of \$2,241 shall be provided prior to issuance of an occupancy permit. Said payment will provide for an approximate 12 inch deep, 2,417 square foot oyster shell plant / reef within the Lynnhaven River. Said compensation is for 25% of the proposed on-site impervious cover.*
8. *A revised site plan and landscape 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 January 28, 2002 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone VE and AE, Base Flood Elevation (BFE): 10 and 8

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

John & Maria Motto

Agenda Item 1

Page 8

Shoreline

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

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

Staff provides the write-up from the November 2023 staff report for the Chesapeake Bay Preservation Area (CBPA) Board's reference.

"The applicant is proposing to construct three-tiered segmented retaining walls in the rear yard of the lot with a permeable paver patio between the top and mid-level tiered walls for a seating area. The distance from the landward edge of tidal wetlands to the base of the proposed retaining walls ranges from approximately 17 feet to 30 feet and occurs at an elevation of approximately 6 to 7 feet above sea level along an existing bank feature. The average length of each retaining wall is approximately 100 linear feet (approximately 305 linear feet in total) with an average vertical height of ranging from 3 to 4 feet. The applicant has indicated concern about the slope of the yard area where the improvements are proposed and associated erosion occurring along the bank due to runoff from increased heavy rainfall storm events. Staff is of the opinion that the applicant's use of retaining walls will help infiltrate rainwater runoff and will allow for vegetative cover to establish within this area of the lot by slowing down the velocity of runoff. As shown on the provided aerial imagery, vegetation is present through all areas of the 50-foot seaward buffer, aside from the lot area north of the proposed retaining walls. Staff is of the opinion that the applicant has taken measures to ensure that the proposed improvements minimize impacts to the Resource Protection Area (RPA) while allowing for future wetland marsh migration given the location for the proposed improvements being substantial landward of the existing tidal feature."

The applicant's agent has revised the proposal to reduce the new impervious cover with this request by approximately 626 square feet: from 947 square feet with the November 2023 submittal to 321 square feet with the revised plans. Two small stepping areas are also proposed off the existing pier to provide access for the property owner to routinely maintain vegetation between the tiered retaining wall system. Added to this variance request since the deferral in November is the redevelopment of the existing retaining along the west side of the residence. The applicant proposes to replace the retaining wall within the same footprint with a new timber wall. Staff is of the opinion the request is minimal and will ensure stability of the applicant's rear yard as well as slow down velocity of runoff from rainwater and heavy storm events.

To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance as merit towards the variance request being in harmony with the findings of the CBPA Ordinance for the Boards deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the project will protect the owner’s property from further erosion and subsidence next to the existing swimming pool.”* Staff adds similar requests are seen throughout the city to stabilize embankments and prevent runoff and erosion into tidal waterways, however, the addition of the paver patio area lends additional impervious cover within the 50-foot seaward buffer.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the three-wall system has been designed to reduce excavation of the shoreline and the use of fill.”* Staff offers the proposed improvements increase the impervious cover by 321 square feet as revised, which keeps the impervious cover on the lot at 23 percent of the lot area above water and wetlands.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“by stabilizing the shoreline, soil transfer due to erosion, will be reduce or eliminated.”* Staff concurs and adds the required buffer restoration provides merit towards the proposed improvements not being of substantial detriment to the water quality of the Chesapeake Bay.
- 5) *“The terraces between the walls will be stabilized by permeable paver patio and plantings which will prevent further erosion and promote infiltration into the soils”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers the recommended conditions below as a means towards managing nonpoint source pollution loading on the lot.

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 Lad Disturbing Activity Plan (Erosion & Sediment Control 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 above plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **321 square feet x 200 percent = 642 square feet**. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation &

Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) This variance and associated conditions **are in addition to** the conditions of the Board variance granted January 28, 2002.
- 12) The conditions and approval associated with this variance are based on the exhibit plan dated September 11, 2023, prepared by Robert S. Kellam, signed January 23, 2024 by Robert S. Kellam. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

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

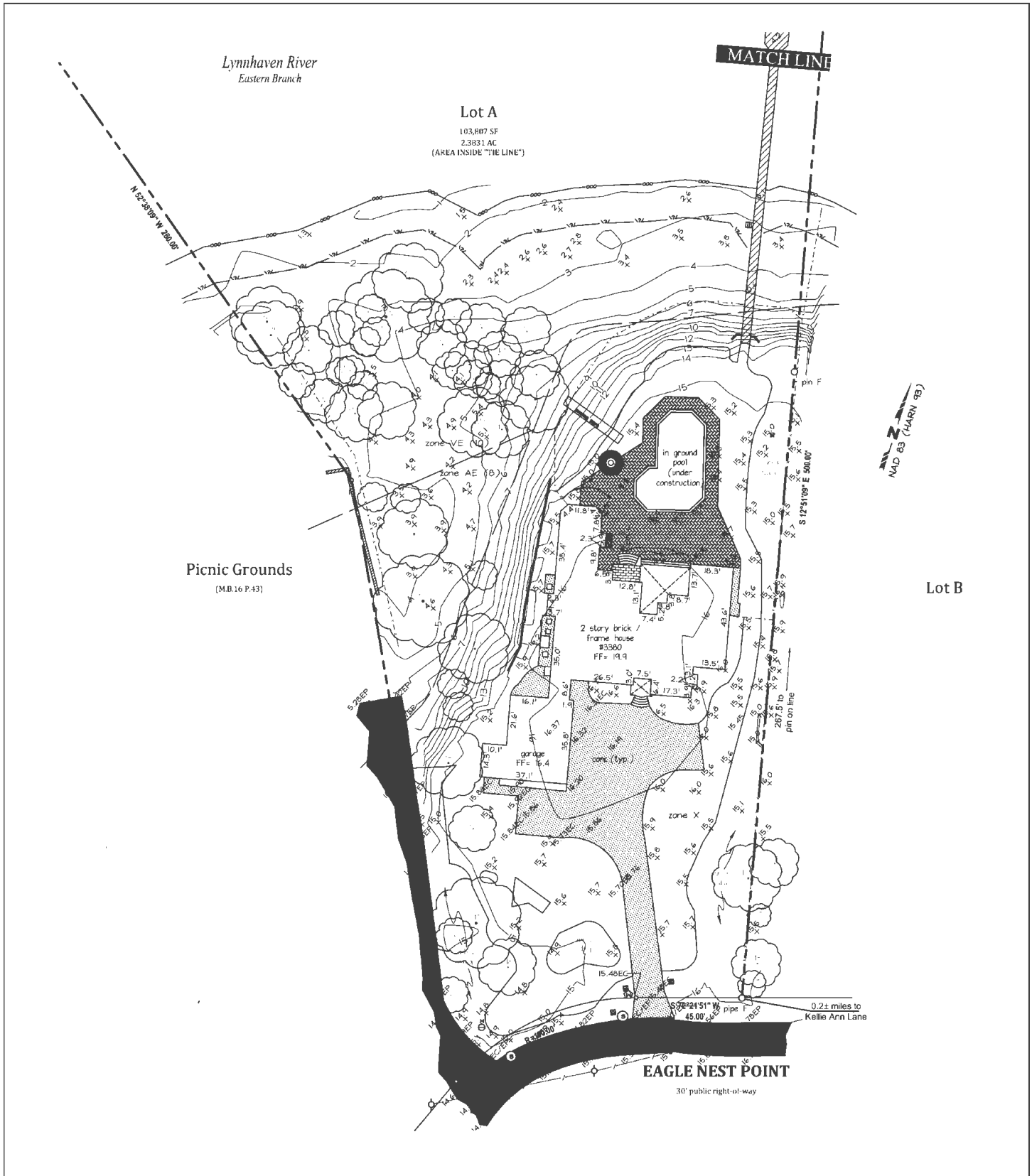
Site Aerial

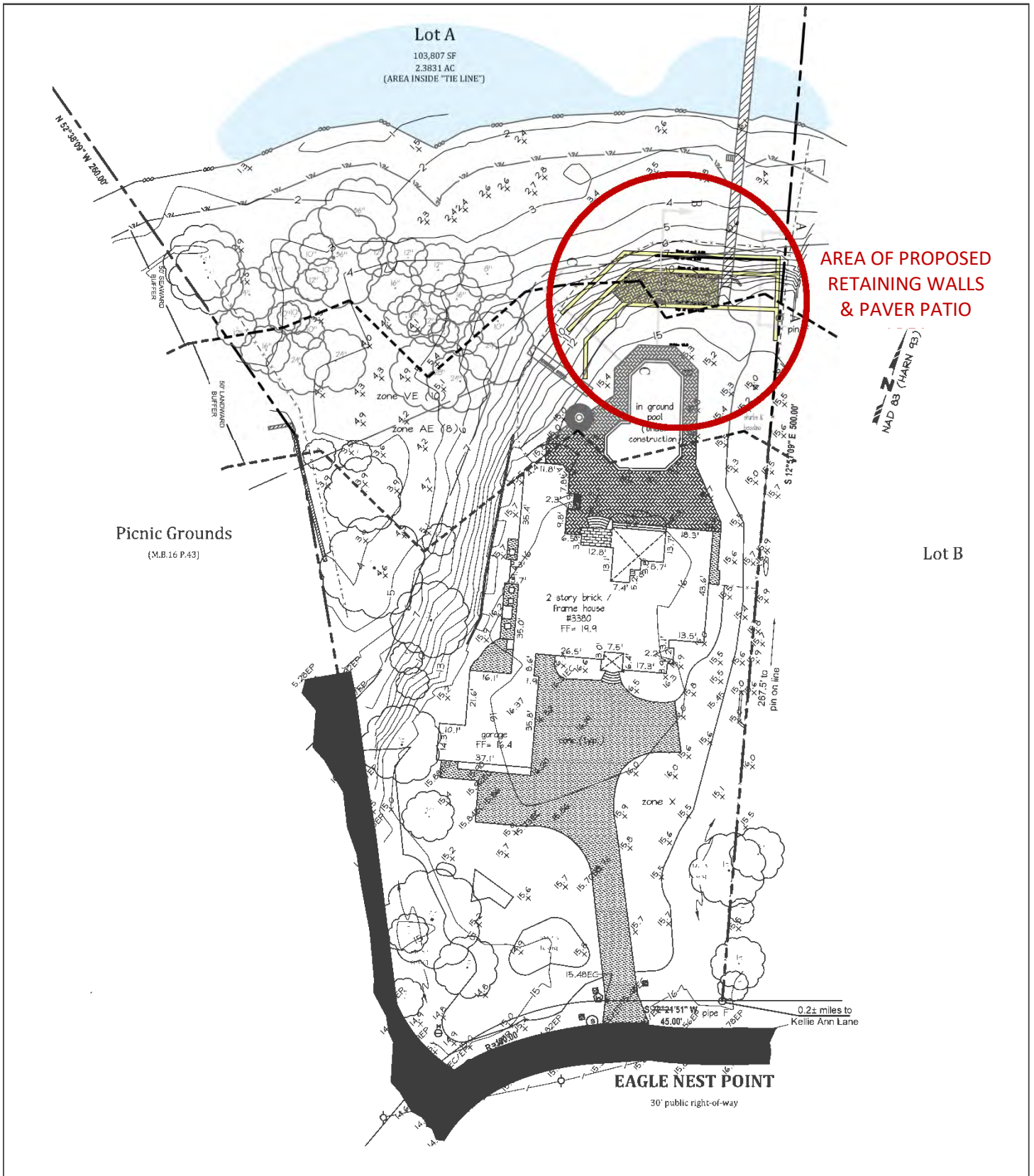


Site Aerial

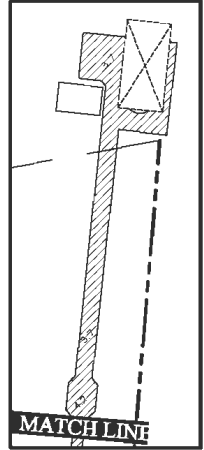
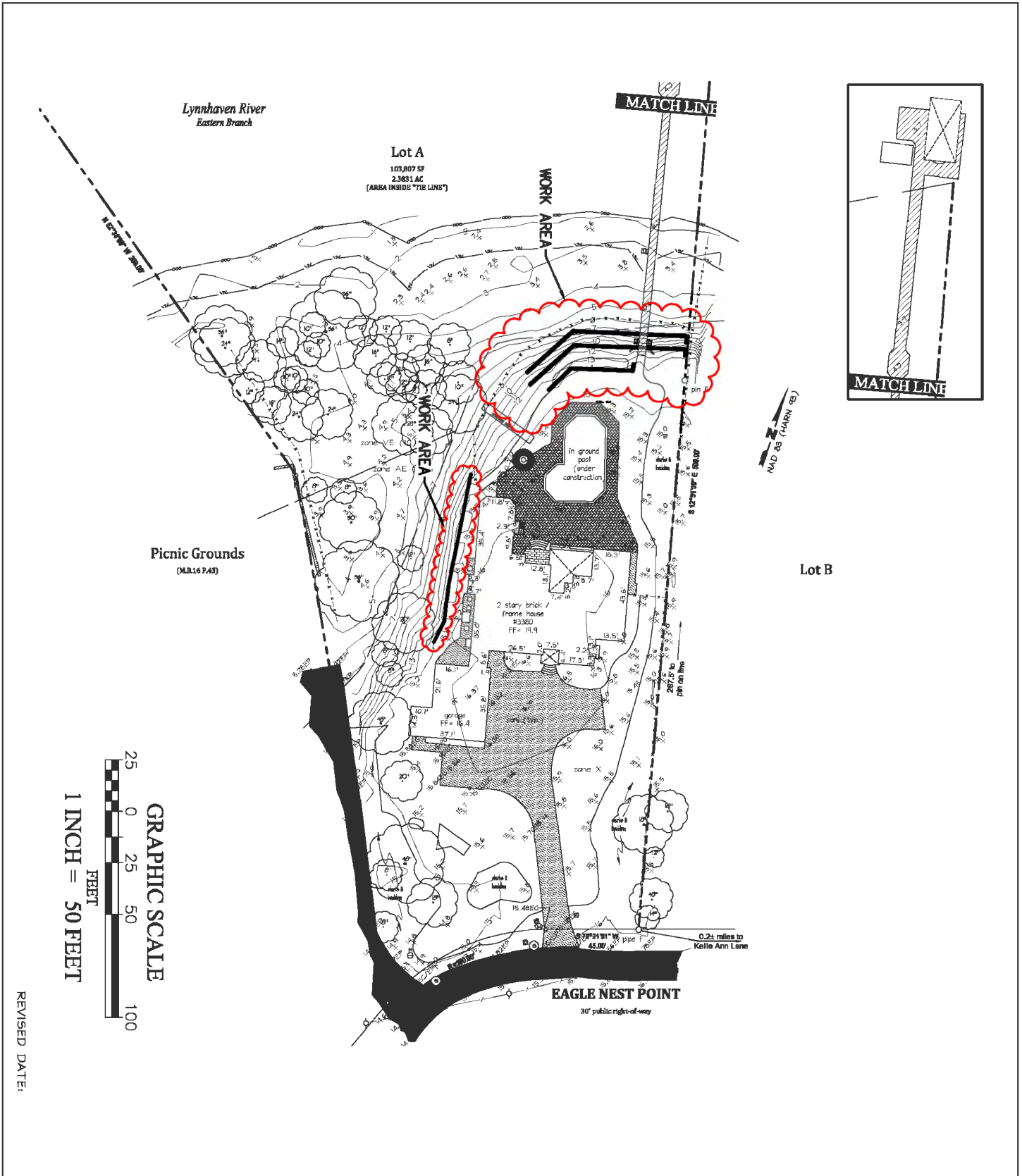


CBPA Exhibit – Existing Conditions



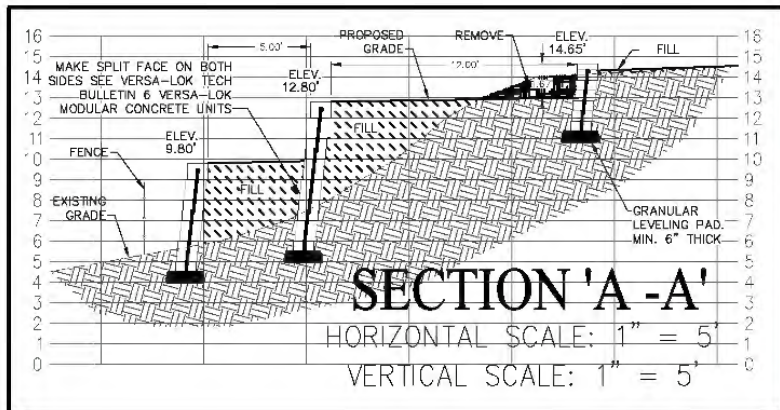


Revised CBPA Exhibit



REVISED DATE:

CBPA Exhibit – Cross Section A-A



LOCATIONS OF WALL SECTION A-A

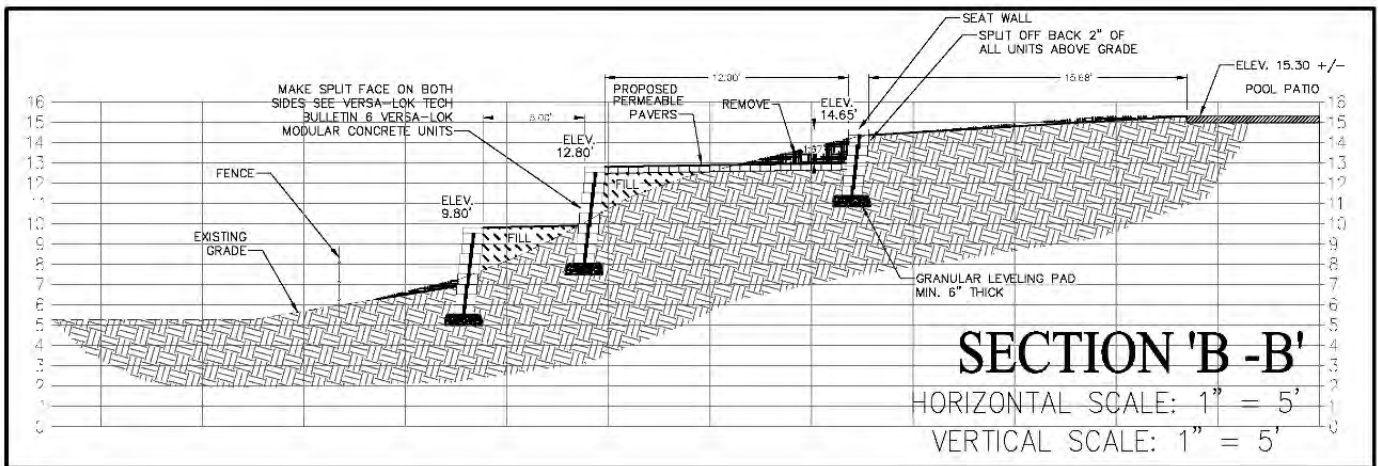


LOCATIONS OF WALL SECTIONS



EXISTING SHORE LINE

CBPA Exhibit – Cross Section B-B



LOCATIONS OF WALL SECTION B-B

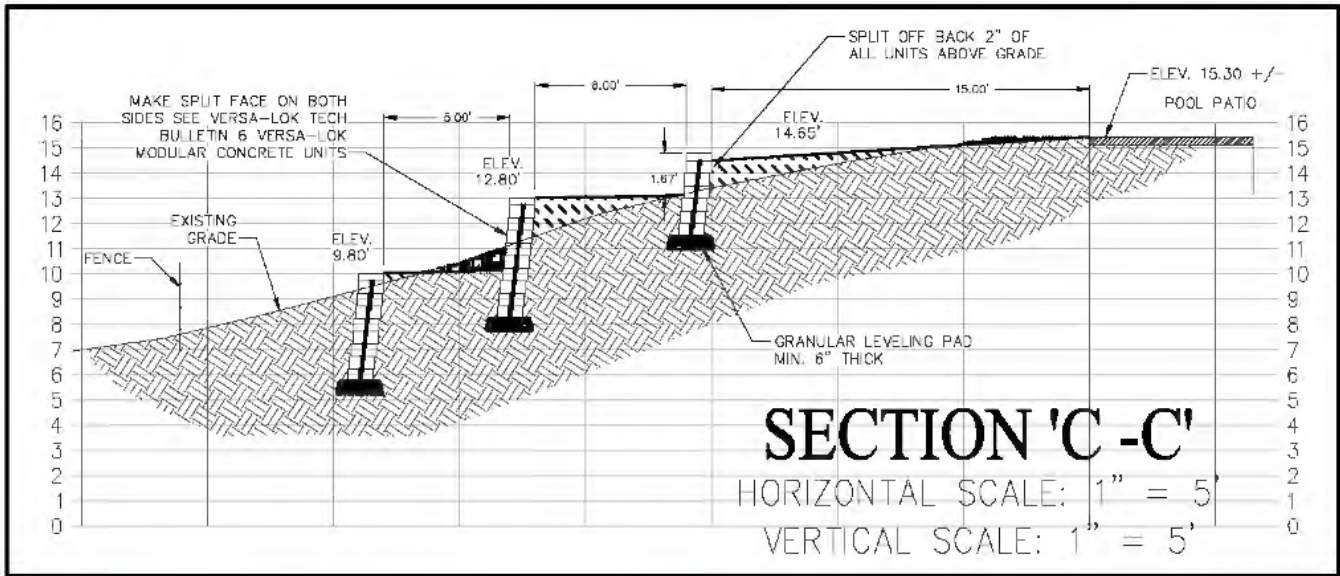


LOCATIONS OF WALL SECTION B-B



LOCATIONS OF WALL SECTION B-B

CBPA Exhibit – Cross Section C-C



LOCATIONS OF WALL SECTION C-C



LOCATIONS OF WALL SECTION C-C



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 John P. and Maria Motta

Does the applicant have a representative? [X] Yes [] No

- If yes, list the name of the representative.

Kellam Gerwitz, Inc.: Robert S. Kellam

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

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

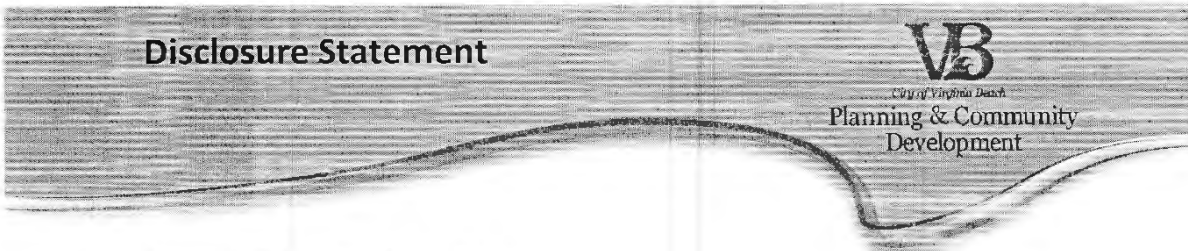
Blank lines for listing names of officers, directors, members, trustees, etc.

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

Blank lines for listing businesses with parent-subsiary or affiliated business entity relationship.

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.



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.

Santander Bank

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

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

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

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

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

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

Kellam Gerwitz, Inc.

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 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.
Virginia Beach PAVERS
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.
Kellam Gerwitz, Inc.; Robert S. Kellam
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.

John P. Motta
 Applicant Signature

John P. Motta
 Print Name and Title

September 29, 2023
 Date

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

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

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



Applicant & Property Owner: **Stewart Investments, LLC**
 Address: **2940 N. Lynnhaven Road & 2950 N. Lynnhaven Road**
 Public Hearing: **February 26, 2024**
 City Council District: **District 8**

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story commercial office building with associated accessory structures.

Applicant's Agent

Eddie Bourdon - Sykes Bourdon, Ahern & Levy PC

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 48, Page 28
 Recorded 10/13/1959

GPIN

1497-26-4306 & 1497-26-2489

SITE AREA

Lot 11 – 19,759 square feet or 0.454 acres
 Lot C – 36,113 square feet or 0.83 acres
 *Combined = 55,872 square feet or 1.28 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

Lot 11 – 19,453 square feet or 0.447 acres
 Lot C – 35,859 square feet or 0.82 acres
 *Combined = 55,312 square feet or 1.26 acres

EXISTING IMPERVIOUS COVER OF SITE

Lot 11 – 2,465 square feet or 13 percent of site
 Lot C – 23,201 square feet or 65 percent of site
 *Combined = 25,666 square feet or 46 percent

PROPOSED IMPERVIOUS COVER OF SITE

Lot 11 – 8,834 square feet or 45 percent of site
 Lot C – 24,104 square feet or 67 percent of site
 *Combined = 32,938 square feet or 59 percent

Area of Redevelopment in RPA

Lot 11 – 1,470 square feet
 Lot C – 554 square feet

Area of New Development in RPA

Lot 11 – 7,364 square feet
 Lot C – 903 square feet

Location of Proposed Impervious Cover

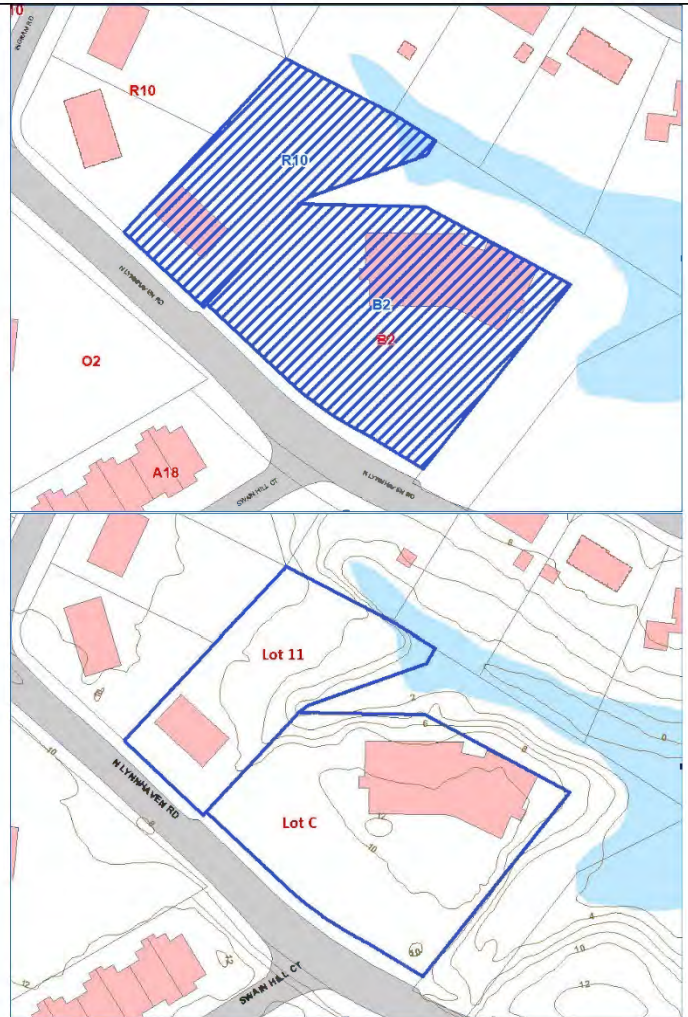
50-foot Seaward Buffer
 50-foot Landward Buffer
 100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing single-family residence and associated driveway, deck, patio, and shed.

Construction Details

- Two-story commercial office building with associated deck, ramp, sidewalks, and parking lot

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Udorthents Series (moderately well-drained soils altered by excavation)

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy 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, shown as within the footprint of the proposed office building.
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 0

Stormwater Management Methodology

The revised Chesapeake Bay Preservation Area (CBPA) Variance Exhibit, specifically Sheet C-4.0 provides stormwater management facilities (SWMF) to mitigate run-off from both existing and proposed impervious cover specific to the following practices.

- Permeable pavement with a treatment volume of approximately 1,035 square feet.
- Outlet control structure – modification of existing parking lot catch basin.
- Modified level spreader w gravel infiltration trench with perforated pipe.
- Underdeck treatment of gravel and sand.
- Riparian buffer planting seaward of existing and proposed improvements.

Evaluation and Recommendations

Staff provides the write-up from the November 2023 staff report for the Chesapeake Bay Preservation Area (CBPA) Board's reference.

"The existing single-family home on the property of 2950 N. Lynnhaven Road (Lot 11) is proposed to be demolished to construct a two-story commercial office building with associated decks, sidewalks, and parking lot. As shown on the Chesapeake Bay Preservation Area (CBPA) exhibit approximately 7,364 square feet of new impervious cover is proposed within the Resource Protection Area (RPA) on this lot of which portions of the proposed office building will encroach into the 50-foot seaward and 50-foot landward buffers of the RPA.

Redevelopment occurs with this request due to the new proposed parking lot area, which would connect to the existing parking lot on the adjacent lot. A permeable paver infiltration basin is proposed within four of the new parking spaces to treat stormwater runoff from the new and existing parking lot areas before reaching the existing stormwater drain. Additionally, due to the elevation of the lot, the applicant proposes a wood deck area and associated ramp connecting to the proposed parking lot to provide an elevated access to the proposed office complex. Furthermore, the lot is currently zoned R-10 and will be applying for a conditional rezoning with the Planning Commission to rezone the lot to O-2 to allow for the use of the office complex. On the adjacent lot on the property of 2940 N. Lynnhaven Road (Lot C), the applicant wishes to construct two sidewalk expansions within the 50-foot landward buffer portion on the lot to connect to existing sidewalk spaces leading to the office complex on the lot.

The riparian buffer on the lot is mature and heavily wooded with dense underbrush and the applicant is proposing to remove only six trees with this variance request and will be retaining the remaining vegetation on the lot. The RPA encompasses the entirety of the property with the 50-foot seaward buffer encroaching onto nearly half of the lot and Staff is of the opinion that any redevelopment of the property shall be challenging given the location of the RPA on the entire lot. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed through the incorporation of structural or nonstructural urban best management practices [Sec. 106 (A)(3)]. Per the applicant's engineer, this proposal will combine the use of structural (permeable pavers, infiltration beds, gravel downspout intercepts, and sand/gravel underdeck treatment) and nonstructural (bioretention planting beds) for stormwater treatment on the site. In addition, Staff met with the applicant's agent after reviewing the initial submittal of this variance request to include additional best management practices to ensure enhanced treatment of stormwater runoff on the site."

To further support the variance request as submitted, the applicant's agent has provided stormwater management facility details regarding the multiple stormwater treatments proposed for the property and surrounding sites, which can be found on page 35 of this staff report. The plan sheet shows the SWMF detail for the permeable paver infiltration basin and modified catch basin proposed in the parking lot of the site, as well as details regarding underdeck treatment, riparian meadow area, and pop-up emitter to treat stormwater from multiple impervious surfaces of the lot.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the site was platted in 1959, prior to the Chesapeake Bay Preservation Act. The RPA buffers currently impact 100% of the lot and development on this lot cannot be obtained without encroaching into the RPA."*

- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owner and design team have worked to customize the building and improvements for the site while trying to meet other city ordinances. The proposed site will utilize additional storm water measures as well as being building on a raised piling foundation where practical."* Staff is of the opinion encroachment into the RPA to redevelop the lot is inevitable given zoning requirements and the location of the RPA buffer encompassing the entire lot. In addition, Staff's recommended conditions specifically address post plan approval implementation of the proposed improvements to preserve existing conditions of the seaward buffer of the RPA and mature canopy trees on the lot beyond limits of construction.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the adjacent commercial parcels. The site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment or buffer restoration provided between the improvements and the bay. In addition to the stormwater mitigation for this site, the owner is inclined convert the sections of gutters downspouts on his adjacent parcel (2940) into gravel downspout interceptors to provide additional E&S measures and increase pollutant removal."* Staff is of the opinion the request in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality subject to the recommended conditions provided in this staff report that include the installation of both structural and nonstructural best management practices throughout the lot to promote infiltration of stormwater.
- 5) *"Planting buffer restoration and bio-retention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion the BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Commercial Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed in substantial compliance with the CBPA Improvements Plan Exhibit, Concept Schedule for the proposed new impervious cover within the RPA: **7,364 square feet x 200 percent = 14,728 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of **6 canopy trees, 12 understory trees, the Riparian Slope Mix area planting, and Understory Slope Mix planting**. The required Category IV Buffer with associated planting and proposed bioretention planting bed areas with associated plantings are excluded from this condition.

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements, the required silt fence shall be installed no further seaward than five (5) feet.
 - Along the remaining portions of the property, the required silt fence shall be installed 10 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 6) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 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) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,894.52 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated February 24, 2024, prepared by WPL, signed February 9, 2024 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

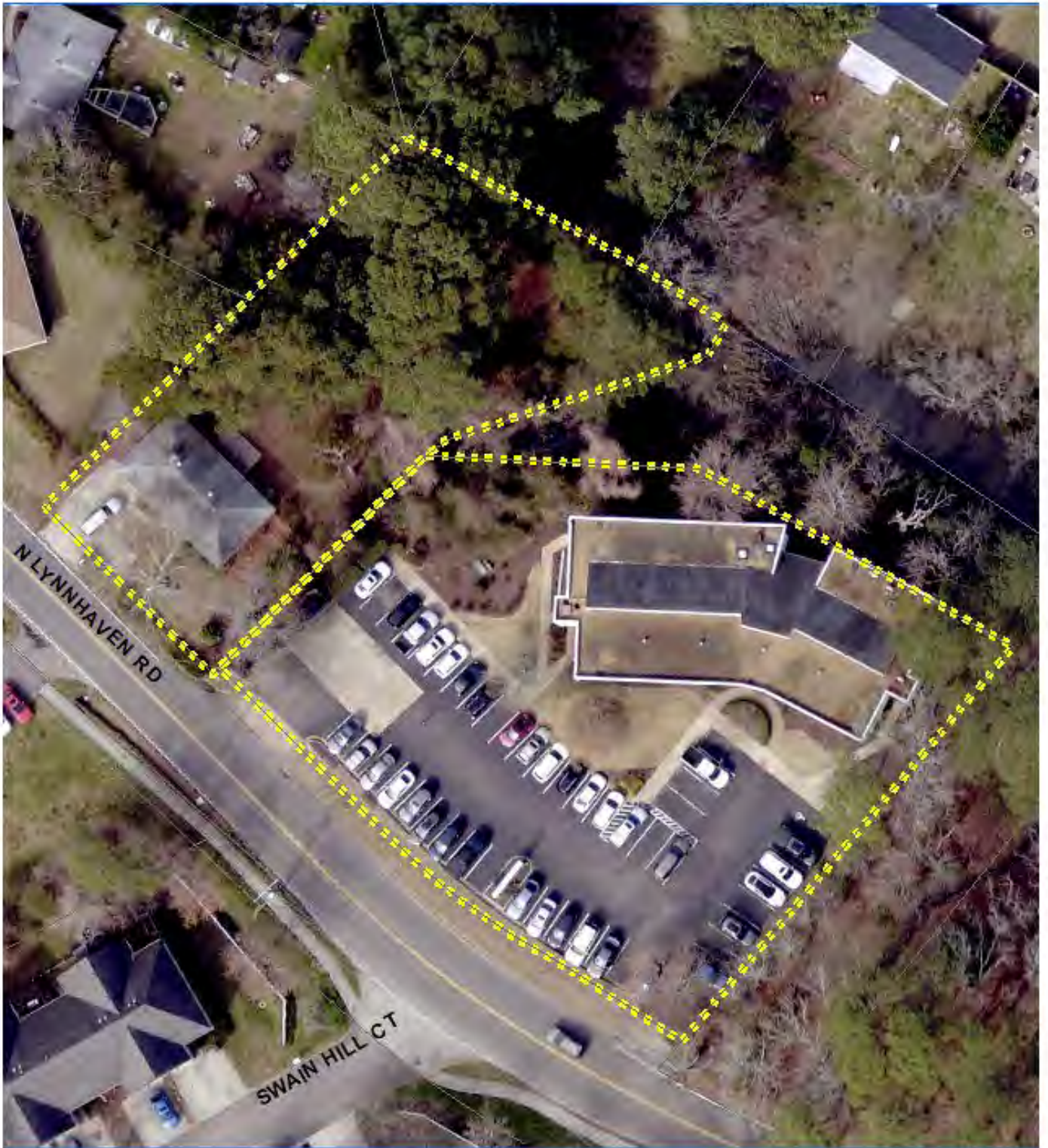
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial Overview



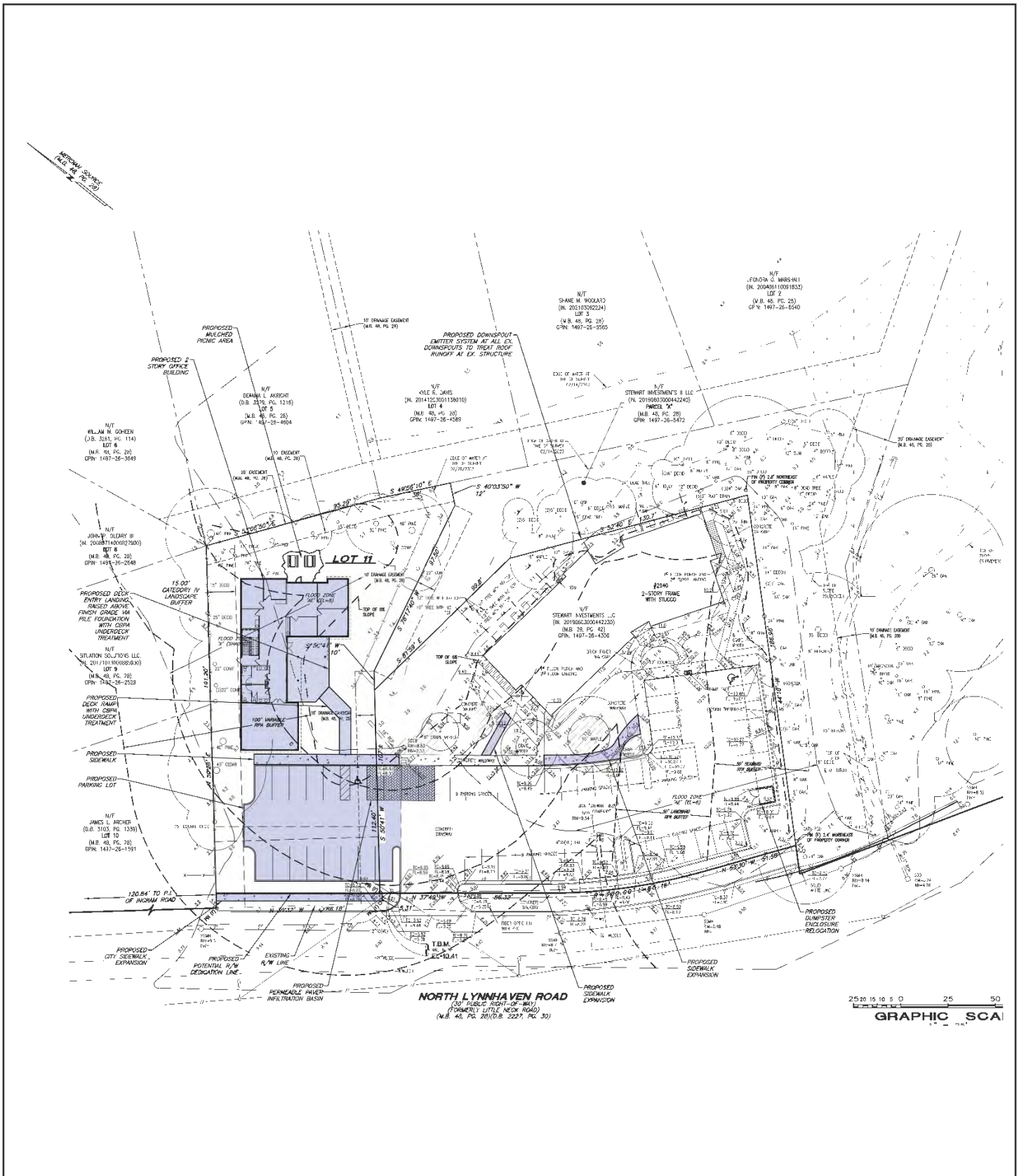
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Color Analysis

CBPA CALCULATIONS (LOT 11)

TOTAL LOT AREA
19,769 SQ. FT.

TOTAL LOT AREA OUTSIDE OF
WATER, WETLAND, MARSH, REVETMENT
19,453 SQ. FT.

TOTAL IMPERVIOUS
PRE-DEVELOPMENT
2,465 SQ. FT.

TOTAL IMPERVIOUS
POST-DEVELOPMENT
8,834 SQ. FT.

■ REDEVELOPMENT
1,470 SQ. FT.

■ NEW IMPERVIOUS
7,364 SQ. FT.

■ REMOVED IMPERVIOUS
935 SQ. FT.

CBPA CALCULATIONS (PARCEL 0.84 ACRES)

TOTAL LOT AREA
36,113 SQ. FT.

TOTAL LOT AREA OUTSIDE OF
WATER, WETLAND, MARSH, REVETMENT
35,859 SQ. FT.

TOTAL IMPERVIOUS
PRE-DEVELOPMENT
23,201 SQ. FT.

TOTAL IMPERVIOUS
POST-DEVELOPMENT
24,104 SQ. FT.

■ REDEVELOPMENT
554 SQ. FT.

■ NEW IMPERVIOUS
909 SQ. FT.

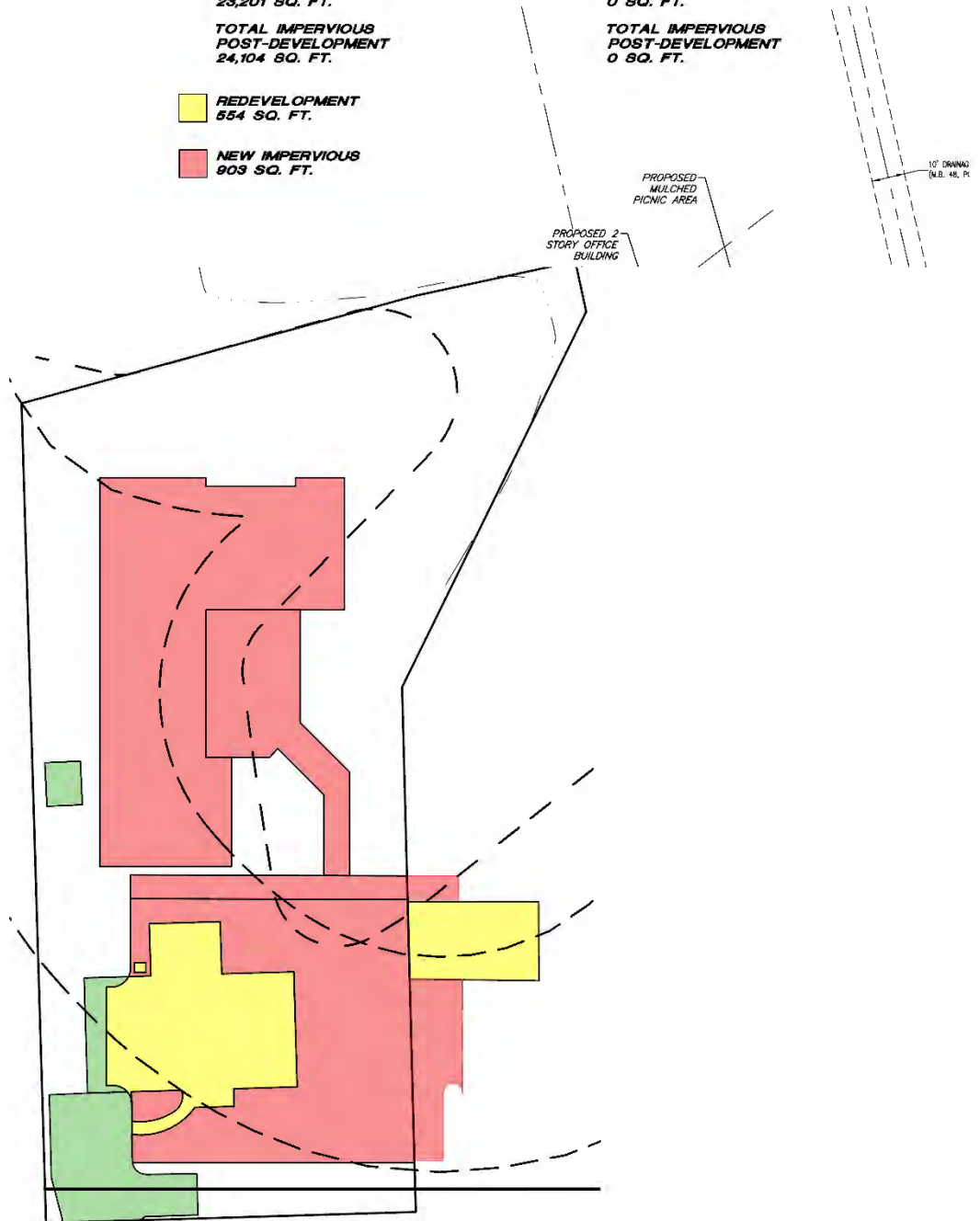
CBPA CALCULATIONS (PARCEL "A")

TOTAL LOT AREA
21,691 SQ. FT.

TOTAL LOT AREA OUTSIDE OF
WATER, WETLAND, MARSH, REVETMENT
9,433 SQ. FT.

TOTAL IMPERVIOUS
PRE-DEVELOPMENT
0 SQ. FT.

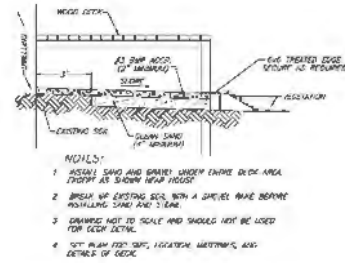
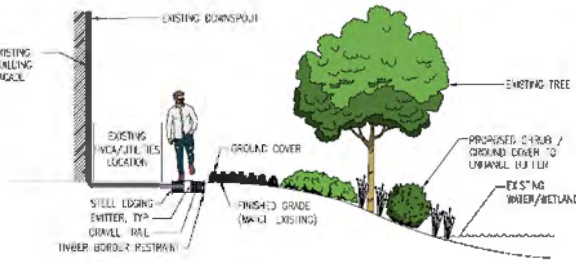
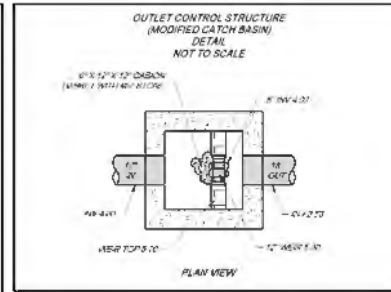
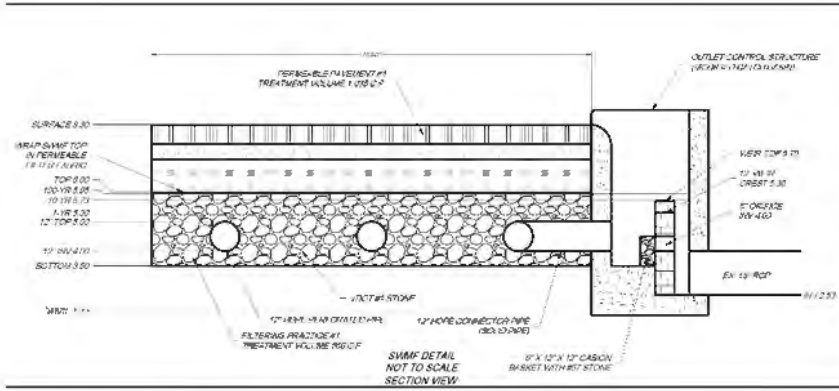
TOTAL IMPERVIOUS
POST-DEVELOPMENT
0 SQ. FT.



CONCEPT SCHEDULE

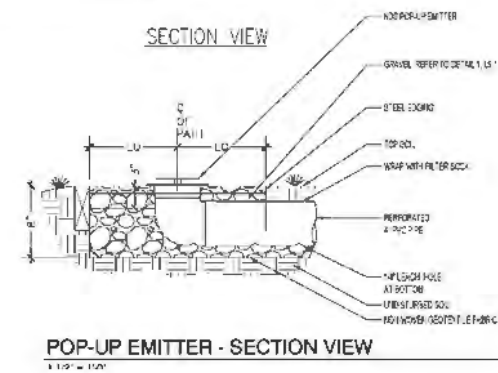
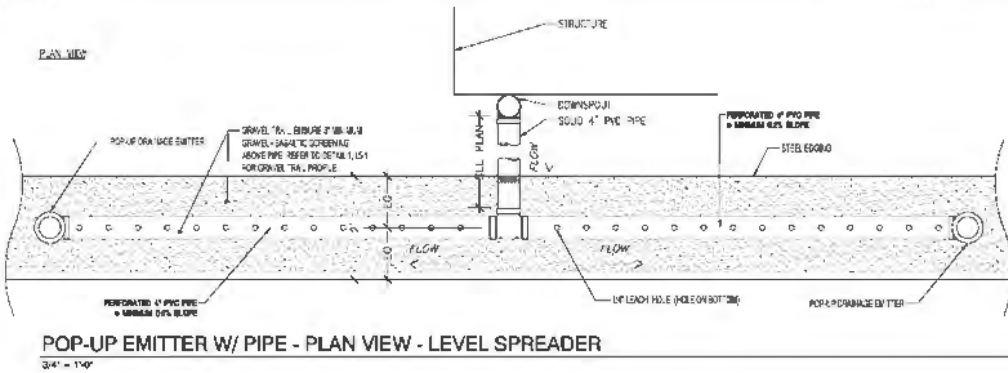
- | | | | | | |
|---|-----------------------------|---|--------------------|---|----------------------|
|  | UNDERSTORY TREE |  | ORNAMENTAL GRASSES |  | RIPARIAN SLOPE MIX |
|  | CAT IV BUFFER - LARGE SHRUB |  | BIORETENTION SHRUB |  | UNDERSTORY SLOPE MIX |
|  | CAT IV BUFFER - SMALL SHRUB | | | | |





00 TYPICAL SECTION ADJACENT TO EXISTING BUILDING
SHEET 1/4" = 1'-0"

UNDER-DECK TREATMENT
1" = 1'-0"



POP-UP EMITTER W/ PIPE - PLAN VIEW - LEVEL SPREADER
3/4" = 1'-0"

POP-UP EMITTER - SECTION VIEW
1/2" = 1'-0"

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 Stewart Investments LLC

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Eddie Bourdon / Sykes, Bourdon, Ahern & Levy.

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)

William R. Stewart, Member

W. Kevin Stewart, Member

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

William R. Stewart & Associates, Inc. and Stewart Financial Services, Inc.

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

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

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.

William R. Stewart & Associates dba Stewart & Company

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

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

WPL

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

Applicant Signature

W. Kevin Stewart

Print Name and Title

W. Kevin Stewart, Member

Date *10/02/2023*

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: Henry Eleuterio & Kimberly Artime
 Address: 408 Behl Court
 Public Hearing: February 26, 2024
 City Council District: District 1

Agenda Item

3

Variance Request

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

Applicant’s Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 263, Page 79
 Recorded 11/26/1997

GPIN

1457-30-3208

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

120 square feet

Location of Proposed Impervious Cover

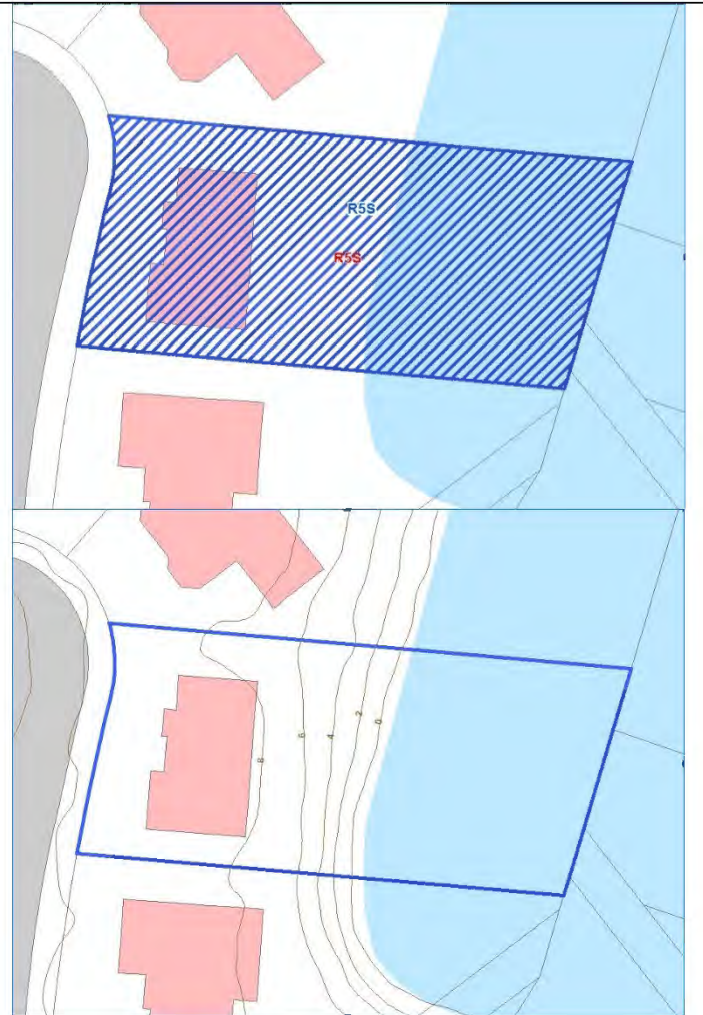
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Wood deck expansion

CBPA Ordinance Variance History

April 25, 1994 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to develop an area within the limits of the RPA which is subject of a proposed 11.6 acre subdivision of land into 35 residential lots with the following conditions:

1. *The metes and bounds of the building envelope for proposed parcel 1 to 35 shall be identified and approved by City staff prior to recordation of the final plat.*
2. *On-site best management practices will be required for all the parcels unless expressly waived or modified by City staff during the plan review process.*
3. *Once construction on each parcel is complete, the denuded area within the construction footprint shall be restored with vegetation according to an approved landscape plan to be submitted with the final site plan.*
4. *Appropriate stormwater, erosion and sediment control and landscape bonds must be posted with the Planning Department prior to the issuance of a building permit for any construction or land disturbing activity on proposed parcels 1 to 35.*
5. *The applicant or subsequent record owner of proposed parcel 1 to 35 shall submit a final site plan to the Planning Department for full plan of development review and approval prior to the issuance of a building permit. The proposed development on each of the parcels will meet all other performance standards of the Chesapeake Bay Preservation Area Ordinance. This final site plan shall delineate all areas to be disturbed and shall set forth all appropriate measures for revegetation of disturbed areas.*
6. *The applicant shall file and record in the Office of the Clerk of the circuit Court of the City of Virginia Beach an agreement of covenants and conditions reflecting the terms and conditions of this variance in such language as shall be approved by the City Attorney's Office. Such agreement shall be recorded together with the final subdivision plat and a certified copy of said agreement shall be submitted to the Planning Department prior to the issuance of any permits.*
7. *The limits of the building envelope shall be amended to include the sidewalks and driveways.*
8. *The applicant shall secure, from City Council, appropriate subdivision variances and a rezoning of the property to develop the site as proposed.*
9. *All dwellings shall adhere to the minimum front yard setback requirements and shall be so noted in recorded covenants and on the final plat, and*
10. *City sewer is required.*

The April 24, 1994 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to construct a 120 square foot deck expansion off the rear of the residence. The rear yard of the lot has a gentle slope with a loamy soil type that is moderately to well drained. The entire property falls within the 100-foot Resource Protection Area (RPA) with the 50-foot landward buffer extending partially into the public street. Staff is of the opinion that a hardship exists given these site conditions and is of the opinion that the request is minimal and will not be of substantial detriment to water quality of the Chesapeake Bay.

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

- 1) 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 are using the normal procedures afforded to all members of the community to obtain approval for the deck extension."* Staff is of the opinion that should the Board grant the variance request that a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded within the improvement of their lots.
- 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 bay act was enacted by the state and the avoidance of the buffer is simply not possible due to the location of the buffer lines. Water quality can be enhanced by the placement of infiltration measures and adding riparian buffer areas."* Staff is of the opinion that the proposed improvements are modest, and the entire lot falls within the 100-foot RPA buffer.

- 3) The variance is the minimum necessary to afford relief because *“the variance seeks approval for a minimal 120 square feet.”* Staff offers that the request is not egregious and over half the lot falls within the 50-foot seaward buffer, making it impossible for the applicant to avoid encroachment.
- 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 deck will be built according to CBPA standards and Virginia Beach code.”* Given the conditioned underdeck treatment and required buffer restoration, Staff is of the opinion that the variance request will not be of substantial detriment to water quality.
- 5) *“Buffer restoration will be planted seaward of the improvements”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds that the required buffer restoration will benefit the sparsely vegetated lot and underdeck treatment will ensure no increase in nonpoint source pollution into the bay.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **120 square feet x 200 percent = 240 square feet.**

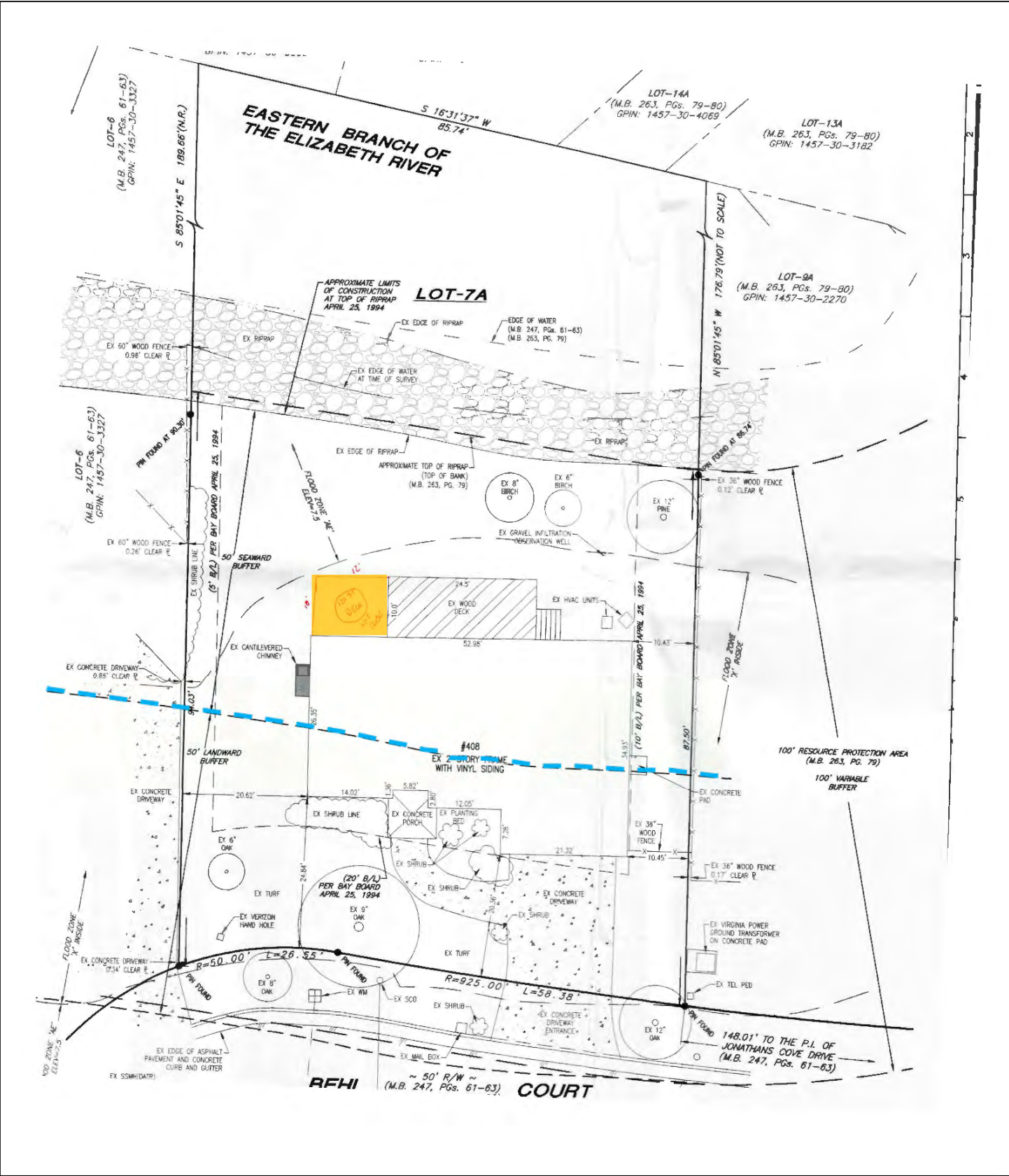
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory trees, 2 large shrubs, and 3 small shrubs.**
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. No perimeter fill is authorized outboard or seaward of the proposed improvements.
5. This variance and associated conditions **are in addition to** the conditions of the Board variance granted April 24, 1994.

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

Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Henry Eleuterio and Kimberly Ann Artime

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

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

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Navy Federal Credit Union (existing mortgage)

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

Yes No

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

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

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


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

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

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

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

Disclosure Statement

Disclosure Statement


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

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

Al Swain - (757) 635-3922

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


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

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


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

Applicant Signature

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



Applicant Signature
Henry Eleuterio Artime and Kimberly Ann Artime



Print Name and Title
01/11/2024

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	

Revised 11-09-2020

3 | Page

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Applicant & Property Owner: **Carter & Justin Griffin**
 Address: **1333 N. Bay Shore Drive**
 Public Hearing: **February 26, 2024**
 City Council District: **District 6**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with paver patios, pool house, walkways, and parking area.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 27, Page 57
 Recorded 08/13/1951

GPIN

2419-10-6234

SITE AREA

35,914 square feet or 0.824 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

35,155 square feet or 0.807 acres

EXISTING IMPERVIOUS COVER OF SITE

10,057 square feet or 29 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

13,557 square feet or 38.5 percent of site

Area of Redevelopment in RPA

647 square feet

Area of New Development in RPA

2,912 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing paver patio, circular driveway, and parking area.

Construction Details

- New concrete circular driveway with expansion and paver motor court and gravel parking area
- Swimming pool with paver patio and pool house
- Walkways and gravel pave pathway

CBPA Ordinance Variance History

November 22, 1993 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a 1,420 square foot addition and porch with the following conditions:

1. *A site plan shall be submitted to the Planning Department for a plan of development review and appropriate bonds posted prior to the issuance of a building permit.*

The November 22, 1993 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased, and/or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal fall within the Resource Management Area (RMA).

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to demolish, reconstruct, and slightly expand their existing asphalt driveway and paver parking area with concrete and pavers at the front of the residence. On both sides of the residence, steppingstone walkways are proposed and lead to the improvements proposed at the rear of the residence, which include a new swimming pool with associated paver patio and pool house. A paver seating area with an inlaid fire pit is proposed slightly seaward of the proposed swimming pool area with a gravel pave pathway leading to the existing pier. All new impervious cover with this request is located within the upper limits of the 50-foot landward buffer and the city's 100-foot variable width buffer of the Resource Protection Area (RPA) with the remaining situated in the Resource Management Area (RMA).

Upon receipt of the initial variance request, Staff expressed concern to the applicant's agent regarding the extent of new impervious cover on the lot and the size of the proposed swimming pool. To address this concern, the applicant's agent submitted a revised Chesapeake Bay Preservation Area (CBPA) Exhibit, provided on page 58 of this report, that reduces the size of the swimming pool surround from 20 feet x 40 feet (800 square feet) to 20 feet x 36 feet (720 square feet) for the CBPA Board's deliberation as a means towards the minimum necessary to afford relief. Additionally, the applicant revised the plan to change the paver seating area to a permeable paver seating area as well as revising the parking pad to the north of the existing garage to become a 1,265 square foot permeable paver parking pad. These revisions reduced the overall impervious cover of the site from 13,614 square feet to 13,557 square feet and introduce approximately 880 square feet of permeable pavers towards providing water quality benefits as best management practices (BMPs) on the lot. Regarding the total impervious cover of the lot, Staff adds that while the overall impervious cover of the lot is over 30 percent, the proposed post-development impervious cover situated solely within the RPA with this request totals to approximately 7,145 square feet or 20 percent. Additionally, the applicant's agent provided that approximately 5,041 square feet (14 percent) of the total impervious area is devoted to driveway space, which is located within the Resource Management Area (RMA). To address Staff's concerns with this request, Staff offers the recommended conditions below, specifically condition 2, regarding the size of the swimming pool and patio surround.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1951 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and offers the encroachment request is similar to existing improvements on adjacent lots. Staff is of the opinion the recommended conditions in this Staff report provides merit towards the variance request not conferring special privileges to this applicant.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts and lessen the impervious area in the RPA."* While Staff acknowledges the statement provided by the applicant's agent, the specific conditions of the lot warrant an analysis of the proposed improvements to

the access of the site, associated land disturbance to construct the proposed improvements, location within the RPA buffer of the proposed improvements and mitigation measures provided to enhance water quality. As such, Staff has provided the recommended conditions below as a means for the variance request to be in harmony with the intent of the CBPA Ordinance.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate stormwater treatment from the new improvement.”* Staff acknowledges the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds and permeable paver systems.
- 5) *“Bioretention beds and Buffer plantings will be installed between the improvements and the waterway to achieve stormwater management requirements to capture and treat runoff prior to discharging into the canal”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **19** 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 proposed swimming pool with associated paver patio surround shall be reduced by approximately 200 square feet.
- 3) The proposed lower paver patio seating area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 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: **2,712 square feet x 200 percent = 5,424 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: **14 canopy trees, 14 understory trees, 28 large shrubs, and 42 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.

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

- 16) 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.
- 17) ** 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 \$621.50 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 18) This variance and associated conditions **shall supersede** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted November 22, 1993.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated October 17, 2023, prepared by WPL, signed 1/29/2024 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

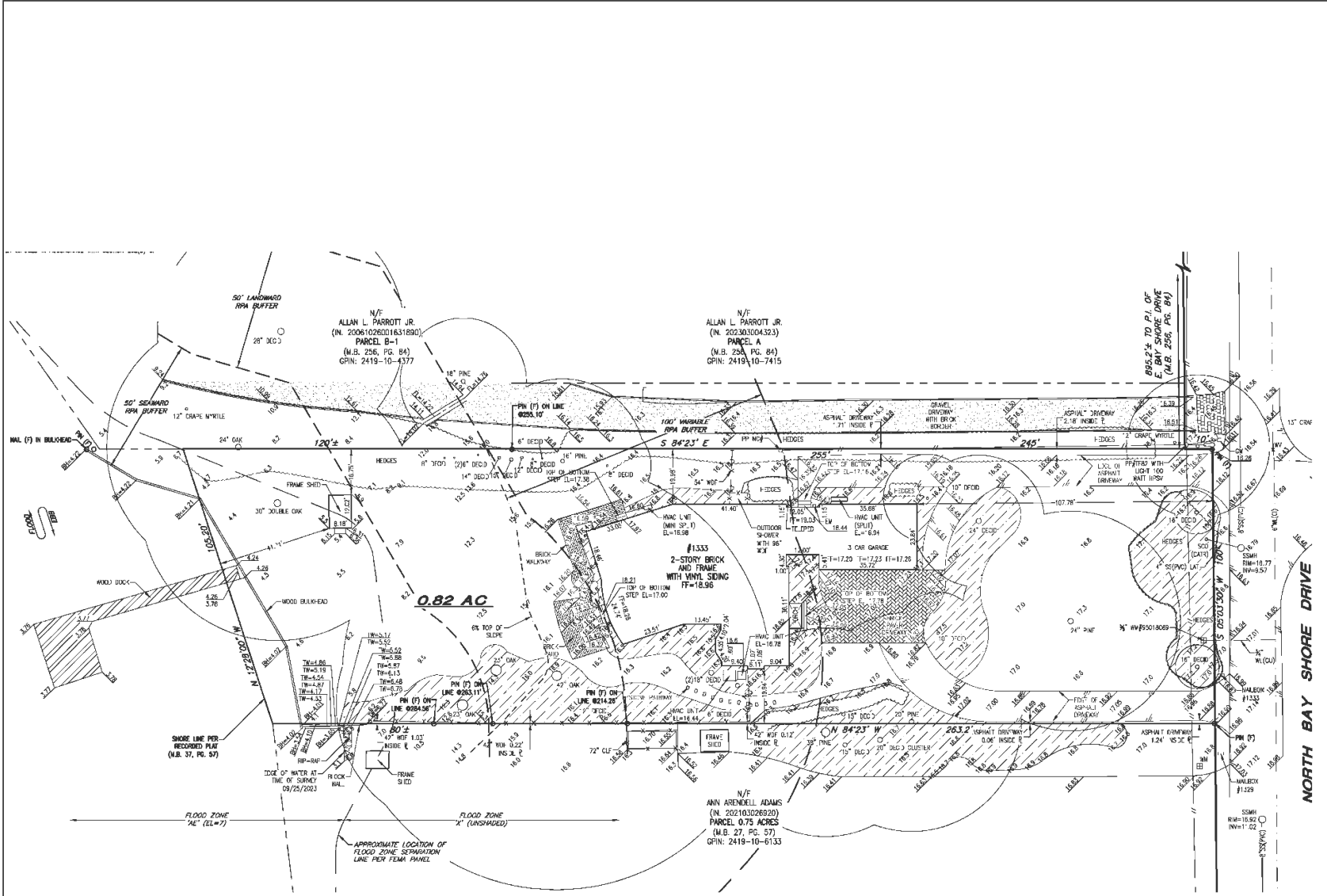
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

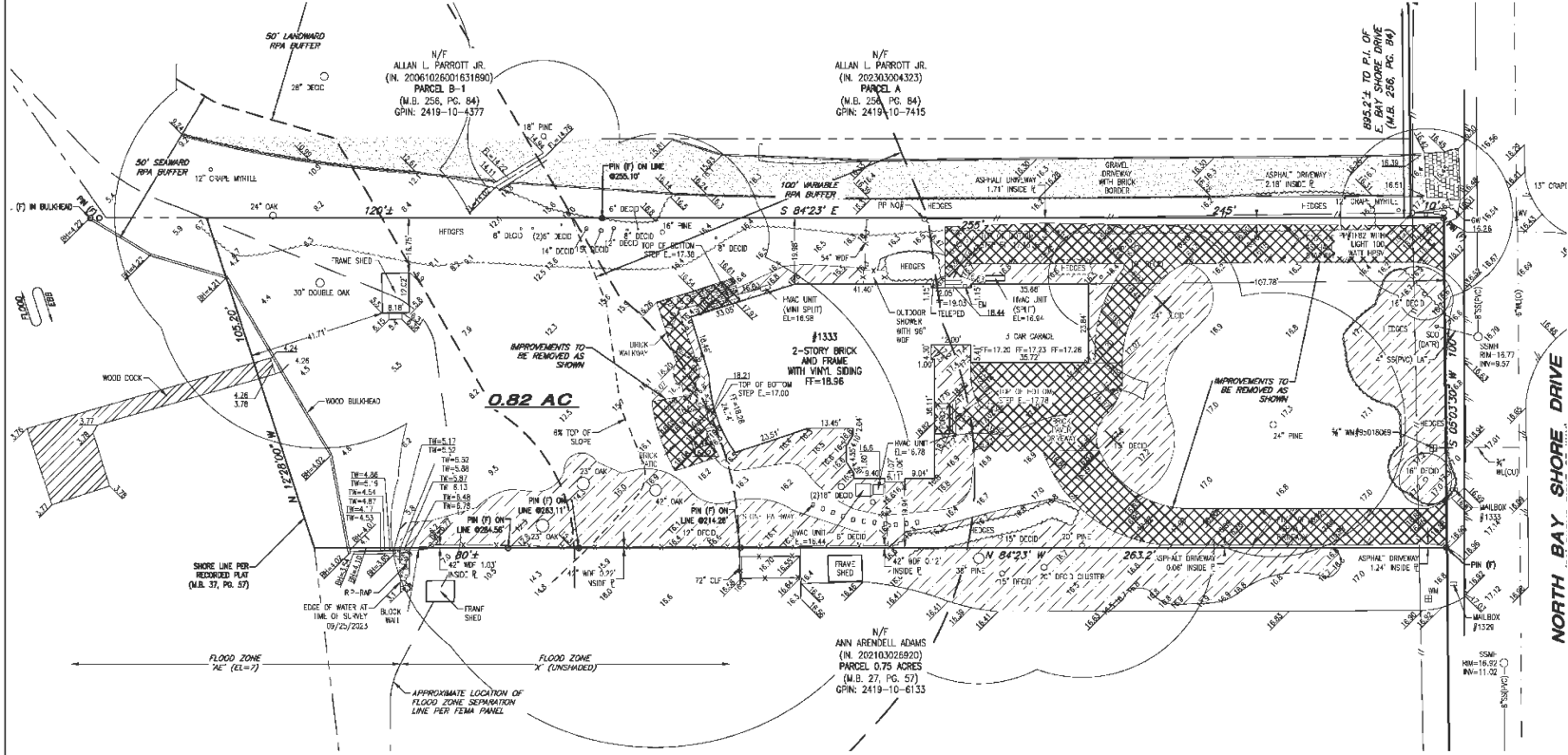
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Demolition Plan



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Elizabeth C Griffin & Justin William Griffin

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

- If yes, list the name of the representative.

Billy Garrington, GPC, Inc

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

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

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

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

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



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

- If yes, identify the financial institutions.

Truist Bank, A Corporation

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

Yes No

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

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

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

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

WPL

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

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

Applicant Signature

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

E. Carter Griffin *Justin Griffin*

Applicant Signature

E. Carter Griffin *Justin Griffin*

Print Name and Title

12/22/23

Date

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

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

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



Applicant & Property Owner: **Raymond & Janet Tyler**
Address: **816 Gilbert Circle**
Public Hearing: **February 26, 2024**
City Council District: **District 8**

Agenda Item

5

Variance Request

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

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 267, Page 65

Recorded 05/27/1998

GPIN

1498-51-3135

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

96 square feet

Location of Proposed Impervious Cover

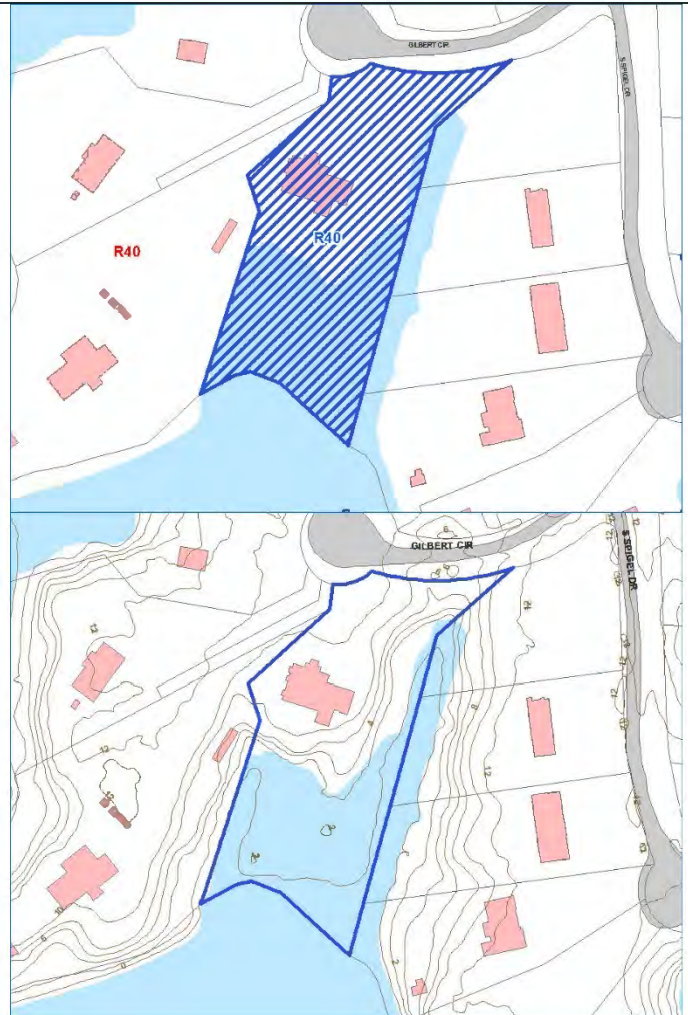
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Storage shed

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Rappahannock Series (deep and poorly drained soils)

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

Tetotum Series (deep, moderately well-drained soils)

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct an 8 foot by 12 foot shed in the rear yard of their property for the purpose of storing various yard equipment. This request will add approximately 96 square feet of new impervious cover within the 50-foot seaward buffer of the Resource Protection Area (RPA). Staff is of the opinion the increased impervious cover will not cause a substantial increase in runoff or be detrimental to the water quality of the Chesapeake Bay and recommends approval subject to the recommended conditions below.

- 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 *“most houses in my neighborhood have sheds, many situated in areas similar to the one I’m proposing.”* Staff concurs.

- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“this variance request is a result of the shape and location of the parcel which was how the parcel was subdivided before we moved to Virginia Beach. As a result of this subdivision everywhere on this property is in the RPA.”* Staff concurs and adds the majority of the property falls within the 100-foot RPA buffer.
- 3) The variance is the minimum necessary to afford relief because *“the shed will relieve the overflow of garden soils, tools, pots, etc. our garage and allow us to once again put both cars into the garage.”* Staff adds the seaward buffer falls on the majority of the lot due to the location of the tidal features and the proposed improvements, as situated in the rear yard, provides merit towards the request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“to mitigate the effects of the shed on the RPA we will elevate it on pedestals thereby minimizing its impervious footprint. Selected higher cost architectural pleasing shed.”* Staff is of the opinion the various request will not be of substantial detriment to water quality.
- 5) *“We eliminated all grass areas in the front section of the property and restored it back to its natural state by installing over \$17K of native trees, shrubs and plants in November 2023”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following **1** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

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

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

Site Aerial



CBPA Exhibit – Proposed Improvements

SEQUENCE OF CONSTRUCTION:

- 1. INSTALL SILT FENCE.
- 2. FLAG TREES THAT ARE TO REMAIN.
- 3. INSTALL TREE PROTECTION.
- 4. BEGIN PROPOSED WOOD DECK CONSTRUCTION
- 5. PROCEED WITH LOT GRADING.
- 6. INSTALL B.M.P. DEVICE WITH A 3' BAND OF SOD AROUND THE B.M.P. DEVICE. B.M.P. INSTALLATION SHALL BE THE FINAL PHASE OF LOT DEVELOPMENT.



PREPARED BY TEC INC. TECHNICAL AND ENVIRONMENTAL SERVICES SURVEYING DIVISION 5855 PROVIDENCE ROAD VIRGINIA BEACH, VIRGINIA 23464 (757) 420-4442 FAX (757) 420-4443	DATE: 10/28/98 SCALE: 1" = 20' SHEET 1 OF 2 JOB# 980685 DRAWN BY G.S.B. PLAT RECORDED IN VIRGINIA BEACH M.B. 267, PG. 65
--	---

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 Raymond S and Janet N Tyler, Trustees of the Tyler Family Declaration of Trust

Does the applicant have a representative? [] Yes [x] No

- If yes, list the name of the representative.

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

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

The land and building (house) at 816 Gilbert Circle is owned by the Tyler Family Declaration of Trust dated December 15, 2022. Raymond S Tyler and Janet N. Tyler, husband and wife, are the Trustees.

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

None

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

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

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

Disclosure Statement

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.

Nelson Hinds, Owner of Dutch Barns

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

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

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

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

Applicant Signature

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

Applicant Signature

Raymond S. Tyler Janet N. Tyler

Print Name and Title

Raymond S and Janet N Tyler, Trustees of Tyler Family Trust

Date

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

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

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

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

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Applicant & Property Owner: **Michael Remington**
Address: **605 Ben Bow Drive**
Public Hearing: **February 26, 2024**
City Council District: **District 1**

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a paver patio and shed.

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 99, Page 18

Recorded 9/11/1975

GPIN

1466-37-4579

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

648 square feet

Location of Proposed Impervious Cover

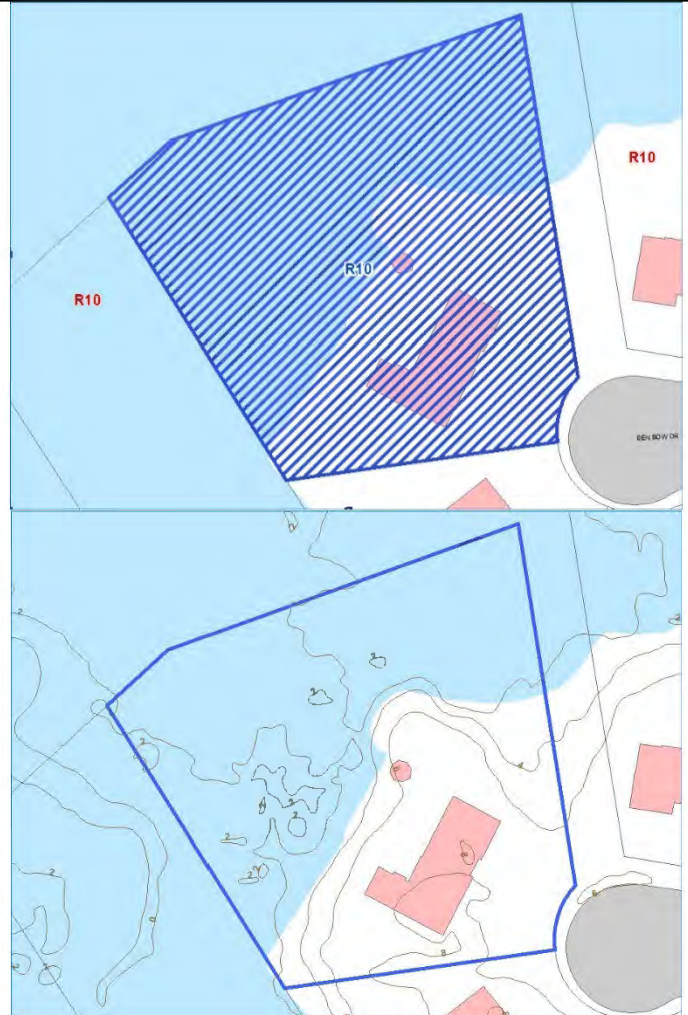
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Expanded patio area off rear of residence.
- Storage shed

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily to moderately wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a concrete patio directly off the rear of the residence and detached storage shed within the southern portion of the Resource Protection Area (RPA) buffer on the lot. As shown on the aerial imagery of the property, a large tidal marsh habitat constitutes most of the area directly behind the existing single-family residence. Due to the expansive marsh area inhabiting the property, much of the property falls within the 50-foot seaward buffer of the RPA with the majority of the residence, which was built in 1974, within the 100-foot RPA buffer. As such, Staff is of the opinion that this request would not be of substantial detriment to the water quality of the Chesapeake Bay and recommends approval subject to the recommended conditions in this report.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the request is similar to and consistent with neighborhood standards and does not confer special privilege or convenience to the applicant/owner that other owners of property in the CBPA were afforded.”* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“this request limits the size of the shed and the patio to the size required to meet the intended purpose of the items.”* Staff concurs and adds that the proposed patio sits immediately adjacent to the house and within the footprint of a previously demolished wood deck.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the request will have minimal to zero impact on water quality, is consistent with neighborhood standards, and does not impact public welfare.”* Staff concurs.
- 5) *“The requested project will not introduce contaminants into the bay”* as a means to manage towards a net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Buffer restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

The required restoration shall be located in 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. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

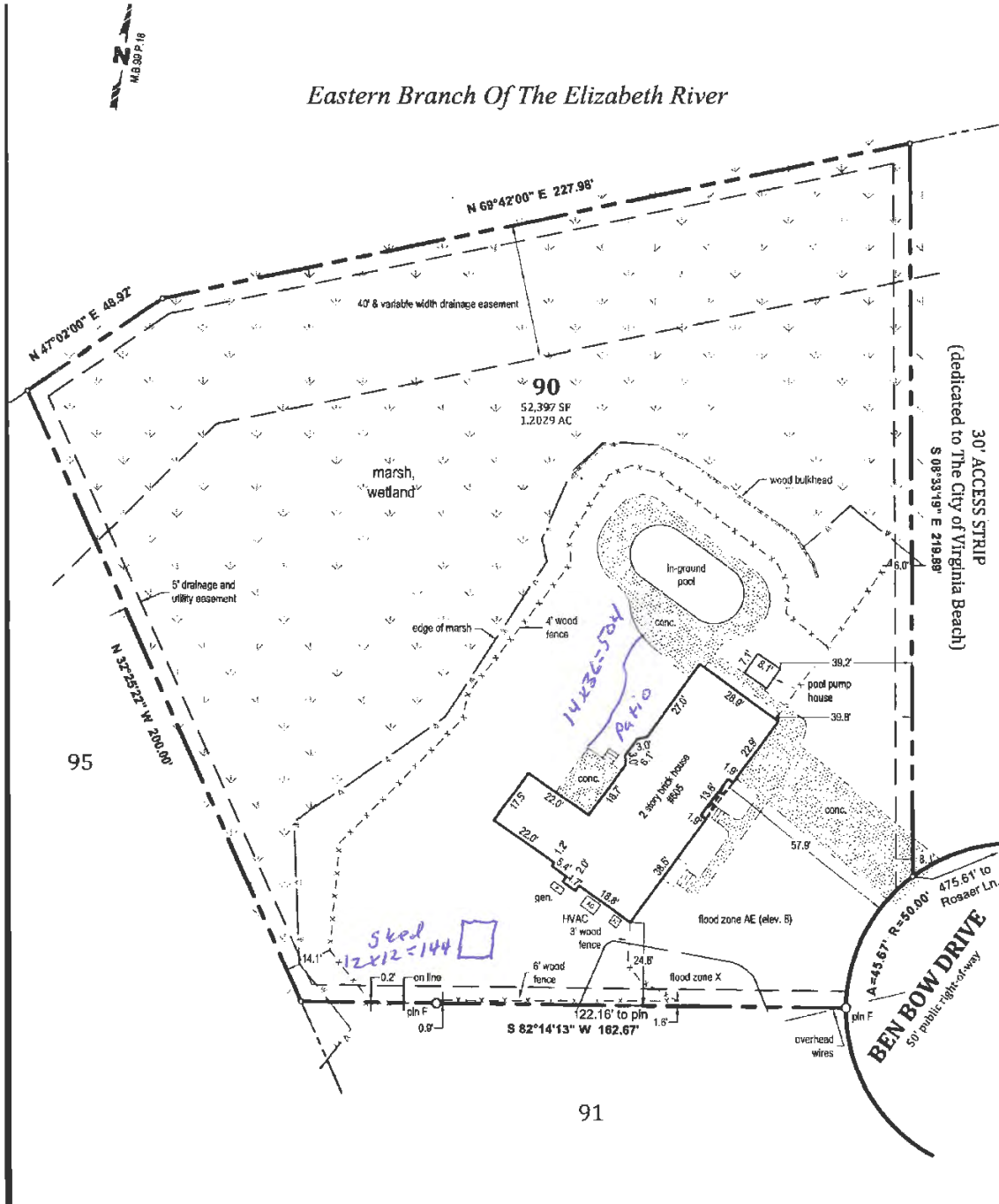
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
5. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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

Site Aerial



CBPA Exhibit – Proposed Improvements



DRAWING SCALE 1" = 30'

DKT ASSOCIATES
LAND SURVEYORS

1232 W. Little Creek Rd. (757) 588-5888 TEL
Suite 300 (757) 588-5880 FAX
Norfolk, VA 23505 DKTASSOCIATES.COM

COMMONWEALTH OF VIRGINIA

DENNIS TAFLAMBAS
Lic. No. 002189
1/23/24
LAND SURVEYOR

PHYSICAL SURVEY

Lot 90, Block 1, Subdivision of Fairfield, Section Eight, Part One
(M.B.99 P.18)

Virginia Beach, Virginia FOR January 23, 2024

Michael Remington & Stephanie Remington

JOB NO.	29088	REVISED	--	SIZE	ANSI B
F.BOOK	445/11	REVIEWED	JB	SHEET	1 OF 1
F.CREW	BS	DRAWN BY	DT		

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 Mike Remington

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

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

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

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

Pennymac Loan Services

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

Yes No

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

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

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

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

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

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

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

Disclosure Statement



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

Applicant Signature

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

Michael S. Remington
 Applicant Signature

Michael S. Remington
 Print Name and Title

02/07/2024
 Date

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

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

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

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Applicant & Property Owner: Nilkanth and Kalpana Patel
 Address: 909 Hall Haven Drive
 Public Hearing: February 26, 2024
 City Council District: District 8

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer for an after-the-fact construction of outdoor kitchen area and walkway.

Applicant’s Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

Deed Book 2526, Page 780 & 781
 Recorded 07/30/1986

GPIN

1498-42-6983

SITE AREA

40,724 square feet or 0.935 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

30,211 square feet or 0.693 acres

EXISTING IMPERVIOUS COVER OF SITE

14,424 square feet or 48 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,498 square feet or 28 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

618 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

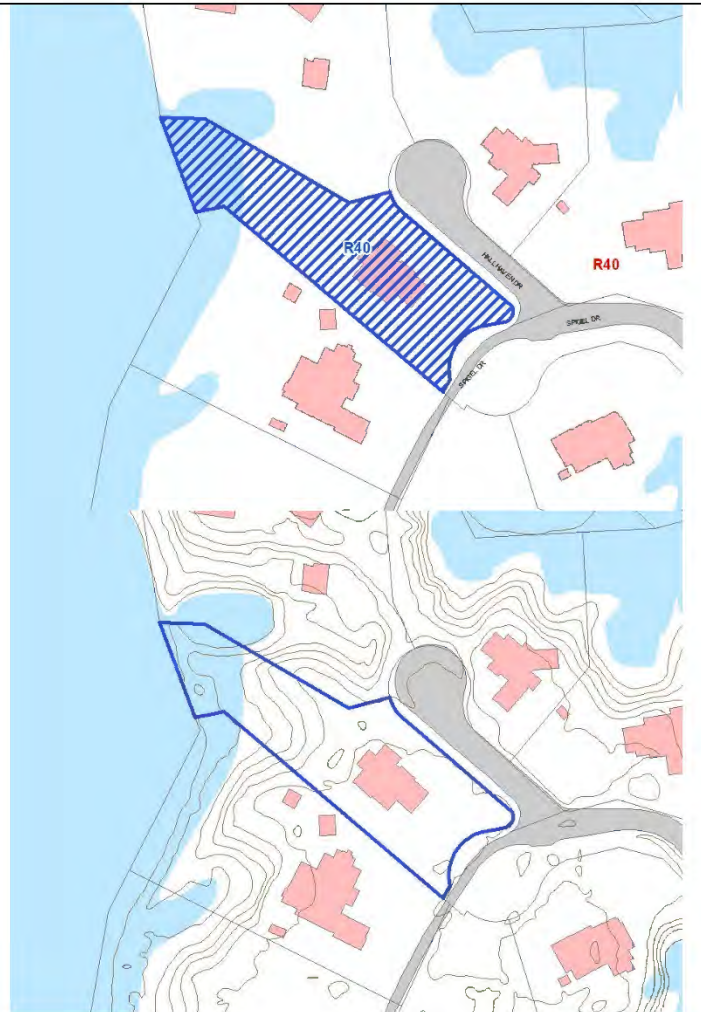
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- 11,498 square feet or 28 percent of site

CBPA Ordinance Variance History

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

A CBPA Administrative Variance was authorized on September 10, 2021 for an addition to the primary structure, expansion of the existing driveway, and paver sidewalk.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 0
- Number of dead, diseased, and/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 bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The subject area of the proposed after-the-fact approval of the outdoor kitchen area is situated within the 50-foot landward buffer of the Resource Protection Area (RPA) constituting approximately 318 square feet of impervious cover. Additionally, the applicant wishes to construct a new walkway around the rear of the residence to said area, in which approximately 300 square feet of that falls within the 50-foot landward buffer. Given the extent of information provided with this restoration order, Staff is of the opinion the restoration hearing for the property located at 909 Hall Haven Drive and the after-the-fact Chesapeake Bay Preservation Area (CBPA) Variance request, agenda items 7 and 8 of this Staff report for the February 26, 2024, CBPA Board public hearing, should be heard in conjunction. Staff recommends the conditions associated with this after-the-fact request shall serve as restoration initiatives.

Nilkanth and Kalpana Patel

Agenda Item 7

Page 84

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the existing outdoor kitchen is 195 square feet in area, the calculations as shown on the restoration plan shows the total impervious cover of the lot will be 11,498 square feet with a total site coverage of 28 percent."* Staff adds an outdoor kitchen and patio space is not an uncommon accessory structure throughout properties within the RPA.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have been working with staff on this after-the-fact variance request to keep the outdoor kitchen area."* Staff is of the opinion the request is the minimum necessary to afford relief subject to the recommended conditions provided in this staff report.
- 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 outdoor kitchen is less than two percent of the total impervious area on site."* Staff adds the recommended conditions provided in this staff report will ensure the variance request is in harmony and not of substantial detriment to water quality.
- 5) *"This is an after-the-fact variance request to keep an existing outdoor kitchen area. Prior to the removal of the non-permitted impervious areas, the site had an impervious percentage of 35.45% and after the restoration, the impervious percentage will be approximately 28 percent"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion retention of the existing outdoor kitchen area and removal of all unauthorized stone pavers will not result in an increase in nonpoint source pollution load.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be in substantial compliance with the "Proposed Landscape Plan" prepared by Brooks Landscaping Inc and provided within the Chesapeake Bay Preservation Area (CBPA) variance exhibit, Sheet 4 of 4 dated November 10, 2023.

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.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated November 10, 2023, prepared by Kellam Gerwitz Engineering, signed January 31, 2024 by Robert Kellam. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

15) Upon granting of a variance, a CBPA / CIVIL permit must be obtained within 45 days. All required restoration must be installed or in the process of installation within 60 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.

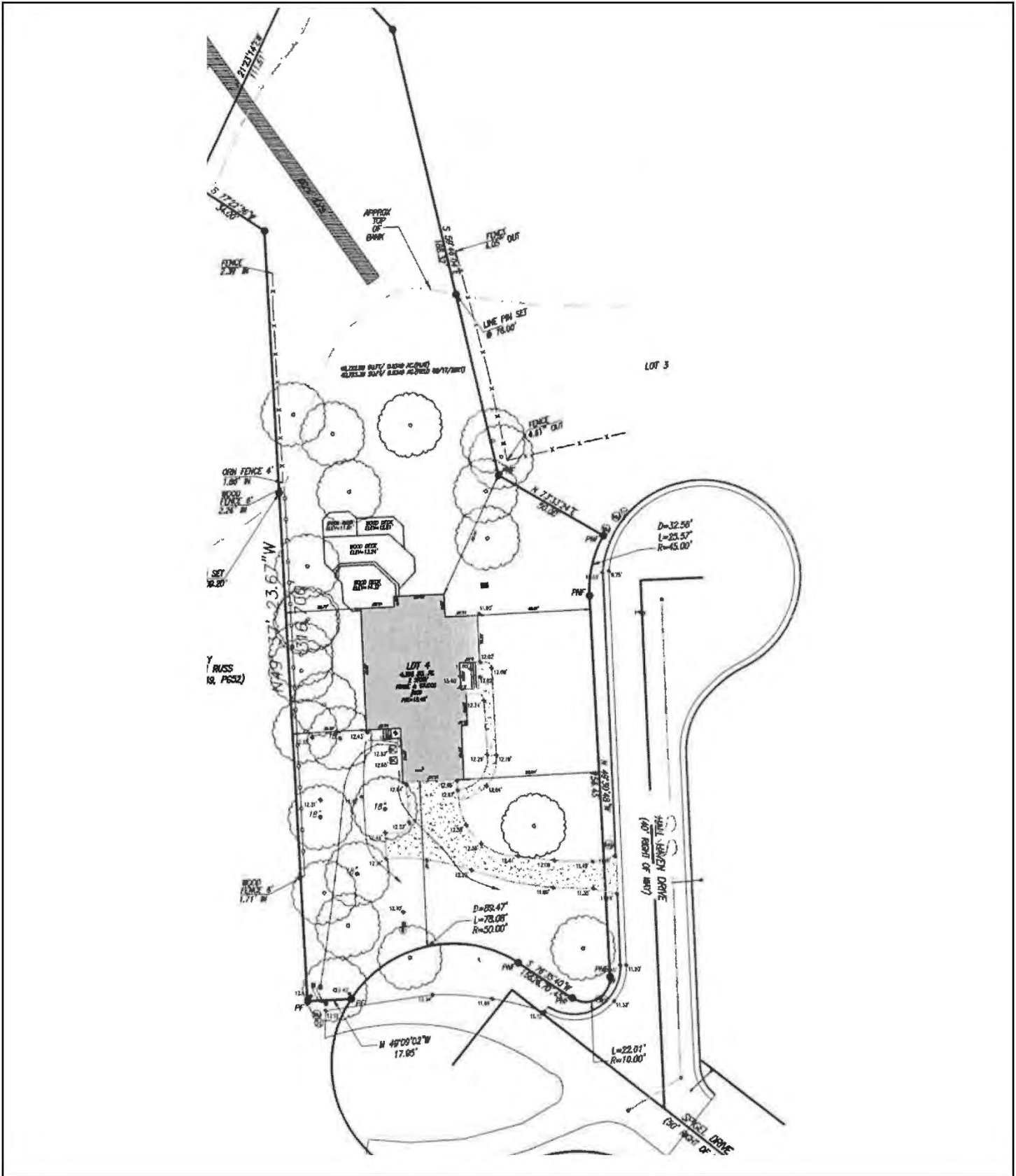
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

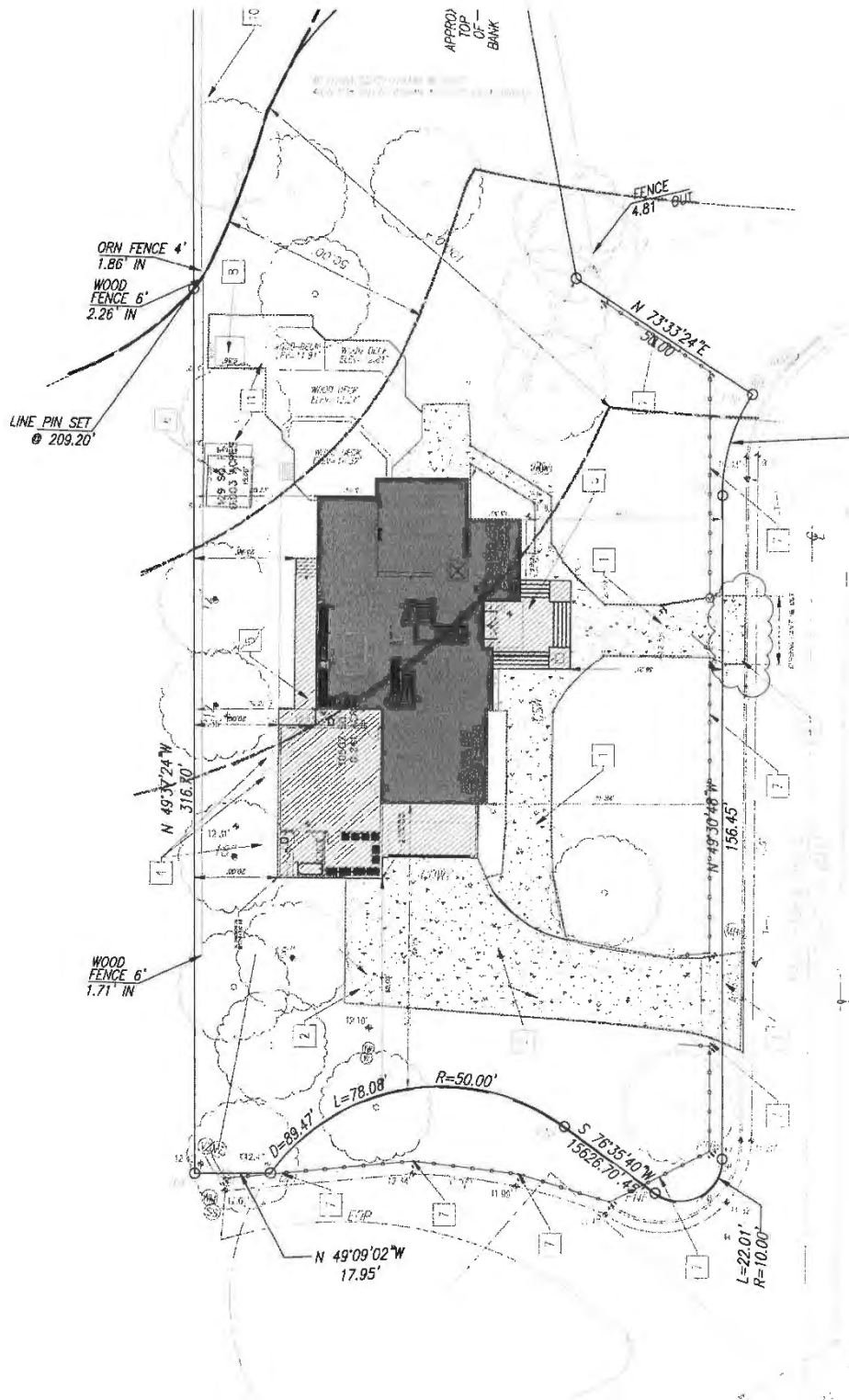
Site Aerial



Pre-Existing Site Conditions Plan



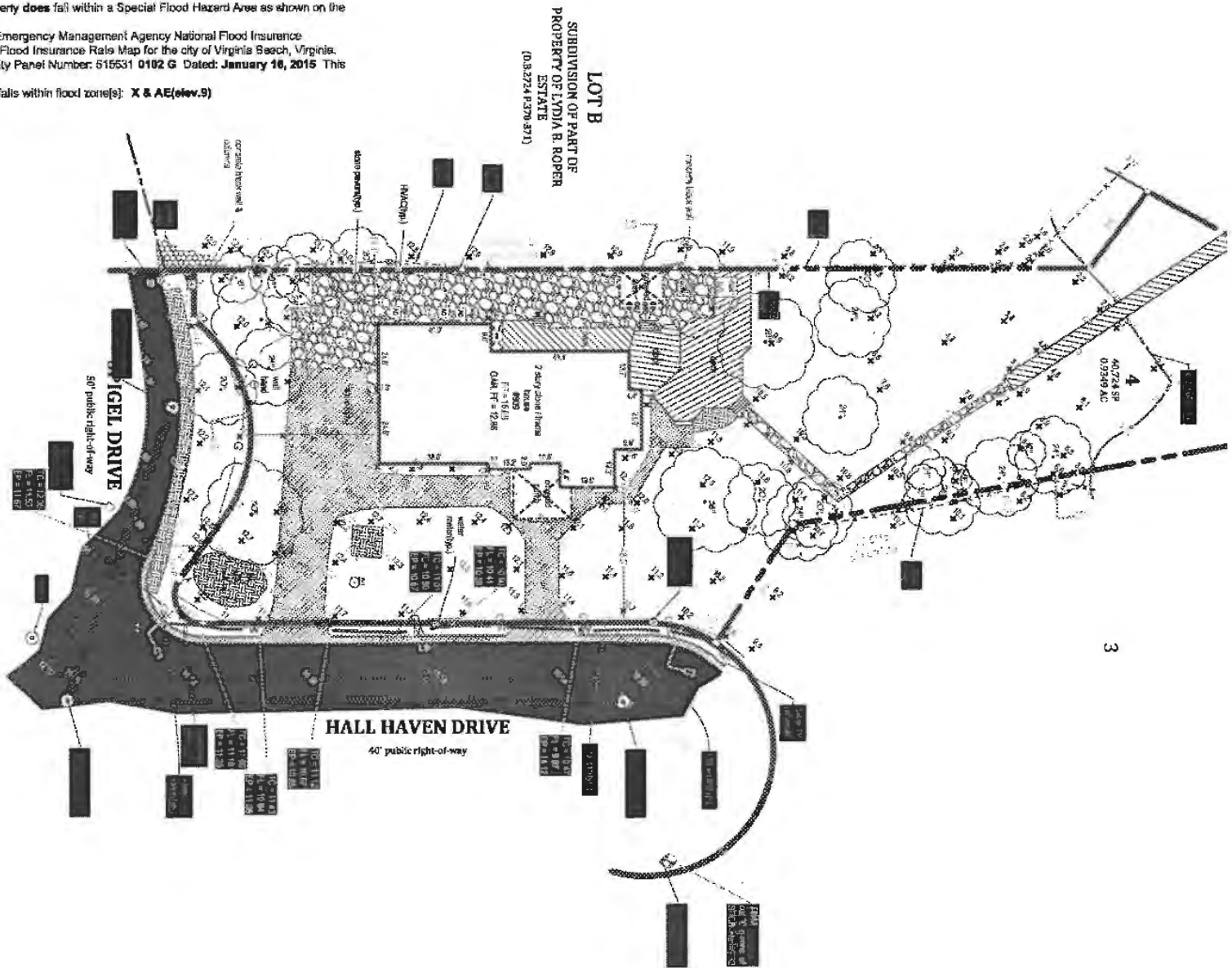
September 10, 2021 Admin Variance Plan



GENERAL NOTES

1. This topographic survey was completed under the direct and responsible charge of Dennis Tallamba, LS, from an actual ground survey made under my supervision; that the imagery and/or original data was obtained on **October 16, 2023**; and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.
2. All elevations shown hereon are expressed in feet and based on **MAVD 1988**. Source: **Geoid 12B**
3. This property **does** fall within a Special Flood Hazard Area as shown on the

Federal Emergency Management Agency National Flood Insurance Program Flood Insurance Rate Map for the city of Virginia Beach, Virginia. Community Panel Number: 515531 0102 G Dated: **January 16, 2015** This property falls within flood zone(s): **X & AE(elev.9)**



LOT B
 SUBDIVISION OF PART OF
 PROPERTY OF LYDIA B. ROPER
 ESTATE
 (D.B. 2747, 376-371)

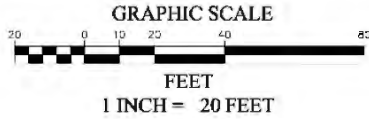


LINE	BEARING	DISTANCE
L1	S 77°06'42" W	26.78'
L2	S 40°47'08" W	17.98'
L3	N 45°59'18" W	316.76'
L4	S 78°00'42" W	34.08'
L5	N 20°45'08" W	111.62'
L6	S 88°17'18" E	50.00'
L7	S 59°07'58" E	188.32'
L8	N 74°11'39" E	50.00'
L9	S 48°59'18" E	156.45'

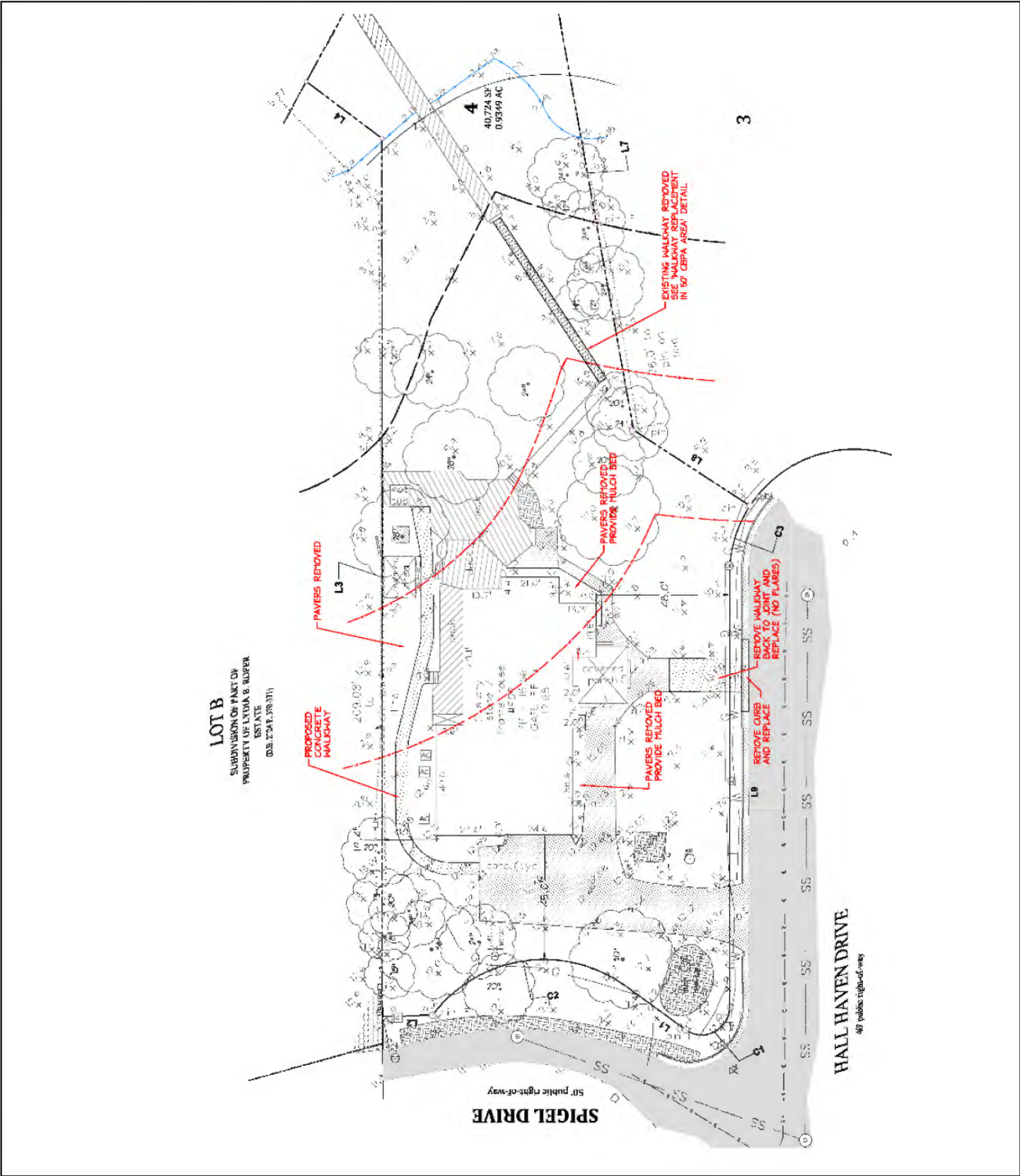
CURVE	RADIUS	ARC LENGTH
C1	10.00'	22.01'
C2	50.00'	78.08'
C3	45.00'	26.06'

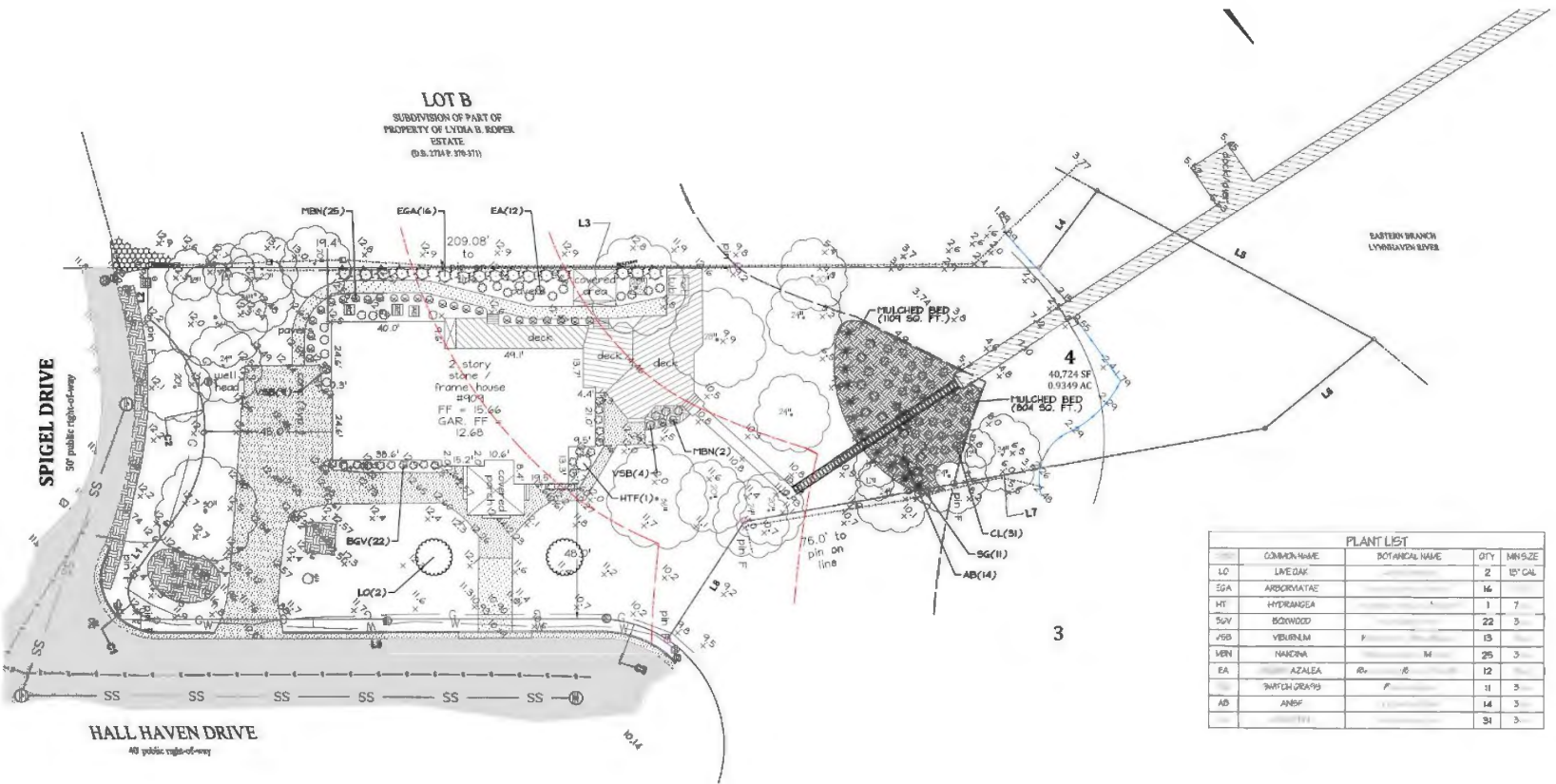
Calculations Based on DKT survey:

Total Area of Site:	40,724 SF	0.935 Acres
Area of Water and Wetlands:	10,513 SF	0.241 Acres
Area of Seaward 50' buffer:	6,819 SF	0.157 Acres
Area of Landward 50' buffer:	7,384 SF	0.170 Acres
Area out of 100' buffer:	16,008 SF	0.367 Acres
Total Impervious Area:	14,424 SF	0.331 Acres
Impervious Area:		
in Seaward 50' buffer:	1,643 SF	0.038 Acres
in Landward 50' buffer:	4,278 SF	0.098 Acres
on Remainder of Site:	8,503 SF	0.195 Acres
% of Impervious Area:		
of Seaward 50' buffer:	24.06%	
of Landward 50' buffer:	57.91%	
of Remainder of Site:	59.12%	
Total Site:	35.42%	



Proposed Improvements Plan





PLANT LIST				
COMMON NAME	BOTANICAL NAME	QTY	NR/SZ	
LO	LIVE OAK	2	18"	CAL
EGA	ARBORVITAE	16		
HT	HYDRANGEA	1	7'	
SOV	SOBWOOD	22	3'	
YVB	YUCCA	13		
VEN	NANDINA	25	3'	
EA	AZALEA	12		
	WITCHAMOUND	11	3'	
AB	ANEMONE	14	3'	
	IRIS	31	3'	

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 _____

Does the applicant have a representative? Yes No

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

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

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

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

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

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

Disclosure Statement

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

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

Yes **No**

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

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

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

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

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

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

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

Disclosure Statement



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

Applicant Signature

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

Applicant Signature

Print Name and Title

Date

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

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

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

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

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Address on Noncompliance: 909 Hall Haven Drive
Property Owner: Nilkanth and Kalpana Patel
Public Hearing: February 26, 2024
City Council District: District 8

Agenda Item

8

Applicant's Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

Deed Book 2526, Page 780 & 781
Recorded 07/30/1986

Lot Description

Trant Berkshire Area, Lot 4, Robinhood Forest, 909 Hall Haven Drive

GPIN

1498-42-6983

Statement of Noncompliance

Unauthorized development within the Resource Protection Area (RPA) buffer for the expansion of an accessory structures.

Show Cause Hearing

A Show Cause hearing was held on November 23, 2023 and a matter of noncompliance found. The extent of noncompliance was based off the following degree of deviation or noncompliance and environmental impacts matrix.

Degree of Deviations or Noncompliance

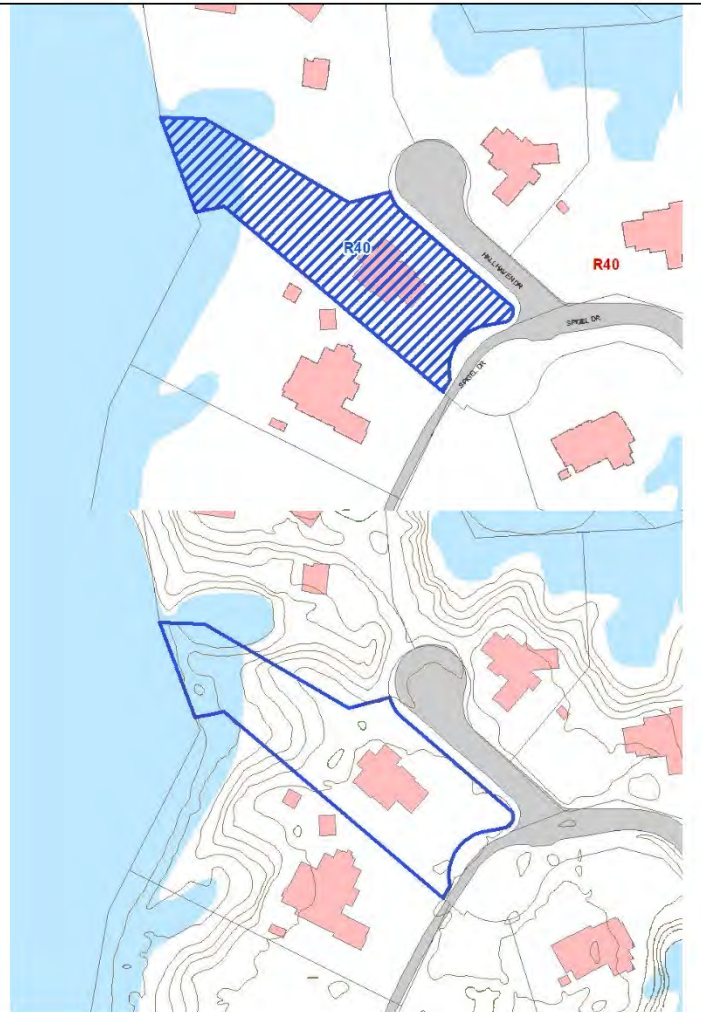
- High

Environmental Impacts

- Medium

A civil charge of \$7,500.00 was imposed to the property owner and a Restoration Hearing ordered by the Chesapeake Bay Preservation Area (CBPA) Board to be heard at the November 27, 2023 CBPA Board Public Hearing for the Property Owner – Nilkanth and Kalpana Patel.

The civil charge has been paid.



Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

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

CBPA Ordinance Variance History

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

History of Noncompliance

Staff's knowledge, Nilkanth and Kalpana Patel has no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot.

A CBPA Administrative Variance was authorized on September 10, 2021 for an addition to the primary structure, expansion of the existing driveway, and paver sidewalk.

Chronology of Noncompliance Event

September 2, 2021	<p>A preliminary Project Request (PPR) was submitted to the Department of Planning and Community Development for the following improvements.</p> <ul style="list-style-type: none">• Removal of one declining Pine tree in accordance with the Virginia Beach Department of Housing and Neighborhood Preservation Hazardous Tree(s) Violation Notice dated June 25, 2021• Additions to the primary structure• Paver sidewalks and driveway
August 10, 2021	<p>Staff sent a Chesapeake Bay Preservation Area (CBPA) Administrative Variance authorization letter to the property owner for the proposed improvements associated with the PPR request.</p>
November 5, 2021	<p>A Single-Family Site Plan in the RPA was accepted for review by the Development Services Center.</p>

- November 8, 2021 Chesapeake Bay Preservation Area (CBPA) Administrative Variance signs were provided to the property owner and the property posted advertising the CBPA Administrative Variance request in compliance with City Code, Appendix F, Sec. 110(B) *Administrative Variances*.
- December 8, 2021 A review letter was sent to the property owner regarding the completion of the first review of the Single-Family Site Plan in the RPA for the property. The site plan was not approved at that time.
- August 19, 2022 Staff sent a Notice to Comply letter to the property owner to remove the unauthorized improvements within the Resource Protection Area. Said removal of unauthorized improvements could be handled through the site plan review process and addressed on the resubmittal of the Single-Family Site Plan in the RPA to the DSC.
- August 10, 2023 Staff sent a Show Cause letter to the property owner to serve as written notice to appear before the CBPA Board at the public hearing scheduled Monday, August 28, 2023.
- August 28, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 909 Hall Haven Drive to the October 23, 2023 CBPA Board public hearing. The motion passed.
- October 23, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 909 Hall Haven Drive to the November 27, 2023 CBPA Board public hearing. The motion passed.
- November 14, 2023 Staff received and up to date physical survey of the property from the property owner's agent.
- November 27, 2023 At the November 27, 2023 CBPA Public Hearing, the property owner appeared before the CBPA Board for the Show Cause Hearing for the construction of the unauthorized improvements on the lot. A motion was made, with a second provided, to find the property owner in noncompliance with a civil charge of \$7,500.00 and a restoration hearing ordered for the February 26, 2023 CBPA Public Hearing.

Evaluation and Recommendation

The subject area of unauthorized construction of the stone pavers on the lot occurred within the 50-foot landward buffer and variable width buffers of the Resource Protection Area (RPA) as well as the Resource Management Area (RMA) of the Chesapeake Bay watershed. The applicant's agent has provided a site demolition plan to remove all unauthorized stone pavers on the lot, which would consist of approximately 2,926 square feet of stone pavers and restore the areas of the lot back to a natural state with the construction of a standard walkway around the rear of the residence. Additionally, the unauthorized paver walkway constructed that leads to the existing pier shall be removed and replaced with a mulched steppingstone walkway.

Given the extent of information provided with this restoration order, Staff is of the opinion that the restoration hearing for the property located at 909 Hall Haven Drive and the after-the-fact CBPA Variance request, agenda items 7 and 8 of this Staff report for the February 27, 2023, CBPA Board public hearing, should be heard in conjunction. Staff recommends that the conditions associated with this after-the-fact request shall serve as restoration initiatives.

Site Aerial

