

Chesapeake Bay Preservation Area

Board Agenda

January 22, 2024



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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, January 22, 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 **January 22, 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

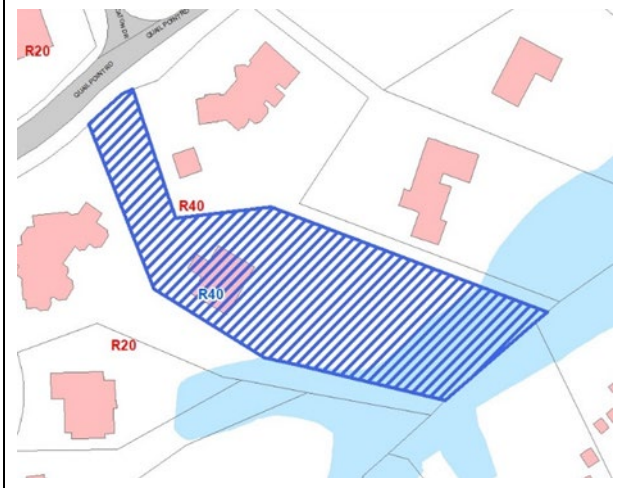
1. Russell Tye
[Applicant & Property Owner]

1573 Quail Point Rd
GPIN 2408-93-2004
City Council District: District 6

Accela Record: 2023-CBPA-00059

Variance Request – Encroachment into the RPA to remove 12 canopy trees.

Staff Planner – Cole Fisher
Staff Report – page 7



NEW BUSINESS AGENDA ITEMS

2. Jarrett and Ma Luisa Price
[Property Owners]

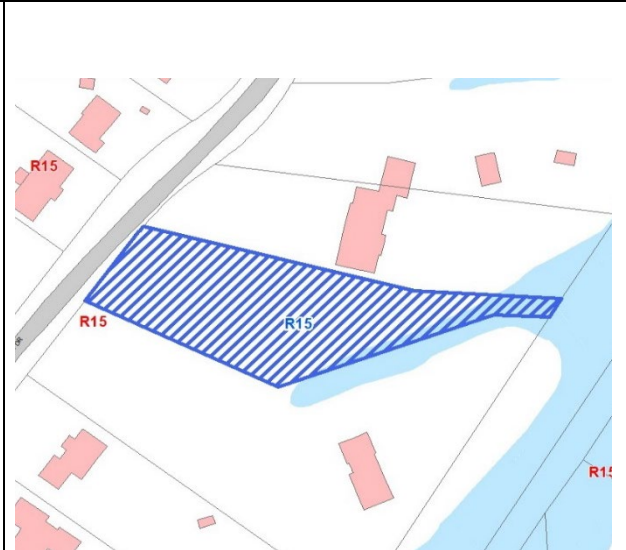
Kenneth Kemner
[Contract Purchaser]

Lot 69, Thalia Shores
GPIN 1487-38-4972
City Council District: District 8

Accela Record: 2023-CBPA-00065

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

Staff Planner – Cole Fisher
Staff Report – page 21



NEW BUSINESS AGENDA ITEMS (CONTINUED)

3. Elizabeth & Paul Kunde
[Applicants & Property Owners]

2945 Breezy Rd

GPIN 1499-18-8109

City Council District: District 8

Accela Record: 2023-CBPA-00067

Variance Request – Encroachment into the RPA to expand a patio surround.

Staff Planner – Cole Fisher

Staff Report – page 37



4. George N. Karavolos Revocable Trust
[Applicant & Property Owner]

2004 English Cedar Cir

GPIN 1499-78-9270

City Council District: District 8

Accela Record: 2023-CBPA-00068

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

Staff Planner – Cole Fisher

Staff Report – page 47



5. Kubichan Living Trust
[Applicant & Property Owner]

3109 Dolphin Rd

GPIN 2418-21-8902

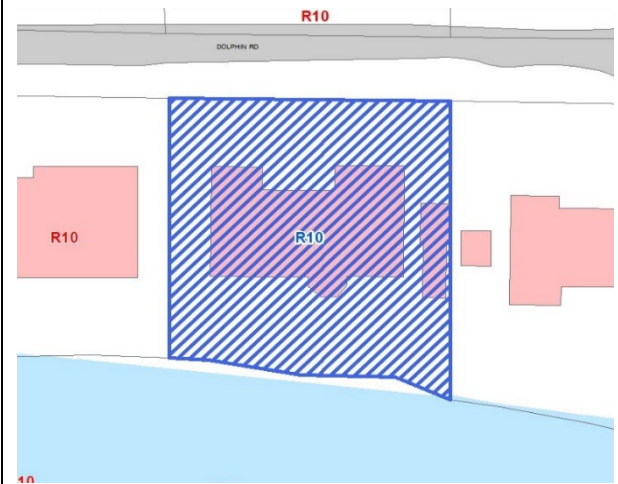
City Council District: District 6

Accela Record: 2023-CBPA-00069

Variance Request – Encroachment into the RPA to construct a building addition, swimming pool and paver patio, and driveway expansion.

Staff Planner – Cole Fisher

Staff Report – page 59



NEW BUSINESS AGENDA ITEMS (CONTINUED)

6. Peter Congdon

[Applicant & Property Owner]

2305 Haversham Ct

GPIN 2409-06-1222

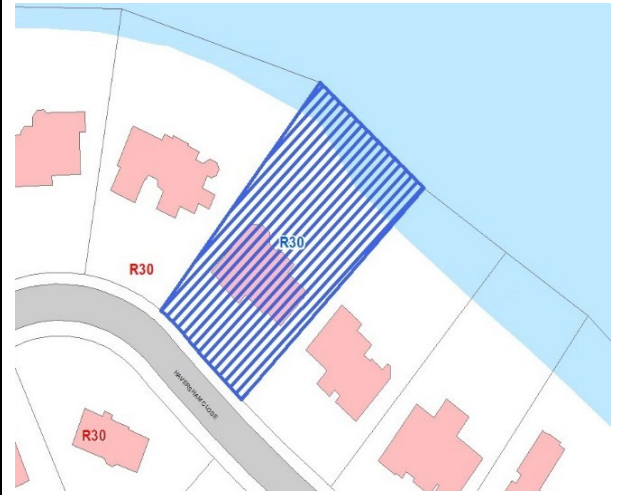
City Council District: District 8

Accela Record: 2023-CBPA-00071

Variance Request – Encroachment into the RPA to construct a covered patio.

Staff Planner – Cole Fisher

Staff Report – page 71



7. Sea Breeze Farm Inc

[Property Owner]

Kirbor Homes, LLC

[Contract Purchaser]

Lot 58, Sea Breeze Trail

GPIN 1489-60-9426

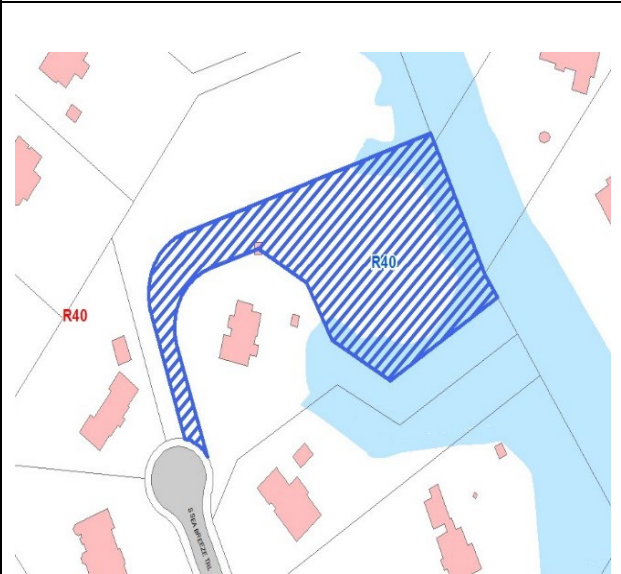
City Council District: District 8

Accela Record: 2023-CBPA-00072

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

Staff Planner – Cole Fisher

Staff Report – page 83



8. Mason Kalfus & Susan Burgess

[Applicants & Property Owners]

1328 E. Bay Shore Dr

GPIN 2418-49-8901

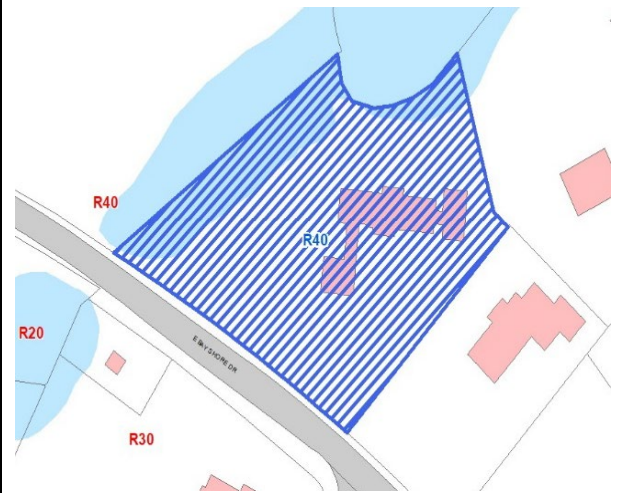
City Council District: District 6

Accela Record: 2023-CBPA-00073

Variance Request – Encroachment into the RPA to construct a permeable paver sports court.

Staff Planner – Cole Fisher

Staff Report – page 97



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Applicant & Property Owner **Russell Tye**
 Address **1573 Quail Point Road**
 Public Hearing **December 20, 2023**
 City Council District **District 6**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to remove 12 canopy trees.

Applicant's Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 2818, Page 0668

Recorded 04/13/1989

GPIN

2408-93-2004

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

0 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

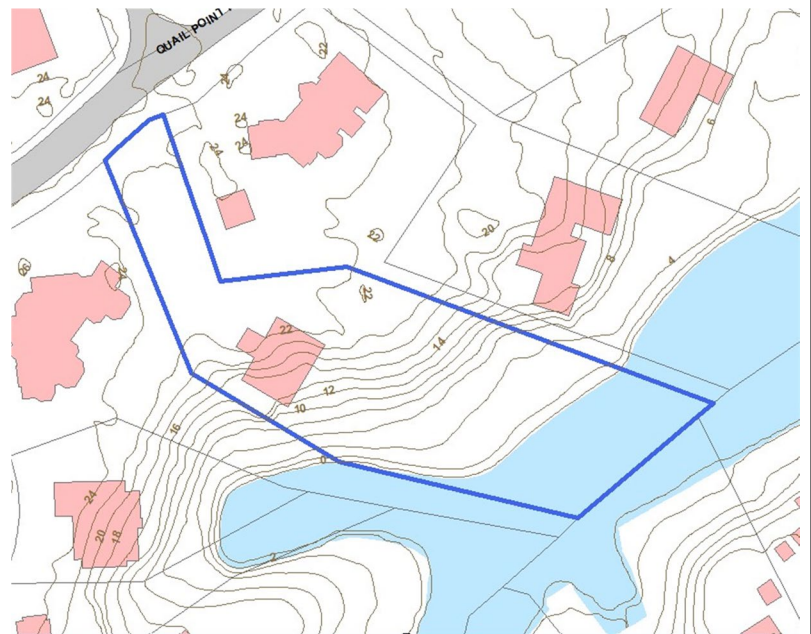
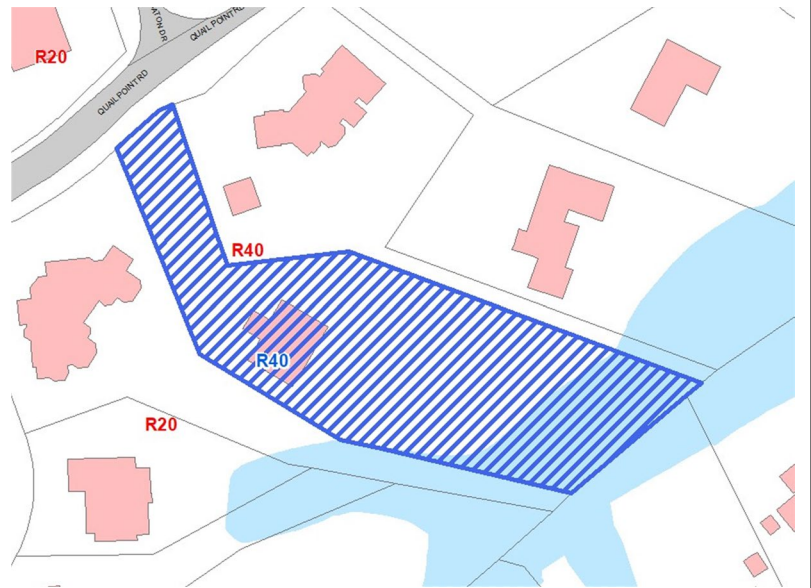
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Deny as submitted



Summary of Proposal

Demolition Details

- Removal of 12 canopy trees from the lot.

CBPA Ordinance Variance History

November 25, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the single-family residence, circular concrete driveway, retaining wall, pool, and decking located within the Resource Protection Area with the following conditions.

1. *A cross section of the retaining wall shall be provided during site plan review.*
2. *Additional information regarding stormwater runoff associated with the driveway and how it will be conveyed to the BMP must be addressed at the time of site plan review.*
3. *Tree compensation shall be at a 1:1 ratio and be so noted on the site plan.*
4. *A doubling of Erosion and sedimentation control measures shall be installed on the channelward side of project.*
5. *Pool decking shall be a maximum of 4'x 4' x4'x8' (diving board area).*
6. *Construction limits shall be held to within 15' of this project along the channelward portion of the project.*
7. *Under deck treatment shall be installed and shown on the revised site plan to include timber ties for that portion below the top-of-bank.*
8. *The excavated material from the pool must be disposed of outside of the Resource Protection Area and in a lawful manner.*
9. *The proposed rip-rap and associated fill is excessive. This portion of the project shall be deleted from the subject request and addressed with the Joint Permit Application.*
10. *A revised site plan shall be submitted to the Planning Department, Development Services Center for a full plan of development review prior to the issuance of a building permit.*

The November 25, 1995 Board granted variance has been acted upon and the associated improvements constructed.

On July 29, 2021, the applicant submitted a Preliminary Project Request (PPR) to remove seven (7) trees on the lot within the Resource Protection Area. An administrative variance to the CBPA Ordinance was granted with the following conditions.

1. *Before you begin any work, obtain a utility/right-of-way permit for landscaping from Permits and Inspections. Please contact the Permits and Inspections at (757) 385- 4211 with any questions regarding permit process and fees.*

2. *A physical survey delineating the location of Trees 1-7 to be removed shall be submitted to the Department of Planning and Community Development prior to the issuance of a building permit.*
3. *Submitted concurrent with the physical survey shall be a list identifying the location, number, and species of trees to be installed as per the buffer restoration requirements.*
4. *Mitigation for trees to be removed is required at a 2:1 ratio (14 new canopy trees to be planted). Please see the attached plant list for suggestions.*

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

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 release of the building permit.

The required trees shall be comprised of approximately fifty percent (50%) deciduous and fifty percent (50%) evergreen species and shall be evenly distributed within the RPA buffer. Minimum size at installation for replacement trees shall be as listed below: • Canopy (matures to a height greater than 35') 1 ½" – 2" caliper. • Evergreen species shall be a minimum of 6' at installation.

5. *No soils are to be added, removed, or disturbed.*
6. *If the tree stumps are to remain, cut the stumps as low as possible to ground level.*
7. *If grinding the tree stumps is required, the wood chips may be spread and leveled evenly on the ground of the forest floor or mulched areas.*
8. *This administrative variance and associated conditions are in addition to the conditions of the Board variance granted November 25, 1996.*

The CBPA Administrative Variance was granted on October 11, 2021.

Environmental Conditions

Flood Zone

Zone 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 rip rap revetment.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 12
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 2 of the 12 trees requested for removal. In addition, the Arborist identified 2 additional trees that are diseased or dying.

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 remove 12 canopy trees from the lot stating safety concerns as the reasoning due to several trees being classified as “diseased, leaning, or having early stages of root rot.” Most of the trees requested for removal consist of mature pine trees located within the 50-foot landward buffer and the city’s 100-foot variable width buffer of the 100-foot Resource Protection Area (RPA). As submitted the request removes the entirety of existing mature canopy cover within the rear yard with exception to the mitigation planted as conditioned by the 2021 CBPA Administrative Variance. Given the extent of this variance application, Staff requested an Arborist report and received the following correspondence from the applicant.

Mr. Tye,

Having assessed the trees in your backyard, I find 4 trees that I certainly would recommend for removal.

- 1. Loblolly pine farthest east from house. Evidence of bark beetles and some bark has exfoliated.*
- 2. Loblolly pine adjacent to one with beetles. This tree is leaning toward NW with evidence of soil heaving on the SE side indication the tree has recently listed due to wind.*
- 3. Lightning damaged pine with elongated trunk injury and heartwood decay in a significant section of the tree.*
- 4. Small dead, desiccated loblolly pine upland between deciduous trees. The canopy is gone, and bark is falling off the top. The children's play area is not far from this tree.*

Please let me know if I can be of any more assistance.

Mark Griffith

ISA Certified Arborist MA 5032A, TRAQ

Commercial/Residential Manager

Given the assessment provided above to the health of the existing canopy trees and the location of said trees on the lot being approximately 50 linear feet or more away from the existing single-family residence, Staff has concern with the extent of this request as submitted. As such, Staff is of the opinion that the existing canopy trees should be retained other than the 4 trees recommended for removal as provided by the Arborist’s correspondence with the applicant. However, should the CBPA Board entertain granting a variance to remove additional trees on the lot per the request of the applicant, Staff provides the recommended conditions below for consideration. Staff is of the opinion that the recommended conditions would ensure the opportunity to provide age diversity with regard to canopy tree species and a mix of species age that will in turn offer merit towards extending the function and productivity of a riparian ecosystem.

To further support the variance request as submitted, the applicant provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“this is being requested due to safety concerns.”* Staff adds that we routinely work with property owners to manage riparian resources on properties throughout the RPA in the City with the intent to address the age and health of canopy trees in addition to a potential hazard there may be to structural improvements of a lot.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“these trees are very old and in the final stages of their lifespan.”* Staff provides that the mature canopy cover on the lot consist primarily of mature pine trees and that the riparian buffer is a resource that should be properly managed overtime to ensure health and function of the buffer.
- 3) The variance is the minimum necessary to afford relief because *“based on talking with a professional, these are the ones he is recommending to remove.”* Given the trees within the lot removed with the CBPA Administrative Variance and assessment made by the Arborist, Staff is of the opinion that the minimum necessary to afford relief has been achieved on this lot. However, for the CBPA Board’s deliberation, Staff provided the recommended conditions below towards mitigation measures for additional tree removal.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“we are not adding any hardscape to our property with this request.”* Although the variance request does not introduce new impervious cover within the RPA, Staff is of the opinion that mature canopy cover within the RPA provides value towards rainwater interception and absorption as a means of contributing to the overall water quality of the adjacent waterway. With regards to evaluating substantial detriment to water quality, staff offers the conditions below.
- 5) *“Appropriate mitigation steps will be taken to ensure this”* as a means to manage towards a no net increase in nonpoint source pollution load. As stated above, Staff is of the opinion that mature canopy cover within the RPA provides value towards rainwater interception and absorption that contributes to the overall health of a watershed. Outboard of the retention of mature canopy cover within a watershed, extensive mitigation is a means towards water quality.

Given the above comments, Staff recommends the following **4** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. A landscape 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 landscape plan shall detail the location, number, and species of vegetation to be installed as per the buffer restoration requirements. The landscape 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. Mitigation options for the remaining 10 canopy trees requested to be removed due to being hazardous or in close proximity to structures on the lot as described on the CBPA exhibit shall be required as follows.
 - 3:1 ratio with canopy tree mitigation only (30 canopy trees to be planted)
 - or-
 - 2:1 ratio with canopy tree and understory tree mitigation (20 canopy trees and 20 understory trees)

The required mitigation shall be located in the 100-foot RPA. Canopy 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 release of the utility/right of way permit.

Minimum size at installation for replacement trees shall be as listed below:

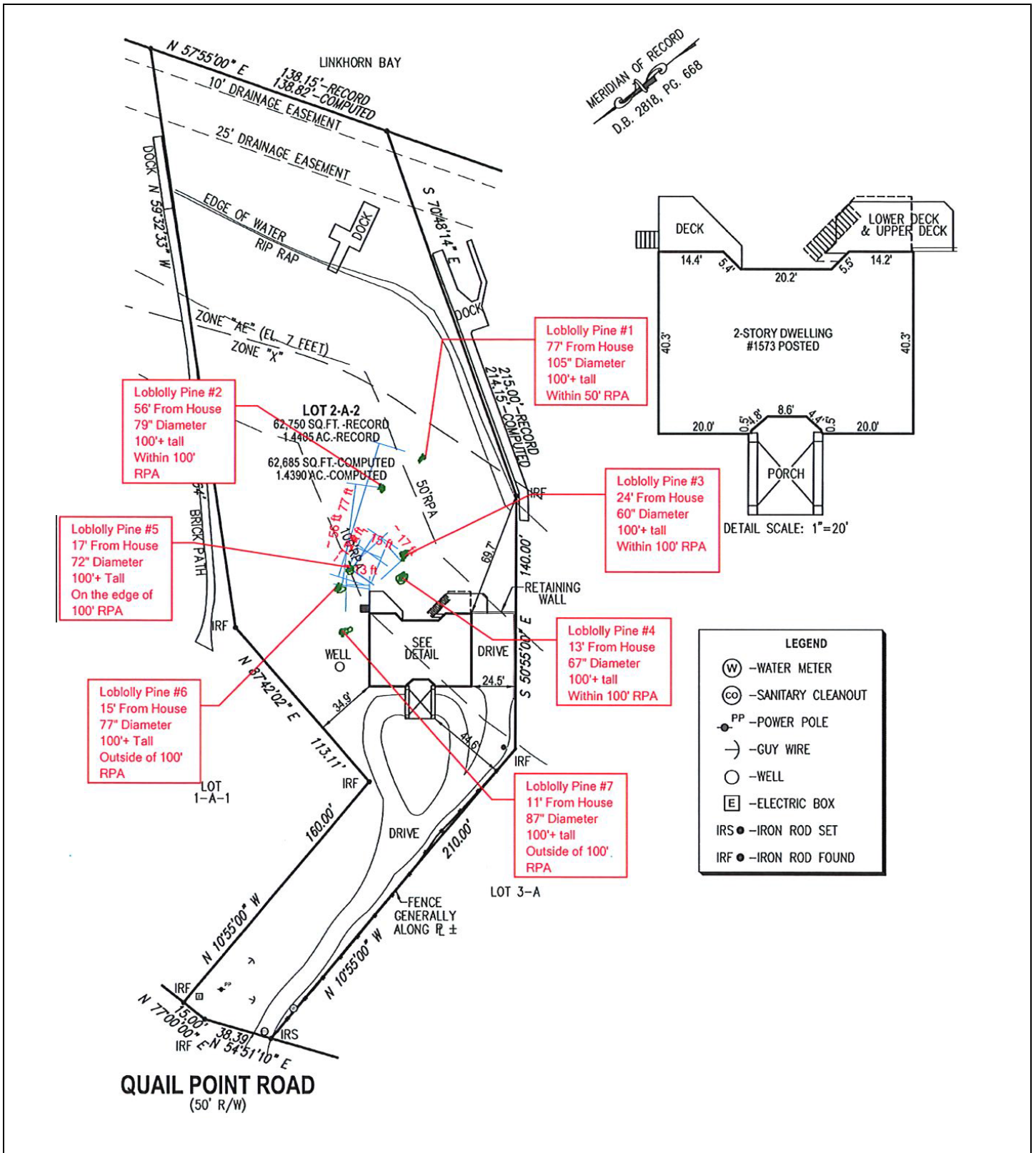
- Canopy tree (matures to a height greater than 35') 1 ½" – 2" caliper at time of installation.
 - Understory tree (matures to a height of 12' to 35') ¾" – 1 ½" caliper at time of installation.
4. A pre-construction meeting shall be held with a CBPA inspector prior to tree removal. All trees approved for removal shall be marked with red tree markers and all trees to be preserved as conditioned in this report shall be marked with blue tree markers.

***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.

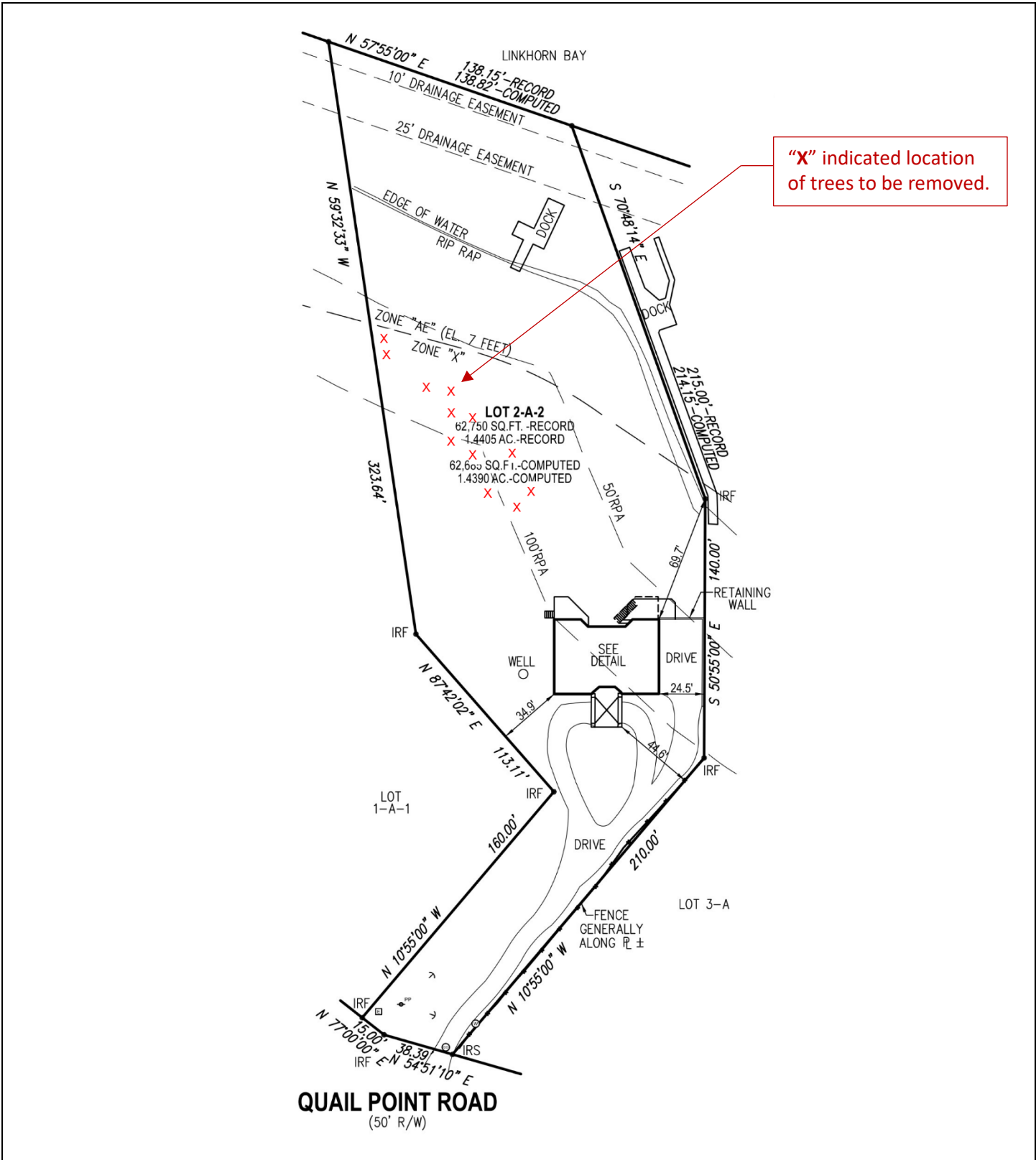
Site Aerial



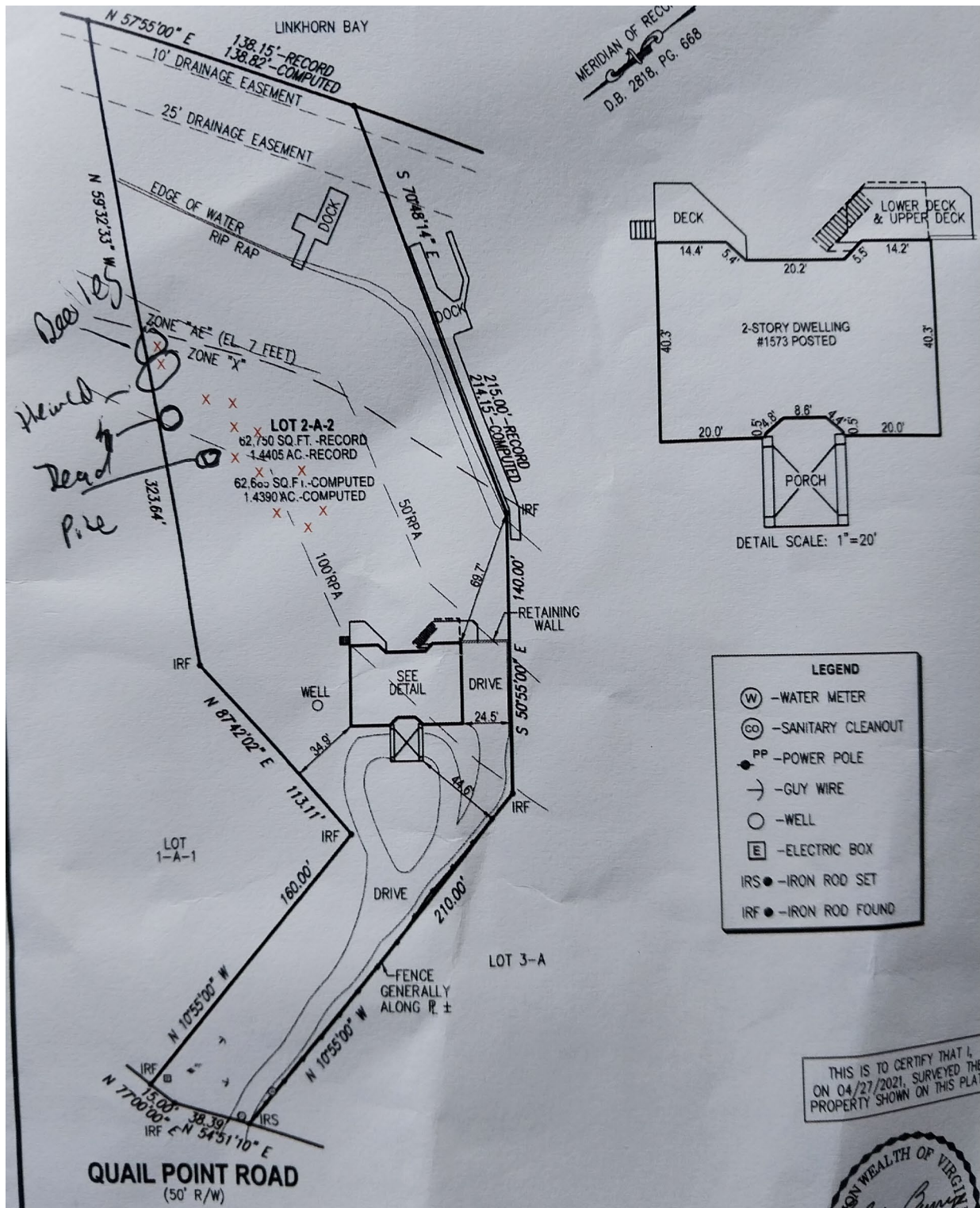
2021 CBPA Administrative Variance Exhibit



CBPA Exhibit – Proposed Tree Removals



CBPA Exhibit –Arborist Evaluation, Proposed Tree Removals



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 Russell Tye

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? [] Yes [x] No

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

Freedom 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



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

Russell Tye owner

Print Name and Title

12/4/20

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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Property Owner **Jarrett and Ma Luisa Price**
 Contract Purchaser **Kenneth Kemner**
 Address **Lot 69, Thalia Shores**
 Public Hearing **January 22, 2024**
 City Council District **District 8**

Agenda Item

2

Variance Request

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

Applicant's Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 34, Page 23

Recorded 06/1952

GPIN

1487-38-4972

SITE AREA

44,308 square feet or 1.02 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

38,248 square feet or 0.88 acres

EXISTING IMPERVIOUS COVER OF SITE

3,555 square feet or 9 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,310 square feet or 16.5 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

4,590 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

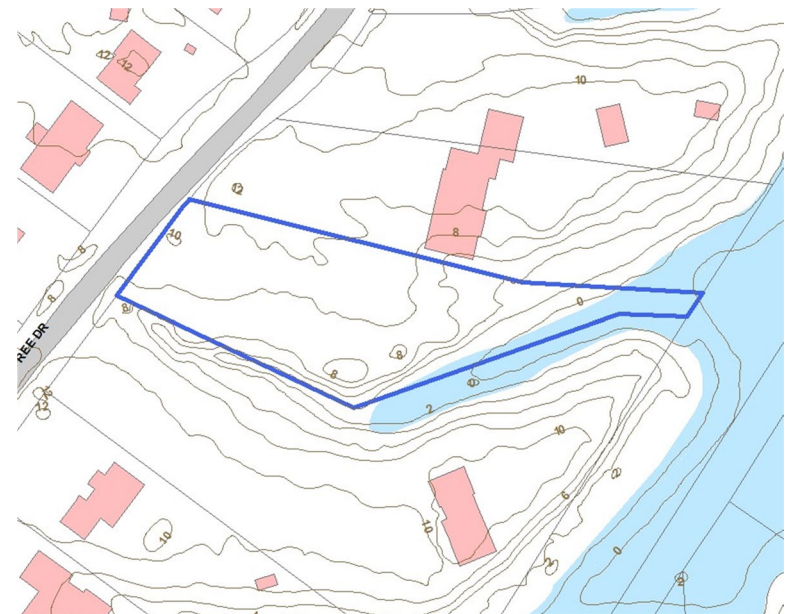
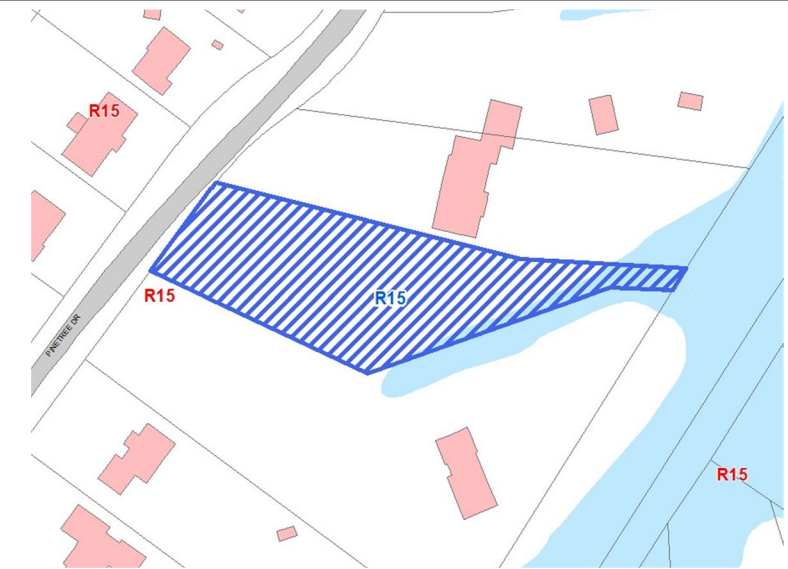
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

- Single family residence with associated walkways
- Concrete driveway with concrete entry court adjacent to residence
- Covered deck and patio

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

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

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 11
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of the proposed residence.

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 lot is part of the Thalia Shores subdivision that was platted in January of 1953. As submitted, the variance request proposes to develop the lot with a single-family residence consistent with the existing single-family residences within the neighborhood. A component of this request consists of acquiring approximately 3,265 square feet of the adjacent lot, lot 68 through a resubdivision that would alter a portion of the existing northern property line for both lots.

Jarrett & Ma Luisa Price

Agenda Item 2

Page 22

This action proposed by the property owner allows for the encroachment associated with this request to be landward of the 50-foot seaward buffer of the Resource Protection Area (RPA).

Overall, the proposed improvements for this lot will increase the impervious cover of the lot above water or wetlands from 9 percent to 16.5 percent of lot. However, this increase does provide a retreat from the 50-foot seaward buffer with the proposed removal of an existing gravel driveway. As such, Staff is of the opinion that the overall site layout of the proposed improvements, which include situating the accessory structures immediately adjacent to the proposed residence, silt fence approximately 10 feet around the proposed residence, retention of existing canopy cover within the environmentally sensitive 50-foot seaward buffer, and the proposed buffer restoration offers merit towards the project addressing the elements of the performance standards set forth in the CBPA Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this lot was platted in 1952. The current owner of lot 69 also owns Lot 68 and has agreed to sell additional property to the purchaser of lot 69 so the proposed home may be moved out of the 50-foot seaward CBPA buffer."* 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 *"lots 69 and 68 will be re-subdivided so the home may be moved out of the 50-foot seaward CBPA buffer."* Staff acknowledges the applicant's statement and reiterates that the proposal limits all proposed new impervious cover to the 50-foot landward buffer of the 100-foot RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this is an existing lot, a re-subdivision of this lot will permit the home to be constructed outside of the 50-foot seaward CBPA buffer."* Staff concurs and adds the applicant has retained all canopy cover and vegetation within the 50-foot seaward buffer on the lot. Additionally, the existing gravel driveway will be removed and converted to buffer restoration.
- 5) *"The proposed lot grading will promote the sheet flow of the storm water into the 50-foot seaward CBPA buffer that is well stabilized by vegetation"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion the preservation of the existing vegetation within the RPA on the lot and the additional buffer restoration as required will ensure a no net increase in nonpoint source pollution load with this request.

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

Recommended Conditions

- 1) 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) Turf grass on the lot is limited to the area south of the proposed driveway and shall not extend beyond the delineated silt fence of the CBPA plan. Said area of turf grass shall not exceed 1,600 square feet.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration on the lot shall be achieved through the following mitigation methods.
 - 3,555 square feet of buffer restoration shall be installed on the lot within the area disturbed for the removal of the existing gravel drive.
 - All areas outside the limits of construction shall be left in a natural state, including the forest floor (leaf litter), and left intact.

Said restoration areas 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. 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. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the Certificate of Occupancy or release of the building permit.

- 5) A certified arborist report shall be provided for review and approval during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
- 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. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the limits of

construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, in the RPA may not be removed.

- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and staked in the field for review by City Staff prior to land disturbance.
- 11) The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or Certificate of Occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) 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.
- 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 \$1,051.87 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) The conditions and approval associated with this variance are based on the exhibit plan dated October 17, 2023, prepared by Robert S. Kellam, signed November 6, 2023 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.

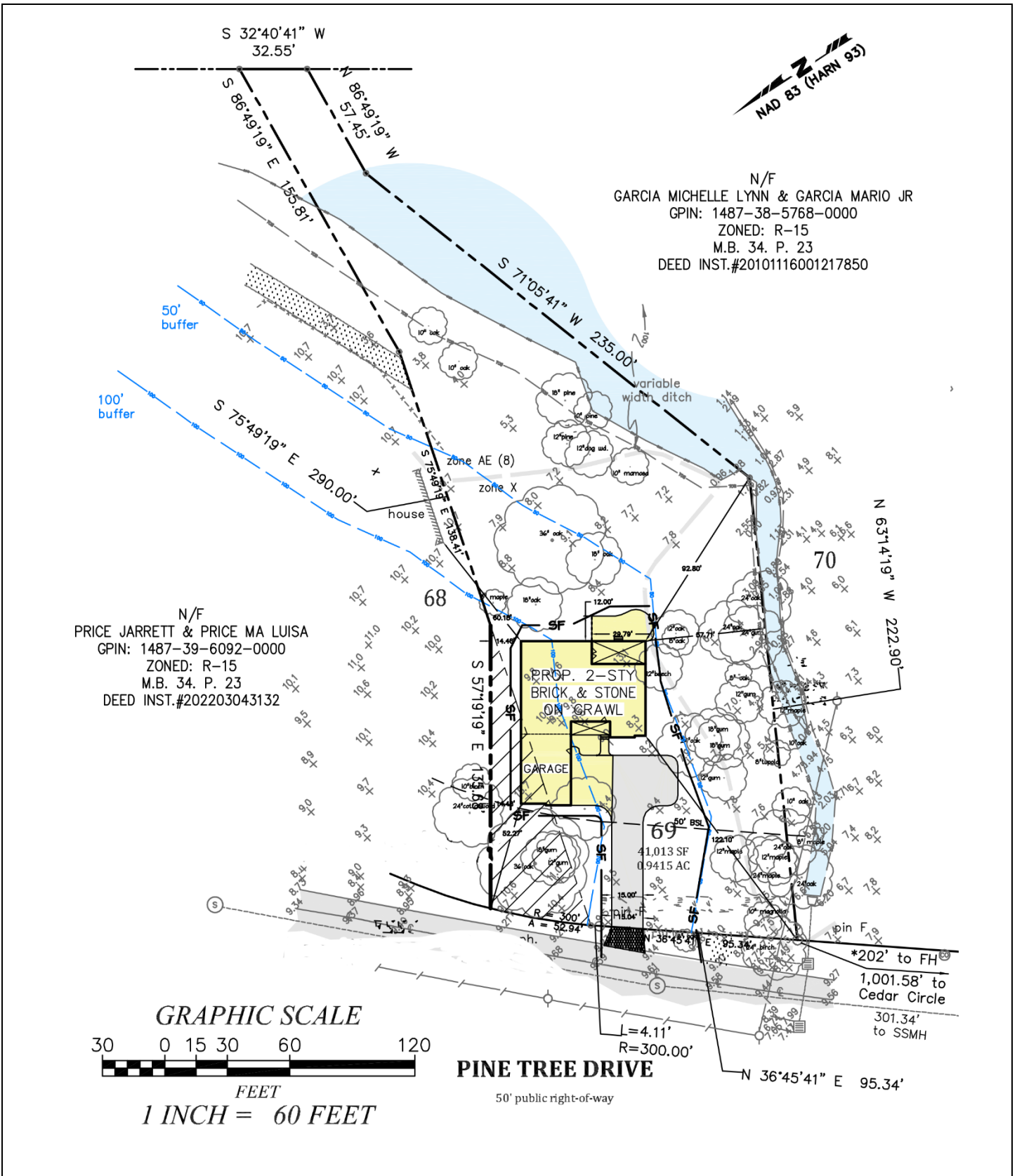
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

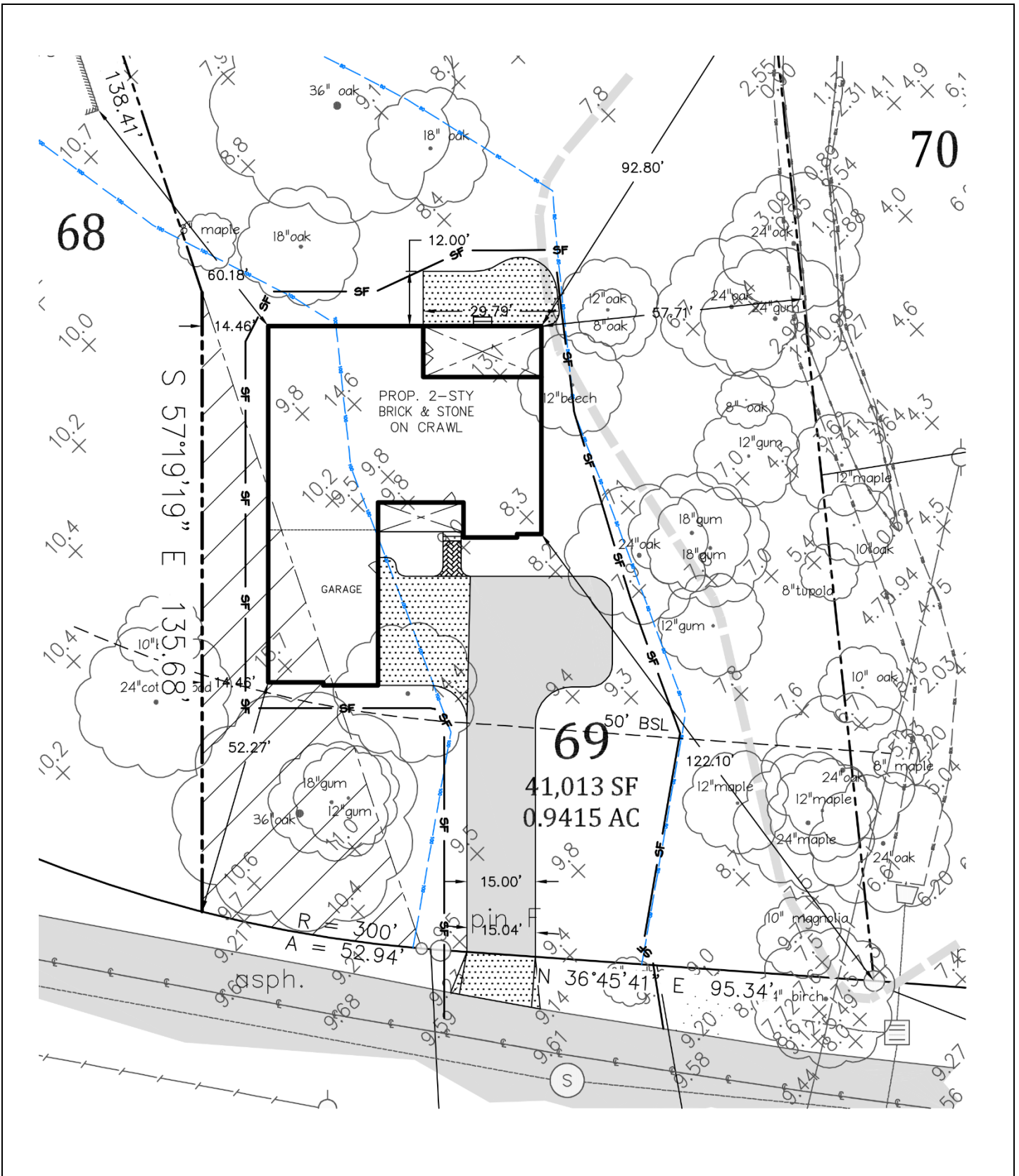
Site Aerial



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Proposed Improvements, Enlarged Plan View



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Kenneth Kemner

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

Robert Kellam

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

Bank TBD for Home Loan

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

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.

Tier 1 Construction LLC - Class A, Licensed and Bonded

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.

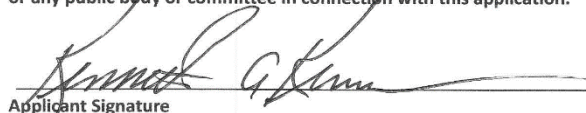
Kellam Gerwitz Engineering / DKT and Associates Surveying

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

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

Applicant Signature

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



Applicant Signature

Kenneth Kemner

Print Name and Title

11/03/2023

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

Disclosure Statement



Owner Disclosure

Owner Name Jarrett S. Price & Maluisa G. Price

Applicant Name _____

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

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

- If yes, list the businesses that have a parent-subsiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

Known Interest by Public Official or Employee

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

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

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

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

Disclosure Statement



Owner Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

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

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

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

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

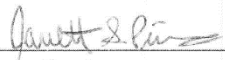
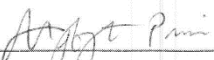
Disclosure Statement



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

Owner Signature

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

	
_____ Jarrett S. Price owner	_____ Ma Luisa Price owner
Print Name and Title	
_____ 11/4/2023	_____ 11/4/2023
Date	



Applicant & Property Owner **Elizabeth & Paul Kunde**
 Address **2945 Breezy Road**
 Public Hearing **January 22, 2024**
 City Council District **District 8**

Agenda Item

3

Variance Request

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

Applicant’s Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 37, Page 47
 Recorded 05/05/1953

GPIN

1499-18-8109

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

243 square feet

Area of New Development in RPA

135 square feet

Location of Proposed Impervious Cover

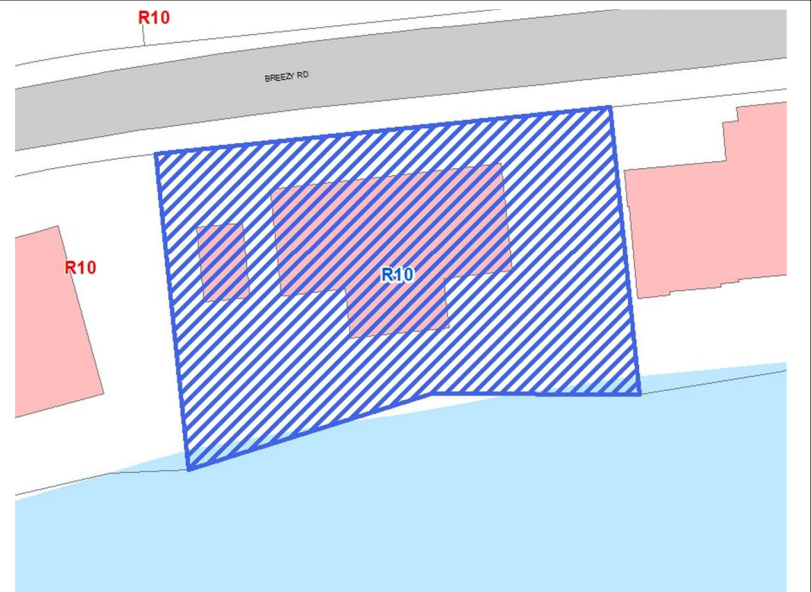
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Paver patio

Construction Details

- Replace and expand paver patio by 135 square feet

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wooden bulkhead.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

The 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 redevelop and expand upon their existing paver patio. This request will add approximately 135 square feet of new impervious cover and redevelop approximately 243 square feet of existing patio area of which all proposed improvements will be within the 50-foot seaward buffer of the Resource Protection Area (RPA). Staff is of the opinion that the additional impervious cover will not cause a substantial increase in runoff nor be detrimental to the water quality of the Chesapeake Bay, due to the underlying soil conditions that are moderately to well-drained soil and the topography of the lot being flat thus limiting the velocity of run-off from the proposed improvements. In addition, given the minimal land disturbance associated with this request, Staff supports the variance request subject to the following comments relative to the findings of the CBPA Ordinance for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“patio replacement and small expansion is a routine part of a variance request and is a normal upgrade to a home.”* Staff acknowledges the applicant’s statement and offers that adjacent properties have similar improvements.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the request is simple for replacement of a modest paver patio.”* Staff is of the opinion that the proposed improvements, as situated in the rear yard, provides merit towards being the minimum necessary to afford relief given the minimal expansion of the patio surround within the 50-foot seaward buffer and situating the patio expansion immediately adjacent to the existing single-family residence.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“this request will cause no harm and will not cause detriment to water quality.”* Staff offers, through the required buffer restoration placed seaward on the lot, coupled with the recommended conditions below, the variance request will not be of substantial detriment to water quality.
- 5) *“This request for restoration requires no landscape disturbance with no pollution discharge”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs, subject to the recommended conditions below.

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: **135 square feet x 200 percent = 270 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.** 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 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.

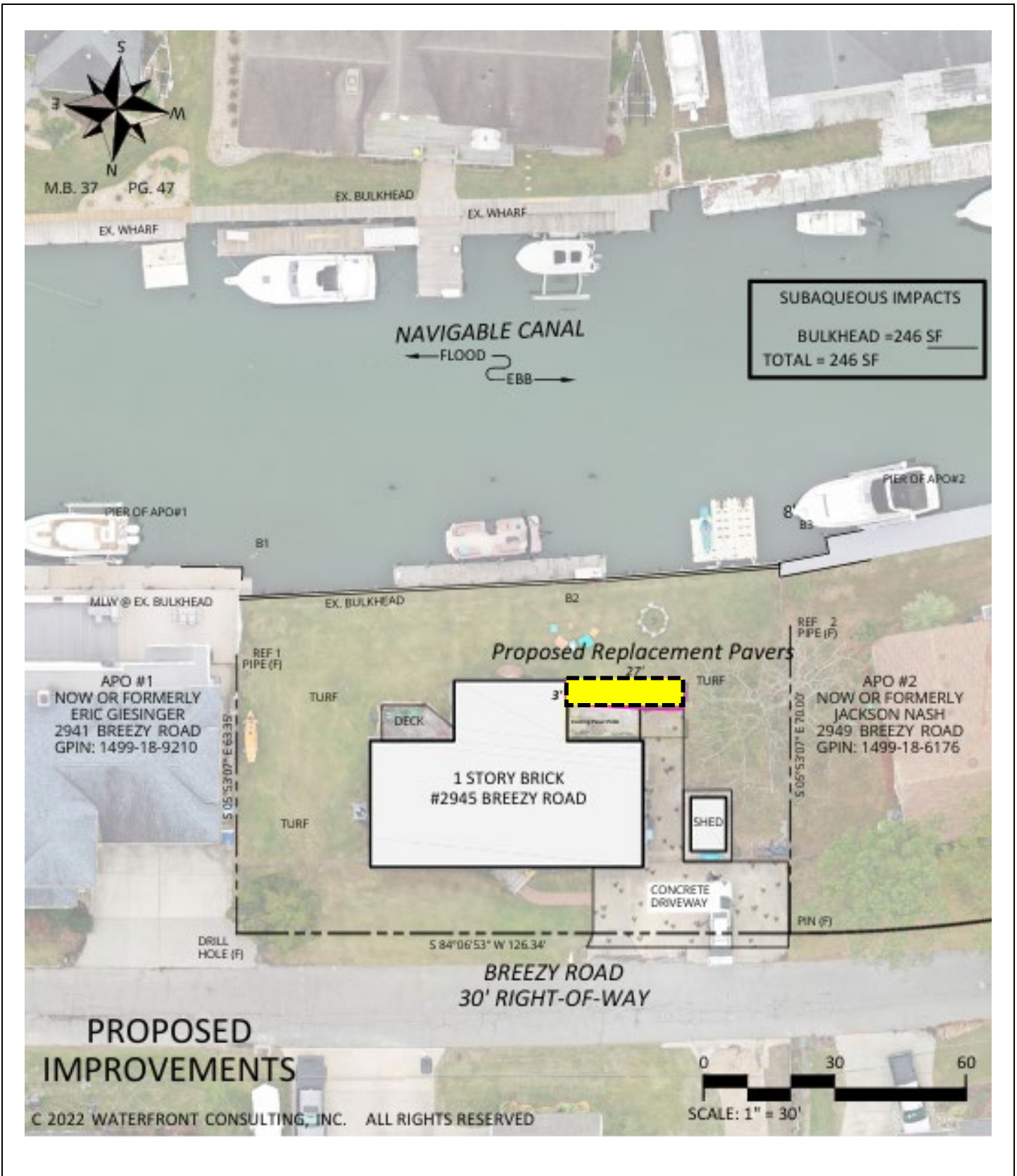
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
5. No perimeter fill is authorized outboard or seaward of the 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



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Elizabeth and Paul Kunde

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.

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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

Elizabeth and Paul Kunde

Print Name and Title

11/29/2023

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	

AS NEEDED, PAGE LEFT BLANK



Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 90, Page 36

Recorded 10/1966

GPIN

1499-78-9270

SITE AREA

13,702 square feet or 0.315 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

13,536 square feet or 0.310 acres (Lot 96)

EXISTING IMPERVIOUS COVER OF SITE

3,174 square feet or 23.4 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,695 square feet or 34.7 percent of site

Area of Redevelopment in RPA

2,106 square feet

Area of New Development in RPA

2,462 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

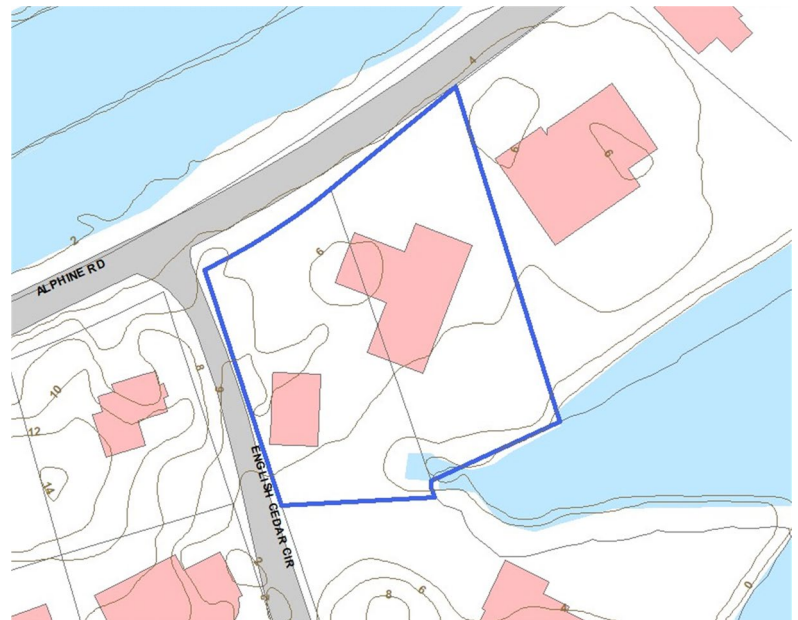
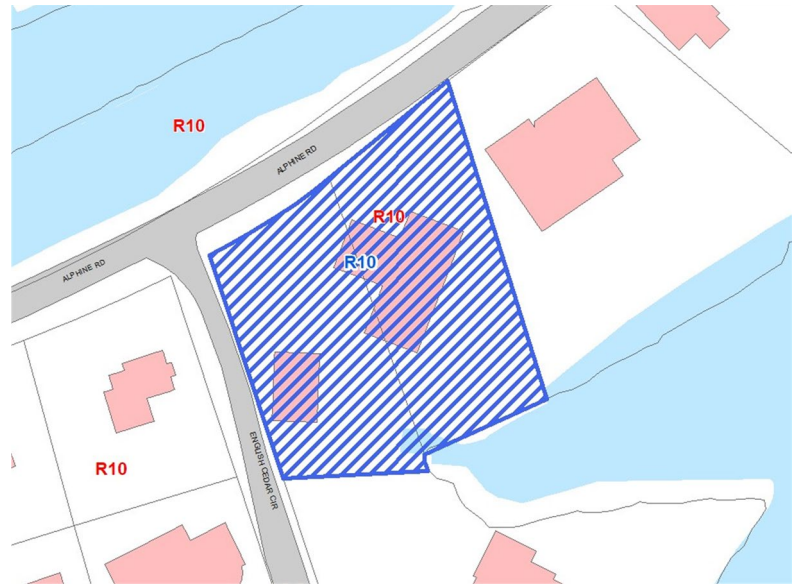
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Existing single-family residence with associated wood deck and portion of concrete walk

Construction Details

- Single-family residence with associated wood deck and concrete driveway
- Raised concrete patio
- Swimming pool with concrete pool patio

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): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the footprint of the proposed improvements.

Stormwater Management Methodology

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

Evaluation and Recommendation

The existing single-family residence is situated over the recorded parcel line for Lot 95 and Lot 96 of which both lots are under common ownership by the applicant. Staff discussed the current matter of nonconformity with the applicant's agent regarding the existing improvements on both lots and the redevelopment of Lot 96 should the Chesapeake Bay Preservation Area (CBPA) Board grant a variance for this request. Staff has informed the applicant's agent that should a

variance be granted by the CBPA Board for the proposed improvements on Lot 96, a Board of Zoning Appeals (BZA) application will need to be filed for Lot 95 for the retention of the existing improvements on said lot.

Regarding the purpose and intent of the CBPA Ordinance, the applicant proposes to demolish the existing single-family residence and construct a new single-family residence with associated accessory structures (raised concrete patio, wood deck, and swimming pool) solely within Lot 96. The Resource Protection Area (RPA), specifically the 100-RPA buffer is present on the lot from both the rear and front yards as delineated on the CBPA Exhibit. Given this presence of the RPA feature, all new impervious cover and redevelopment with this request is situated within the 100-foot RPA buffer. However, outboard of a small portion of the proposed driveway, as a means of ingress and egress to the lot, all the new improvements are situated within the 50-foot landward buffers on the lot. Approximately 2,462 square feet of new impervious cover will be added to the overall impervious cover on the lot to which the applicant's Engineer of Record is proposing multiple best management practices (BMPs) to treat stormwater runoff, including bio-retention planting beds seaward of the proposed improvements in the rear yard, gravel downspout intercepts with the new residence, and underdeck treatment with the new deck. Staff is of the opinion that this request utilizes redevelopment to the greatest extent practicable and the new improvements are modest in size and are situated on the lot to avoid further encroachment into the 50-foot seaward buffer of the RPA. With minimal impact to existing canopy cover, the required buffer restoration specific to this variance request, and the best management practices proposed, the redevelopment of this lot offers merit towards the variance being in harmony with the performance standards set forth in the CBPA Ordinance [City Code, Appendix F, Sec. 106(3)].

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff is of the opinion the CBPA exhibit coupled with the use of materials and stormwater methodology offer merit towards the variance request not conferring upon the applicant any special privilege or convenience not afforded to other owners of property in the neighborhood based upon the extent of redevelopment proposed to the existing conditions of the lot.
- 2) Staff offers the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff adds the placement of the proposed improvements limits the encroachment into the buffer, situating in the 50-foot landward buffer on a lot that is encompassed by the RPA in both the rear and front yards of the lot. The applicant has utilized redevelopment to the greatest extent on the highly encumbered lot and, in the rear yard of the lot, the applicant has shifted the layout of the home to further reduce encroachment in the rear yard 50-foot landward buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare

because “the purpose and intent of the ordinance is simply water quality, to prevent pollution of the bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bio retention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynn Haven Oyster Heritage Program all to benefit water quality.” Staff acknowledges the requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality benefits. The applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds, gravel downspout intercepts, and underdeck treatment. With the high redevelopment and the multiple best management practices proposed, Staff is of the opinion the redevelopment of this lot is in harmony with the purpose and intent of the Ordinance.

- 5) “Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters” as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs and acknowledges the site currently offers no stormwater management and as stated above, the applicant has taken measures to achieve a no net increase in nonpoint source pollution load into the Chesapeake Bay Watershed by using bioretention planting beds, gravel downspout intercepts, and underdeck treatment as well as the installation of the conditioned 4,924 square feet of buffer restoration that restores the lack of tree canopy cover on the lot. Staff is of the opinion the proposed best management practices provide merit to minimize the erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **14** reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,462 square feet x 200 percent = 4,924 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals. All construction activities and associated land disturbance shall be contained within limits of the site fence.
- 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 prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit and staked in the field for review by City Staff prior to land disturbance.
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 12) 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.
- 13) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$564.20 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated October 10, 2023, prepared by Gallup Surveyors & Engineers, signed November 30, 2023 by David R. Butler. The conditions and

approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Site Aerial



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 GEORGE KARAVOLOS

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.
BILLY GARRINGTON

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

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.

GALLUP SURVEYORS

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

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

Applicant Signature

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

George Karavolos

Applicant Signature

GEORGE KARAVOLOS - OWNER

Print Name and Title

11/29/23

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 **Kubichan Living Trust**
 Address **3109 Dolphin Road**
 Public Hearing **January 22, 2024**
 City Council District **District 8**

Agenda Item

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a building addition, swimming pool, paver patio, and driveway expansion.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 41, Page 44

Recorded 05/26/1956

GPIN

1489-97-9917

SITE AREA

13,375 square feet or 0.307 acres – Lot 207

2,423 square feet or 0.055 acre – Parcel C

15,796 square feet or 0.363 acres – Overall

SITE AREA OUTSIDE OF WATER/WETLANDS

16,214 square feet or 0.317 acres

EXISTING IMPERVIOUS COVER OF SITE

4,927 square feet or 30 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

5,851 square feet or 36 percent of site

Area of Redevelopment in RPA

1,614 square feet

Area of New Development in RPA

1,295 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

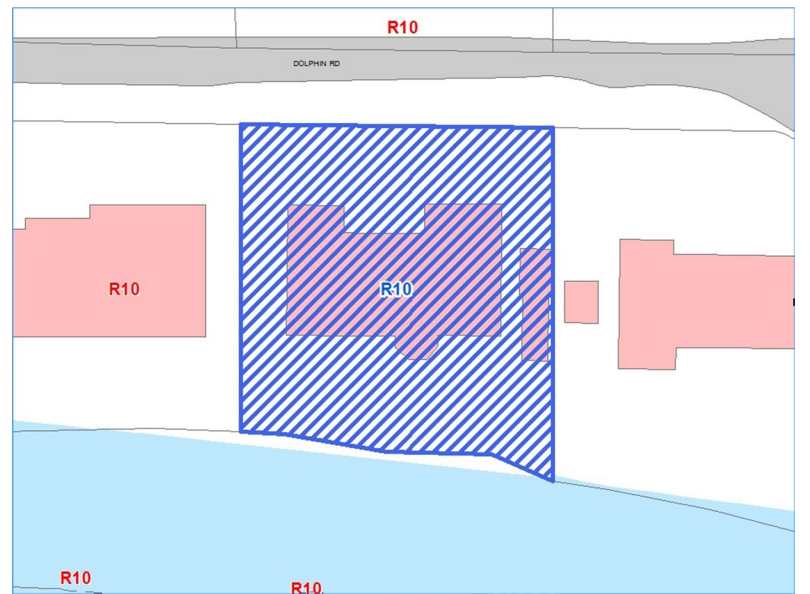
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete driveway, front walkway, shed, and deck

Construction Details

- Swimming pool with paver patio surround
- Garage Addition
- Driveway Redevelopment and Expansion

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): 7

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wooden bulkhead.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the footprint of the proposed swimming pool. Staff is of the opinion that removal of the trees are warranted and shall be replaced with the required buffer restoration.

Stormwater Management Methodology

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

Evaluation and Recommendation

The northern side of Dolphin Road is a narrow manmade canal that creates a thin peninsula of land where the subject lot is located. The average width of the peninsula ranges from approximately 130 feet to 185 feet. Given the width of the peninsula, both the front and rear portions of all the residential lots along Dolphin Road are within the 100-foot Resource Protection Area (RPA) buffer. Of the 16,214 square feet of the subject lot above water or wetlands, approximately 8,804 square feet is located within the 50-foot seaward buffer. Given the environmental constraints

created by the peninsula and the location of the proposed improvements in proximity to the adjacent tidal feature, Staff performed an analysis of existing improvements along Dolphin Road based off aerial photography to examine extent of encroachment on adjacent lots within the 50-foot seaward buffer of the RPA. Staff is of the opinion the CBPA Variance would not afford the applicant any special privilege or convenience not accorded to other owners of property who are subject to the provisions of this Ordinance and are similarly situated. However, 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 given the environmental constraints and shallow rear yard. To address this concern the applicant's agent submitted a revised CBPA Exhibit, provided on sheet 67 of this report, that reduces the size of the swimming pool surround for the CBPA Board's deliberation as a means towards the minimum necessary to afford relief.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1956 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* While this is the first variance request received for a property located along Dolphin Road, swimming pool requests are common accessory structures found throughout the RPA. Staff acknowledges the statement provided by the applicant's agent and reiterates variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Dolphin Road, with most residential structures being built during the mid-1970's and the density of the area equal to or greater than four dwelling units per acre, Staff is of the opinion the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff for this variance request.
- 2) Staff offers 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."* Staff acknowledges the statement of the applicant's agent with regard to "the minimum necessary to afford relief" and provides the recommended condition, specifically condition 1, that evaluates the overall impervious cover of the lot in relationship to existing encroachments within the neighborhood and is of the opinion the limit provided to the overall impervious cover associated with the redevelopment of this lot is more harmonious with the findings of the CBPA Ordinance than that provided with the CBPA Exhibit.
- 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 treatment from the new improvement."* Staff is of the opinion that, coupled with the required buffer restoration, best management practices, and the recommended conditions, the request is in harmony with the purpose and intent of the Ordinance and will not be of substantial detriment to water quality.

- 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 proposed best management practices, and restoration, will ensure a no net 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 installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,295 square feet x 200 percent = 2,590 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 7 understory trees, 12 large shrubs, and 18 small shrubs.**

The required restoration shall be located 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 5 feet from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 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) ** 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 \$313.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated October 23, 2023, prepared by WPL, signed November 30, 2023 by Eric A. Garver. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

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

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

Site Aerial



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 Kubichan Living Trust

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)

Terry R Kubichan and John E Kubichan, Trustees

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

- If yes, identify the financial institutions.
-

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

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

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

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

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

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

WPL

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.

Terry Kubichan *JOHN KUBICHAN*

Applicant Signature JOHN KUBICHAN

Print Name and Title 11-30-23

Date 11-30-23

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

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

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

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



Applicant & Property Owner **Peter Congdon**
 Address **2305 Haversham Close**
 Public Hearing **January 22, 2024**
 City Council District **District 8**

Agenda Item

6

Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 188, Page 08

Recorded 04/1985

GPIN

2409-06-1222

SITE AREA

25,504 square feet or 0.585 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

20,777 square feet or 0.477 acres

EXISTING IMPERVIOUS COVER OF SITE

8,431 square feet or 41 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,699 square feet or 42 percent of site

Area of Redevelopment in RPA

441 square feet

Area of New Development in RPA

336 square feet

Location of Proposed Impervious Cover

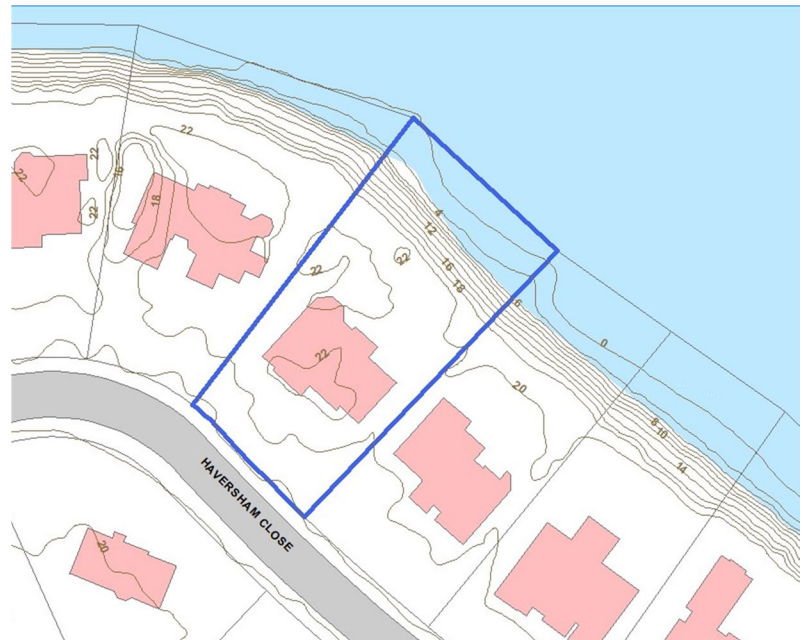
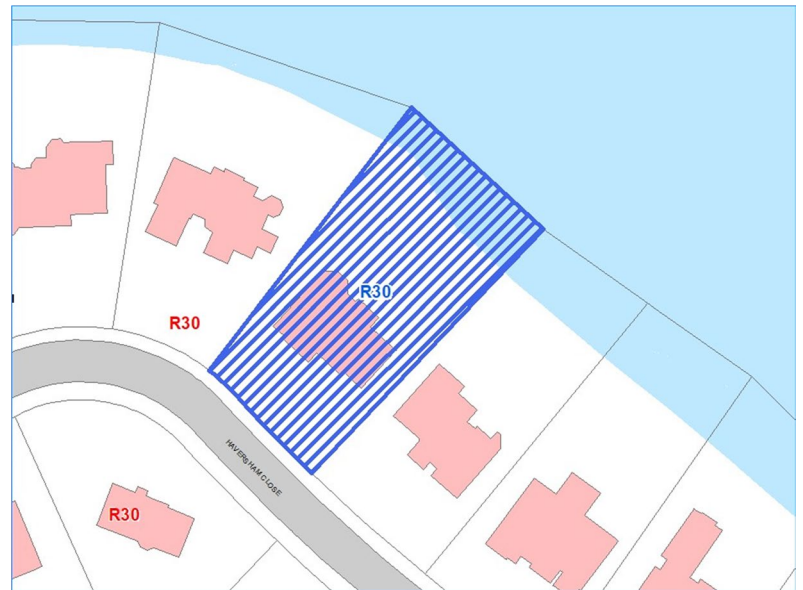
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Rear porch and stone patio

Construction Details

- Covered raised brick patio

CBPA Ordinance Variance History

November 22, 2004, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of concrete decking and walkways with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *A heavy duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction. A reinforced silt fence shall be installed along the seaward portion of the project.*
4. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 5' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *All stormwater from existing and proposed impervious cover shall be conveyed to structural stormwater management facilities*
8. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$344.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 375 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
9. *Buffer restoration shall be installed equal to 300% of proposed impervious cover (7,500 sq. ft.) and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
10. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*

11. *A minimum of eight (8) trees (inclusive of the two required during administrative variance for room addition) shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.*
12. *The conditions and approval associated with this variance are based on the site plan dated May 6, 2004, prepared by MSA, P.C. and a pool deck plan from Leland Enterprises dated October 20, 2004.*
13. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The November 22, 2004 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a new covered raised brick patio attached to the single-family residence. This request will add approximately 336 square feet of new impervious cover in the 50-foot landward portion of the 100-foot Resource Protection Area (RPA) with approximately 441 square feet of redevelopment over an existing patio area. Staff is of the opinion the additional impervious cover will not cause a substantial increase in runoff nor be detrimental to the water quality of the Chesapeake Bay given the minimal land disturbance associated with this request and no removal of existing canopy cover. Staff supports this variance as conditioned below.

To further support the variance request as submitted, the applicant provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the intent of the CBPA Ordinance for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the property was platted in 1984 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff acknowledges the statement provided by the applicant’s agent and offers several lots along Haversham Close have accessory structure encroachments into the 100-foot RPA 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 *“we have designed the improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts.”* Staff is of the opinion the proposed improvements, as situated in the rear yard, provide merit towards being the minimum necessary to afford relief given the extent of redevelopment, size of the proposed structure, and location adjacent to the existing residence.
- 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 treatment from the new improvement.”* Staff offers the lot currently has minimal canopy cover and the required buffer restoration throughout the remaining portions of the 100-foot buffer will provide a benefit towards water quality on the lot. Additionally, the request utilizes all redevelopment over the existing patio space with slight increases in impervious cover and the desire to slightly expand the proposed covered patio.
- 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 Broad Bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that the lot currently has minimal canopy cover and the required buffer restoration throughout the remaining portions of the 100-foot buffer will provide a benefit towards water quality on the lot.

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated October 11, 2023, prepared by WPL, signed December 1, 2023 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. If required, revised plans and calculations shall be submitted to the Planning Administration Chesapeake Bay Board team for reviewal and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with

local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **336 square feet x 200 percent = 678 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.**

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.

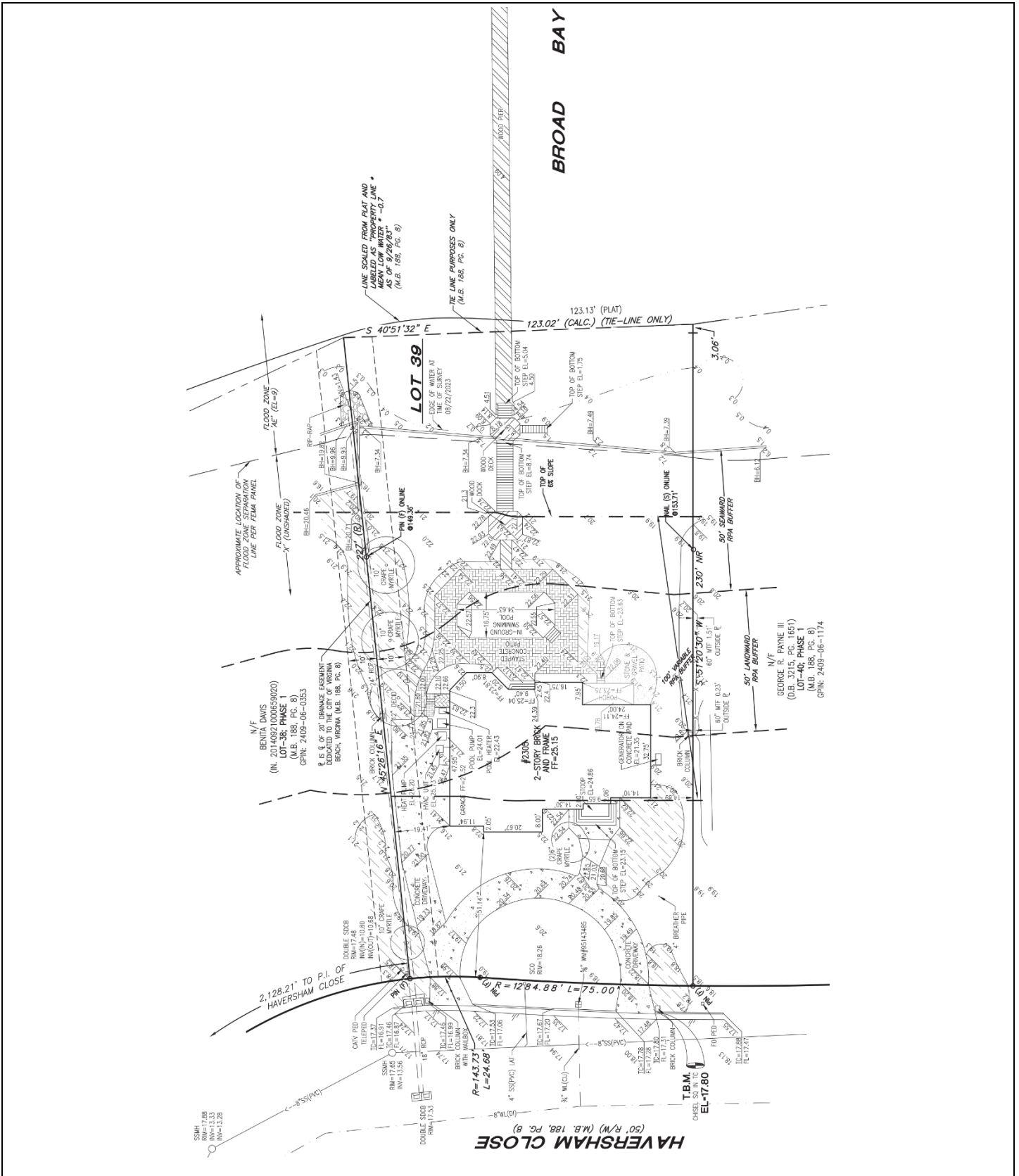
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 22, 2003.

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

Site Aerial



CBPA Exhibit – Existing Conditions



Disclosure Statement

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 Peter Congdon

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

WPL

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

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

Disclosure Statement



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

Applicant Signature

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

Applicant Signature

Peter Congdon

Print Name and Title

11/30/23

Date

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

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

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

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

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Property Owner **Sea Breeze Farm, Inc.**
 Contract Purchaser **Kirbor Homes, LLC.**
 Address **Lot 58, Sea Breeze Trail**
 Public Hearing **January 22, 2024**
 City Council District **District 8**

Agenda Item

7

Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 156, Page 39

Recorded 05/20/1982

GPIN

1489-60-9426

SITE AREA

73,241 square feet or 1.68 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

49,333 square feet or 1.13 acres

EXISTING IMPERVIOUS COVER OF SITE

172 square feet or 0.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,897 square feet or 22 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

5,961 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

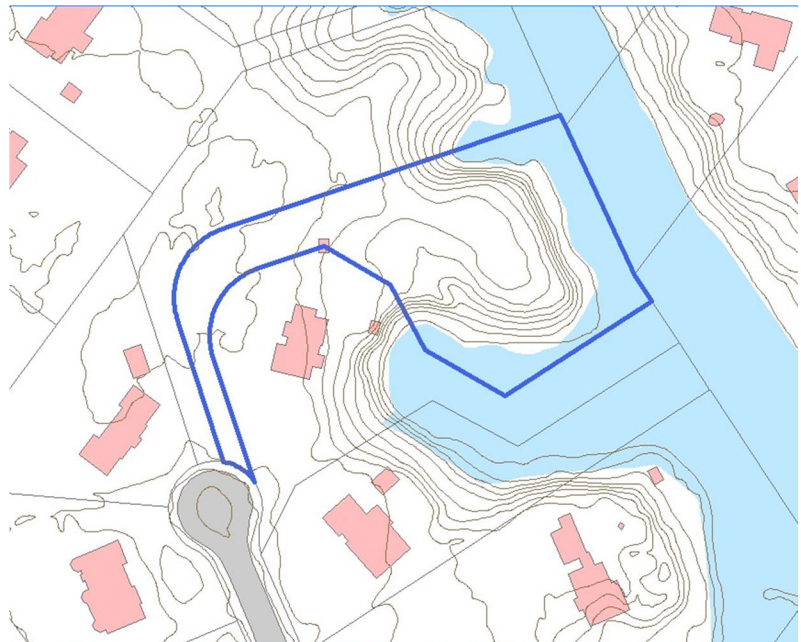
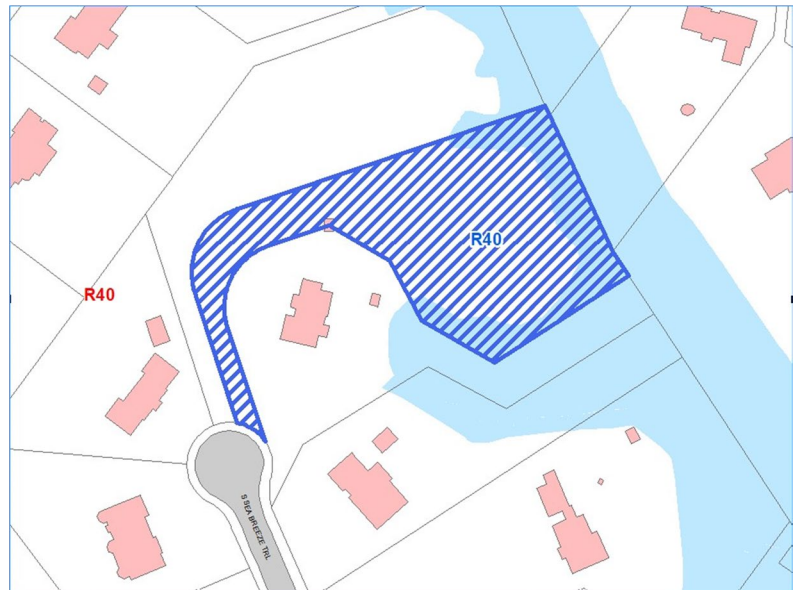
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped lot

Construction Details

- Single family residence with associated walkways
- Concrete driveway with associated entry court and retaining wall
- Swimming pool with concrete pool patio

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

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: 27
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction of the proposed single-family residence and associated accessory structures.

Stormwater Management Methodology

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

Evaluation and Recommendations

This undeveloped lot in the Little Neck subdivision is proposed to be developed with a two-story single-family dwelling and an associated swimming pool, patio, walkways, driveway/parking area and retaining walls. As shown on the CBPA exhibit, approximately 5,961 square feet of new impervious cover is proposed within the Resource Protection Area

Sea Breeze Farm, Inc.

Agenda Item 7

Page 84

(RPA) on the lot of which 1,289 of that new impervious cover is located within the city's Variable Width buffer of the Resource Protection Area (RPA). The applicant's consultant team has situated the proposed improvements mindful of the existing mature canopy trees within eastern portions of the lot and shoreline topography within those same areas. As a result, portions of the proposed swimming pool and pool patio are situated within the upper limits of the 50-foot landward buffer and no encroachment seaward is proposed with this request.

Staff is of the opinion the applicant's consultant team has provided a development plan that minimizes impervious cover to promote infiltration of stormwater into the ground consistent with the use or development of the lot 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 (gravel downspout intercepts) and nonstructural (bioretention planting beds and shoreline tree limb management) best management practices for the stormwater treatment of this site. Staff is of the opinion the layout of the proposed improvements minimizes encroachment into the RPA to the greatest extent practicable and is in harmony with the purpose and intent of the CBPA Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the site was originally platted in 1982 prior to the Chesapeake Bay Preservation Act, and the RPA buffers currently impact 75% of the lot. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff is of the opinion the CBPA exhibit provided, coupled with the use of materials and stormwater methodology integrating best management practices on the lot, offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of the property in the neighborhood that have redeveloped lots platted prior to the adoption of the CBPA Ordinance.
- 2) Staff offers the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the owners have designed the proposed improvements to be minimal and stay outside of the 50' seaward buffer to the greatest extent practicable."* Staff acknowledges the placement of the proposed improvements limits encroachment to the landward and variable width buffers and utilizes the redevelopment of impervious cover on the lot to the greatest extent practicable.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment or buffer restoration provided between the improvements and the bay."* Staff offers the requirement to treat stormwater with the redevelopment of this lot provides merit towards the variance request not being a detriment to water quality coupled with the retention of existing vegetation within the 50-foot seaward buffer. These best management practices can provide an annual runoff volume reduction with beneficial reductions of phosphorous and nitrogen mass load removal.

- 5) *“Planting buffer restoration and/or 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 concurs.

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

Recommended Conditions

- 1) 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.

Buffer restoration shall be installed in substantial compliance with the Improvements Plan, Concept Plant Schedule and layout submitted with this variance request. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers per said plan consisting of **25 canopy trees, 25 understory trees, 50 large shrubs, 75 small shrubs and a perennial meadow mix.**

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

- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved.

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

- 10) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 12) 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.
- 13) 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.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,366.06 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated November 28, 2023, prepared by WPL, signed December 1, 2023 by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board. Deviation from said conditions during site plan review may require re-submittal for CBPA Board consideration.

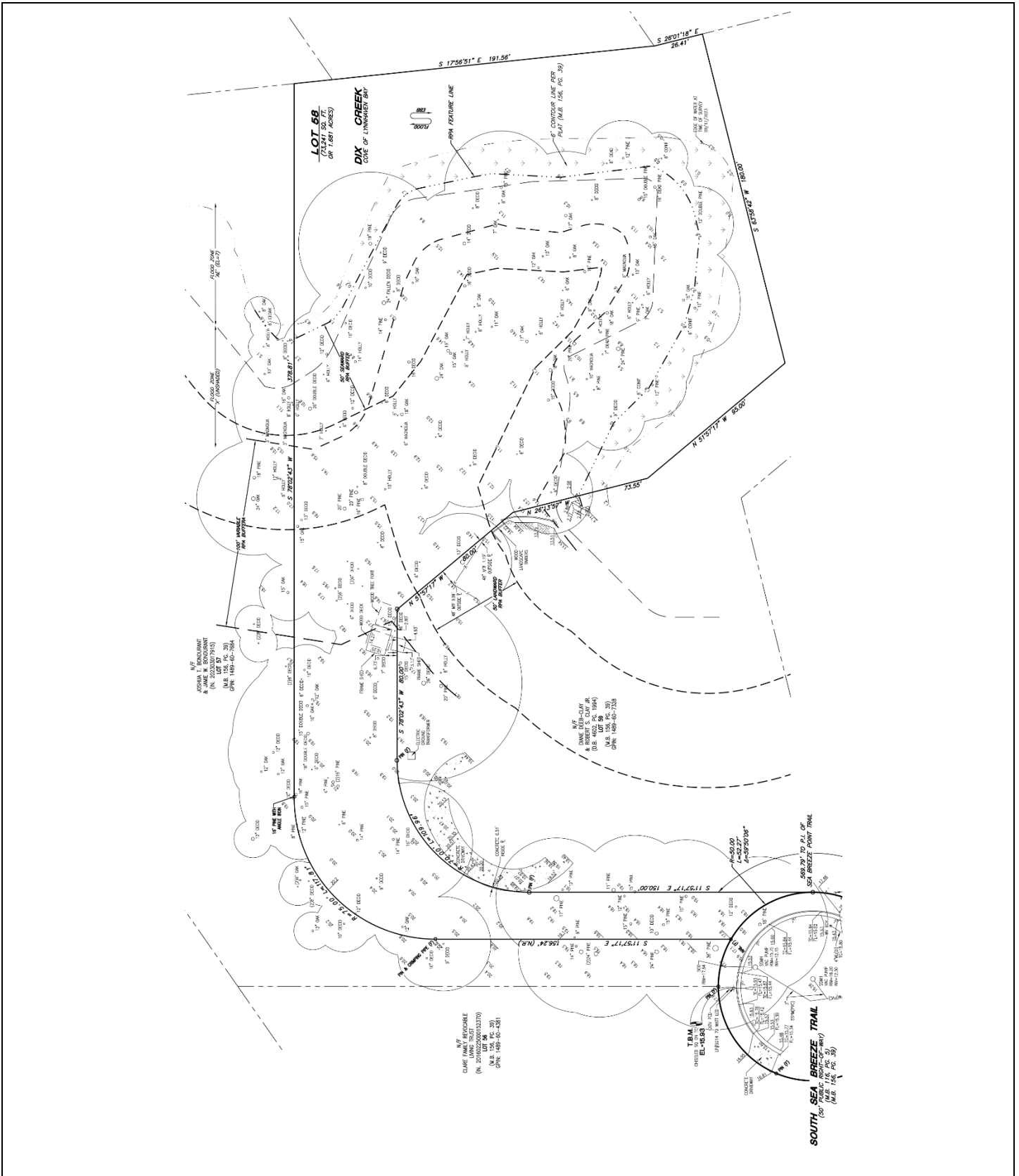
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

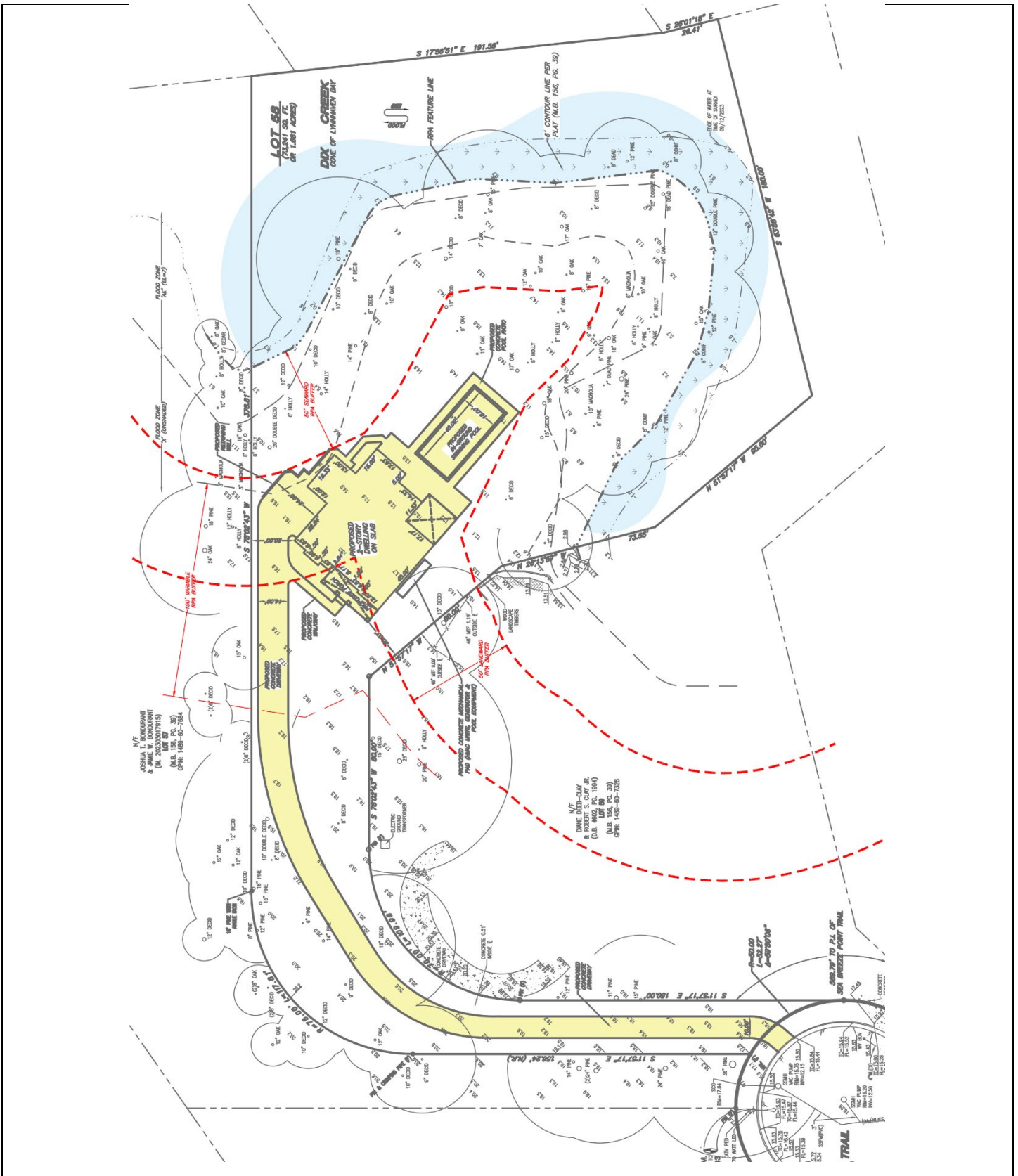
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name KIRBOR Homes, LLC

Does the applicant have a representative? Yes No

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

GPC, Inc. - Billy Garrington

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

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

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

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

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

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

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

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

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

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

D&D Studio (Architect) / WPL- Landscape Architect

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

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

Disclosure Statement



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.

Kirbor Homes

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

KIRBOR Homes, LLC

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	

Disclosure Statement



Owner Disclosure

Owner Name Sea Breeze Trail, Inc

Applicant Name KIRBOR Homes, LLC

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

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

- If **yes**, list the businesses that have a parent-subsiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

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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**

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Disclosure Statement



Owner Services Disclosure

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Yes No

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

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

Yes No

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

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-

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-

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

Disclosure Statement



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

Owner Signature

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

Authentisign
Carlton E. Seay 12/01/23

Owner Signature
Carlton E. Seay

Print Name and Title
December 1, 2023

Date



Applicant & Property Owner **Mason Kalfus & Susan Burgess**

Agenda Item

Address **1328 E. Bay Shore Drive**

Public Hearing **January 22, 2024**

City Council District **District 6**

8

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a permeable paver sports court.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 273, Page 06

Recorded 08/20/1998

GPIN

2418-49-8901

SITE AREA

49,079 square feet or 1.127 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,279 square feet or 0.833 acres

EXISTING IMPERVIOUS COVER OF SITE

8,252 square feet or 23 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,194 square feet or 28 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,942 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

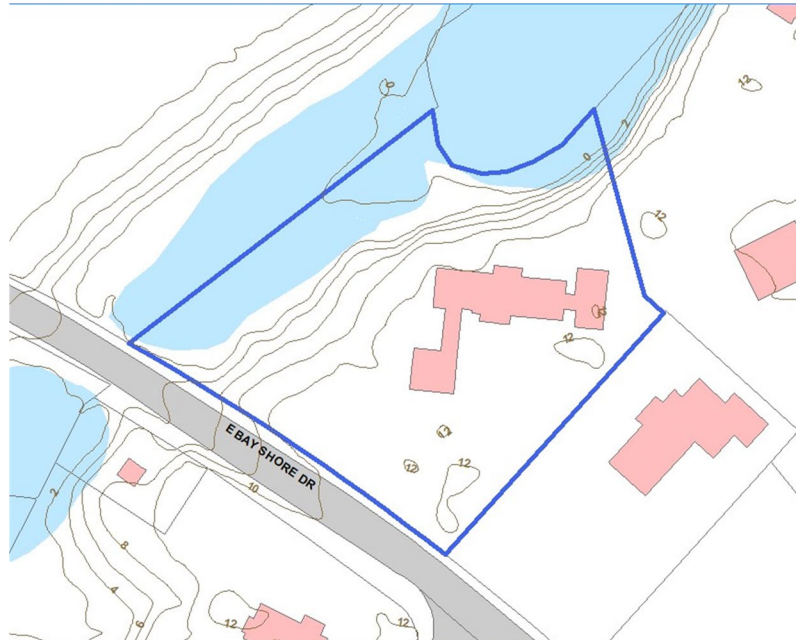
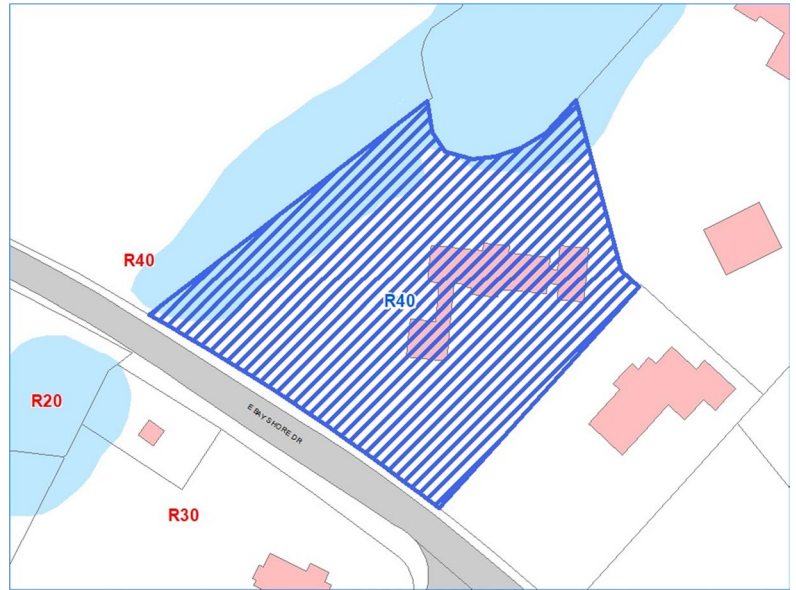
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Permeable paver sports court (28 feet x 31 feet) with associated retaining wall

CBPA Ordinance Variance History

May 24, 1993, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a retaining wall with fill material with the following conditions:

1. *Tree mitigation shall be on a 3 to 1 basis as outlined in the Chesapeake Bay Preservation Area Ordinance.*
2. *No heavy equipment shall be used to complete the proposed project. All work is to be performed manually.*
3. *The area to be filled must be sodded immediately upon completion of backfill.*

The May 24, 1993 Board granted variance has been acted upon and the associated improvements constructed.

August 26, 1996, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a retaining wall with fill material with the following conditions:

1. *Double erosion and sediment control measures must be installed along the bulkhead capboard and maintained until vegetative cover is established.*
2. *Sod shall be installed along the backfill slope immediately following installation of the backfill material.*
3. *A site plan must be submitted to the DSC for review and approval prior to the issuance of a permit.*

The August 26, 1993 Board granted variance has been acted upon and the associated improvements constructed.

February 25, 2019, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of an addition to the detached garage, and a swimming pool with patio area and associated retaining wall with the following conditions:

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

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

5. *Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.*
6. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
8. *Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.*
9. *A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
10. *Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.*
11. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
12. *Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 1,073 square feet x 200 percent = 2,146 square feet. Of the 2,146 square feet of buffer restoration, approximately 900 square feet of buffer restoration shall be installed seaward of the proposed retaining wall.*

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 to the greatest extent practicable. 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.

13. *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
14. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$245.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
15. *Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.*
16. *This variance and associated conditions are in addition to the conditions of the Board variance granted May 24, 1993.*
17. *The conditions and approval associated with this variance are based on the exhibit plan dated December 21, 2018, prepared by WPL, signed January 4, 2019 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*

The February 25, 2019 Board granted variance improvements have not been constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 5
- Number of dead, diseased, or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: As shown on the submitted demolition plan, the trees being requested for removal are within the footprint of the location of the proposed improvements. Staff is of the opinion tree impacts will be unavoidable regardless of the location of the proposed improvements on this portion of the lot.

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant is proposing to construct a permeable paver sports court with associated low gravity retaining wall within the upper reach of the 50-foot landward buffer portion of the Resource Protection Area (RPA). As specified on the Chesapeake Bay Preservation Area (CBPA) Exhibit provided for this variance request, the sport court will be constructed out of a permeable paver material as merit towards providing water quality benefits by filtering contaminants, pollutants, and sediments and reduce runoff volume from its surface. The area near the sport court consists of small saplings and understory vegetation. While Staff understands the desire to locate the sports court in the proposed location on the property, Staff is of the opinion the proposed improvements could be located out of the 100-foot RPA buffer and closer to, if not a component of, the existing gravel driveway. Furthermore, while relocating the proposed improvements further out of the 100-foot RPA buffer would reduce impervious cover impacts, Staff understands additional impacts to the existing canopy cover and mature vegetation within the variable width buffer portion on the lot may be required as more vegetation is present landward of desired location of the proposed improvements. To address Staff's concern the applicant's agent has provided a revised Chesapeake Bay Preservation Area (CBPA) Exhibit, page 108 of this Staff report, that shifts the sport court further landward in the RPA buffer.

The applicant submits the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the findings of the CBPA Ordinance for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the property was platted in 1953 prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff routinely works with property owners on requests such as driveway expansions and parking areas within portions of the RPA. Staff is of the opinion a permeable paver sport court for recreational use by family members is not an untypical request 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 designed the improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts and we are using a permeable sports court system to lessen the impervious impact to stormwater in the RPA."* Staff is of the opinion the proposed request is the minimum necessary to afford relief subject to the recommended conditions in the 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 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 treatment from the new improvements."* Staff is of the opinion, coupled with the use of materials, the required buffer restoration, and the recommended conditions, the request will not be of substantial detriment to water quality.
- 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 creek"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds as

conditioned, additional space within the 50-foot landward buffer would be available for the required buffer restoration and bioretention planting beds.

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

Recommended Conditions

- 1) The proposed sport court shall be relocated landward of the 100-foot Resource Protection Area (RPA) buffer.
- 2) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 3) 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.
- 4) 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.**
- 5) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 6) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 7) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 8) 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.
- 9) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 10) 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.
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- 12) The conditions and approval associated with this variance are based on the exhibit plan dated December 21, 2018, prepared by WPL, signed January 11, 2024 by Eric A. Garner. The conditions and approval associated with

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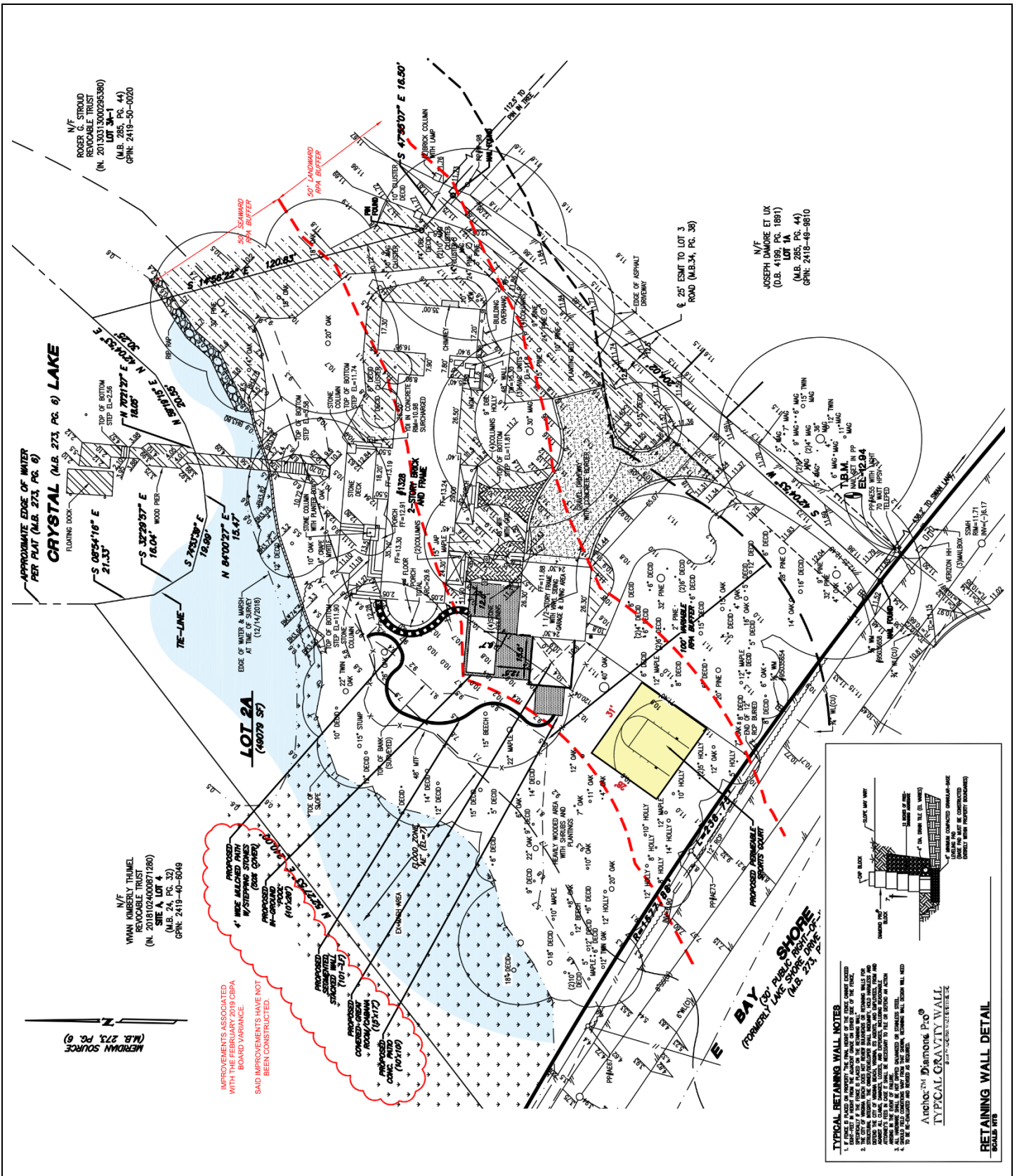
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Site Aerial



CBPA Exhibit – Proposed Improvements



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Applicant Disclosure

Applicant Name Mason S Kalfus & Susan K Burgess

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**

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- 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.

TowneBank 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.

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

Print Name and Title

Date

1/4/24

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	