

Chesapeake Bay Preservation Area Staff Report

March 25, 2024



CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

A Public Hearing of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will be held on **Monday, March 25, 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.



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.

New Business Agenda Items	
<p>1. Caroline Rawls & John Perry [Applicants & Property Owners]</p> <p>2512 Queens Elm Place GPIN 1499-84-2162 City Council District: District 8 Accela Record: 2024-CBPA-00012</p> <p>Variance Request – Encroachment into the RPA to construct a deck expansion.</p> <p>Staff Planner – Cole Fisher Staff Report – page 7</p>	
<p>2. Lisa W. Rudiger [Applicant & Property Owner]</p> <p>409 W. Chickasaw Road GPIN 1457-70-8392 City Council District: District 1 Accela Record: 2024-CBPA-00002</p> <p>Variance Request – Encroachment into the RPA to construct a deck expansion and building addition.</p> <p>Staff Planner – Cole Fisher Staff Report – page 17</p>	

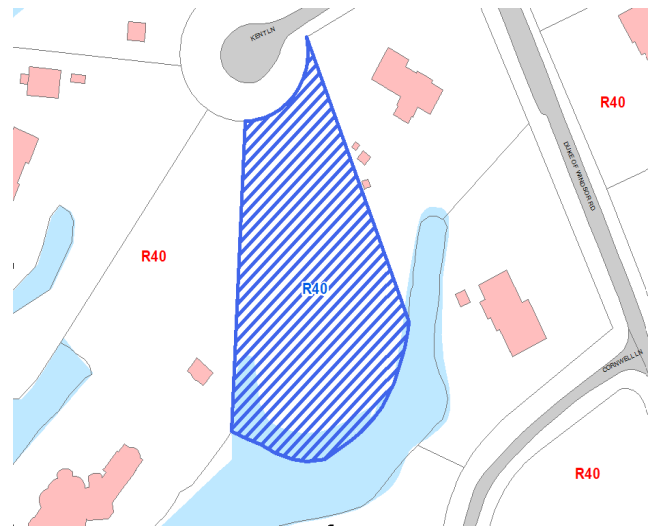
New Business Agenda Items (CONTINUED)

3. Terry Exempt Trust & Terry Cherry
[Applicants & Property Owners]

1205 Kent Lane
GPIN 2408-97-5488
City Council District: District 6
Accela Record: 2024-CBPA-00003

Variance Request – Encroachment into the RPA to construct a two-story single-family residence with associated swimming pool, concrete patio, wood deck, and pool house.

Staff Planner – Cole Fisher
Staff Report – page 27

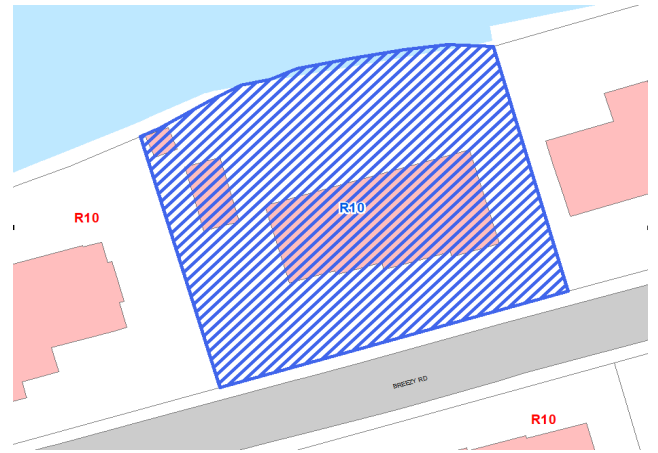


4. Bryan Matthew Killian Trust
[Applicant & Property Owner]

2904 Breezy Road
GPIN 1499-38-0667
City Council District: District 8
Accela Record: 2024-CBPA-00004

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

Staff Planner – Cole Fisher
Staff Report – page 39

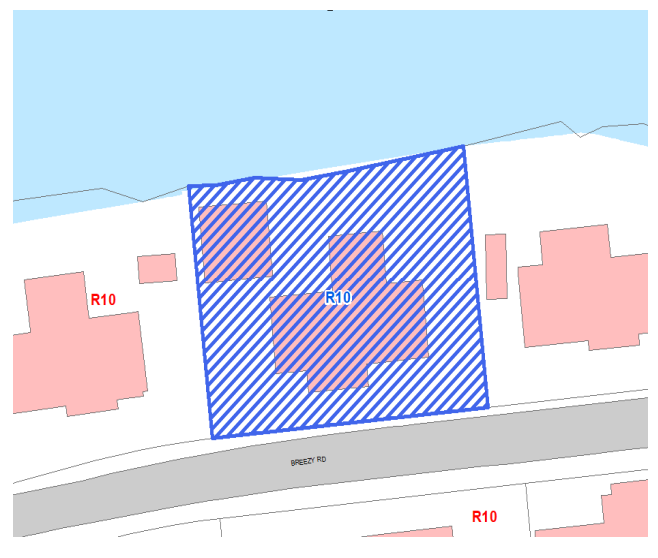


5. Carl & Denise Gideon
[Applicants & Property Owners]

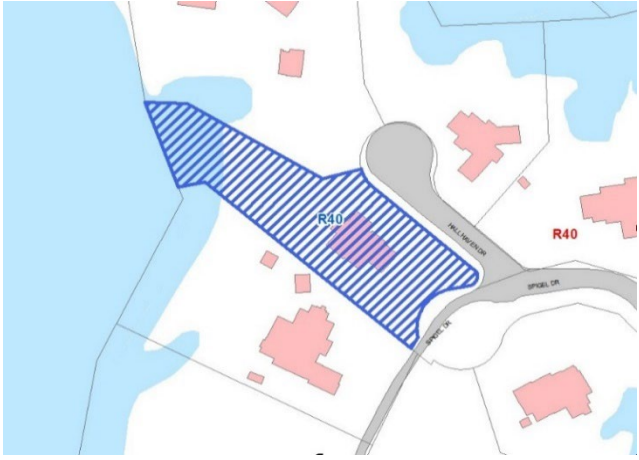
2944 Breezy Road
GPIN 1499-18-7380
City Council District: District 8
Accela Record: 2024-CBPA-00005

Variance Request – Encroachment into the RPA to construct a building addition, concrete driveway, and swimming pool with patio surround.

Staff Planner – Cole Fisher
Staff Report – page 55



New Business Agenda Items (CONTINUED)	
<p>6. Donald & Patricia Carrier [Applicants & Property Owners]</p> <p>1228 Carlson Lane GPIN 1488-67-8299 City Council District: District 8 Accela Record: 2024-CBPA-00006</p> <p>Variance Request – Encroachment into the RPA to construct a swimming pool with associated patio surround, outdoor kitchen area, and walkways.</p> <p>Staff Planner – Cole Fisher Staff Report – page 69</p>	
<p>7. Barbara Brebrick [Applicant & Property Owner]</p> <p>821 22nd Street GPIN 2417-78-4305 City Council District: District 6 Accela Record: 2024-CBPA-00009</p> <p>Variance Request – Encroachment into the RPA to construct a deck expansion.</p> <p>Staff Planner – Cole Fisher Staff Report – page 81</p>	
<p>8. Nilkanth & Palpana Patel [Applicants & Property Owners]</p> <p>909 Hall Haven Drive GPIN 1498-42-6983 City Council District: District 8 Accela Record: 2022-CBPV-00004</p> <p>Variance Request – Encroachment into the RPA for an after-the-fact outdoor kitchen area and walkway.</p> <p>Staff Planner – Cole Fisher Staff Report – page 89</p>	

Restoration Hearing Agenda Items	
<p>9. Nilkanth & Palpana Patel [Applicants & Property Owners]</p> <p>909 Hall Haven Drive GPIN 1498-42-6983 City Council District: District 8 Accela Record: 2022-CBPV-00004</p> <p>Statement of Noncompliance – Encroachment into the RPA for unauthorized pavers/patio area.</p> <p>Staff Planner – Cole Fisher Staff Report – page 105</p>	 <p>The map displays a residential area with several lots. A central lot, identified as 909 Hall Haven Drive, is highlighted with blue diagonal hatching. This lot is situated along a shoreline, with a water body to its left. Other lots are shown in light red. The map also indicates zoning designations, with 'R40' labels visible on several lots. Street names 'HALL HAVEN DR' and 'SPICE DR' are also labeled.</p>



Applicant & Property Owner: **Caroline Rawls & John Perry**
 Address: **2512 Queens Elm Place**
 Public Hearing: **March 25, 2024**
 City Council District: **District 8**

Agenda Item

1

Variance Request

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

Applicant’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 149, Page 6
 Recorded 05/26/1981

GPIN

1499-84-2162

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

920 square feet

Area of New Development in RPA

210 square feet

Location of Proposed Impervious Cover

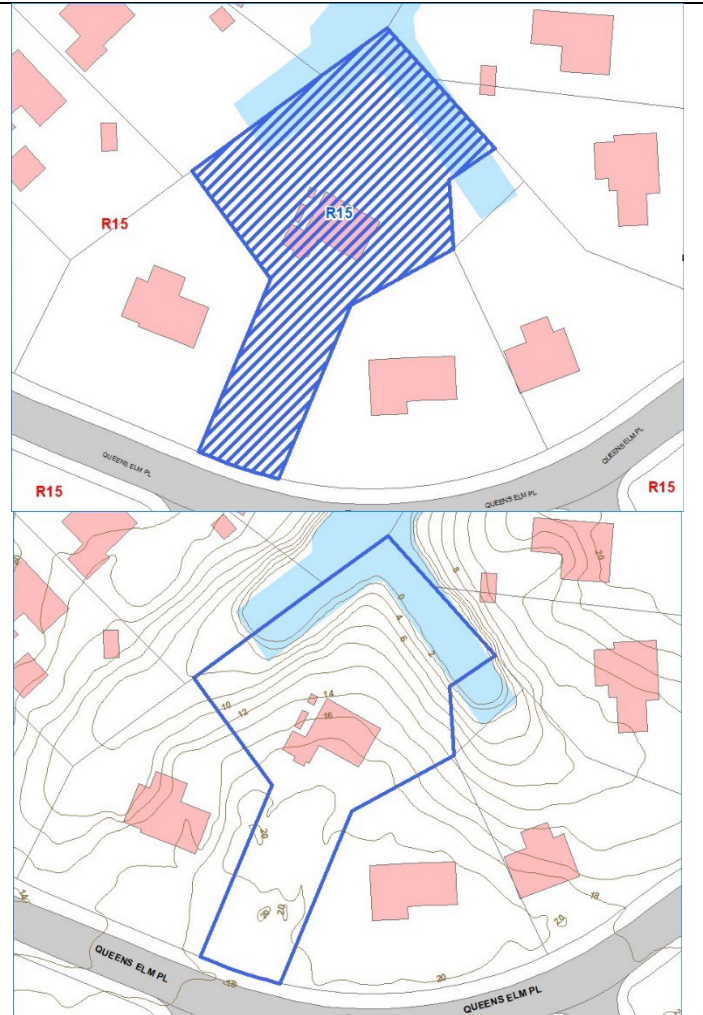
- 50-foot Seaward Buffer
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted.



Summary of Proposal

Demolition Details

- Existing wood deck, tornado damaged property.

Construction Details

- Redeveloped existing wood deck 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 X and AE, Base Flood Elevation (BFE): 8

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Moderately to sparsely wooded lot

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

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 subject lot was impacted by the 2023 tornado that touched down in the Great Neck corridor of Virginia Beach. During the cleanup and repair process from sustained damages to the existing residence, the existing wood deck had to be rebuilt due to lift that occurred to the structure during the event. When the existing deck was rebuilt, a slight expansion occurred along the western side of the structure within the 100-foot Resource Protection Area (RPA) buffer. As such, the property owner has applied for a variance request to the Chesapeake Bay Preservation Area (CBPA) Ordinance for an after-the-fact approval for said expansion.

The rear yard of the lot has a moderate to steep slope with highly erodible soils present. As shown in the site photographs, the applicant placed underdeck treatment of sand and gravel under the entire wood deck to aid in rainwater infiltration and erosion prevention. The 100-foot RPA buffer encroaches into the entirety of the lot with the project falling within the 50-foot seaward buffer. Staff is of the opinion the request is minimal and has not been of substantial detriment to water quality of the Chesapeake Bay.

To further support the variance request as submitted, the applicant offers the following comments relative to the findings of the CBPA Ordinance specific to this variance request 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 neighborhood was developed prior to the Bay Act and all waterfront property owners are equally impacted when utilizing the RPA."* Staff concurs with the statement provided by the applicant and offers that the subject lot is at the headwater of a manmade canal that manages development within the RPA through the performance standards of the CBPA Ordinance. These performance standards are applied to all properties within the RPA and have been applied to other owners of property in the RPA that have been granted similar encroachments.
- 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 proposed deck is mainly redevelopment with only a small portion of expansion."* Staff concurs with the applicant's statement and offers that the expansion of the wood deck is not an egregious request given the applicant's effort to work with the existing topography of the lot and constructed the deck in a manner that abates erosion of the existing bank with a stone underdeck treatment where shading prevents the growth of vegetation.
- 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 *"a deck on the rear of the house has no negative impact to the public, neighborhood, or water quality."* Staff concurs and offers that underdeck treatment and buffer restoration provides merit towards water quality benefits with this request.
- 5) *"All non-biodegradable debris will be collected and disposed of. Filter fabric, sand backfill, and gravel treatment will mitigate any runoff from the deck"* 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 2 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 request are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
- 2) Buffer restoration shall be installed for the proposed new impervious cover within the RPA as follows.
 - **1 canopy tree and 3 understory trees**

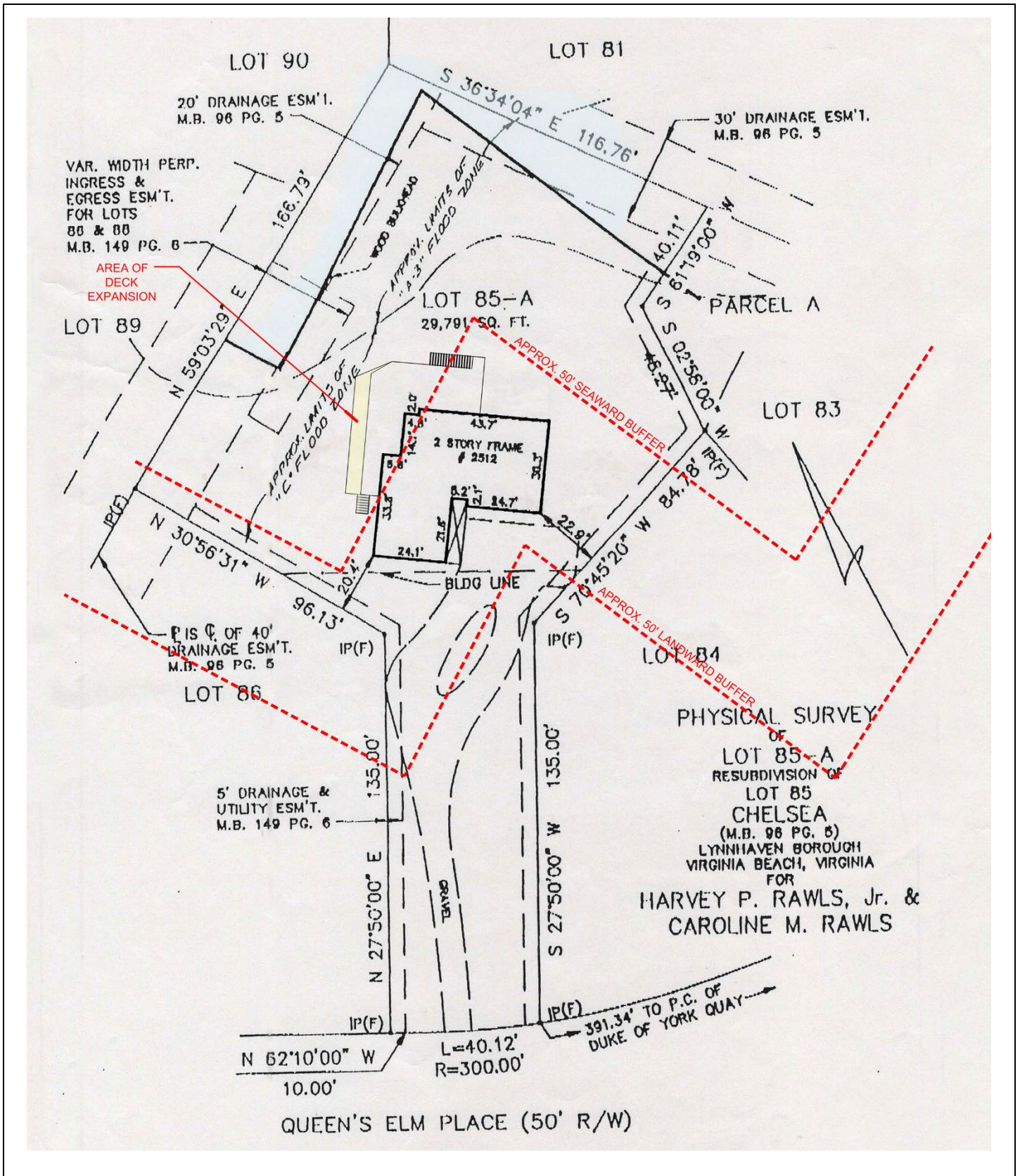
Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said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

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

Site Aerial



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Caroline Michael Rawls and John Edward Perry

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-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.

Current mortgage with Wells Fargo

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

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

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

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

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

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

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

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

Disclosure Statement

Disclosure Statement



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

<p><u>Caroline M Rawls</u> Applicant Signature</p> <p><u>Caroline M Rawls</u> Print Name and Title</p> <p><u>3/6/24</u> Date</p>	<p><u>John E Perry</u> Applicant Signature</p> <p><u>John E Perry</u> Print Name and Title</p> <p><u>3/2/2024</u> Date</p>
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- Is the applicant also the owner of the subject property? **Yes** **No**
- If **yes**, you do not need to fill out the owner disclosure statement.

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

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

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Applicant & Property Owner: **Lisa W. Rudiger**
 Address: **409 W. Chickasaw Road**
 Public Hearing: **March 25, 2024**
 City Council District: **District 1**

Agenda Item

2

Variance Request

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

Applicant’s Agent

Armond Reich

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 60, Page 49
 Recorded 12/02/1953

GPIN

1457-70-8392

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

505 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

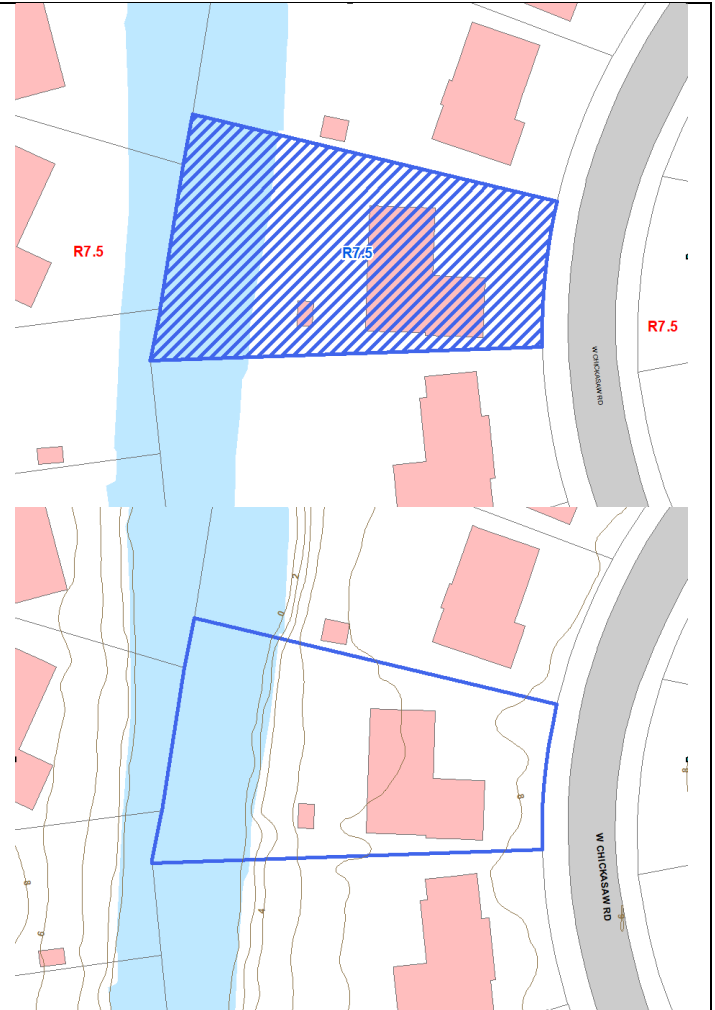
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Demolish existing wood deck

Construction Details

- Wood deck expansion and building addition

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)

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

Chapanoke Series (deep, poorly drained soils)

Shoreline

Shoreline is stabilized by wood bulkhead.

Riparian Buffer

Sparsely wooded lot

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

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 demolish, reconstruct, and slightly expand a wood deck off the rear of the residence and construct a 324 square foot building addition off the northwest portion of the residence. The rear yard of the lot has a gentle slope with a loamy soil type that is moderately to well drained. Although the proposed improvements are primarily located within the 50-foot seaward buffer of the RPA, much of the request is for an addition to the primary structure on a lot that predated the city's adoption of the Chesapeake Bay Preservation Area (CBPA) Ordinance. Staff is of the opinion that a hardship exists given the environmental constraints of the lot and policy application of 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 *"other additions of the size and larger have been approved in close proximity to this request."* Staff is of the opinion that should the CBPA Board grant the variance request, a special privilege will not be afforded to the applicant given the process that property owners follow relative to the findings of the CBPA Ordinance.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the home was built in 1969 prior to the CBPA existing."* Staff is of the opinion that the proposed improvements are modest, the entire lot falls within the 100-foot RPA buffer and the lot was platted prior to the city's adoption of the CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because *"the size of the addition is minimal."* Staff offers that the request is not egregious and over half the lot falls within the 50-foot seaward buffer, therefore challenging the redevelopment of this lot for the applicant to avoid seeking a variance to the CBPA Ordinance for encroaching into the 100- Resource Protection Area (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 a simple building addition and deck replacement. It's in as much harmony as possible, not injurious to any aspect of the neighborhood and not detrimental to the public welfare in any way."* Given the conditioned underdeck treatment and required buffer restoration, Staff is of the opinion the variance request will not be of substantial detriment to water quality.
- 5) *"Buffer restoration will be planted seaward of the improvements"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds the required buffer restoration will benefit the sparsely vegetated lot and underdeck treatment will ensure no increase in nonpoint source pollution into the Elizabeth River tributary.

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: **505 square feet x 200 percent = 1,010 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, 3 understory trees, 6 large shrubs, and 9 small shrubs.**

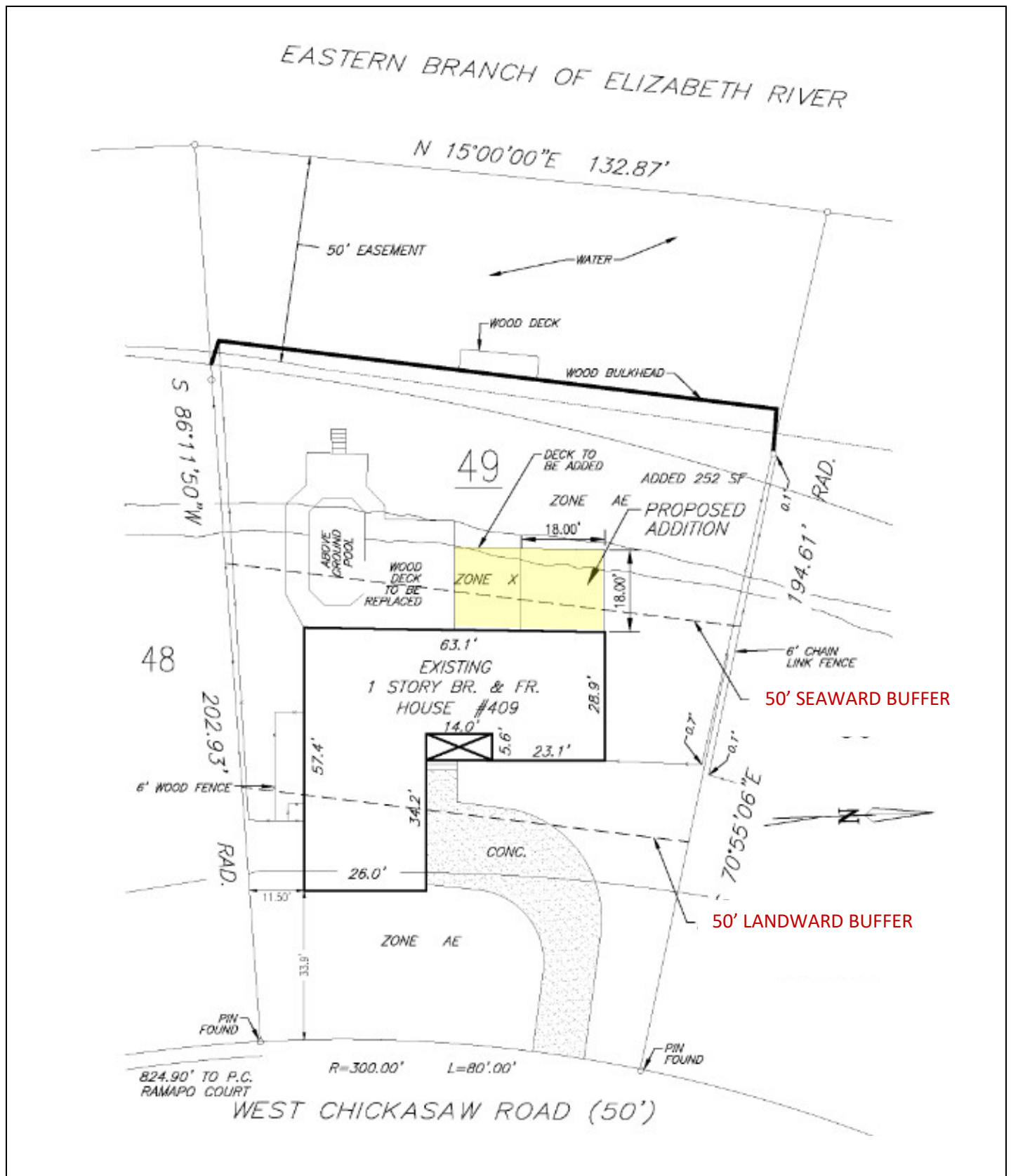
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
5. No perimeter fill is authorized outboard or seaward 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.

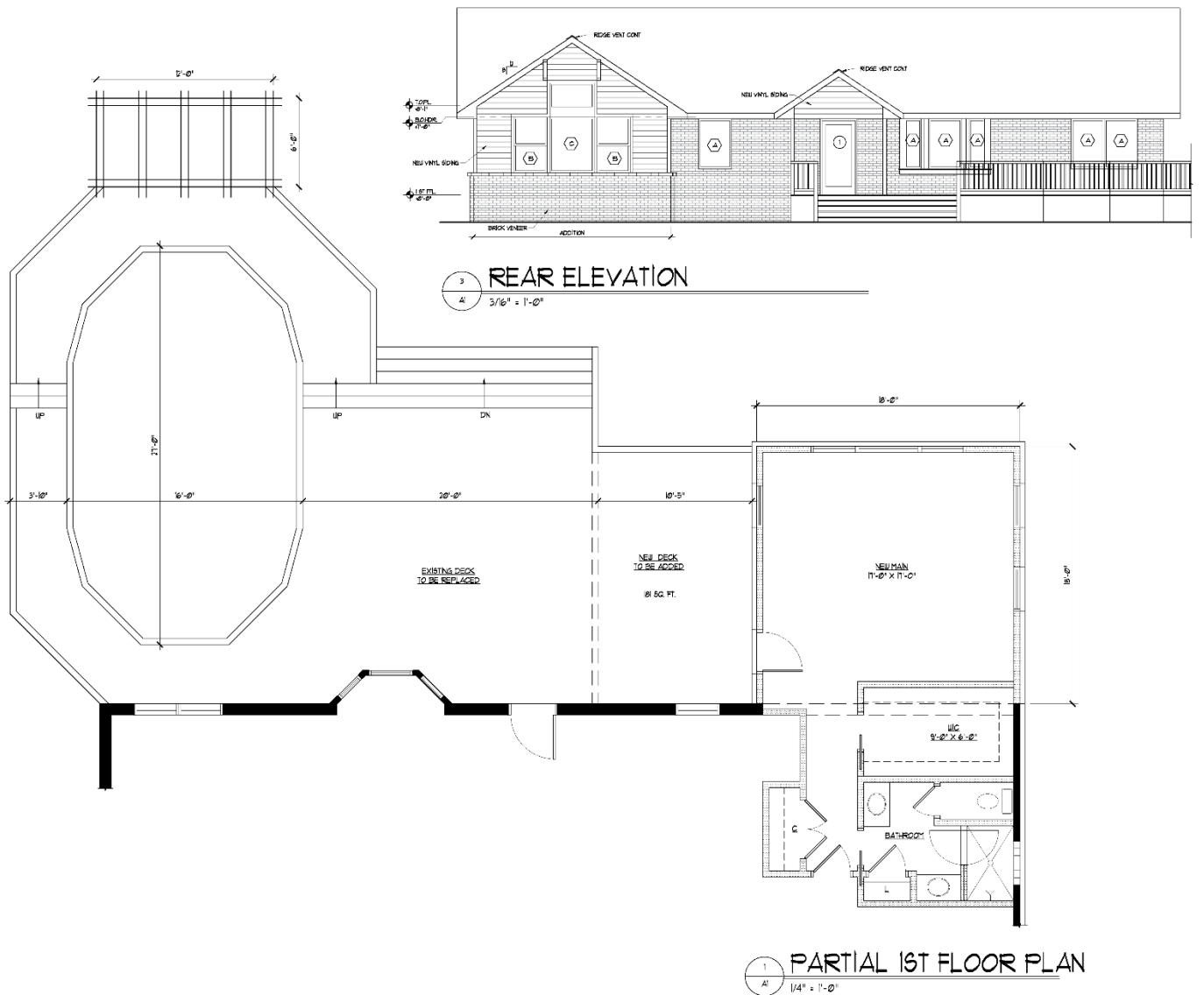
Site Aerial



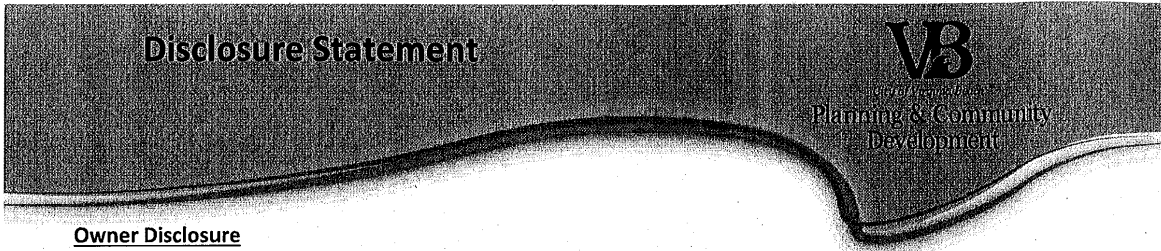
Proposed Improvements



CBPA Exhibit – Proposed Improvements, Architectural Plan



Disclosure Statement



Owner Disclosure

Owner Name Lisa Rudiger

Applicant Name Lisa Rudiger

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

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

- If yes, list the businesses that have a parent-sub subsidiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

Known Interest by Public Official or Employee

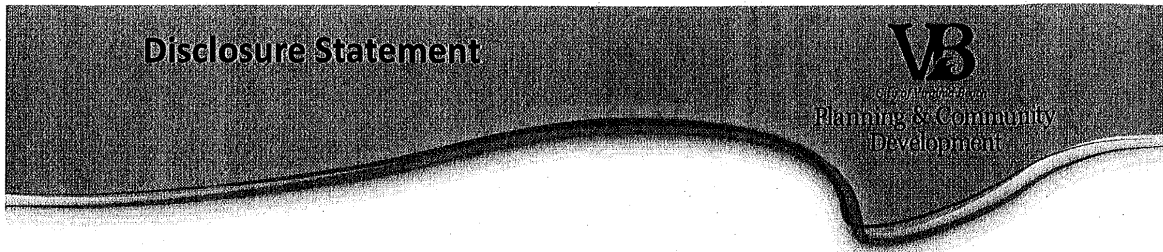
Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes No

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

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

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

Disclosure Statement



Owner Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

reich design associates, plc, Armond Reich, 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.
-

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

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.

Lisa Rudiger by Thomas Reich

Owner Signature

Lisa Rudiger, Owner

Print Name and Title

1/17/24

Date



Applicant & Property Owner: Terry Exempt Trust & Terry Cherry
 Address: 1205 Kent Lane
 Public Hearing: March 25, 2024
 City Council District: District 6

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a two-story single-family residence with associated swimming pool, concrete patio, wood deck, and pool house

Applicant's Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 36, Page 26
 Recorded 05/11/1964

GPIN

2408-97-5488

SITE AREA

47,529 square feet or 1.09 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

47,529 square feet or 1.09 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,304 square feet or 26 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

12,272 square feet

Location of Proposed Impervious Cover

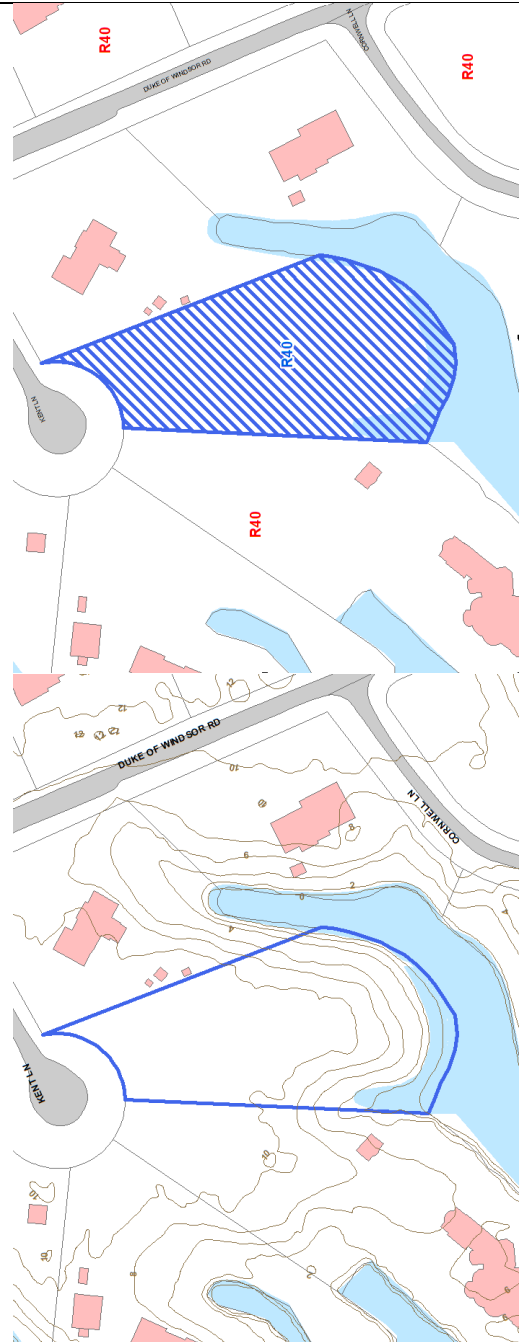
- 50-foot Landward Buffer
- 100-foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Two-story single-family residence with attached garage and permeable paver driveway
- Concrete patio and wood deck off rear of residence
- Swimming pool with associated pool house and pool surround

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is stabilized by a rip rap revetment.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 14
- Number of dead, diseased, and/or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Seven of the 14 trees proposed for removal fall within the 50-foot landward buffer of the RPA and within the footprint of the proposed improvements with the remaining within the variable width buffer and RMA. No trees within the 50-foot seaward buffer are proposed for removal.

Stormwater Management Methodology

Grass channels, soil amendments, permeable pavers, infiltration beds, and bioretention beds.

Evaluation and Recommendation

The applicant desires to develop the vacant lot with a new two-story residence with associated accessory structures including a swimming pool, patio area, wood deck, and pool house. Much of the lot is relatively flat with a moderate slope along the delineated top of bank feature starting at an elevation of approximately 10 feet above sea level and descending approximately 8 feet in elevation to approximately 2 feet above sea level at the top of the rip rap revetment. As shown on the submitted CBPA exhibit, portions of the proposed single-family residence and accessory structures off the rear of the residence encroach into the 50-foot landward buffer of the Resource Protection Area (RPA) transitioning

landward on the lot into the city's variable width buffer of the Chesapeake Bay watershed. Situating the proposed improvements at the front yard setback of the lot avoided encroachment over the top of bank feature and into the 50-foot seaward buffer on the lot other than to access the adjacent waterway via a 3-foot-wide pathway. Overall, the proposed impervious cover of the site is at 26 percent of the lot, above water and wetlands. Approximately 12,272 square feet of new development is located within the RPA of which 7,054 square feet is located within the city's Variable Width buffer and 5,218 square feet is located within the 50-foot landward buffer of the RPA. Given the new development on this lot, multiple best management practices are proposed as documented in the Stormwater Management Methodology section of this report, inclusive of a permeable paver driveway to treat stormwater runoff from new impervious cover.

As the project proposes no encroachment within the 50-foot seaward buffer on the lot other than a pathway to access the adjacent waterway and integrates multiple best management practices to further enhance rainwater infiltration and stormwater management, in addition to the proposed buffer restoration measures, Staff is of the opinion the variance request is acceptable and will not be a substantial detriment to water quality subject to the recommended conditions in this staff report.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this request is for a new single-family dwelling and associated accessory structures on this vacant lot recorded in 1953 some 36 years prior to the adoption of the bay act. Numerous other properties in the immediate vicinity have appeared before the bay board for similar improvements so granting this request will not confer any special privilege on the current owners."* Staff concurs the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and offers the encroachment request is similar to existing improvements on adjacent lots.
- 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 located the new dwelling forward to meet the minimum front yard! setback for the current zoning district, we have made sure there is no encroachment into the 50-foot seaward buffer and limited the total lot coverage well below the 30% threshold usually accompanied with these requests."* Staff is of the opinion that the variance request is the minimum necessary to afford relief given the location of the proposed improvements on the vacant lot and the best management practices and buffer restoration proposed.
- 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 bay act is water quality while still protecting economic development, the new dwelling will include all of the required storm water treatment facilities infiltration trenches, soil amendments as well as extensive buffer restoration to enhance the existing trees and bushes as well as off-site treatment via the oyster fund program all to ensure water quality is improved post construction."* Staff acknowledges the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of bioretention planting beds, permeable paver systems, soil amendments, and grass channels.

- 5) *“The first thing to be installed and last to be removed is the E & S measures since most erosion occurs while construction is on-going, single point access stockpile areas on flat ground etc. all denuded areas to be revegetated and post construction storm water treatment facilities installed and buffer restoration installed in areas CURRENTLY devoted to turf in the seaward buffer all to improve water quality”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

Given the above comments, Staff recommends the following **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.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **5,218 square feet x 200 percent = 10,436 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **13 canopy trees, 13 understory trees, 52 large shrubs, and 78 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall 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 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.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
- 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) The proposed driveway expansion/parking pad area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 14) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 15) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,195.79 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated January 22, 2024, prepared by Gallup Surveyors & Engineers, signed January 22, 2024, 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.

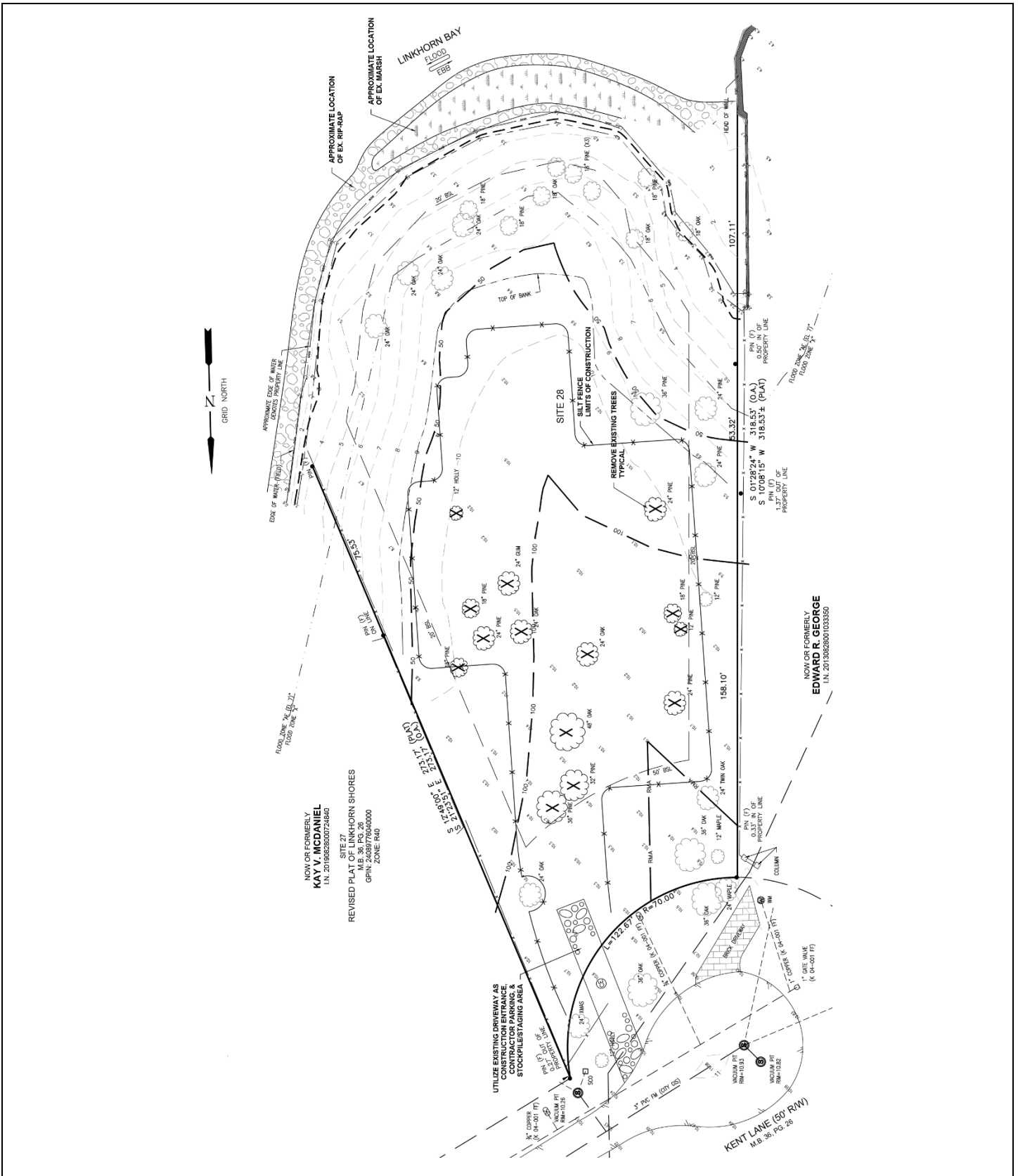
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*****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.

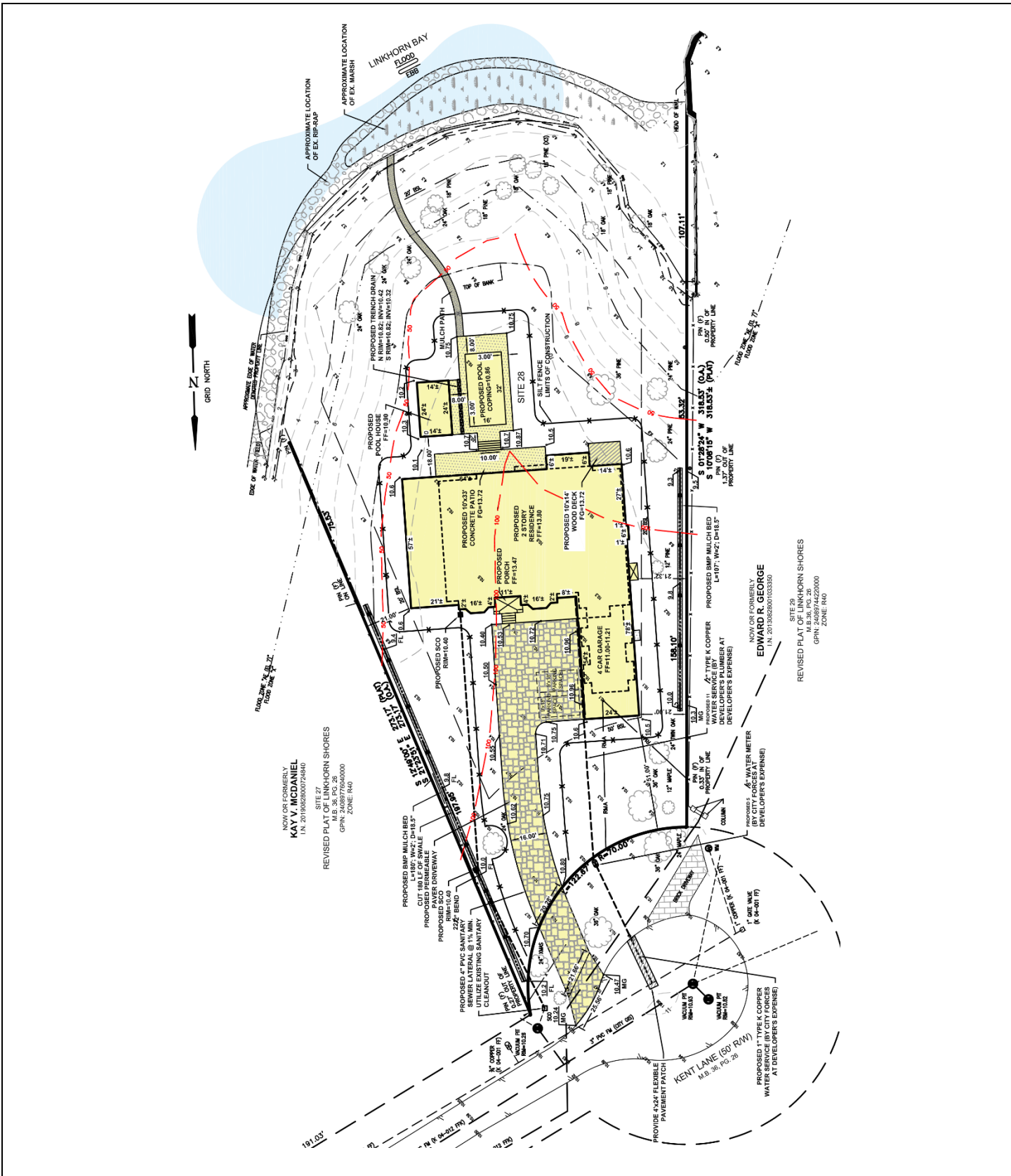
Site Aerial



CBPA Exhibit – Demolition Plan



CBPA Exhibit – Proposed Improvements



NOW OR FORMERLY
KENT LANE
 I.N. 2013062900103350
 REVISOR PLAT OF LINKHORN SHORES
 M.B. 38, PG. 28
 G.P.N. 24089744220000
 ZONE R40

NOW OR FORMERLY
EDWARD R. GEORGE
 I.N. 2013062900103350
 REVISOR PLAT OF LINKHORN SHORES
 M.B. 38, PG. 28
 G.P.N. 24089744220000
 ZONE R40

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 TERRY FLETCHER CHERRY

Does the applicant have a representative? Yes No

• If yes, list the name of the representative.
Billy GARRINGTON GPC

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

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

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

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

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

Disclosure Statement

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.

PATTI FRANKENFIELD

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.

BRIAN DEIBEL

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.

Dale Butler, 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.

Terry Fletcher Cherry
Applicant Signature

TERRY FLETCHER CHERRY
Print Name and Title

JANUARY 29, 2024
Date

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

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

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

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



Applicant & Property Owner: **Bryan Matthew Killian Trust**
 Address: **2904 Breezy Road**
 Public Hearing: **March 25, 2024**
 City Council District: **District 8**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a pavilion with associated walkway.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1457-30-3208

SITE AREA

12,688 square feet or 0.291 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

12,439 square feet or 0.286 acres

EXISTING IMPERVIOUS COVER OF SITE

6,179 square feet or 49.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,474 square feet or 52 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

295 square feet

Location of Proposed Impervious Cover

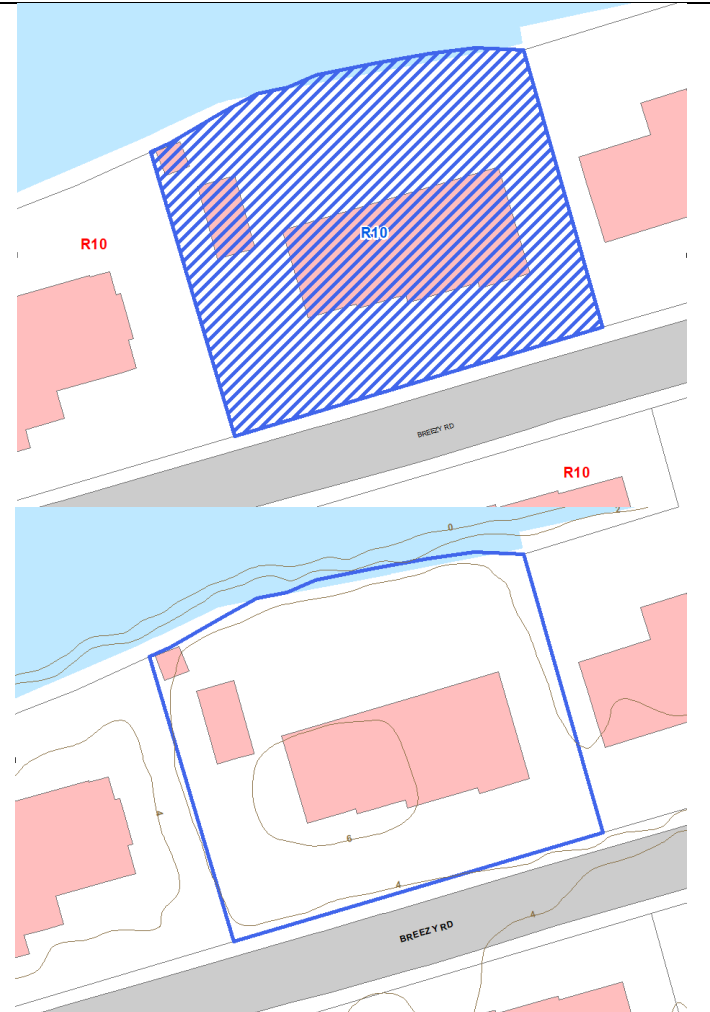
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Deny as submitted.



Summary of Proposal

Construction Details

- 235 square foot pavilion with associated 60 square foot walkway

CBPA Ordinance Variance History

May 24, 2012, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a two-story residence with associated accessory structures with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *Wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 10 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline (to the greatest extent practicable) of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*
6. *Construction limits shall lie a maximum of 10' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
8. *The pool shape, size, and location shall be as shown on the submitted plan.*
9. *The pool shall be constructed prior to or concurrent with the residence.*
10. *Under deck treatment of sand and gravel shall be installed.*
11. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized (trees, landscaping, and mulched organic surfaces) areas, planting beds, and turf zones.*
12. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*
13. *The conditions and approval associated with this variance are based on the site plan prepared by Gallup Surveyors and Engineers dated March 27, 2012, sealed by Bruce Gallup dated April 3, 2012.*

14. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
15. *A means of intercept (i.e., trench drain, concrete gutter pan, etc.) shall be provided within the driveway so that stormwater runoff from the proposed impervious cover is not conveyed to the public right-of-way.*
16. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$390.49 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 426 sq. ft., 12-inch-deep oyster shell plant within the Lynnhaven River Basin.*
17. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (1,702 sq. ft. x 200% = 3,404 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.*
18. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (3,586 sq. ft. x 100% = 3,586 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located within the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.*
19. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*

The May 24, 2012, Board granted variance has been acted upon and the associated improvements constructed.

October 26, 2015, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a two-story residence with associated accessory structures with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. 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" 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. Said silt fence shall be installed 10' from improvements.*
5. *Construction limits shall lie a maximum of 10' 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. *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.*
7. *A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.*
8. *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.*
9. *Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.*
10. *The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.*
11. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA: 295 sq. ft. x 200% = 590 sq. 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: 2 canopy trees, 4 understory, and 8 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" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50% deciduous and 50% 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.
12. *No perimeter fill is authorized outboard or seaward of the proposed improvements.*
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. *This variance and associated conditions are in addition to the conditions of the Board variance granted May 24, 2012.*
15. *The conditions and approval associated with this variance are based on the exhibit plan dated August 31, 2015, prepared by Gaddy Engineering Service, signed August 31, 2015, by Michael Gaddy. Deviation from said conditions during site plan review may require re-submittal for Board consideration.*

The October 26, 2015, Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Heavily to moderately wooded lot

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

Stormwater Management Methodology

Land disturbance associated with the proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required. Rainwater harvesting and bioretention beds were provided in the WQIA with the statement “some of these indicated measures will be used as necessary for stormwater management requirements.”

Evaluation and Recommendation

The 2012 Chesapeake Bay Preservation Area (CBPA) Variance for this lot was granted for the construction of a new single-family residence with associated swimming pool. At that time, it was the opinion of the CBPA Board “*that the approval granted is the maximum impervious cover the site can support.*” In 2015 the same property owner was granted a modification to the 2012 CBPA Variance moving the swimming pool from the side yard of the lot to the rear of the lot. Currently the property is under new ownership and the applicant desires to construct a 235 square foot pavilion with a 60 square foot walkway adjacent to the existing swimming pool within the 50-foot seaward buffer of the lot. Although the proposed new impervious cover is a minimal request with regard to new impervious cover, Staff’s opinion, the new overall impervious cover would exceed that which the CBPA Board stated was the maximum impervious cover that the lot could support in 2012. Staff acknowledges the lot is challenged by the presence of the Resource Protection Area (RPA) buffer of which the 50-foot seaward buffer encumbers approximately half of the lot, however, given the variance history of the lot and layout of the proposed improvements within the buffer area, Staff is off the opinion the variance request as submitted does not represent the minimum necessary to afford relief.

As a means to provide merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance the applicant's agent offers the following comments relative to the findings of the CBPA Ordinance specific to this variance request 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 property is similar to others in the neighborhood (breezy & buccaneer), some of which have been permitted similarly situated back yard improvements."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request based off, but not limited to, environmental conditions, extent of encroachment request, the intent of the CBPA Ordinance, and prior variance requests granted by the CBPA Board.
- 2) The applicant's agent offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant because *"the property was created before the CBPA act. This is a minimal addition in an area that is currently turf."* Staff concurs with the applicant's statement 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 property owner is requesting a reasonable amount of covered outdoor living space, around the deck area and the existing pool."* Staff acknowledge the property is challenged due to the dimensional depth of the lot, however, approximately 600 square feet of screened porch and wood deck area exist off the rear of the residence adjacent to the existing swimming pool. Therefore, staff is of the opinion that a smaller pavilion would be permitted to encroach into the side yard setback (no more than 150 square feet and offset 5 feet off the side yard setback) could be situated over the existing paver pool patio to provide a reasonable amount of covered outdoor living space.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this redevelopment project is similar to other properties in the neighborhood and will result in improved water quality since stormwater management is required."* Staff offers the recommended conditions below towards this variance request being in harmony with the purpose and intent of the CBPA Ordinance and conditions of the previous CBPA Variances granted for this lot.
- 5) The applicant's agent stated in the Water Quality Impact Assessment (WQIA) that to manage towards a no net increase in nonpoint source pollution load *"the stormwater runoff will be directed to and treated by BPs which will reduce pollution in the post-development stormwater runoff."* No best management practices (BMPs) have been shown on the CBPA exhibit. Rainwater harvesting and bioretention beds were provided in the WQIA with the statement *"some of these indicated measures will be used as necessary for stormwater management requirements."*

As indicated on page 39 of this Staff report, the recommendation for this variance request from Staff is to deny as submitted, however, should the CBPA Board desire to deliberate the variance request the following 9 reasonable and appropriate conditions are provided towards preventing the variance from causing or contributing to a degradation of water quality.

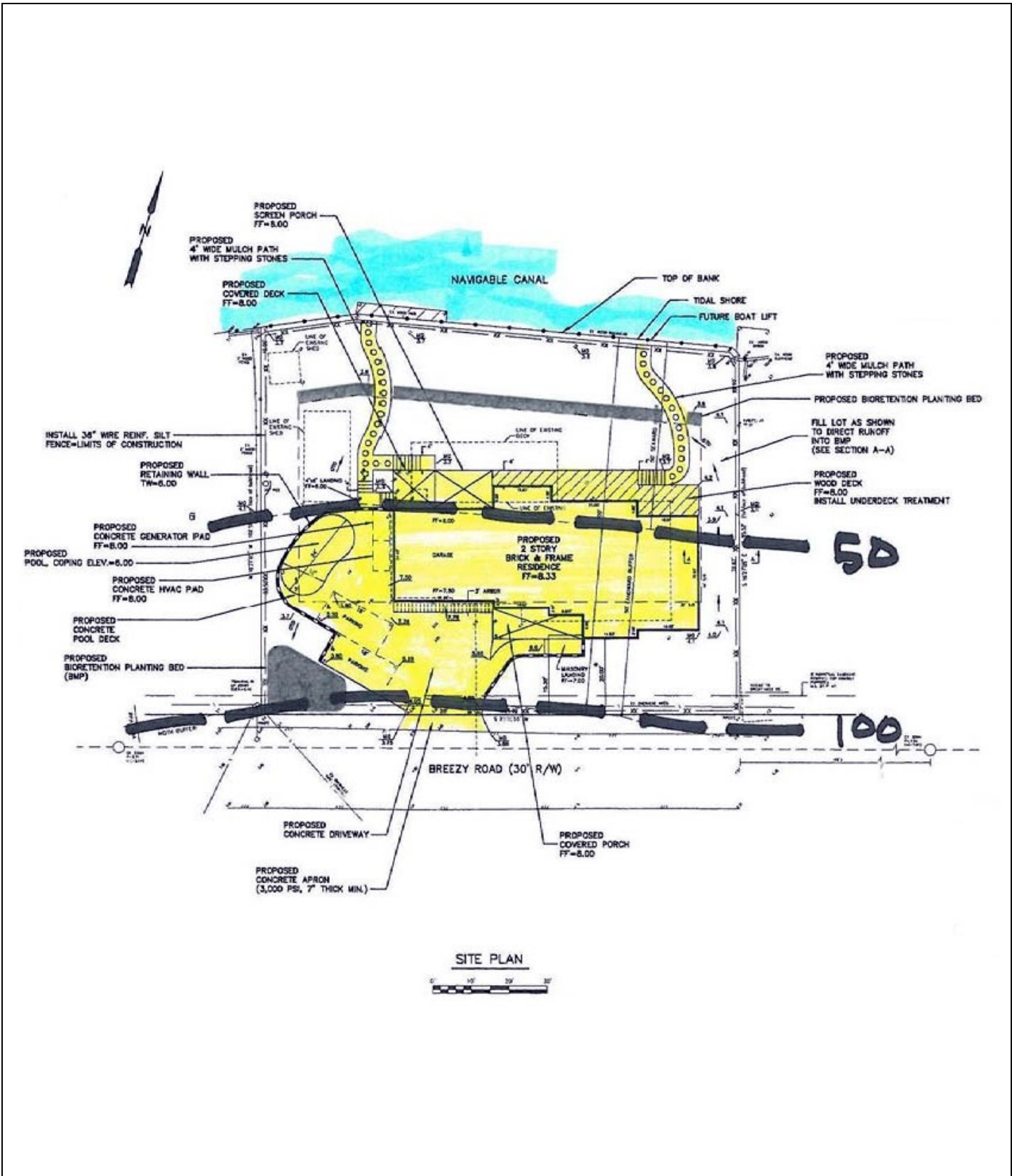
Recommended Conditions

- 1) The overall impervious cover of the site shall not be increased by more than 150 square feet, not to exceed 6,329 square feet of overall impervious cover on the lot.
 - 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
 - 3) 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.
 - 4) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
 - 5) Buffer restoration shall be installed for the proposed new impervious cover within the RPA as follows.
 - **1 canopy tree and 3 understory trees**
- Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
 - 7) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
 - 8) The conditions and approval associated with this variance are based on the exhibit plan dated January 22, 2024, prepared by WPL, dated February 1, 2024, signed February 1, 2024, by Brad Martin. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.
 - 9) This variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) Board variance granted May 24, 2012, and October 26, 2015.

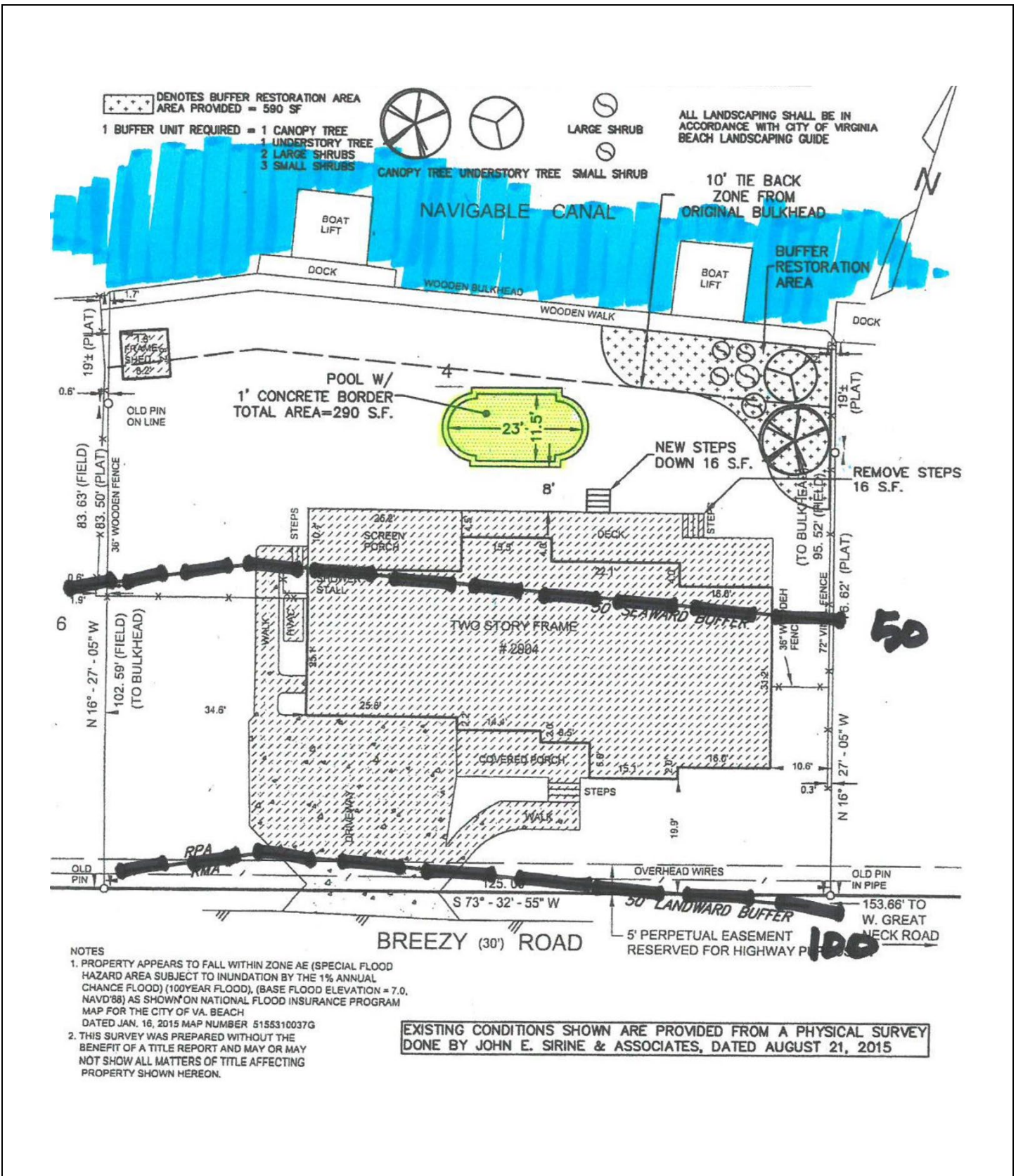
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

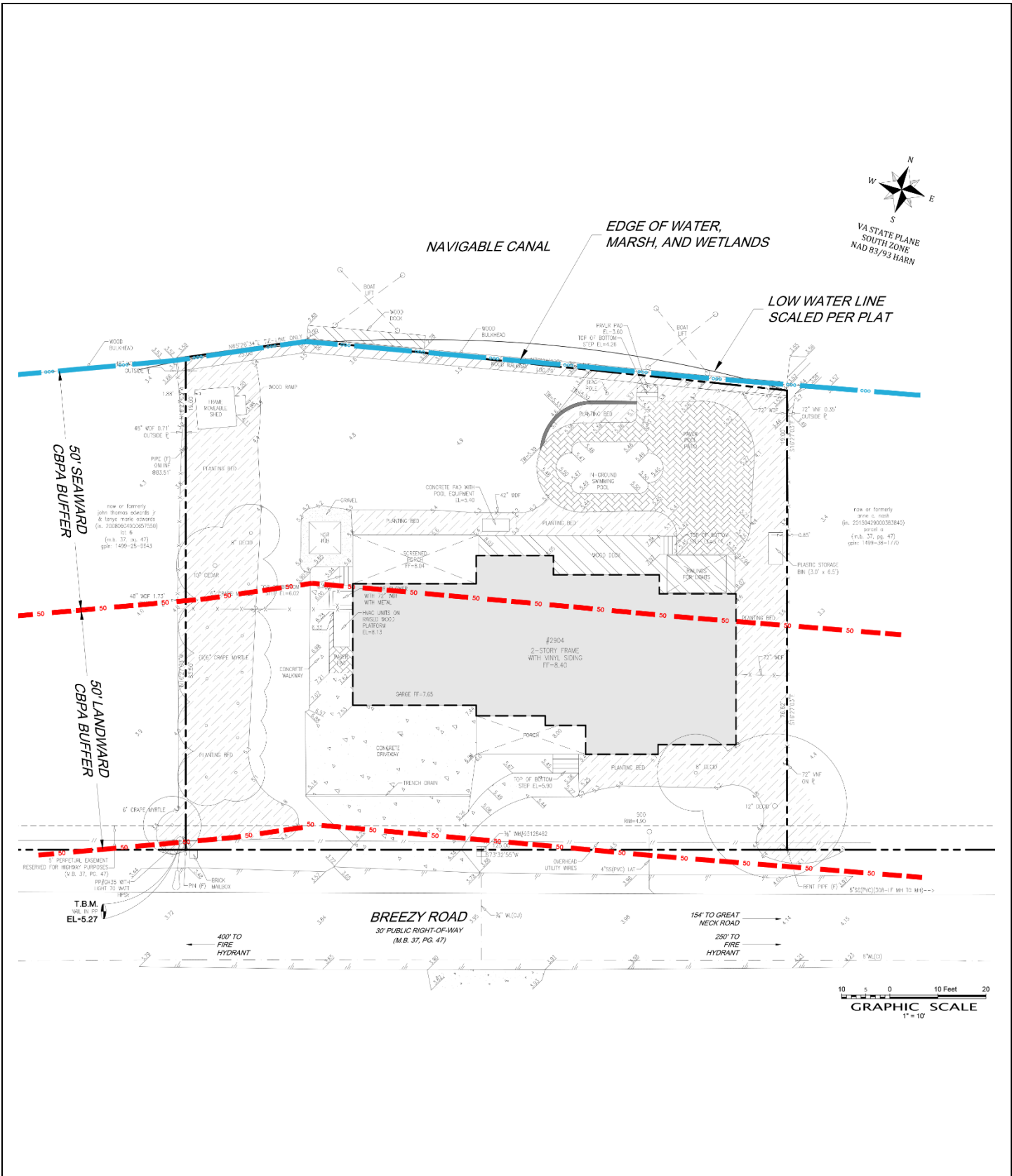




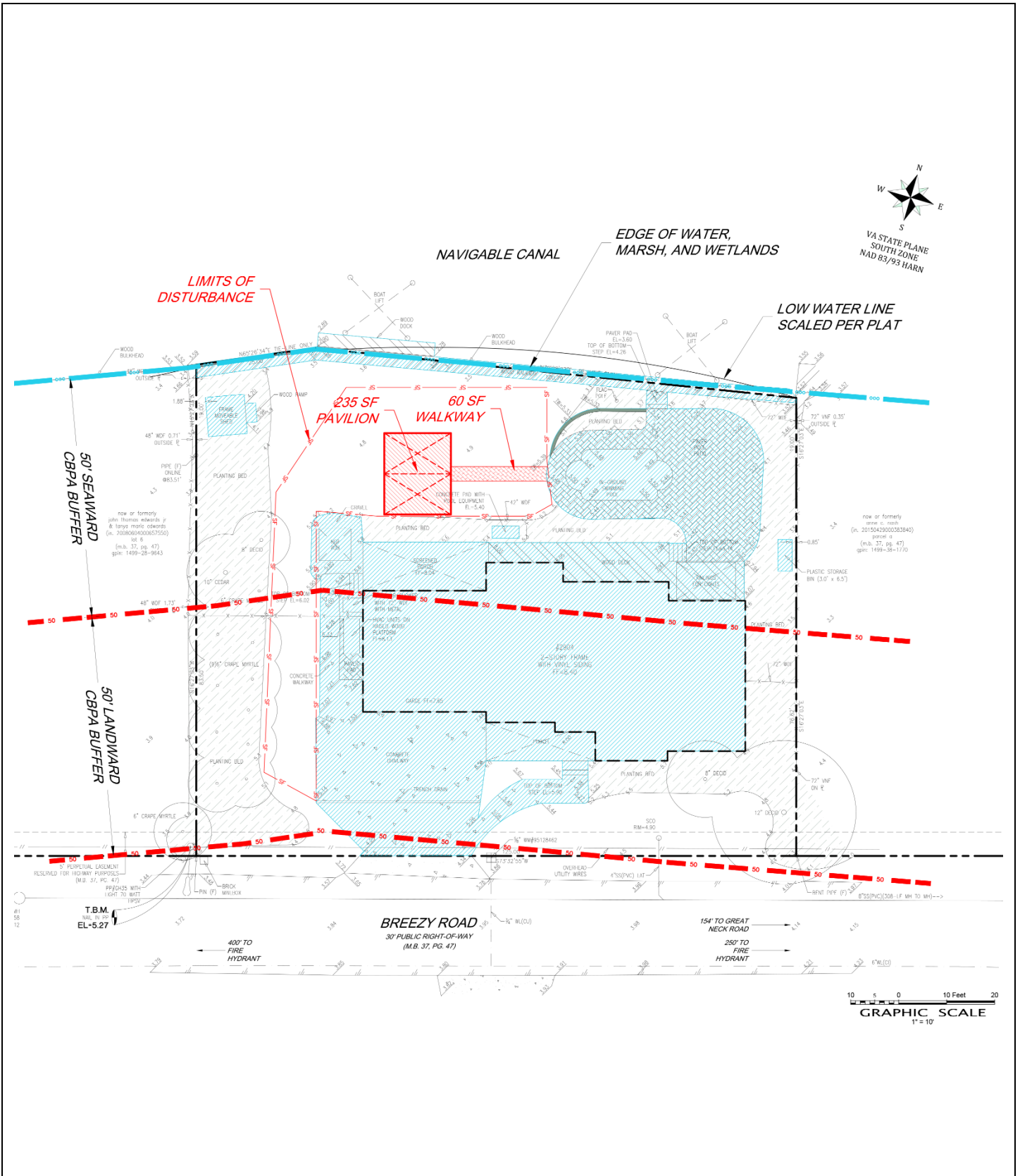
October 26, 2015, Chesapeake Bay Preservation Area (CBPA) Board Exhibit



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name BRYAN KILLIAN

Does the applicant have a representative? Yes No

- If yes, list the name of the representative.

BILLY GARRINGTON, GPC

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)

BRYAN MATTHEW KILLIAN (BRYAN MATTHEW KILLIAN TRUST)

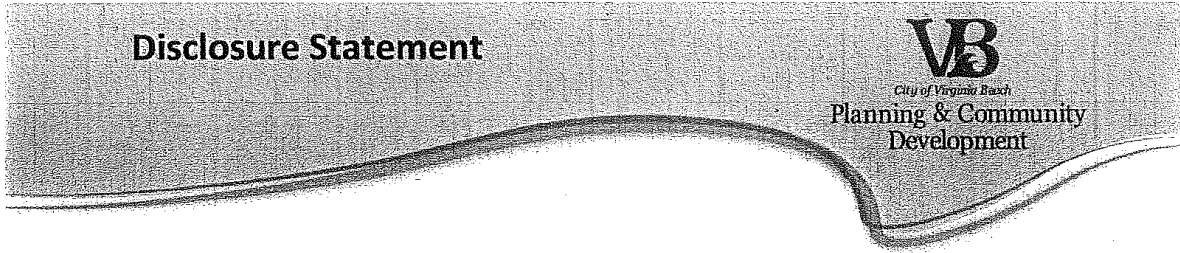
- If yes, list the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the applicant. (Attach a list if necessary)

N/A

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.

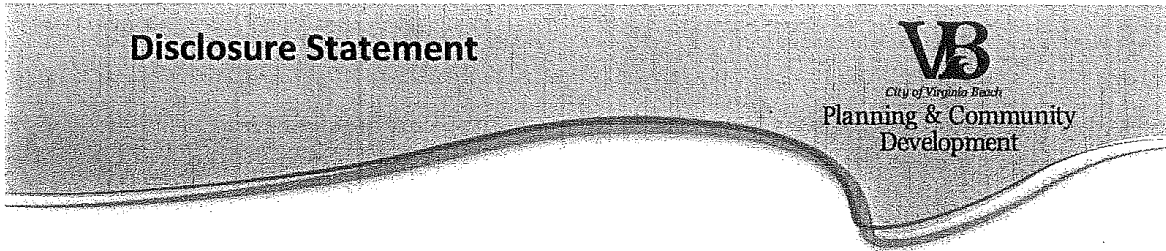
4. Does the applicant have services from an **architect/landscape architect/land planner** provided in connection with the subject of the application or any business operating or to be operated on the property? Yes No

- 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.
- BRAD MARTIN, WPL & BILLY GARRINGTON, GPC
-
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.

Bryan M. Killian
 Applicant Signature

BRYAN M. KILLIAN
 Print Name and Title

1/31/2024
 Date

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

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

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Applicant & Property Owner: **Carl & Denise Gideon**
 Address: **2944 Breezy Road**
 Public Hearing: **March 25, 2024**
 City Council District: **District 8**

Agenda Item

5

Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 37, Page 47
 Recorded 08/13/1951

GPIN

1499-18-7380

SITE AREA

9,432 square feet or 0.217 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

10,710 square feet or 0.245 acres

EXISTING IMPERVIOUS COVER OF SITE

5,820 square feet or 54.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,403 square feet or 59.7 percent of site

Area of Redevelopment in RPA

1,341 square feet

Area of New Development in RPA

1,385 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

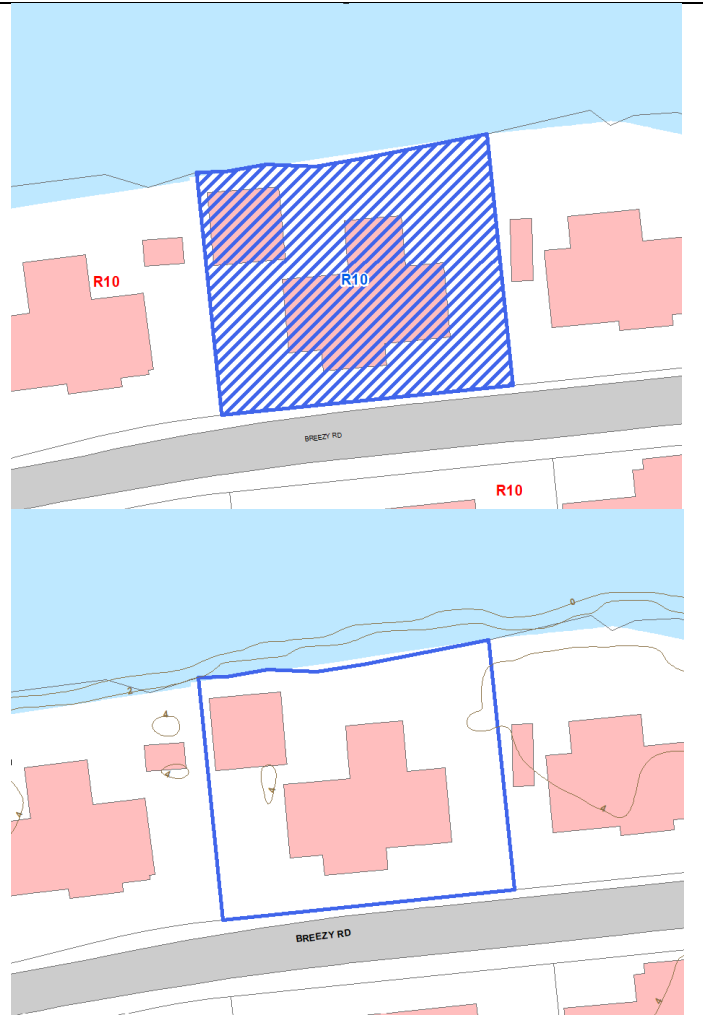
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Deny as submitted.



Summary of Proposal

Demolition Details

- Existing driveway, detached garage, wood deck, and paver walkway

Construction Details

- Two-story building addition with garage
- Swimming pool with associated pool surround and patio space

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

- The existing finished floor (F.F.) elevation for the single-family residence is below the FEMA base flood elevation for the lot. As such, improvement of any kind to a structure and/or use, in any floodplain district to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the criteria of the city's Floodplain Ordinance and shall require the entire structure to conform to the VA USBC [City Code, Appendix F, Article V].

Soil Type(s)

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

Shoreline

Shoreline is stabilized by a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Methodology

Gravel downspout intercepts and bioretention planting beds.

Evaluation and Recommendation

The applicant is proposing to demolish, reconstruct, and slightly expand their existing concrete driveway and remove the existing detached garage to construct a new two-story building addition on the west side of the property. The first floor of the proposed building addition will connect to the existing single-family home by an internal staircase to the second floor. Additionally, the applicant proposes to remove the existing wood deck and construct a new swimming pool with

an associated pool surround and patio area. Staff provides this reach of Breezy Road is a narrow peninsula with manmade canals located to the north and south of all existing residential lots with the average width of the peninsula ranging from approximately 145 feet to 240 feet, shoreline to shoreline. Lots located along breezy road are entirely within the 100-foot Resource Protection Area (RPA) buffer with the 50-foot seaward buffer encompassing over half of this lot.

Staff is of the opinion the extent of proposed improvements on the lot challenges the finding of the Chesapeake Bay Preservation Area (CBPA) Ordinance towards being the minimum necessary to afford relief and not being of substantial detriment to water quality based off the overall proposed impervious cover. To address this concern the applicant's agent reduced the proposed building addition by approximately 184 square feet from 24.5 feet by 48 feet to 22 feet by 45 feet. Portions of the existing driveway to the right of the residence were removed to reduce the overall impervious cover on the lot. To further support the variance request as submitted, the applicant's agent provides the following comments relative to the findings of the CBPA Ordinance specific to this variance request 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."* While Staff acknowledges the statement provided by the applicant's agent, Staff reiterates variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request based off but not limited to environmental conditions, extent of encroachment request, the intent of the CBPA Ordinance, and prior variance requests granted by the CBPA Board. Staff is of the opinion the recommended conditions in this Staff report provides merit towards the variance request not conferring special privileges to this applicant.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we have designed the improvement over existing impervious area to the greatest extent practicable for redevelopment and to minimize site impacts and lessen the impervious area in the RPA."* While Staff acknowledges the statement provided by the applicant's agent, the specific conditions of the lot warrant an analysis of the proposed improvements to the access of the site, associated land disturbance to construct the proposed improvements, location within the RPA buffer of the proposed improvements and mitigation measures provided to enhance water quality. As such, Staff has provided the recommended conditions below as a means for the variance request to be in harmony with the intent of the CBPA Ordinance.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and if approved, the stormwater mitigation and buffer restoration will be installed to facilitate stormwater treatment from the new improvement."* Staff is of the opinion the introduction of stormwater management with a request that disturbs more than 2,500 square feet of uplands, coupled with riparian buffer mitigation in an area with underlying soils that are moderately well drained offers merit towards providing water quality. Staff offers the selection of plant material associated with the stormwater management facilities and riparian buffer mitigation should be evaluated off indigenous plants specific to the USDA Plant Hardiness Zone for this area, Zone 8a, and selected based off valuable water uptake specific to the selected plant species.

- 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 concurs and is of the opinion the analysis and layout of the stormwater management facilities, if sequenced thought-out the lot, offers nutrient reduction annually on a lot and associated project that would not require stormwater management as proposed.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The existing concrete driveway located to the east of the existing single-family residence shall be reduced by 550 square feet. Said reduction shall allow for a single vehicular parking space. With the reduction of the existing concrete driveway, the overall impervious cover of the lot shall not exceed 5,853 square feet.
- 3) The proposed concrete driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided on the site plan submitted to the Development Services Center for review and approval. Said construction of the area shall follow the Virginia Department of Environmental Quality (DEQ) Stormwater Design Specification 7 for permeable pavement system installation.
- 4) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 5) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **835 square feet x 200 percent = 1,670 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, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

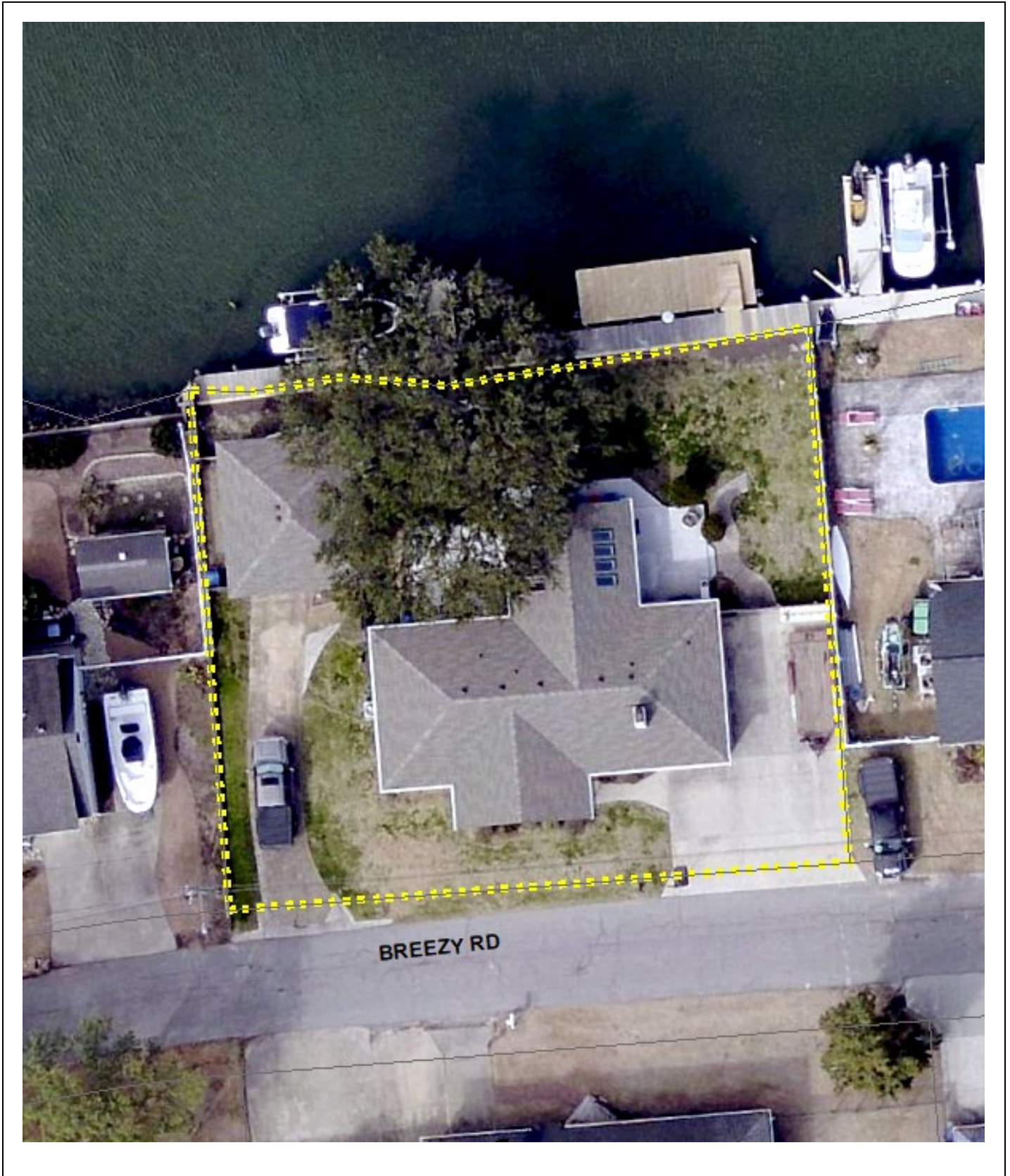
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material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

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 510 feet from improvements.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) Perimeter fill within the limits of construction shall be the minimum necessary to facilitate positive drainage away from the proposed improvements. Fill material for such development shall be limited to minimize disturbance of existing vegetation and contours to effectively maintain the integrity of the buffer area.
- 16) ** 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 \$317.39 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated January 12, 2024, prepared by WPL, signed March 15, 2024, by Eric A. Garner. The conditions and approval associated with this variance are based on the CBPA Board exhibit prepared by the applicant and presented to the CBPA Board, the application submitted and the sworn presentation to the CBPA Board.

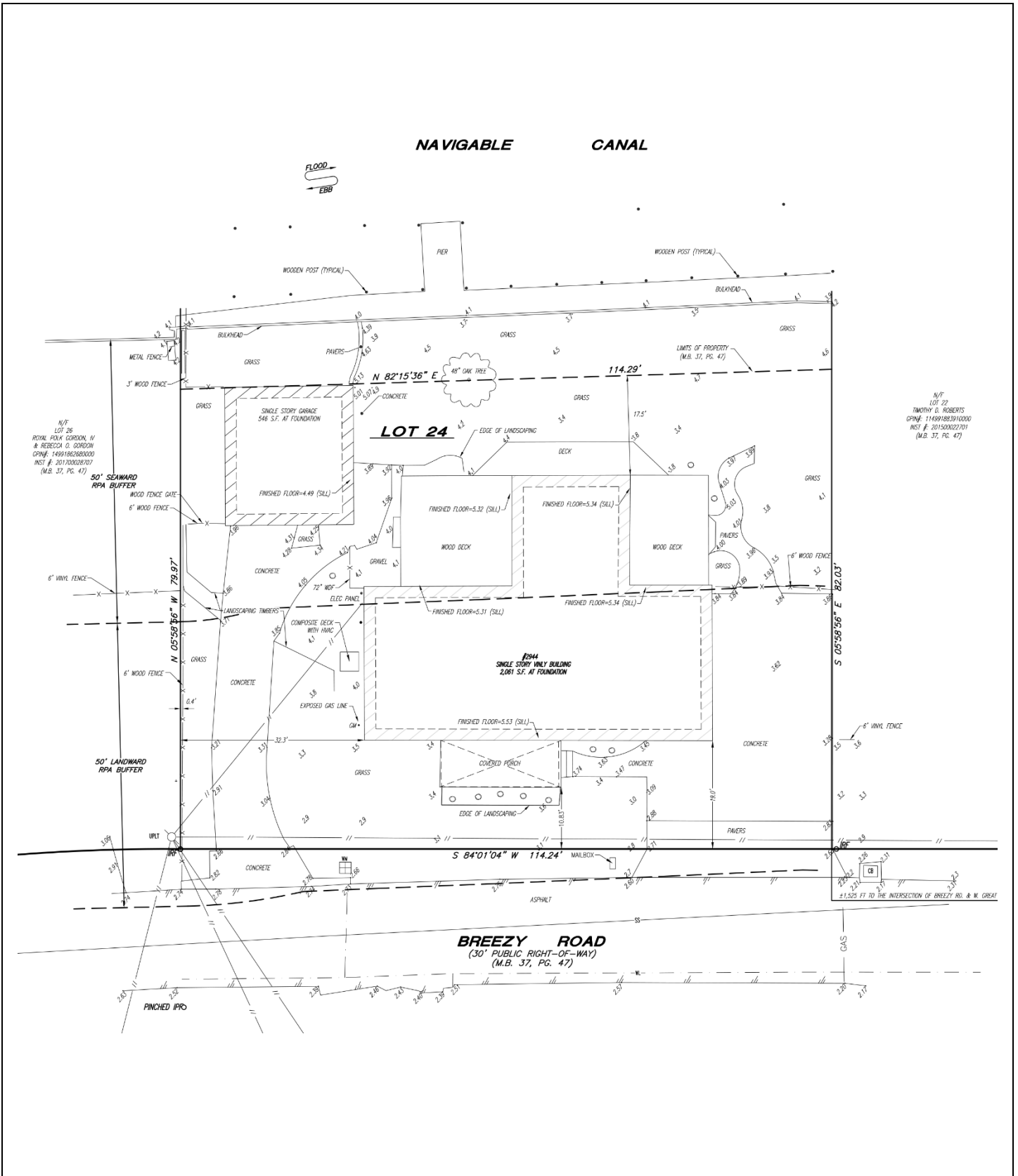
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

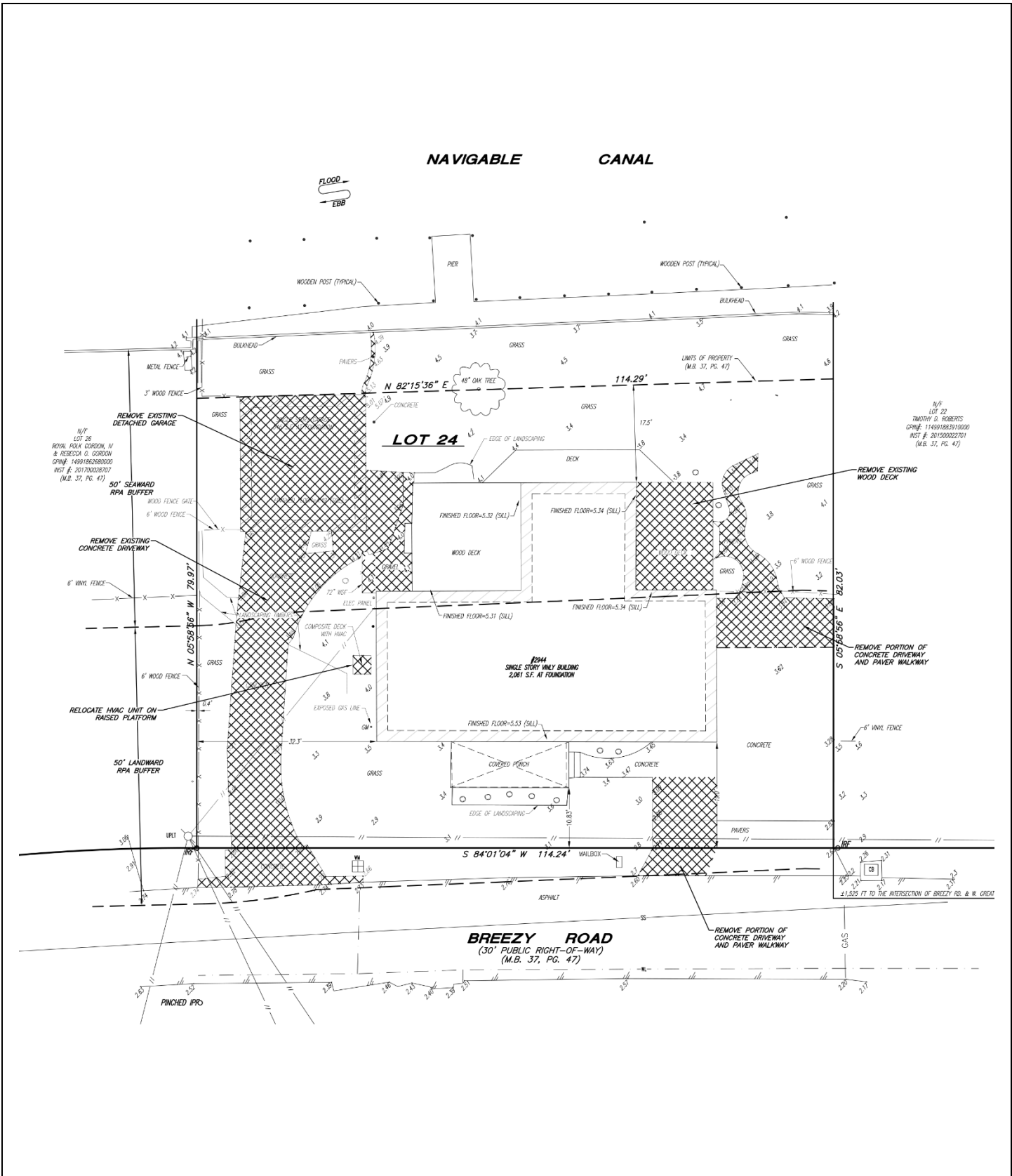
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Demolition Plan



CBPA Exhibit – Color Analysis

 **TOTAL LOT AREA**
9,432 SQ. FT. (TIE-LINE)

 **TOTAL LOT AREA OUTSIDE**
OF WATER, MARSH,
WETLAND & REVETMENT
10,710 SQ. FT. (100.0%)

TOTAL IMPERVIOUS
PRE-DEVELOPMENT
5,820 SQ. FT. (54%)

TOTAL IMPERVIOUS
POST-DEVELOPMENT
6,403 SQ. FT. (60%)

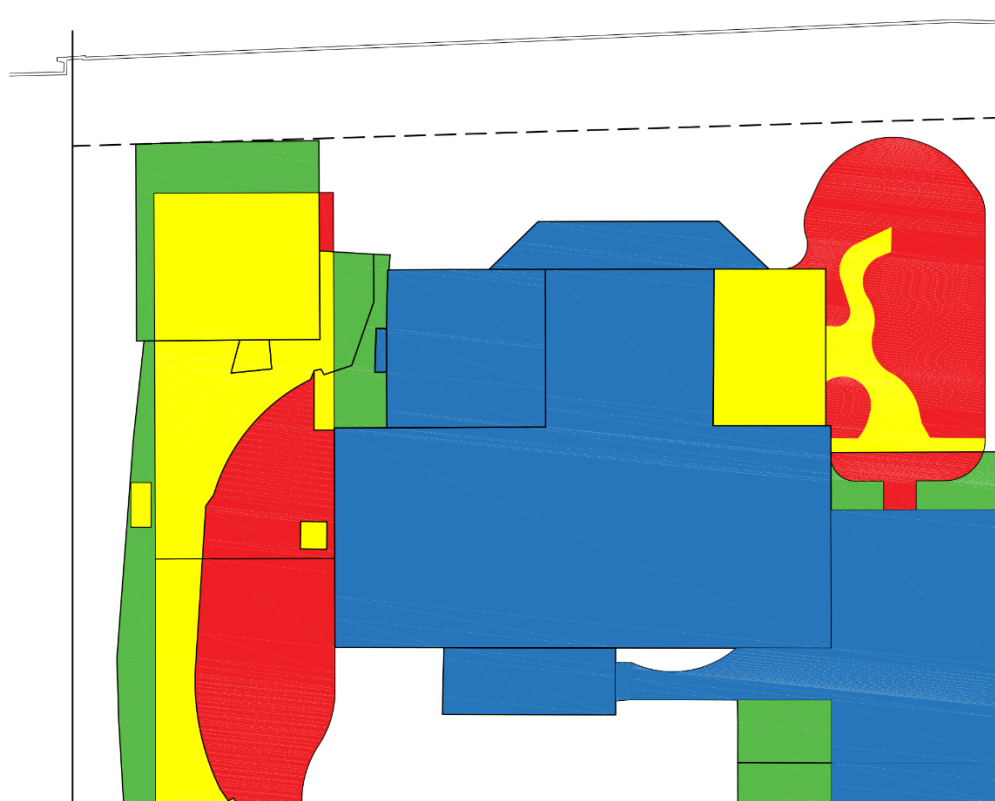
 **EX. IMPERVIOUS**
3,678 SQ. FT. (34.3%)

 **REDEVELOPMENT**
1,341 SQ. FT. (12.5%)

 **NEW DEVELOPMENT INSIDE RPA**
1,385 SQ. FT. (12.9%)

 **REMOVED IMPERVIOUS**
724 SQ. FT. (6.76%)

06/07/15
139/10000
1022701
47)



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 Carl D Gideon & Denise B Gideon

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

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

Billy Garrington, GPC, Inc

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

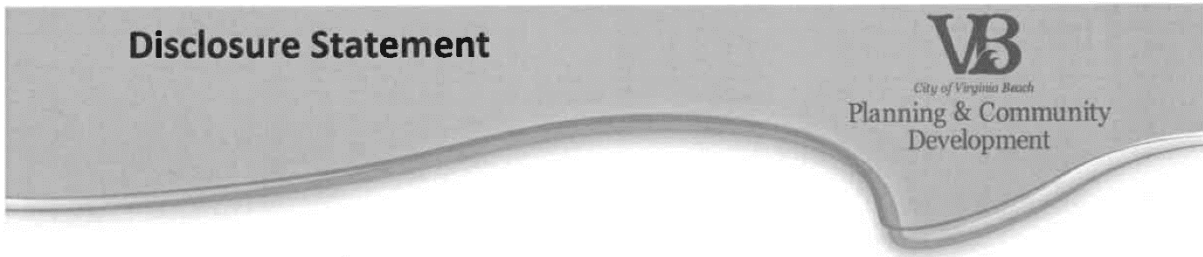
- If **yes**, list the names of all officers, directors, members, trustees, etc. below. (Attach a list if necessary)

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

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

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

Disclosure Statement



Known Interest by Public Official or Employee

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

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

Applicant Services Disclosure

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

Yes **No**

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

Primelending, A Plainscapital Company

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**

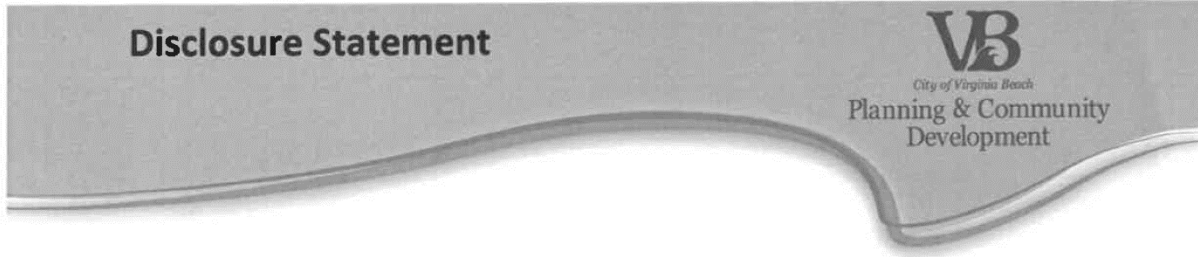
- If **yes**, identify the firm or individual providing the service.

WPL & Ken Kirby (Progressive R & D)

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.

C. David Gideon

Applicant Signature

C. DAVID GIDEON

Print Name and Title

15 MAR 2024

Date

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

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

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

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



Applicant & Property Owner: **Donald and Patricia Carrier**
 Address: **1228 Carlson Lane**
 Public Hearing: **March 25, 2024**
 City Council District: **District 8**

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with associated patio surround, outdoor kitchen area, and walkways.

Applicant’s Agent

Billy Garrington

Staff Planner

Cole S. Fisher

Lot Recordation

Map Book 36, Page 4
 Recorded 08/13/1953

GPIN

1488-67-8299

SITE AREA

29,475 square feet or 0.678 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

29,068 square feet or 0.667 acres

EXISTING IMPERVIOUS COVER OF SITE

7,818 square feet or 27 percent

PROPOSED IMPERVIOUS COVER OF SITE

8,458 square feet or 30 percent

Area of Redevelopment in RPA

99 square feet

Area of New Development in RPA

1,490 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

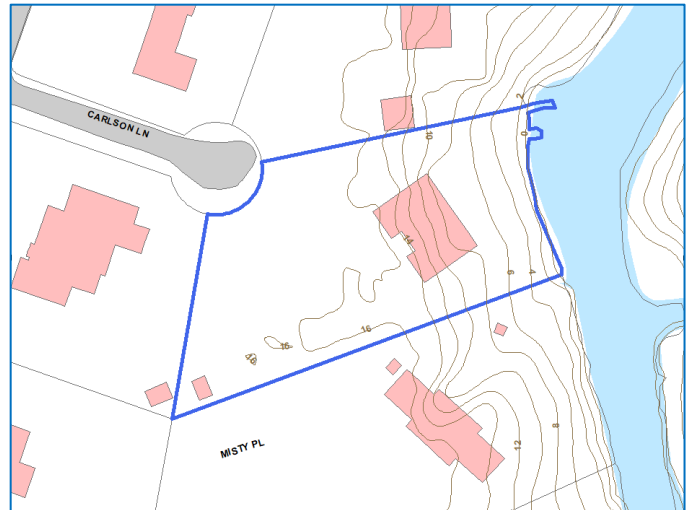
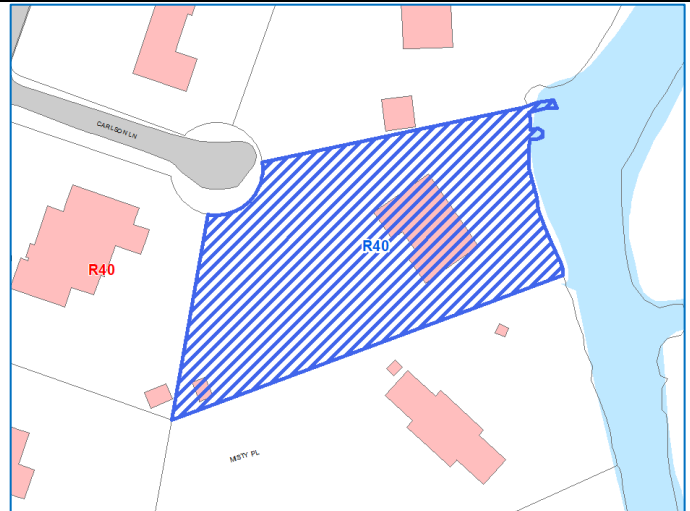
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with associated patio surround and hot tub
- Outdoor kitchen area and walkways

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)

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

Moderately to sparsely wooded lot

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

Stormwater Management Methodology

The applicant is proposing infiltration beds as best management practices (BMPs) with this request.

Evaluation and Recommendations

The applicant is proposing to construct a new 13.5 feet by 30 feet swimming pool with associated patio surround with outdoor kitchen area and associated walkways. As shown on the submitted CBPA exhibit, most of the proposed improvements are located within the 50-foot seaward buffer of the Resource Protection Area (RPA). Upon receipt of the initial variance request, Staff recommended the plan be revised to reduce the overall post-development impervious cover of the site to 30 percent and inquired on the ability to locate some improvements out of the 50-foot seaward buffer. The applicant's agent indicated that locating the proposed swimming pool and patio to the south of the property and further out of the seaward buffer would result in greater land disturbance and would require multiple retaining walls with backfill material given the topography of the lot. During discussions with Staff the applicant's agent provided a revised CBPA Exhibit to reduce portions of the proposed patio surround area, wooden walkway, driveway and completely removed a proposed gravel path to reduce overall impervious cover amounts. The applicant's agent also provided a buffer restoration plan indicating extensive buffer restoration all throughout the remaining portions of the 50-foot seaward buffer on the lot and portions of the lower lying areas will be devoted to high marsh species. Given the Donald and Patricia Carrier

revisions made to the initial request and the proposed best management practices and buffer restoration with the request, Staff is of the opinion the request will not be of substantial detriment to water quality of the Chesapeake Bay 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 *"granting a variance request in this circumstance would not confer privileges to the applicant which have been denied to other property owners within the CBPA Overlay District in this area."* Staff concurs.
- 2) Staff offers 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 RPA encumbers the majority of the lot, leaving only a small area outside the RPA, approximately 5,100 SF (or 17.5%). The proposed improvements are located in all portions of the Buffer (Seaward, Landward, and V/W). The proposed placement of improvements are due to the proximity of their home within the RPA, built in 1955. While the proposed improvements increase their overall impervious surface in the RPA, the majority takes place in areas that are currently dedicated to lawn or areas of washout. In this regard, the proposed improvements are in the most logical locations and are a minimum amount to gain usable space within their lot."* Staff is of the opinion the application, coupled with the recommended conditions, ensure the variance request is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the existing RPA buffer on this lot is comprised of lawn and a small amount ornamental landscaping. Proposed improvements are within all portions of the RPA Buffer and sited adjacent to their existing residence and/or impervious surfaces. This request will require the establishment of additional vegetation within the buffer to help address runoff from the proposed improvements. This request will not be injurious to the neighborhood and with the addition of vegetation, will not be a detriment to water quality as the applicant is mitigating impacts within the buffer to help with the increase in runoff generated by the proposed improvements. The proposed request is not expected to be injurious to the public welfare, and is not of substantial detriment of water quality."* Staff is of the opinion the request is in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality subject to the recommended conditions provided in this staff report that include the installation of both structural and nonstructural best management practices throughout the lot to promote infiltration of stormwater.
- 5) *"It is expected that City Staff will work with the applicant to ensure that the landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscape that should aid in slowing the velocity of stormwater leaving the site while also allowing for the absorption of any additional runoff. The applicant has submitted a conceptual landscape plan that is consistent with the Riparian Buffers Modification and Mitigation Manual and identifies an appropriate quantity of canopy trees, understory trees, and shrubs within the RPA buffer"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion the

BMPs proposed for this variance request coupled with the required buffer restoration measures will provide a means to manage towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following **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) 4,570 square feet of buffer restoration shall be installed within the RPA on the lot.

Said restoration shall achieve the full complement of vegetation consisting of **8 canopy trees, 14 understory trees, 30 large shrubs, 56 small shrubs, and high marsh ornamental grasses**. The required Category IV Buffer with associated planting and proposed bioretention planting bed areas with associated plantings are excluded from this condition.

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - Along the seaward portion of the proposed improvements, the required silt fence shall be installed no further seaward than five (5) feet.
 - Along the remaining portions of the property, the required silt fence shall be installed 10 feet from all proposed improvements.
 - All construction activity shall be contained within the limits of the silt fence.
- 6) **The silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts not included with this variance request.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) 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 \$341.46 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 February 1, 2024, prepared by Painted Fern Landscape Architecture, signed February 1, 2024 by Jason M. Thomas. 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.

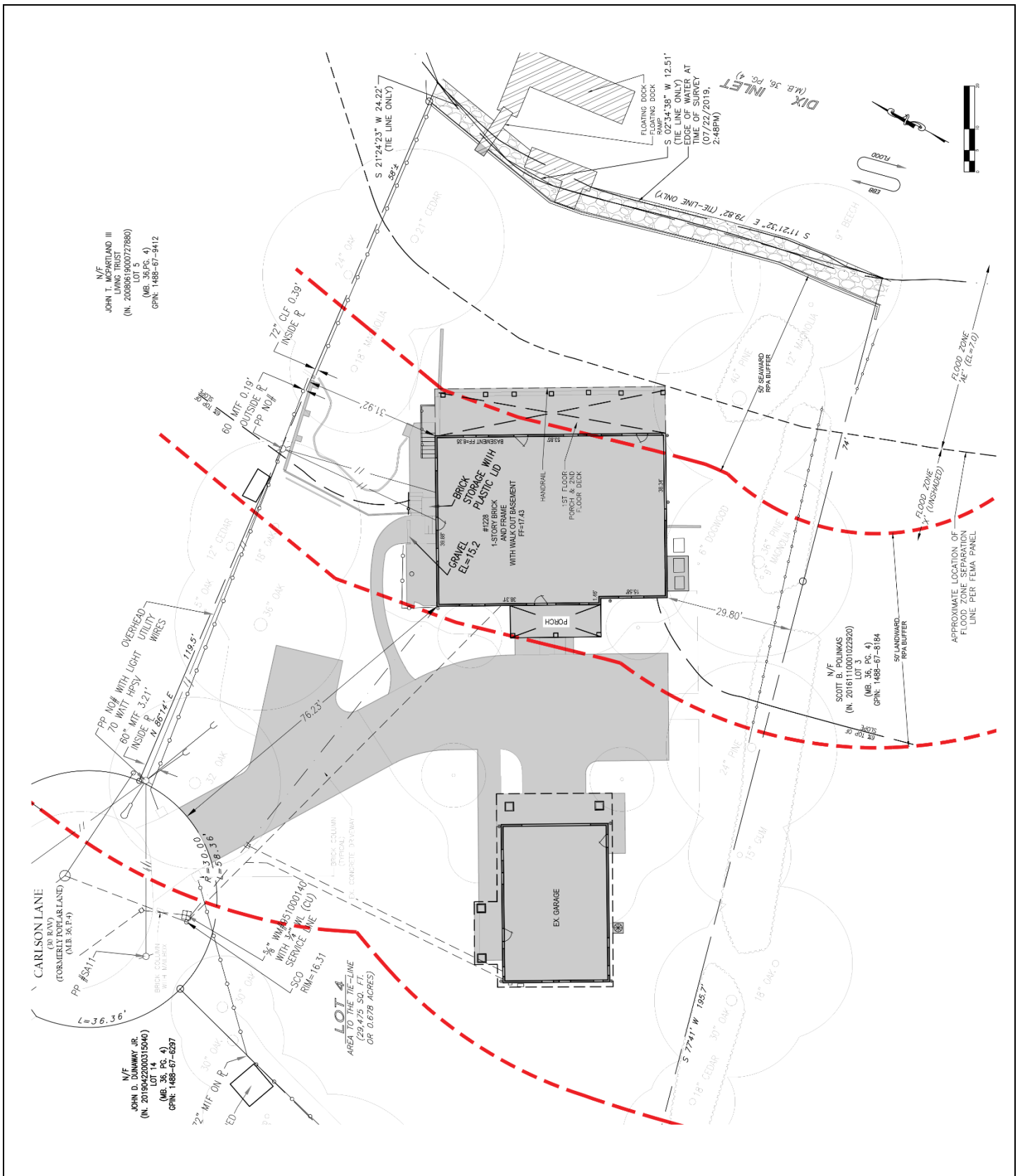
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*****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.

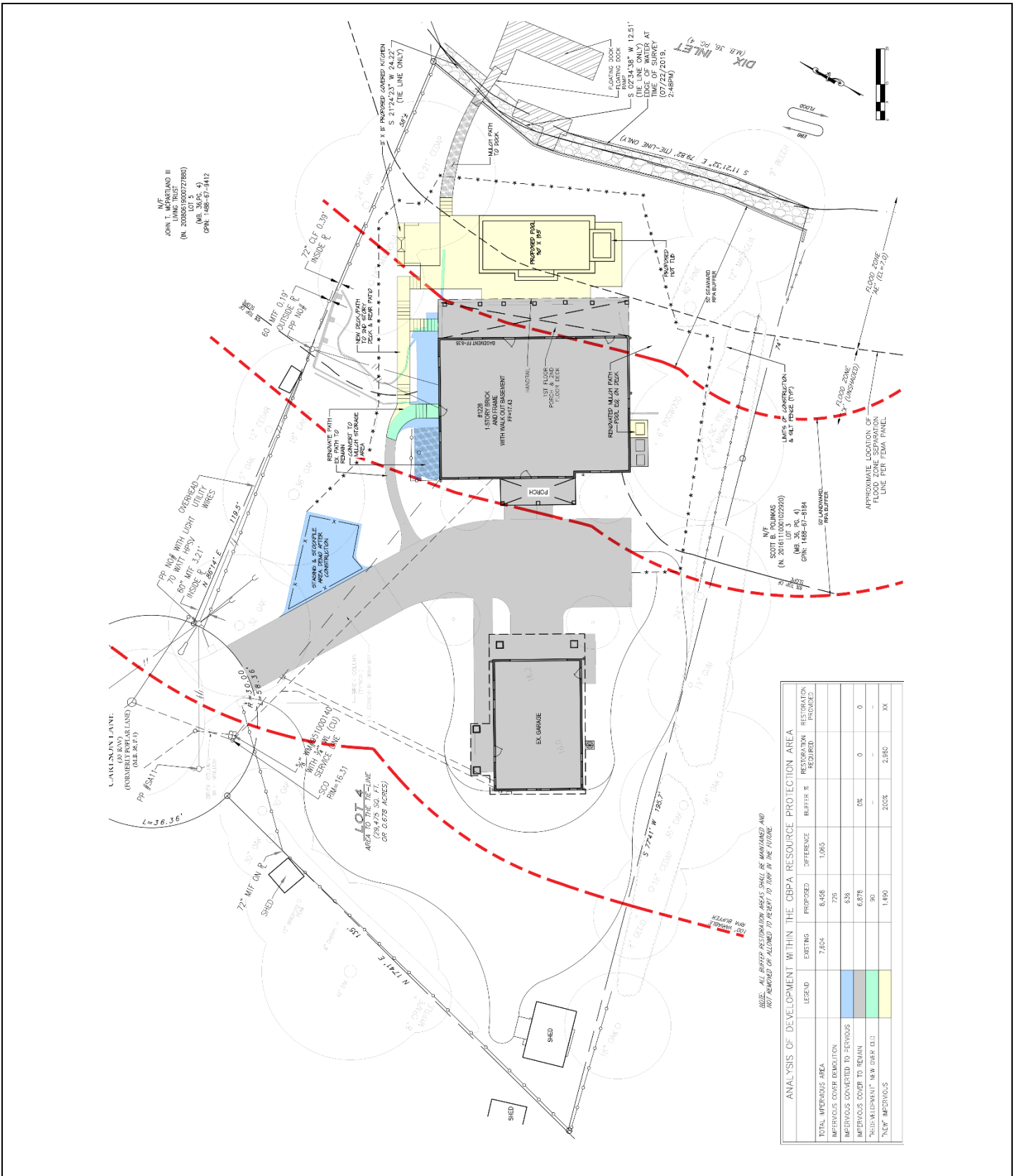
Site Aerial



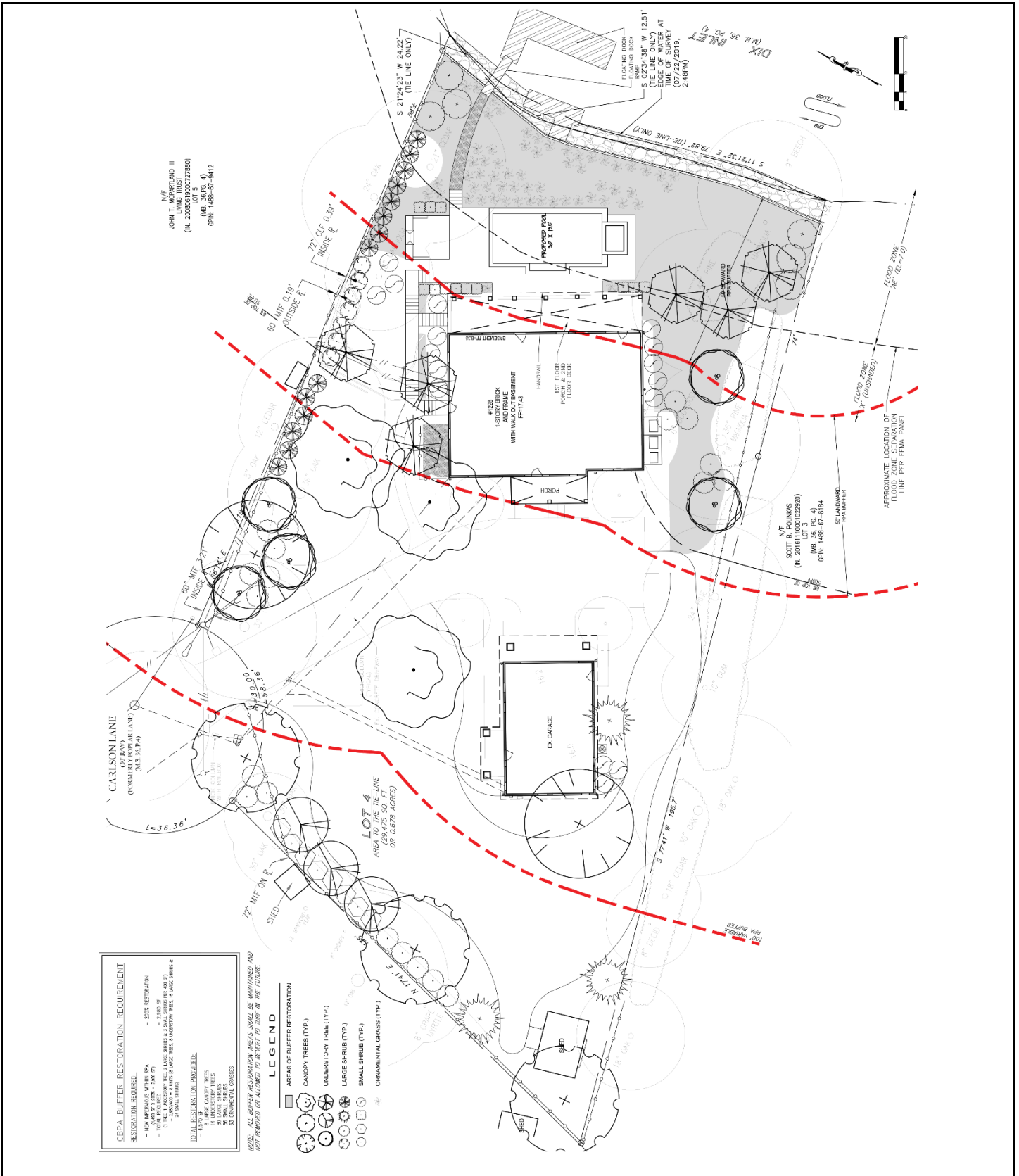
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Landscape Plan



Disclosure Statement

Disclosure Statement



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Applicant Disclosure

Applicant Name Donald and Patricia Carrier

Does the applicant have a representative? Yes No

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

Billy Garrington

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

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

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

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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.

William R. Stewart & Associates dba Stewart & Company

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

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

WPL

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

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

Disclosure Statement



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

Donald Carrier and/or Patricia Carrier, Homeowners

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: **Barbara D. Brebrick**
 Address: **821 22nd Street**
 Public Hearing: **March 25, 2024**
 City Council District: **District 6**

Agenda Item

7

Variance Request

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

Applicant’s Agent

Self-represented

Staff Planner

Cole S. Fisher

Lot Recordation

Instr. No. 20070907001226100

Recorded 09/07/2007

GPIN

2417-78-4305

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER OF SITE

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

120 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

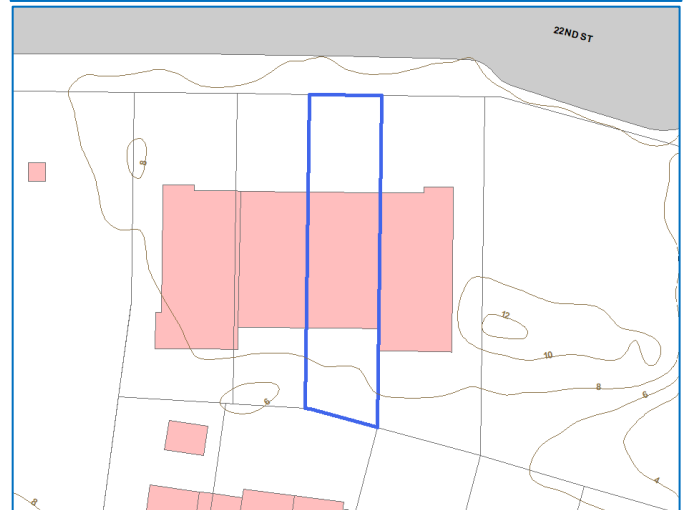
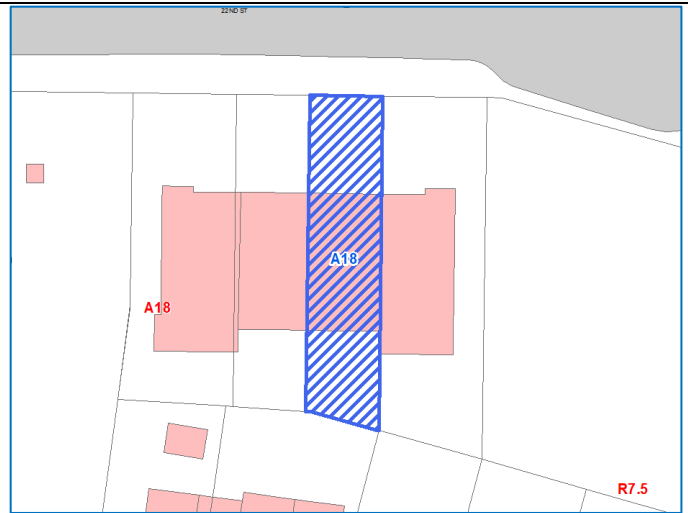
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolish Details

- Portions of existing deck

Construction Details

- Wood deck expansion, approximately 120 square feet

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

Soil Type(s)

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

Yeopim Series (deep and moderately well-drained soils)

Shoreline

N/A

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

The applicant desires to remove, reconstruct, and slightly expand a ground level wood deck off the rear of the residence. The rear yard of the lot has a gentle slope with a loamy soil type that is moderately to well drained. The 100-foot Resource Protection Area (RPA) slightly encroaches into the rear yard of the property and the project falls within the upper reaches of the 50-foot landward buffer and variable width buffer portions. Staff is of the opinion that the request is minimal and will not be of substantial detriment to water quality of the Chesapeake Bay.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“not changing impact to lot other than building up off existing structure to add decks.”* Staff is of the opinion, should the Board grant the variance request, a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded within the improvement of their lots.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“the RPA encroaches into the rear yard of the lot”* Staff is of the opinion the proposed improvements are modest and portions of the lot fall within the 100-foot RPA buffer.
- 3) The variance is the minimum necessary to afford relief because *“impact is minimal as repairing existing ground level deck that has rotted.”* Staff offers the request is not egregious and is situated within the upper reaches of the RPA.
- 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 *“no real change to existing state. Replacing rotted 1st level deck and building decks off 2nd and 3rd levels.”* Staff is of the opinion the variance request will not be of substantial detriment to water quality.
- 5) *“Buffer restoration will be planted seaward of the improvements”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff adds the required buffer restoration will benefit the sparsely vegetated lot and underdeck treatment will ensure no increase in nonpoint source pollution into the bay.

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

Recommended Conditions

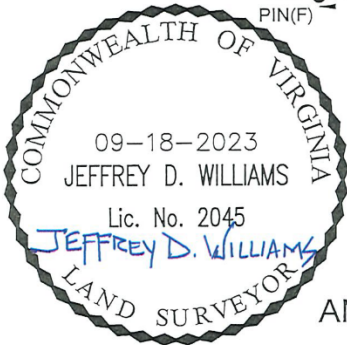
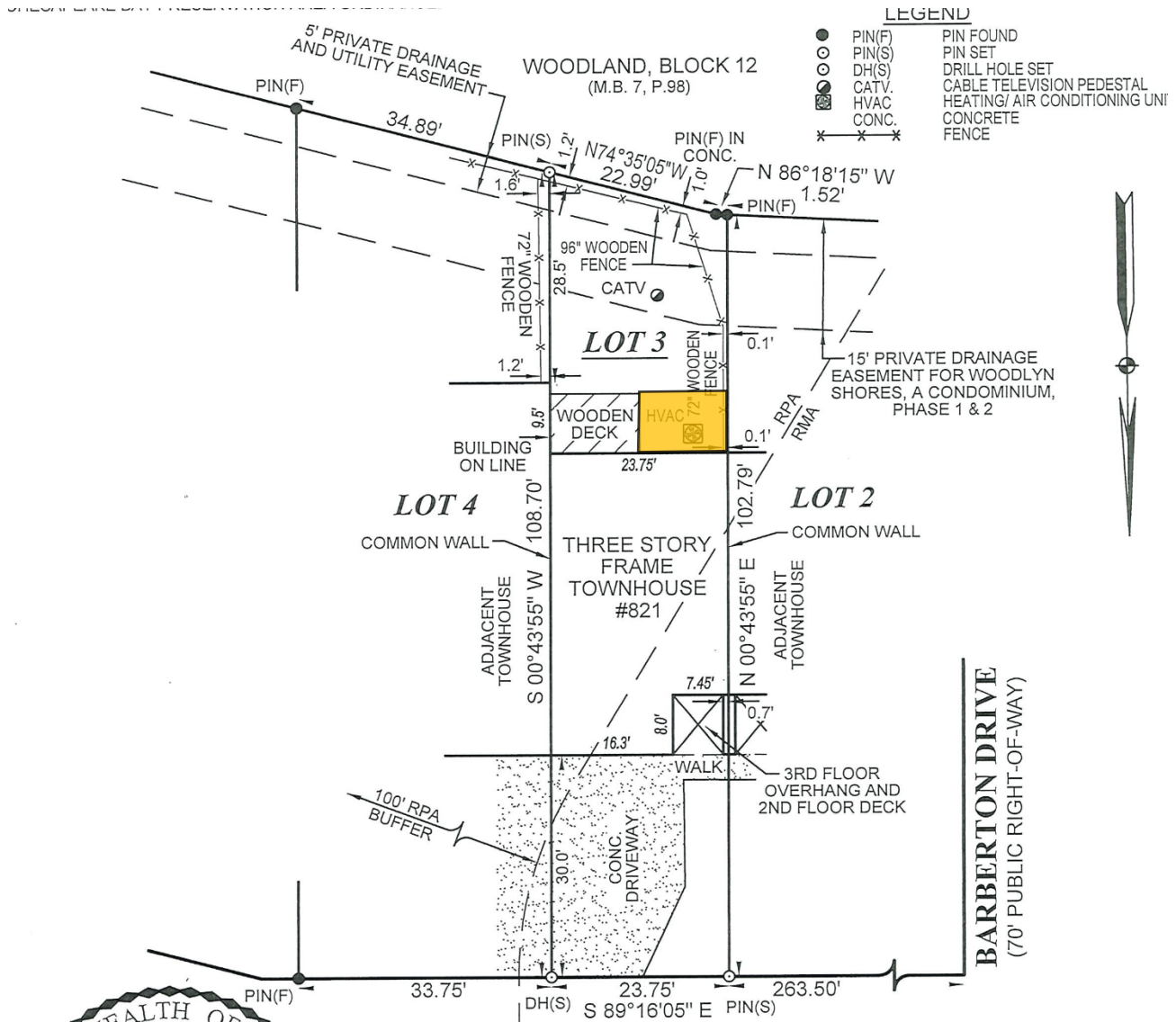
1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division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

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

Site Aerial

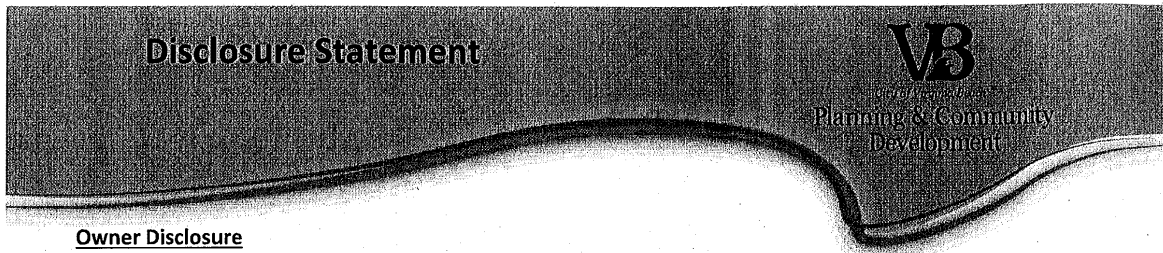


CBPA Exhibit – Proposed Improvements



22ND STREET
 (50' PUBLIC RIGHT-OF-WAY)
 PHYSICAL SURVEY OF
 LOT 3
 SUBDIVISION OF
WOODLYN SHORES
 A CONDOMINIUM, EXPANDABLE LAND
 AND RESUBDIVISION OF LOTS 24 AND 25, BLOCK 11
WOODLAND
 (INST. #20070907001226100)
 VIRGINIA BEACH, VIRGINIA

Disclosure Statement



Owner Disclosure

Owner Name Lisa Rudiger

Applicant Name Lisa Rudiger

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

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

- If yes, list the businesses that have a parent-sub subsidiary³ or affiliated business entity⁴ relationship with the Owner. (Attach a list if necessary)

Known Interest by Public Official or Employee

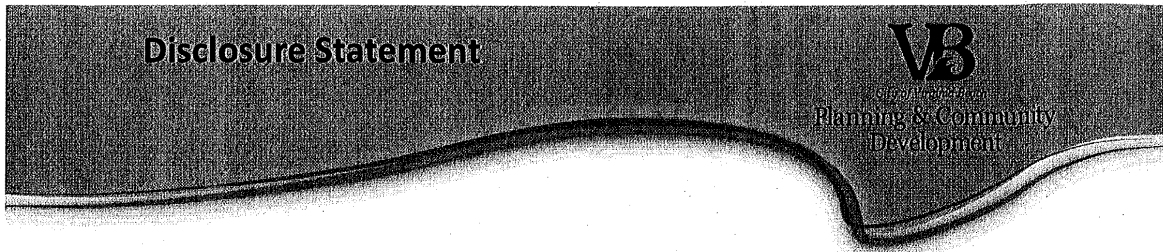
Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action? Yes No

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

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

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

Disclosure Statement



Owner Services Disclosure

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

Yes No

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

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

Yes No

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

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

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

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

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

reich design associates, plc, Armond Reich, 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.
-

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

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.

Lisa Rudiger by Edward Reich

Owner Signature

Lisa Rudiger, Owner

Print Name and Title

1/17/24

Date



Applicant & Property Owner: Nilkanth and Kalpana Patel
 Address: 909 Hall Haven Drive
 Public Hearing: March 25, 2024
 City Council District: District 8

Agenda Item

8

Variance Request

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

Applicant’s Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

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

GPIN

1498-42-6983

SITE AREA

40,724 square feet or 0.935 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

30,211 square feet or 0.693 acres

EXISTING IMPERVIOUS COVER OF SITE

14,424 square feet or 48 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,498 square feet or 28 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

618 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

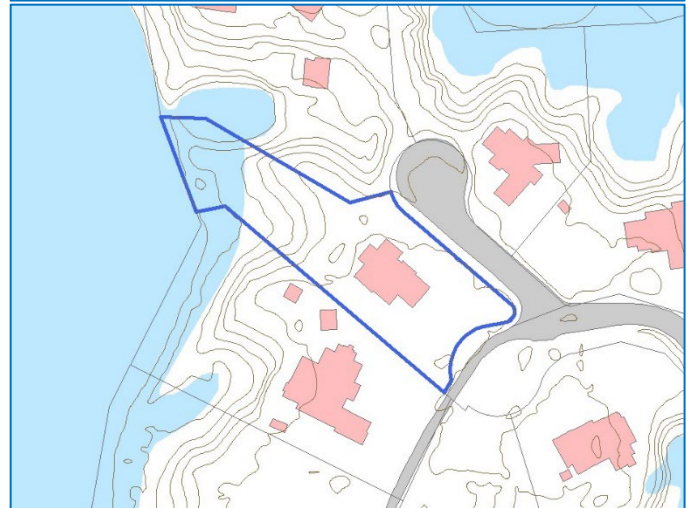
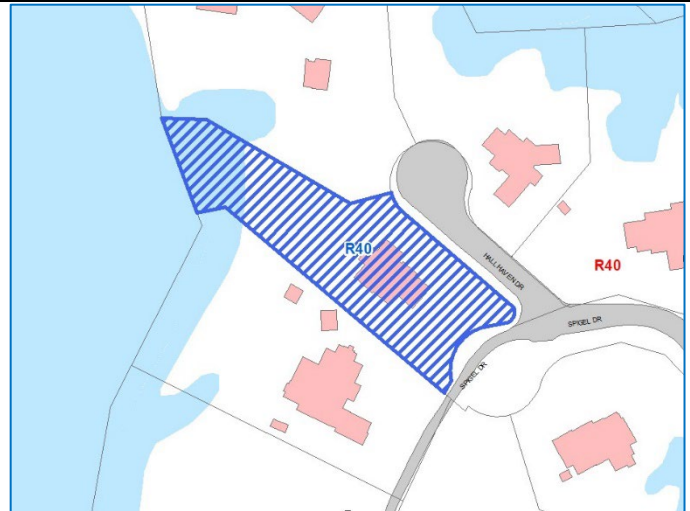
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Construct walkway and after-the-fact approval for kitchen area

CBPA Ordinance Variance History

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

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded lot

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

Stormwater Management Methodology

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

Evaluation and Recommendation

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

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

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

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

Recommended Conditions

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

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

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

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

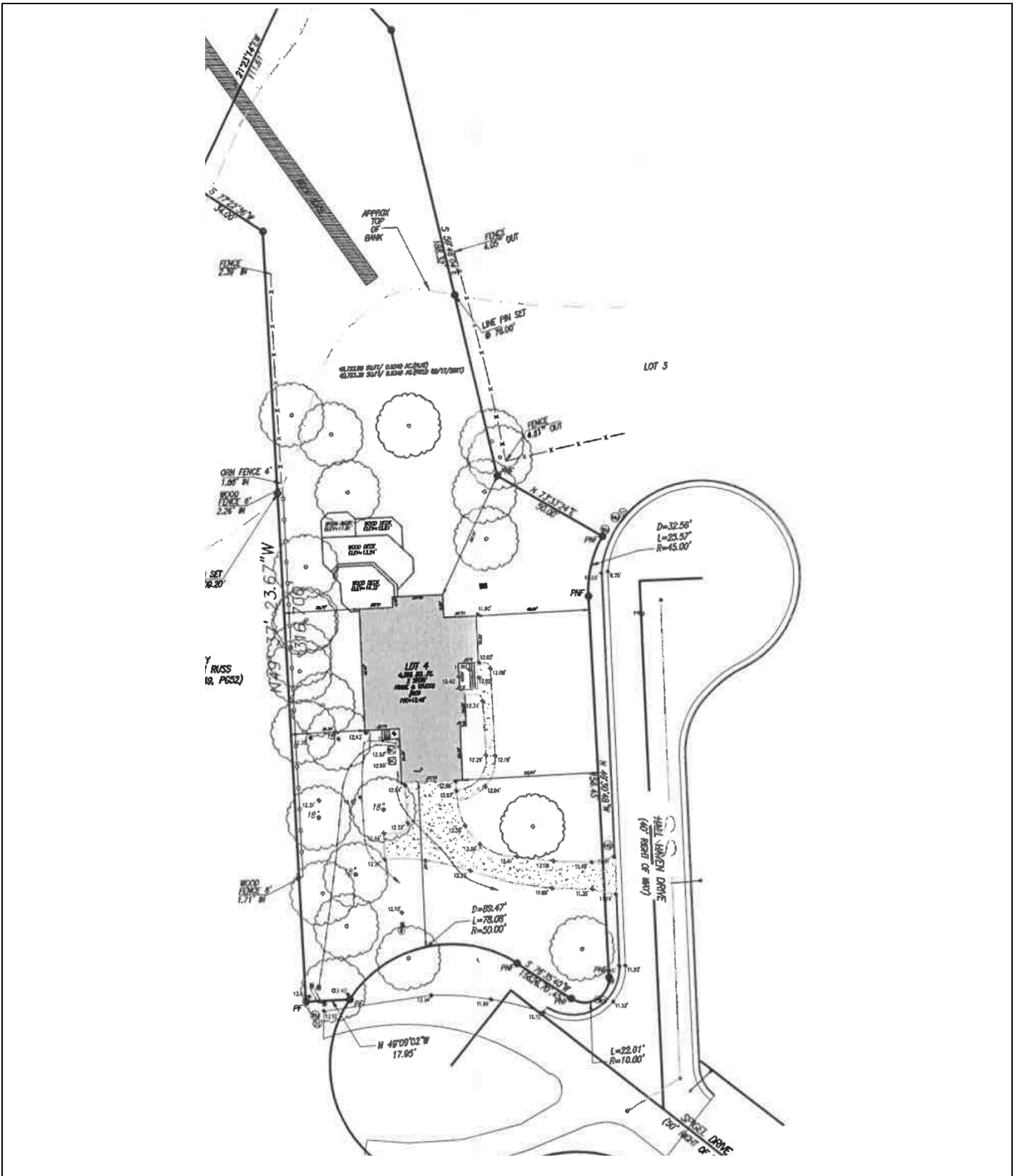
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

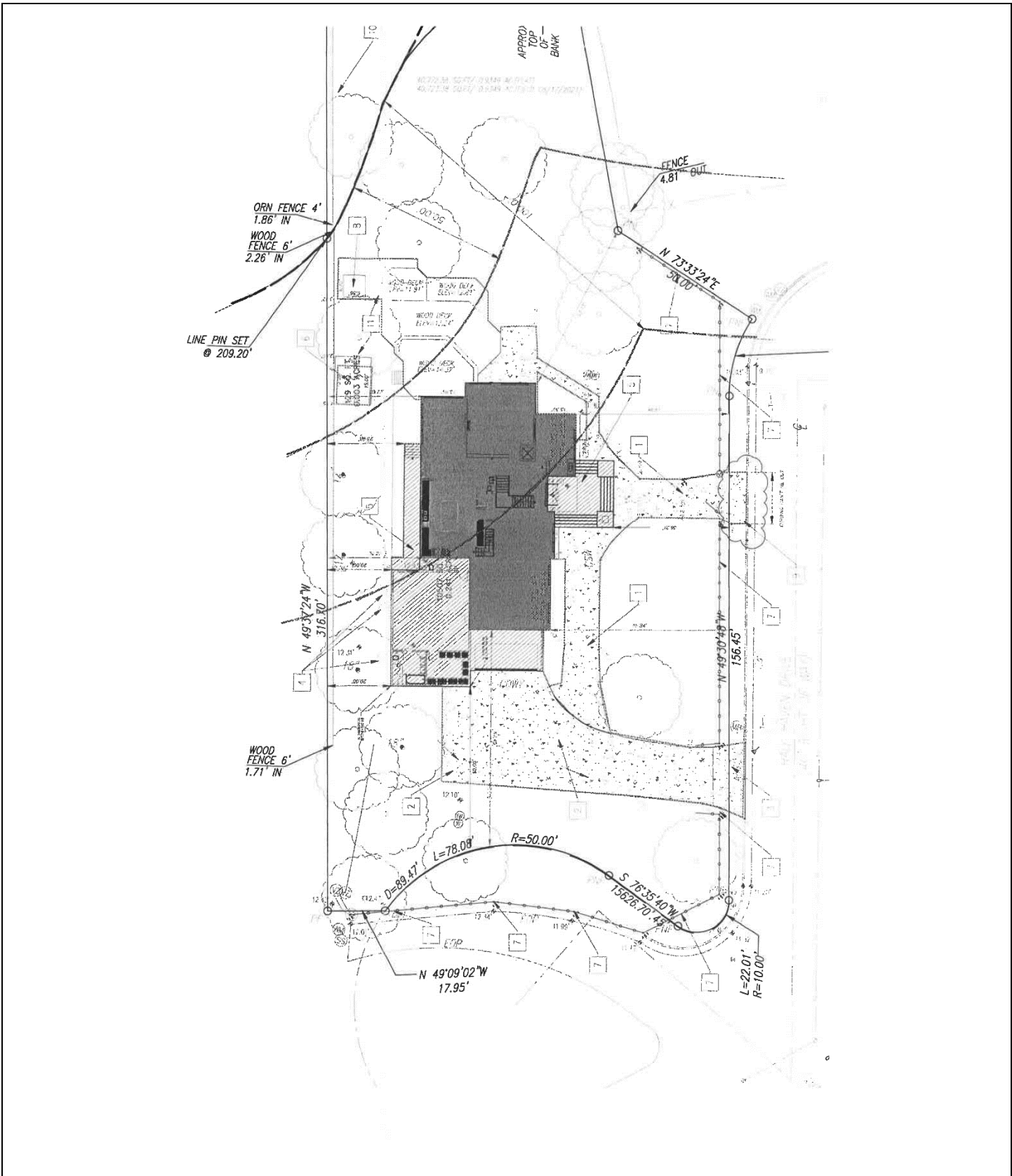
Site Aerial



Pre-Existing Site Conditions Plan



September 10, 2021, Admin Variance Plan

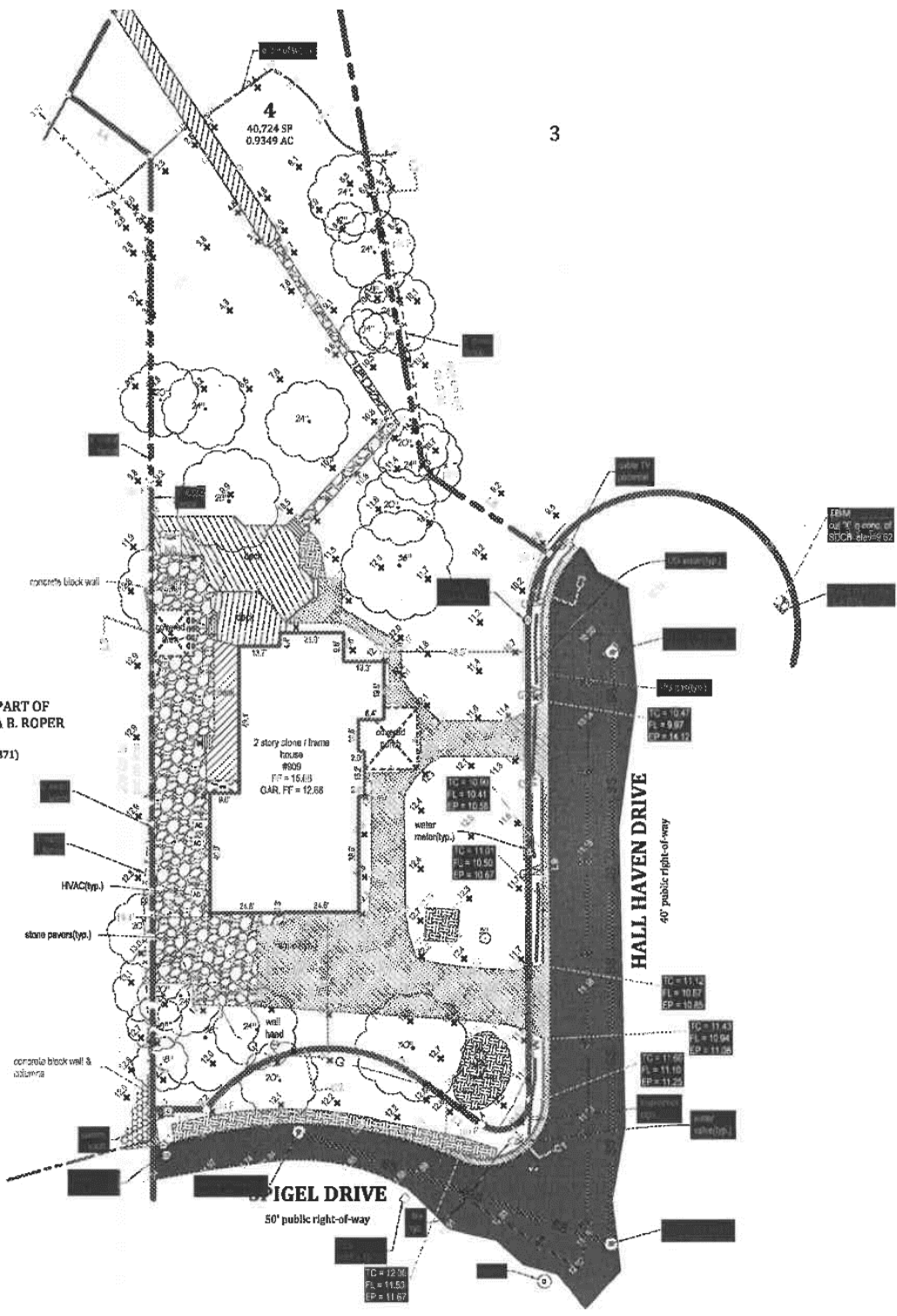


Unauthorized Pavers and Walkway

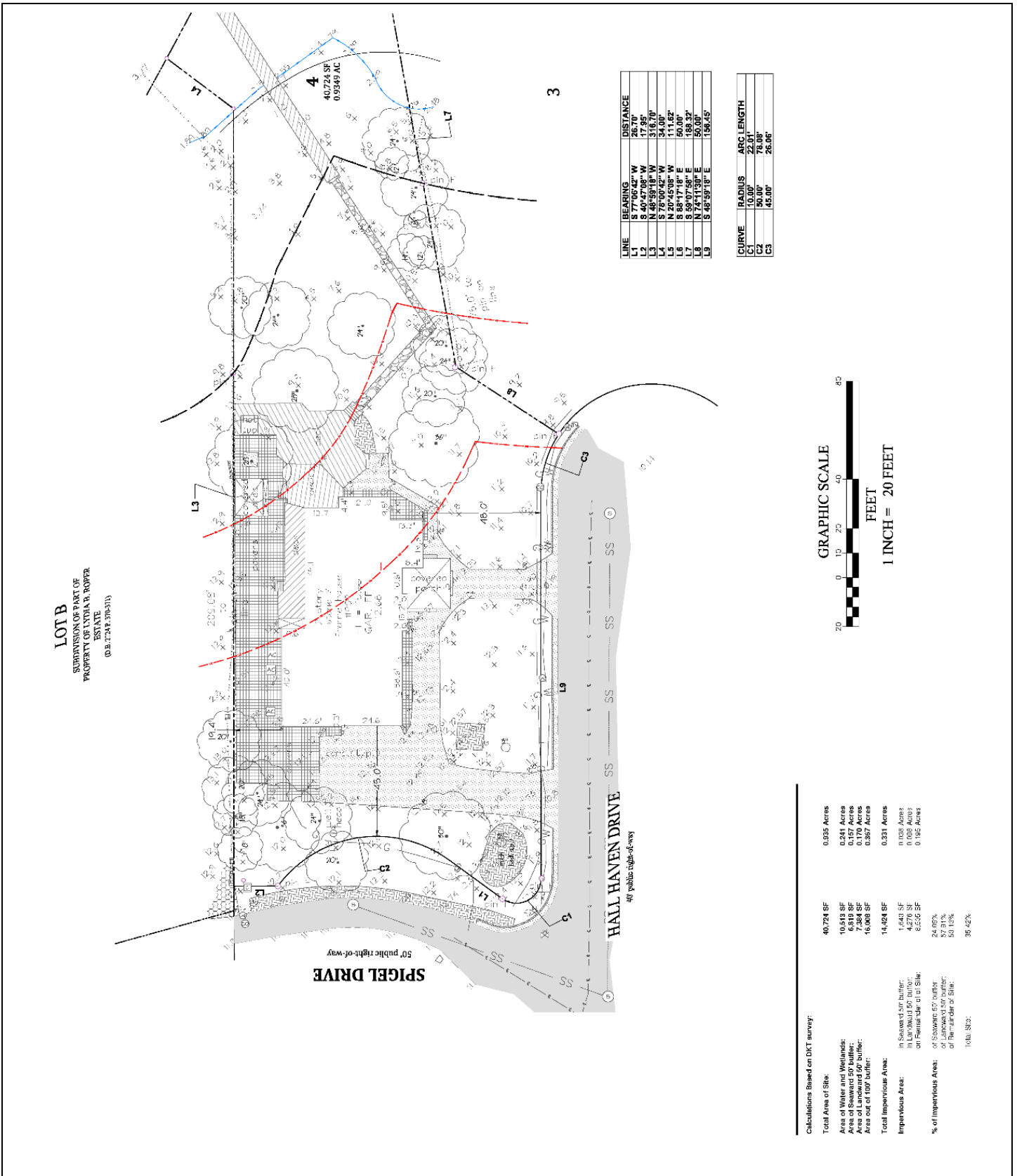
GENERAL NOTES

1. This topographic survey was completed under the direct and responsible charge of Dennis Tallambas, L.S., from an actual ground survey made under my supervision; that the imagery and/or original data was obtained on **October 16, 2023**; and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.
2. All elevations shown hereon are expressed in feet and based on **MAVD 1988**. Sources: **Geoid 12B**
3. This property **does** fall within a Special Flood Hazard Area as shown on the Federal Emergency Management Agency National Flood Insurance Program Flood Insurance Rate Map for the city of Virginia Beach, Virginia, Community Panel Number: **516531 0102 G** Dated: **January 16, 2015**. This property falls within flood zone(s): **X & AE(elev.9)**

LOT B
 SUBDIVISION OF PART OF
 PROPERTY OF LYDIA B. ROPER
 ESTATE
 (D.B.2724 P.370-371)



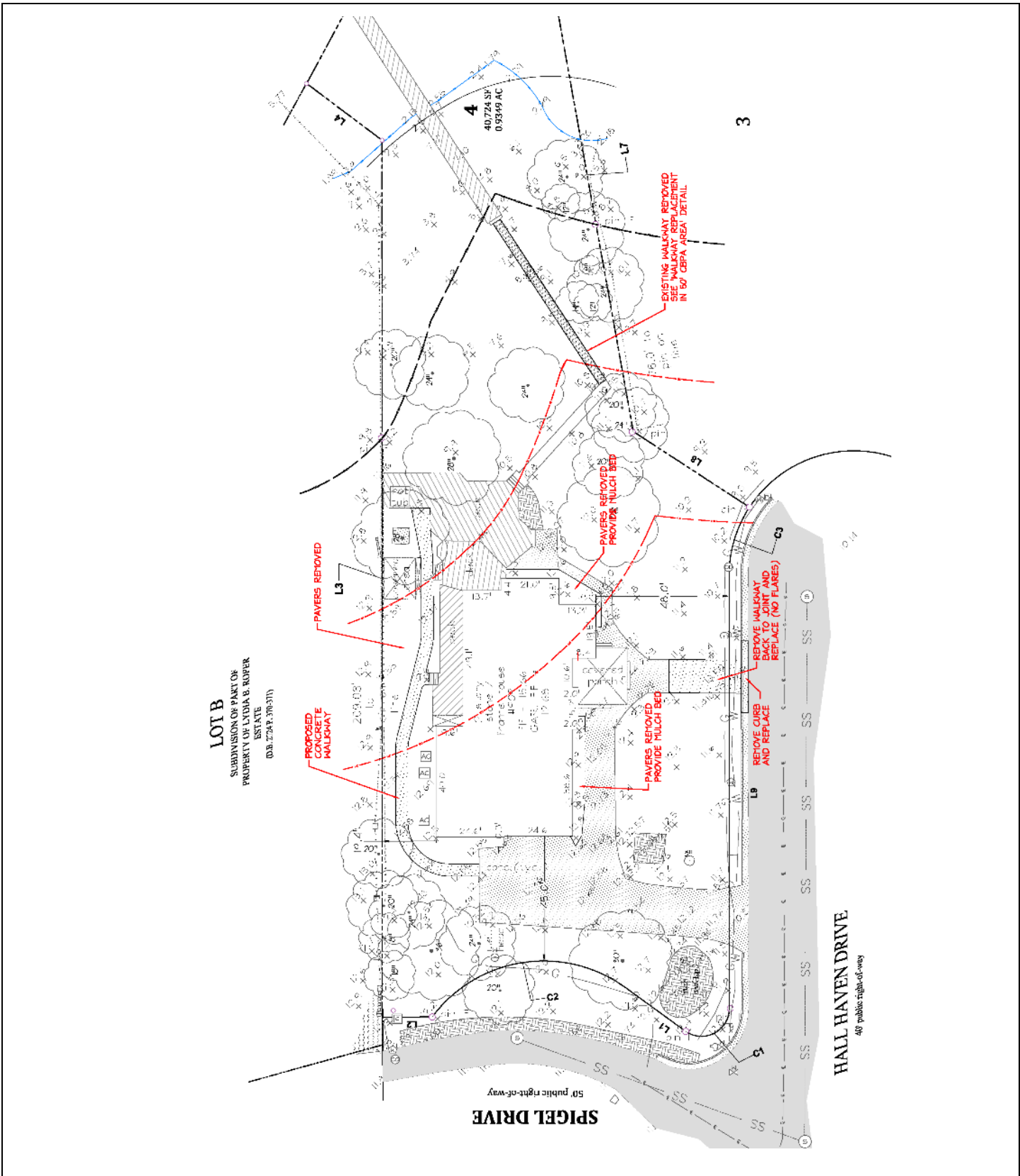
Demolition Plan



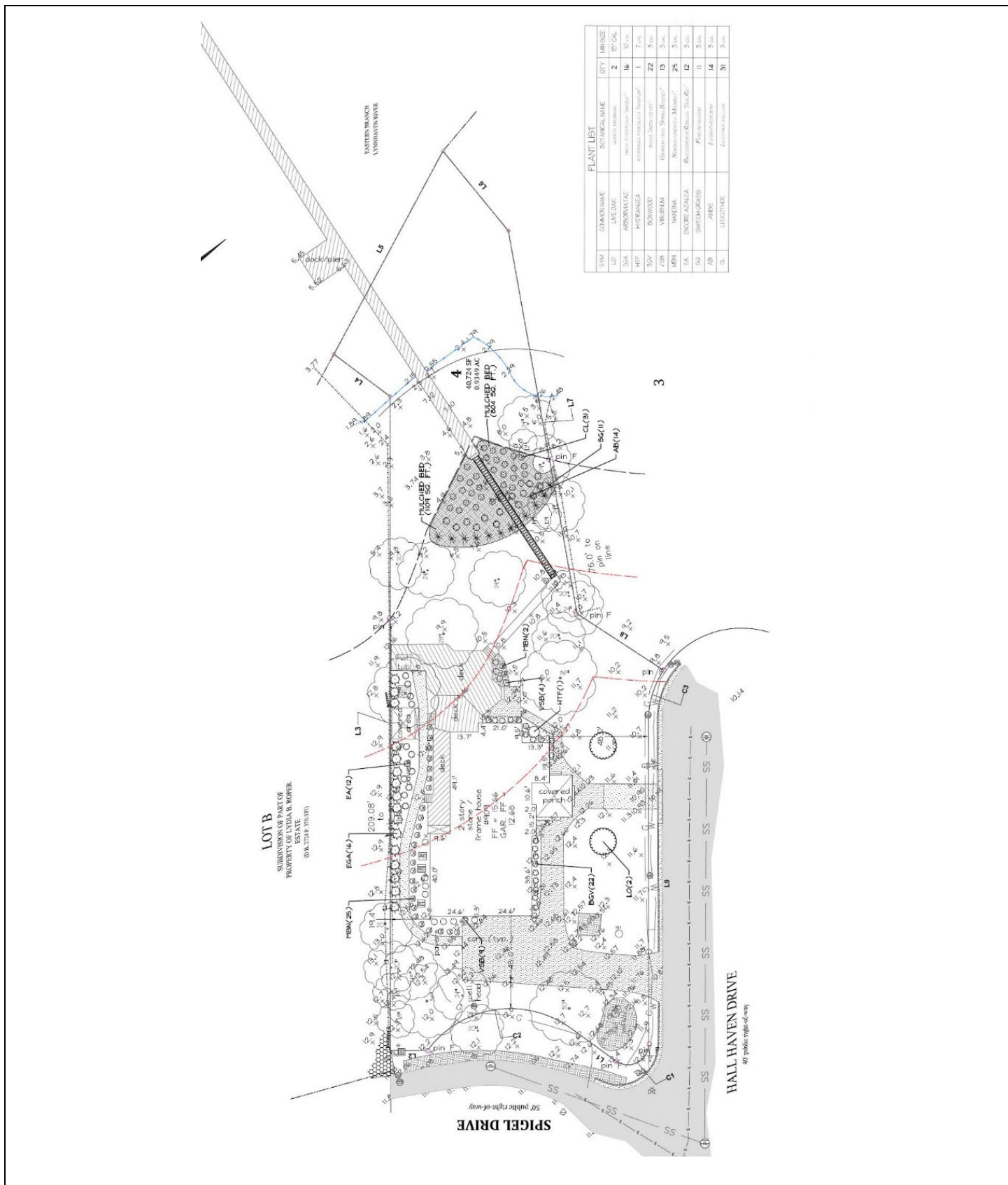
Calculations Based on DKT survey:

Total Area of Site:	40,724 SF	0.932 Acres
Area of Water and Wetlands:	10,518 SF	0.241 Acres
Area of Seaward 50' buffer:	6,818 SF	0.157 Acres
Area of Landward 50' buffer:	7,384 SF	0.170 Acres
Area out of 100' buffer:	16,008 SF	0.367 Acres
Total Impervious Area:	14,424 SF	0.331 Acres
Impervious Area:	1,641 SF	0.038 Acres
	4,278 SF	0.098 Acres
	8,505 SF	0.195 Acres
% of Impervious Area:	24.08%	
	57.31%	
	50.13%	
TOTAL SF2:		36.42%

Proposed Improvements Plan



Buffer Restoration/Landscape Plan



Disclosure Statement

Disclosure Statement



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

Applicant Disclosure

Applicant Name Nilkant Patel

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.

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.

Cuboid Global, LLC

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.

Kellam Engineering

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

Nilkanth

Print Name and Title

Nilkanth Patel (Owner)

Date

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

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

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

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

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Address on Noncompliance: 909 Hall Haven Drive
Property Owner: Nilkanth and Kalpana Patel
Public Hearing: March 25, 2024
City Council District: District 8

Agenda Item

9

Applicant's Agent

Robert Kellam

Staff Planner

Cole S. Fisher

Lot Recordation

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

Lot Description

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

GPIN

1498-42-6983

Statement of Noncompliance

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

Show Cause Hearing

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

Degree of Deviations or Noncompliance

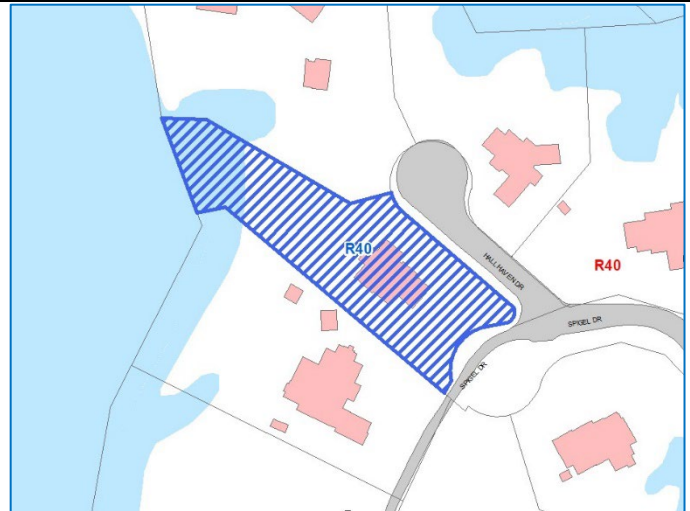
- High

Environmental Impacts

- Medium

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

The civil charge has been paid.



Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

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

CBPA Ordinance Variance History

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

History of Noncompliance

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

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

Chronology of Noncompliance Event

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

- November 8, 2021 Chesapeake Bay Preservation Area (CBPA) Administrative Variance signs were provided to the property owner and the property posted advertising the CBPA Administrative Variance request in compliance with City Code, Appendix F, Sec. 110(B) *Administrative Variances*.
- December 8, 2021 A review letter was sent to the property owner regarding the completion of the first review of the Single-Family Site Plan in the RPA for the property. The site plan was not approved at that time.
- August 19, 2022 Staff sent a Notice to Comply letter to the property owner to remove the unauthorized improvements within the Resource Protection Area. Said removal of unauthorized improvements could be handled through the site plan review process and addressed on the resubmittal of the Single-Family Site Plan in the RPA to the DSC.
- August 10, 2023 Staff sent a Show Cause letter to the property owner to serve as written notice to appear before the CBPA Board at the public hearing scheduled Monday, August 28, 2023.
- August 28, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 909 Hall Haven Drive to the October 23, 2023, CBPA Board public hearing. The motion passed.
- October 23, 2023 A motion was brought forth at the CBPA Board public hearing to defer the Show Cause hearing for the property located at 909 Hall Haven Drive to the November 27, 2023, CBPA Board public hearing. The motion passed.
- November 14, 2023 Staff received and up to date physical survey of the property from the property owner's agent.
- November 27, 2023 At the November 27, 2023, CBPA Public Hearing, the property owner appeared before the CBPA Board for the Show Cause Hearing for the construction of the unauthorized improvements on the lot. A motion was made, with a second provided, to find the property owner in noncompliance with a civil charge of \$7,500.00 and a restoration hearing ordered for the February 26, 2023, CBPA Public Hearing.
- February 26, 2024 The CBPA Board deferred this item at the public hearing for 90 days.

Evaluation and Recommendation

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

Given the extent of information provided with this restoration order, Staff is of the opinion that the restoration hearing for the property located at 909 Hall Haven Drive and the after-the-fact CBPA Variance request, agenda items 8 and 9 of this Staff report for the March 25, 2024, CBPA Board public hearing, should be heard in conjunction. Staff recommends the conditions associated with this after-the-fact request shall serve as restoration initiatives.

Site Aerial

