

Chesapeake Bay Preservation Area Board Agenda

September 24, 2018



CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

The Virginia Beach Chesapeake Bay Preservation Area Board will hold a Public Hearing on **Monday, September 24, 2018, at 10:00 a.m. in the City Council Chamber**, Virginia Beach Municipal Center, Virginia Beach, Virginia.

An informal session is held at 9:00 a.m. in the City Council Chamber at which time 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 Public Hearing held at 10:00 a.m. in the City Council Chamber.

The staff reviews all of the items on this agenda and offer recommendation for consideration by the Chesapeake Bay Preservation Area Board, in the event they should approve the application. However, it should not be assumed that those conditions constitute all of 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 DO NOT UNDERSTAND, ASK A STAFF MEMBER SITTING AT THE DESK AT THE FRONT OF THE CHAMBER OR THE STAFF MEMBER AT THE DESK OUTSIDE THE CHAMBER).

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 of 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 of 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 of the items that it believes should be on the Consent Agenda, it will vote at one time for all of 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 Planning Department 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 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 CBPA Board Chairman, this time may be increased to 5 minutes. Speakers will be electronically timed.

If you are **physically disabled** or **visually impaired** and need assistance at this meeting, please call the **Planning and Community Development** at **(757) 385-4621**.

9:00 AM

- **INFORMAL STAFF BRIEFINGS OF PUBLIC HEARING AGENDA ITEMS**

10:00 AM

- **FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS**

NEW BUSINESS AGENDA ITEMS

1.

Bryan and Heather Garnett
[Property Owners and Applicants]

1428 N. Woodhouse Road
GPIN: 2409-90-5068
COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Robert Simon

Staff Planner – PJ Scully

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2.

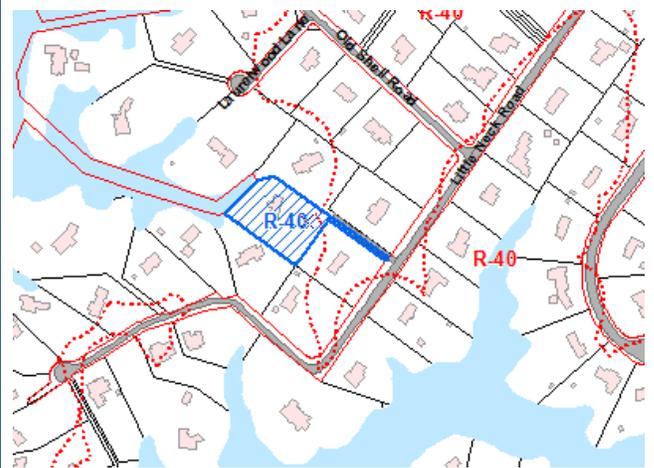
Beverly-Ann Hyde Trust
[Property Owner and Applicant]

1388 W. Little Neck Road
GPIN: 1488-38-6419
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Tom Langley, P.E.

Staff Planner – PJ Scully

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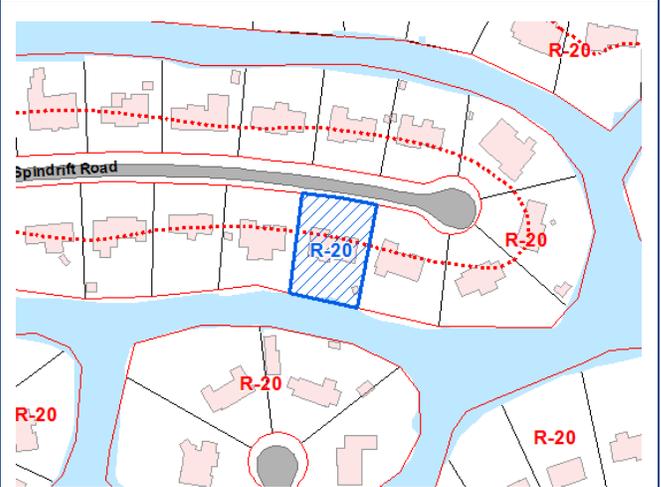
3.

John and Terry Kubichan
[Property Owners and Applicants]

2309 Spindrifft Road
GPIN: 2409-09-5563
COUNCIL DISTRICT – Lynnhaven

Applicant’s Agent – Billy Garrington

Staff Planner – PJ Scully
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4.

**John O. Wynne Jr. Revocable Trust and
Katherine W. Wynne Revocable Trust**
[Property Owners and Applicants]

1421 N. Bay Shore Drive
GPIN: 2419-11-5075
COUNCIL DISTRICT – Beach

Applicant’s Agent – Billy Garrington

Staff Planner – PJ Scully
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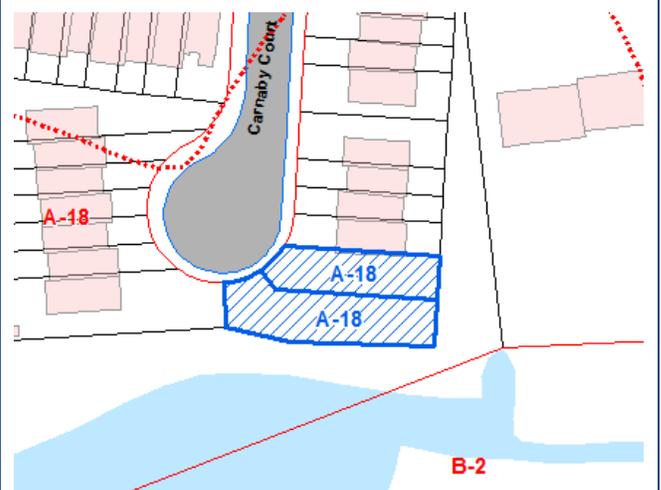
5.

Lynnhaven Area Properties, LLC
[Property Owner and Applicant]

**Washington Square, Section 7, Part 1,
Carnaby Court, Lots 9A and 10A**
GPINs: 2407-28-7593 and 2407-28-7531
COUNCIL DISTRICT – Lynnhaven

Applicant’s Agent – Lisa Murphy, Esq.

Staff Planner – PJ Scully
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9.

John P. Dunn and Kimberly Brown
[Property Owner and Applicant]

2309 Broad Bay Road
GPIN: 1499-99-8075
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Self represented

Staff Planner – PJ Scully
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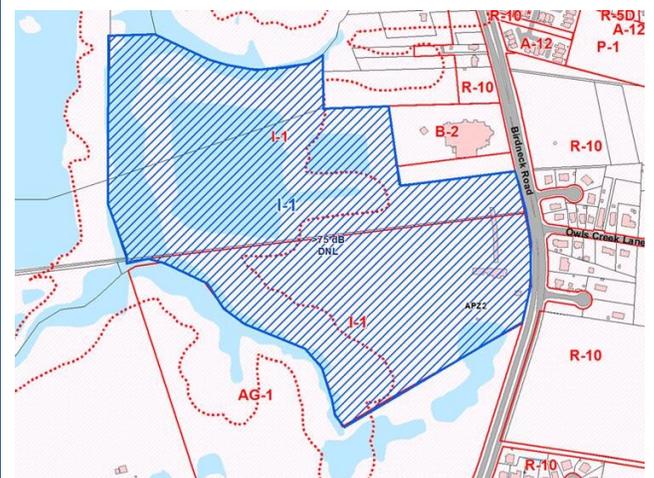
10.

Owl Creek Energy, LLC
[Property Owner and Applicant]

411 S. Birdneck Road
GPIN: 2417-40-4823
COUNCIL DISTRICT - Beach

Applicant's Agent – Scott Acey, P.E.

Staff Planner – PJ Scully
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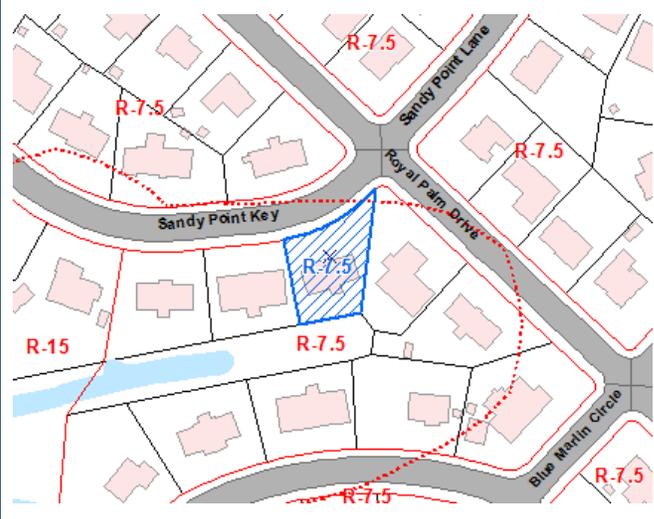
11.

Jamie Collins-Facteau
[Property Owner and Applicant]

3513 Sandy Point Key
GPIN: 1487-68-1393
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Self represented

Staff Planner – PJ Scully
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Property Owners and Applicants **Bryan and Heather Garnett**
 Address **1428 N. Woodhouse Road**
 Public Hearing **September 24, 2018**
 City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) 100 buffer to construct a shed, garage and swimming pool with associated pool surround, patio areas, walk, and pool house.

Applicant's Agent

Robert Simon

Staff Planner

PJ Scully

Lot Recordation

9/23/1982

Map Book 160, Page 13

GPIN

2409-90-5068

SITE AREA

148,287 square feet or 3.40 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

123,040 square feet or 2.83 acres

EXISTING IMPERVIOUS COVER OF SITE

20,758 square feet or 16.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

24,285 square feet or 19.7 percent of site

Area of Redevelopment in RPA

1,966 square feet

Area of New Development in RPA

3,557 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

50 foot Landward Buffer

100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of paver driveway

Construction Details

- Garage
- Paver patio with associated walk
- Swimming pool with pool surround and pool house
- Shed (*majority of shed is proposed over existing gravel driveway*)
- Redevelopment of existing wood decks

CBPA Ordinance Variance History

September 22, 1997, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a detached garage/guest house with the following conditions:

- 1. The garage/guest house is to be relocated so that no portion of the footprint extends below the top-of-bank. This can be accomplished by realigning the structure approximately 18 feet to the south. As proposed, the improvements would lie approximately 22 feet from wetlands with construction limits within a few feet of this resource.*
- 2. Remove debris from the adjacent tidal fringe marsh.*
- 3. Tree compensation shall be at a 3:1 ratio as required by the CBPA Ordinance. Six trees will be required. The location of the new trees shall be noted on the revised site plan.*
- 4. The applicant is required to utilize pavers for the 18' x 18' concrete parking pad in an effort to minimize stormwater runoff.*
- 5. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

The September 22, 1997 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): 8

Soil Type(s)

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

Shoreline

The north and east portions of the shoreline are hardened by bulkheads. A Joint Permit Application (JPA) will be pursued to replace the wood bulkhead along the eastern portion of the property. The southern portion of the property is partially hardened by a riprap revetment. A small portion of this shoreline, that has not been hardened, is exhibiting signs of erosion and will be addressed through the JPA process.

Riparian Buffer

Heavily wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 4
- Evaluation of existing tree removal request: Trees being requested for removal are within the delineated limits of construction. The 30 inch pine to be removed is exhibiting signs of decline due to the existing speaker system and lighting systems girdling several branches.

Evaluation and Recommendation

This request provides merit towards the purpose and intent of the Chesapeake Bay Preservation Area (CBPA) Ordinance. First, to protect high quality state waters, the applicant has a Joint Permit Application (JPA) under review for the installation of additional riprap along the southern shoreline, specifically the area between the two existing riprap revetments, to correct the ongoing shoreline erosion. Second, to filter stormwater run-off and rain water infiltration, the applicant is proposing to construct the proposed improvements within areas of existing impervious cover and areas currently devoted to turf. As a result, tree removal will be minimal and the existing riparian buffer left intact. Lastly, stormwater management will be required and addressed through best management practices and can be accomplished in close proximity to the proposed improvements, allowing the existing forested areas and mature forest floor to remain undisturbed.

With impacts to the existing riparian ecosystem being minimal, and the overall proposed impervious cover of the parcel at less than 20 percent, Staff supports this variance request and is in agreement with the agent's responses that address the required findings of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because *"the existing residence does not have an attached garage as do most developed sites within Alanton and the pool request is in keeping with similar sized pools and decks in the neighborhood."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief *"with the proposed improvements keeping the overall impervious cover under 20 percent for the entire parcel above water and wetland."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare *"with the placement of all proposed improvements being within areas of relatively flat topography with BMPs being installed to treat stormwater runoff where there are none currently."* Staff adds that the access

Bryan and Heather Garnett

Agenda Item 1

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to the proposed improvements during construction occurs across areas of existing impervious cover and areas of turf help support this finding.

- 5) *“Structural BMPs shall be installed”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Staff recommends the following 11 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project, the required silt fence shall be installed 15 feet from improvements.
5. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
6. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
7. 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.
8. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,557 square feet x 200 percent = 7,114 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 to the greatest extent practicable.

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

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

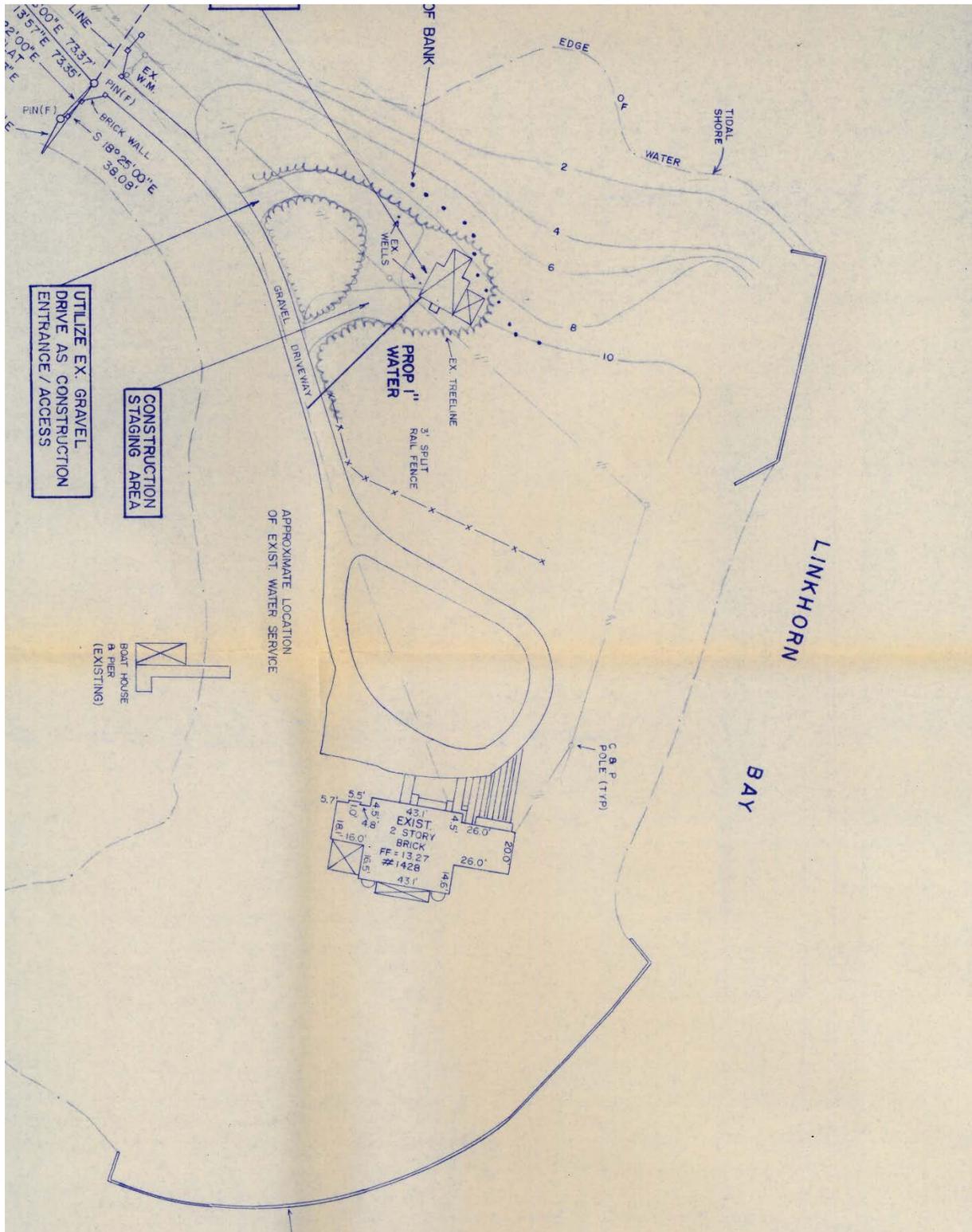
9. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
10. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$815.14 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
11. The conditions and approval associated with this variance are based on the exhibit plan dated September 5, 2018, prepared by Chesapeake Bay Site Solutions, signed by Gregory Milstead. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for 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.

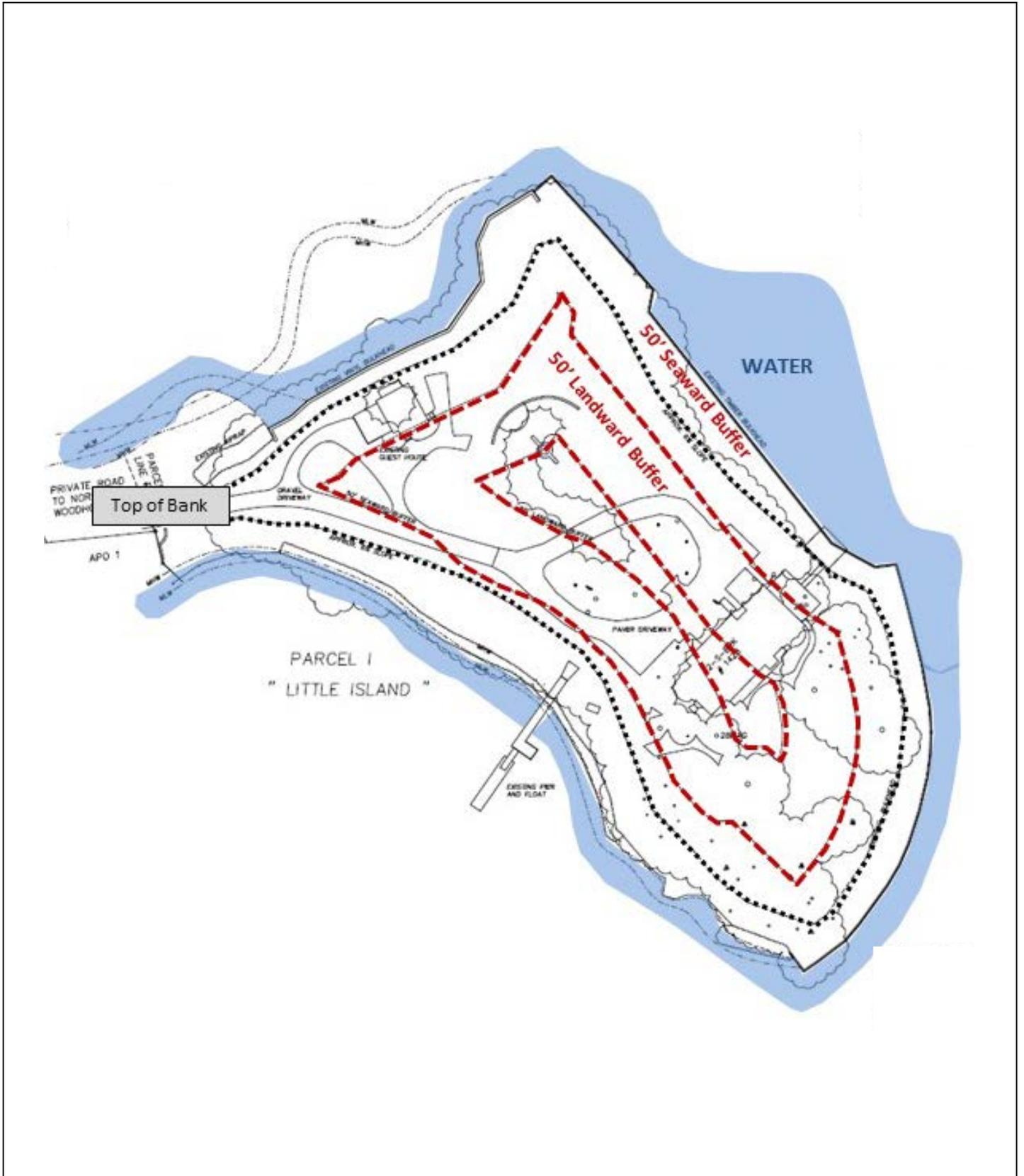
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial





CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Bryan Garnett

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).		
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE: _____
<input type="checkbox"/>	NO CHANGES AS OF	DATE: _____
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE: _____



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.
- (A) List the Applicant's name: Bryan Garnett
If an LLC, list all member's names:

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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
- (A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Keiter, Jacob Fawaro
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Marathon Resource Management
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WCI, Chesapeake Bay Site Solutions
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Union Bank & Trust
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

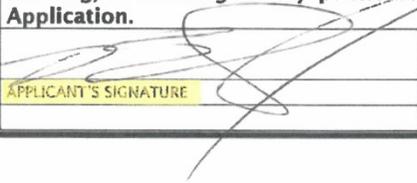
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Bryan Garnett	10-4-18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.
Bryan and Heather Garnett
Agenda Item 1
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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool and expand portions of the existing driveway.

Applicant's Agent

Tom Langley

Staff Planner

PJ Scully

Lot Recordation

3/28/1961

Map Book 52, Page 13

GPIN

1488-38-6419

SITE AREA

60,092 square feet or 1.38 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

59,413 square feet or 1.364 acres

EXISTING IMPERVIOUS COVER OF SITE

9,271 square feet or 15.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

15,146 square feet or 25.5 percent of site

Area of Redevelopment in RPA

564 square feet

Area of New Development in RPA

3,906 square feet

Location of Proposed Impervious Cover

50 foot Landward Buffer

100 foot Variable Width Buffer

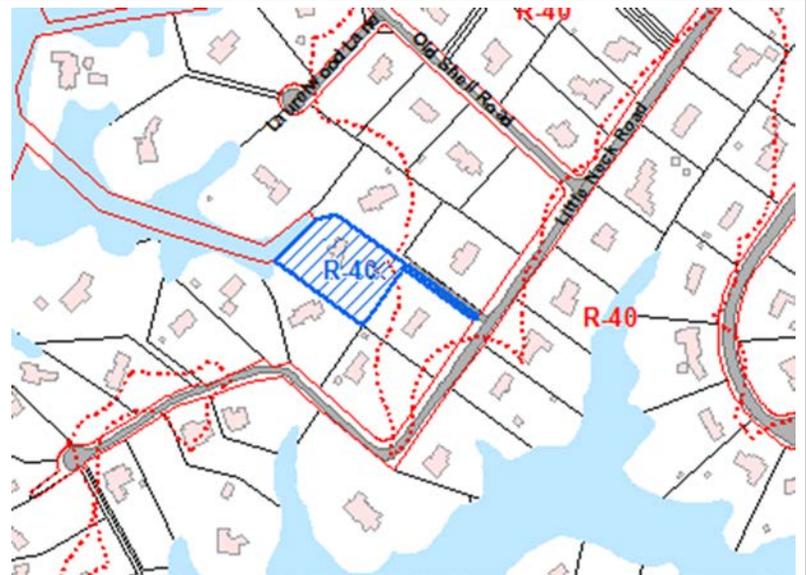
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of existing gravel driveway
- Shed

Construction Details

- Expansion of existing gravel driveway with the use of GravelPave or similar installation
- Pervious paver driveway expansion, adjacent to existing concrete driveway
- Concrete pad, adjacent to existing concrete driveway
- Swimming pool with associated concrete pool surround
- Shed

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is partially in a natural state with a wood bulkhead and pier along the northwestern portion of the parcel.

Riparian Buffer

Moderate to heavily wooded parcel.

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

Evaluation and Recommendation

For the Board's deliberation, the applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 1) *"The proposed improvements are similarly situated with other improvements on properties within the immediate neighborhood and will not confer upon the Applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas."* Staff concurs.

- 2) Staff provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the proposed backyard pool has been located and positioned to minimize seaward encroachment to the maximum extent possible."* The Applicant's agent also offers that *"the proposed improvements should not contribute to a degradation of water quality."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare, as *"the Applicant is proposing buffer restoration with new trees and shrubs, and other best management practices to protect water quality to reduce pollution."* Staff concurs.
- 5) *"The Applicant is proposing buffer restoration of new trees and shrubs, bioretention, pervious pavers, and pervious gravel driveway to intercept stormwater runoff"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Staff supports the application as submitted with the 10 recommended conditions below and is in agreement with the applicant's agent that said improvements will not contribute to the degradation of water quality or prove detrimental to resource protection area features.

Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
6. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
7. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,825 square feet x 200 percent = 5,660 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 to the greatest extent practicable.

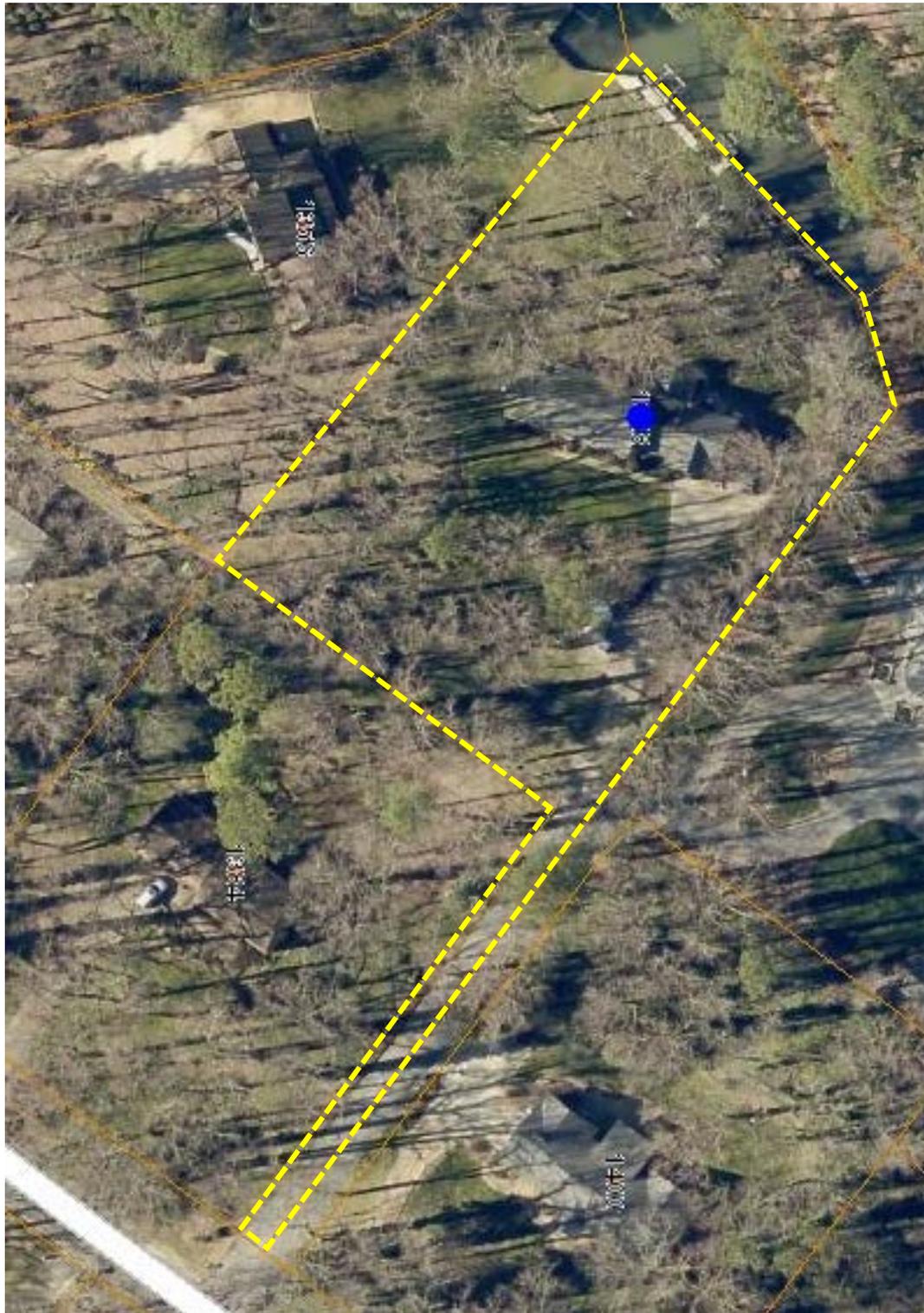
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material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

8. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
9. **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 \$647.39 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
10. The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by Langley & McDonald Inc., signed September 13, 2018 by Alan B Gonyo. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

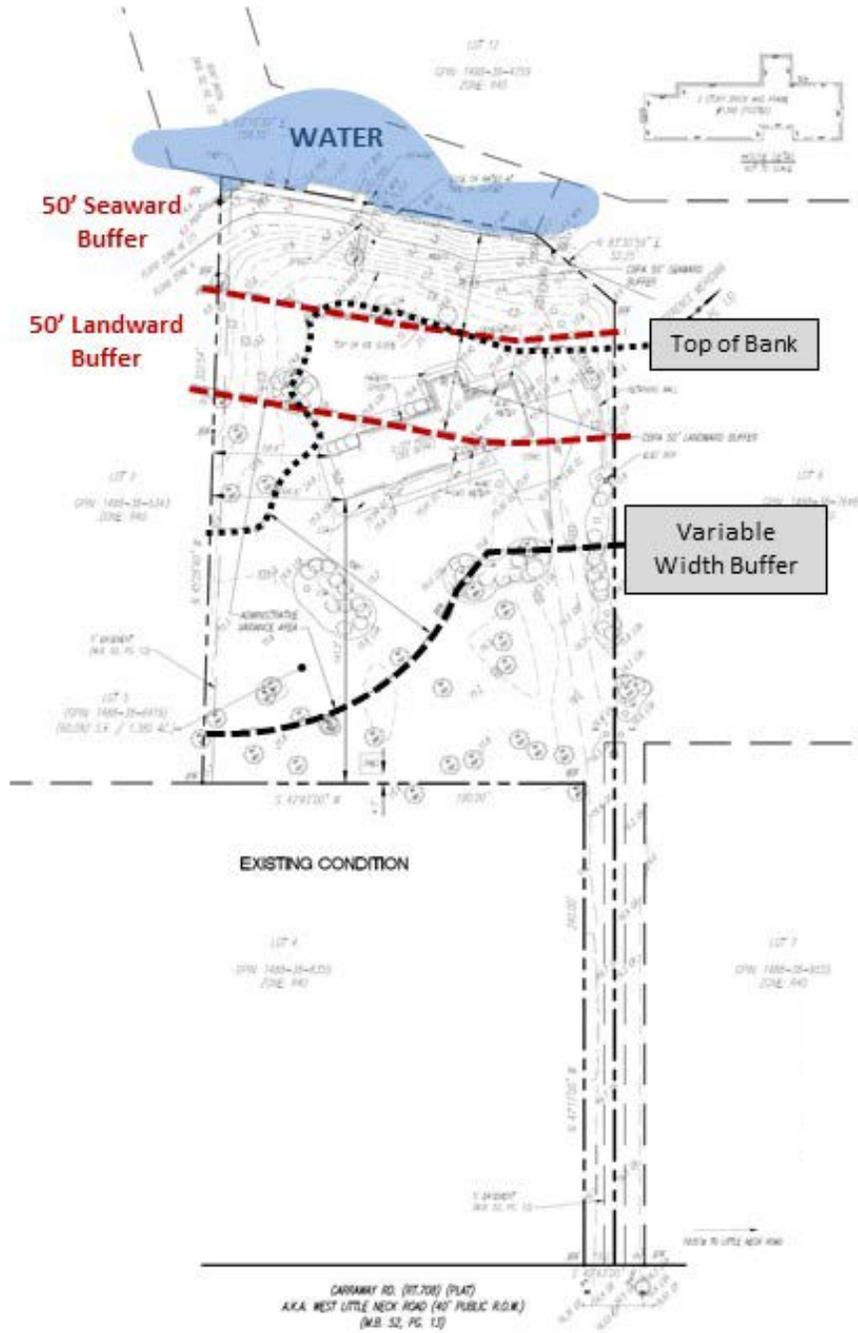
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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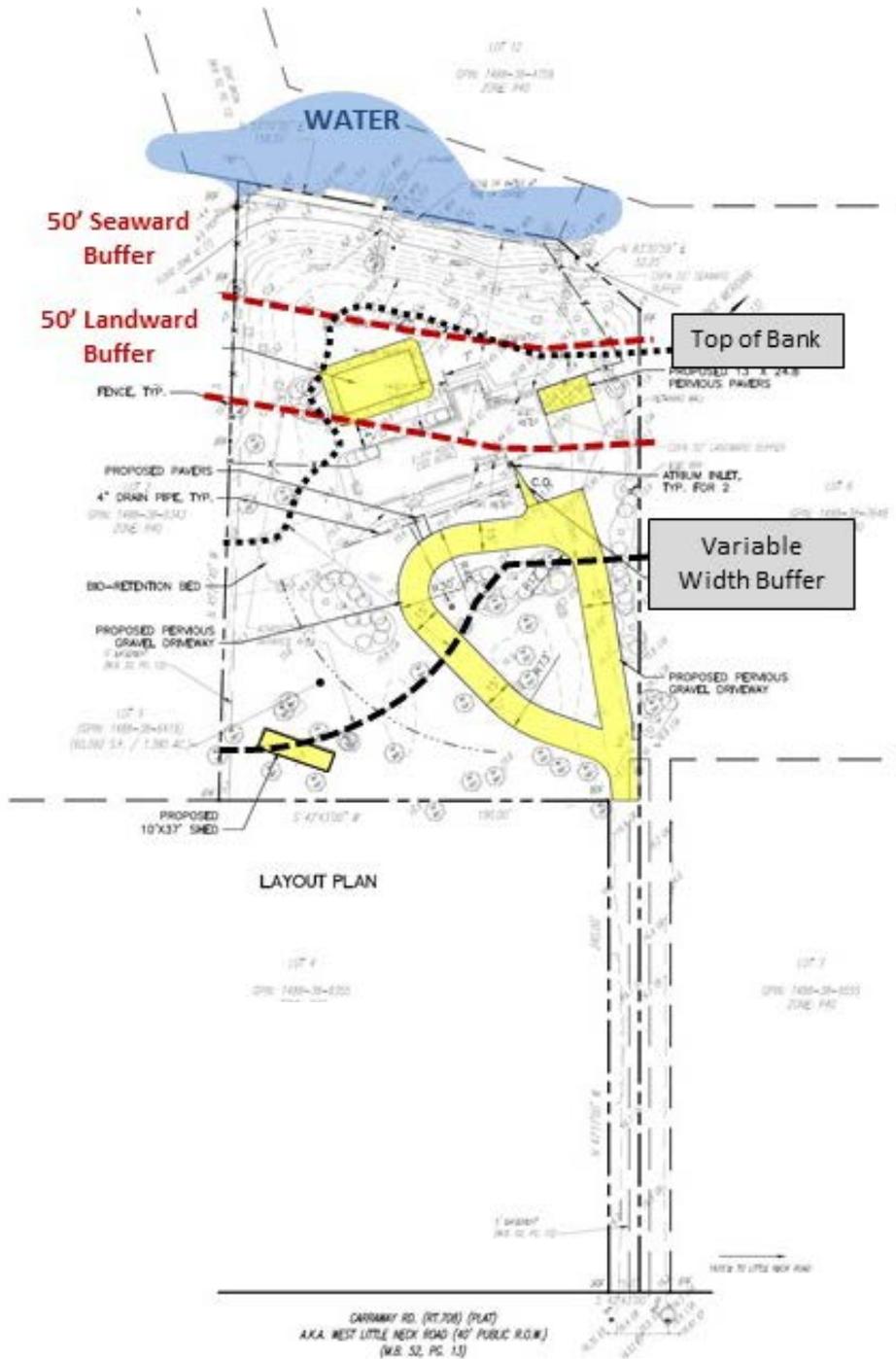
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Beverly-Ann Hyde Trust

DISCLOSURE STATEMENT FORM

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Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).			
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: _____
If an LLC, list all member's names:

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

(B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Eileen Schneider, CPA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Langley & McDonald (Tom Langley)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Freedom Mortgage
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Inman & Strickler (Mike Inman)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Beverly-Ann Hyde Trust	8/2/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

The application is being withdrawn. Staff supports the withdrawal.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool and associated pool surround.

CBPA Variance Request History

December 28, 1993 A Chesapeake Bay Preservation Area (CBPA) variance was granted for the construction of a swimming pool and pool surround.

Applicant's Agent

Brad Martin, P.E.

Staff Planner

PJ Scully

Lot Recordation

10/6/1959

Map Book 48, Page 15

GPIN

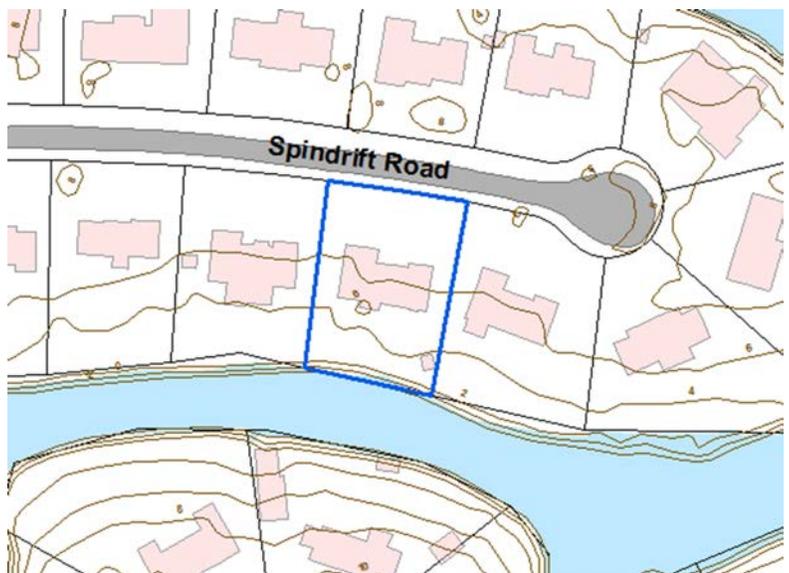
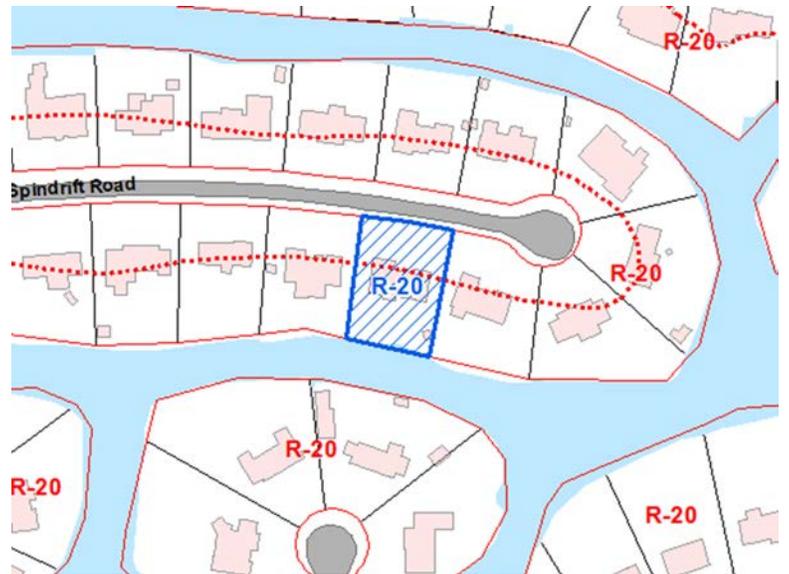
2409-09-5563

SITE AREA

20,445 square feet or 0.47 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,826 square feet or 0.46 acres



AS NEEDED, PAGE LEFT BLANK

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

2/14/1944

Map Book 15, Page 48

GPIN

2419-11-5075

SITE AREA

81,750 square feet or 1.877 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

81,062 square feet or 1.86 acres

EXISTING IMPERVIOUS COVER OF SITE

12,117.8 square feet or 15.0 percent of site
 (Quantity inclusive of previously demolished single family residence)

PROPOSED IMPERVIOUS COVER OF SITE

21,644.4 square feet or 26.7 percent of site

Area of Redevelopment in RPA

1,272.2 square feet

Area of New Development in RPA

2,353 square feet

Location of Proposed Impervious Cover

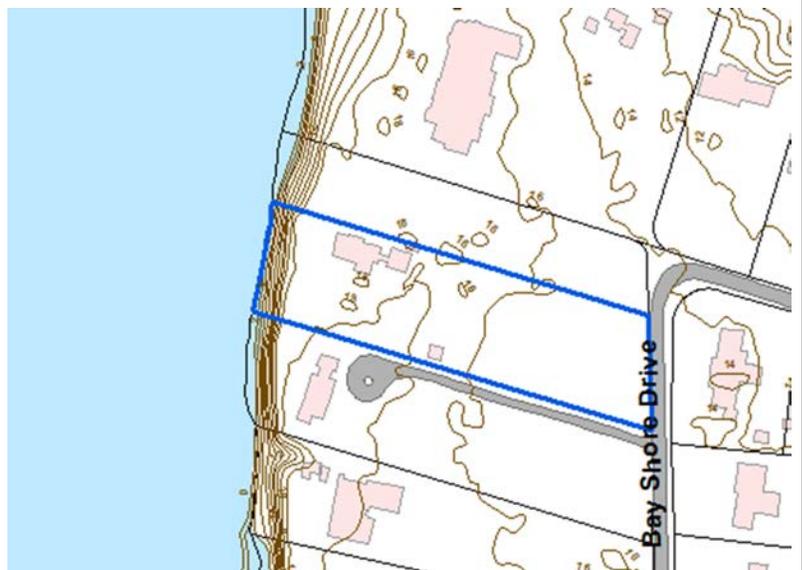
- 50 foot Seaward Buffer
- 50 foot Landward Buffer
- 100 foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Asphalt driveway
- Wood retaining wall
- Block steps

Construction Details

- Single family residence with associated walkways and garden areas
- Paver driveway with arrival court, service court area and detached garage
- Storage structure and generator area
- Swimming pool and spa with associated paver patio area
- Reconfigured bank with turf steps and retaining wall at existing frame boathouse

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

The tidal shoreline is hardened with a riprap revetment. The upper reach of the existing bank is exhibiting signs of erosion. Existing tree stumps along the northeastern reach of the bank are deteriorating and the invasive groundcover has shaded out underlying herbaceous growth adding to the risk of future erosion. The Center for Coastal Resource Management suggests that along some shorelines, it may be appropriate to reduce the steepness of a bank's slope to allow wave run-up and to improve growing conditions in order to sustain vegetation. Grading should only be conducted where essential and done as minimally as possible to achieve the necessary slope. Banks that are graded should be stabilized with a variety of native plants placed at appropriate elevations. The feasibility to grade a bank may be limited by upland structures, existing shoreline defense structures, and/or adjacent property conditions. The applicant's agent intends to address this environmental condition by regrading the northeastern portion of the existing bank. The current slope ratio exceeds a 2:1 ratio, with an approximately slope of 54 percent. The proposed regrading of the northeastern reach of the bank would retreat from the top of bank approximately 20 feet and reduce the slope by approximately 14 percent to a slope of 40 percent.

Riparian Buffer

Sparsely wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 11

John O. Wynne Jr. RT and Katherine W. Wynne RT

Agenda Item 4

Page 36

- **Evaluation of existing tree removal request:** In total, 23 trees are requested for removal. Eleven of the 23 trees are within the RPA, of which 5 of the 11 trees are associated with the regrading of the existing shoreline bank. While Staff supports the regrading of the northeastern reach of the existing bank, it is Staff's opinion that the 5 existing trees located south of the framed boathouse and proposed gravel walk should be preserved. Staff has addressed this concern with the recommended conditions, specifically condition 12 below.

Evaluation and Recommendation

Exclusive of the proposed gravel walk to the existing boathouse and wood pier, the proposed improvements result in a slight increase of 170 square feet of impervious surfaces within the 50 foot landward buffer.

With regards to the land disturbance associated with this variance request, Staff met with the applicant's agent, engineer of record, landscape architect, and builder to discuss the redevelopment of this parcel with an intent to correct the deteriorating bank condition and the placement of proposed improvements with regard to the delineated RPA features, topography, and location of the existing residential structure that has been demolished. Staff is of the opinion that the proposed project provides a comprehensive approach that benefits the short-term maintenance and redevelopment of the riparian buffer ecosystem by addressing existing and future erosion potential and by providing a master plan towards revegetation of the parcel that will provide long-term water quality benefits through interception and infiltration of rainwater.

The applicant's agent has provided the following comments with respect to the findings of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991, numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff respects the applicant's position; however, given the size of the parcel, and the amount of available land for development in the RMA, Staff instead focuses on the comprehensive approach with regard to the redevelopment of this parcel which includes corrective measures to address erosion threats and vegetative replacements to harvest rainwater and restore the buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but rather; *"the buffer zones being made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff adds that this parcel was platted in 1944, prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the 100 foot RPA and the delineated variable width buffer.
- 3) The applicant's agent provides that *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* While this variance results in an overall impervious cover of 26.7 percent, Staff is of the opinion that the proposed impervious cover within the 100 foot buffer is minimal given that the overall comparison of the proposed impervious cover in the 50 foot landward buffer is a minimal increase of approximately 170 square feet.

- 4) The applicant’s agent provides that *“the purpose and intent of the ordinance is simply water quality, to prevent pollution on the Bay as a result of non-point source pollution. Most of these homes currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* As mentioned above, Staff is of the opinion that the proposed project provides a comprehensive approach that benefits the short-term maintenance and redevelopment of the riparian buffer ecosystem by addressing existing and future erosion potential and by providing a master plan towards revegetation of the parcel that will provide long-term water quality benefits through interception and infiltration of rainwater.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load; *“strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.”* Staff concurs.

For the Board’s deliberation, Staff offers the following 14 recommended conditions relative to the performance standards of the CBPA Ordinance specific to this variance request, as a means towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

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

2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.

5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**

6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

7. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

9. 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.
10. Buffer restoration shall be installed in substantial compliance with the Landscape Masterplan provided by Page Duke Landscape Architects. Said 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.
11. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
12. The existing trees, 5 in total delineated as trees 42, 43, 44, 45 and 53 located south of the existing boathouse and proposed gravel path to the pier shall be preserved.
13. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$539.22 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
14. The conditions and approval associated with this variance are based on the exhibit plan dated July 25, 2018, prepared by Gallup Surveyors and Engineers, signed July 25, 2018 by Bruce Gallup. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

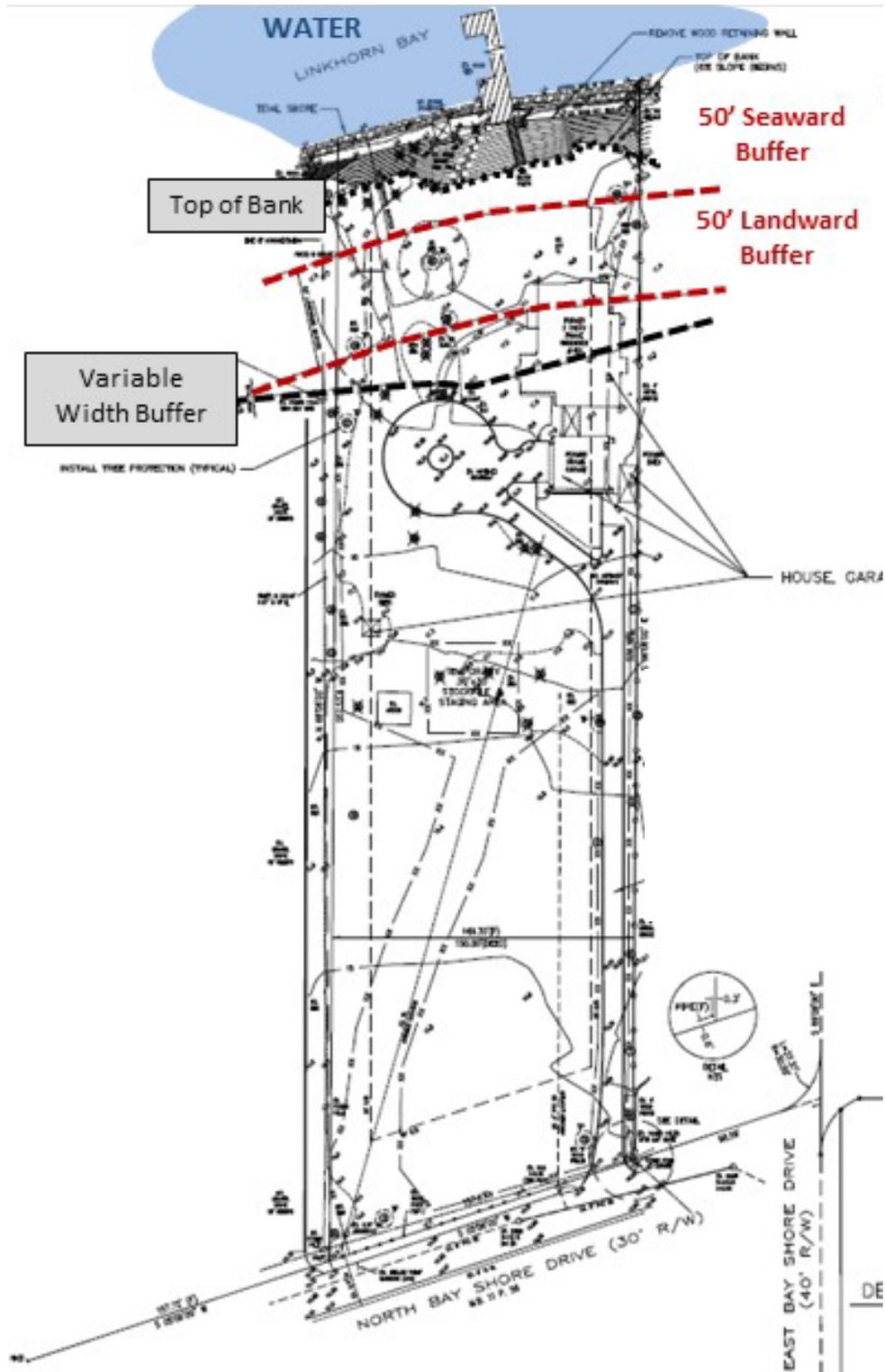
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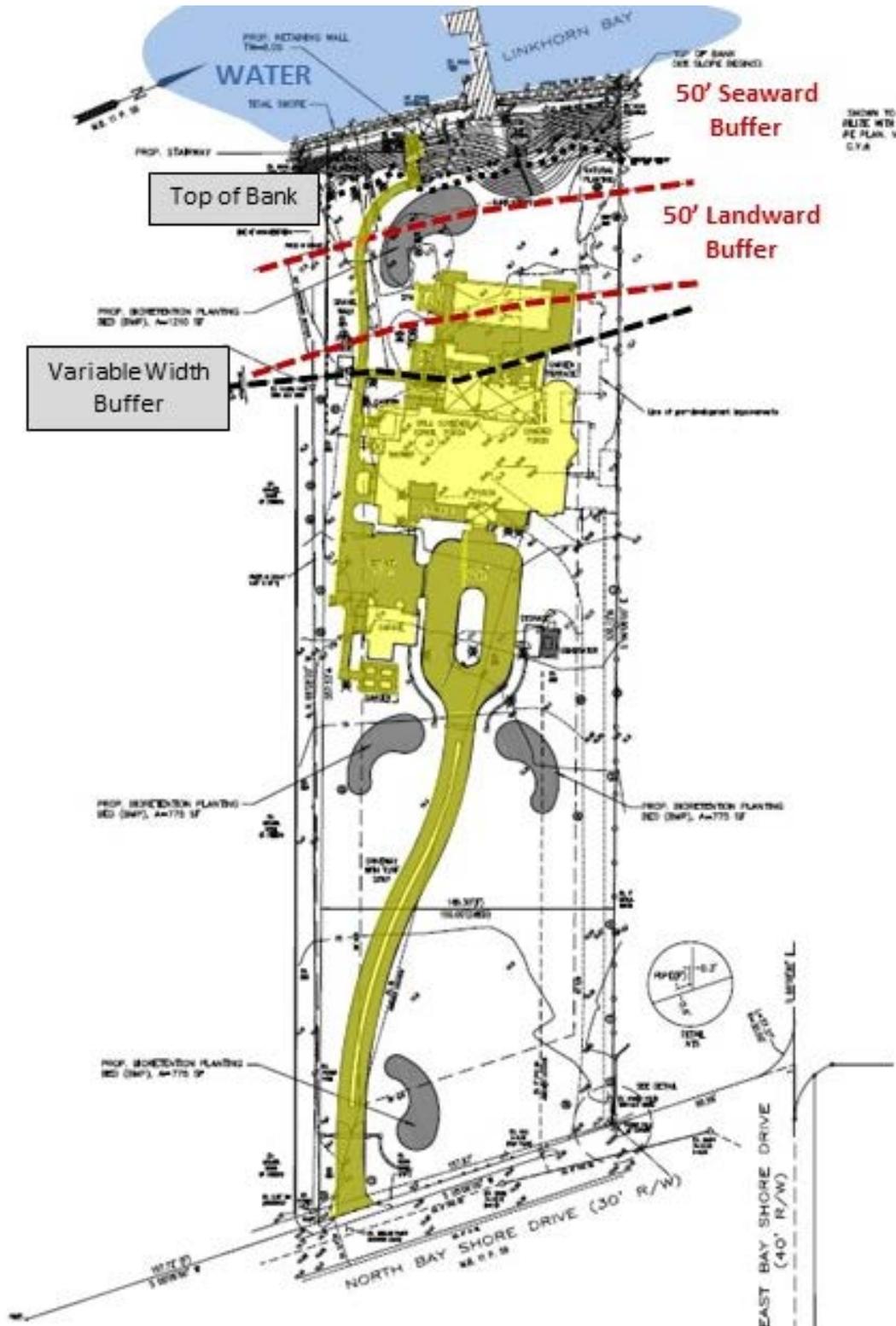
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Illustrative Master Plan





APPLICANT'S NAME Katherine W. Wynne/John O. Wynne Jr Rev. Trusts

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<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Wynne Revocable Trusts below
If an LLC, list all member's names:

Katherine W. Wynne Revocable Trust
John O. Wynne Jr 2009 Revocable Trust

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

(B) List the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes¹ and²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Landscape: Siska Arund; Page Duke / Jenkins Architecture
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	J. M. Sykes, Inc.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Bruce Gallup, PE / Steve Boone LS
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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CERTIFICATION:

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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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.**

<i>John O. Wynne, Jr.</i>	John O. Wynne, Jr	7/25/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

John O. Wynne Jr. RT and Katherine W. Wynne RT

Agenda Item 4

Page 48



APPLICANT'S NAME Katherine W. Wynne/John O. Wynne Jr Rev. Trusts

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Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).			
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Wynne Revocable Trusts below
If an LLC, list all member's names:

Katherine W. Wynne Revocable Trust
John O. Wynne Jr 2009 Revocable Trust

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

(B) List the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Landscape: Siska Arund; Page Duke / Jenkins Architecture
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	J.M. Sykes, Inc.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Bruce Gallup, PE / Steve Boone LS
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	<p>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?</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.**

<i>Katherine W. Wynne</i>	Katherine W. Wynne	7/25/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

AS NEEDED, PAGE LEFT BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) 100 foot buffer to construct a single family attached townhouse on each lot.

Applicant's Agent

Lisa Murphy, Esq.

Staff Planner

PJ Scully

Lot Recordation

9/23/1982

Map Book 148, Page 4

GPINs

2407-28-7593 and 2407-28-7531

SITE AREA

8,268 square feet or 0.18 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

8,268 square feet or 0.18 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

3,612 square feet or 43.6 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,612 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

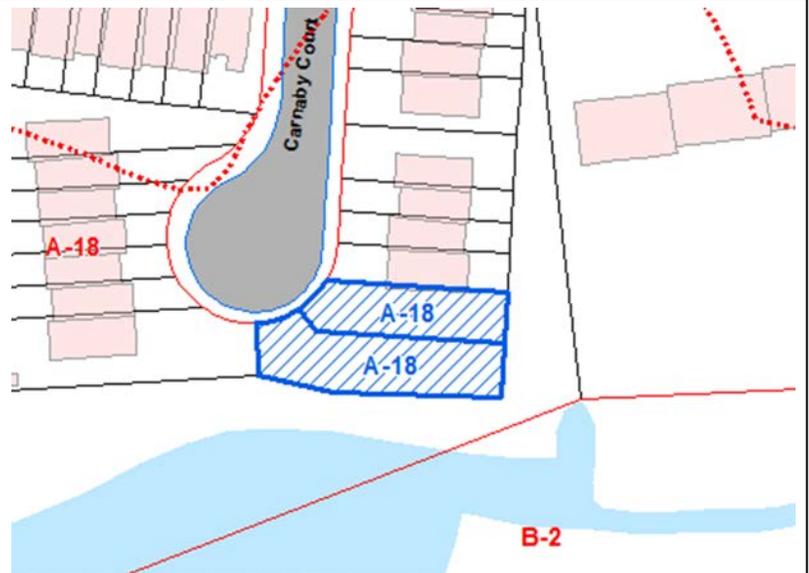
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family attached townhome on each lot
- Driveways and associated walkways

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Chapanoke Urban Series (deep, poorly drained soils)

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

Shoreline

Shoreline is in a natural state and is the headwater of Wolfsnare Creek. The majority of this reach is mudflat with heavy overgrowth of woody vegetation along the shoreline bank that transitions into a Phragmites dominated marsh environment.

Riparian Buffer

Sparsely wooded, undeveloped parcel

- Number of existing canopy trees requested for removal within the RPA: 866 square feet of scrub vegetation/forested area.
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: The vegetation to be removed is located in the southeast corner of the parcel consisting of undergrowth, large shrubs and understory trees of 4 inch diameter at breast height (DBH) or less.

Evaluation and Recommendation

The applicant is proposing to construct a townhome on each undeveloped lot. Each townhome will have a footprint of approximately 1,035 square feet, inclusive of an attached garage, and a 120 square foot patio. The existing lots, platted in 1982, are reasonably sized to allow for accessory uses. These lots are at the end of a row of townhomes in a cul-de-sac. There are other townhomes within Washington Square that encroach similarly and further into the RPA. The proposed townhomes would be similar in style and building materials, but will also include garages, which the existing townhomes do not have.

Lynnhaven Area Properties, LLC

Agenda Item 5

Page 56

For the Board’s deliberation, the applicant’s agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 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 *“These lots were platted prior to the adoption of the Chesapeake Bay Preservation Act (“CBPA” or “Act”) and the City’s CBPA Ordinance. The application of the Act places the entirety of the buildable portion of Lot 10A and nearly all of the buildable portion of Lot 9A within the RPA and would result in the loss of nearly all of the buildable area of Lot 9A and all of the buildable area of Lot 10A. The proposed improvements are consistent with other properties situated in the neighborhood that have proposed improvements within the RPA post adoption of the CBPA Ordinance.”* Staff concurs.
- 2) *“The encroachments into the RPA in connection with the proposed development of Lots 9A and 10A are not based on conditions or circumstances that are or have been created or imposed by the Applicant, but rather are necessitated by the fact that these lots were platted prior to the adoption of the Act and the City’s CBPA Ordinance, which placed all of the buildable area of Lot 10A and nearly all of the buildable area of Lot 9A within the RPA.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief as *“these lots are uniquely situated in that nearly the entirety of each lot falls within the RPA. Therefore, the proposed development, which is consistent with the development of townhomes on other lots in this neighborhood is the minimum necessary to afford relief.”* Staff concurs.
- 4) *“The proposed development is consistent with the location of improvements on other properties in the vicinity. This coupled with the preservation of 900 square feet of riparian buffer ecosystem and the proposed buffer restoration on-site, together with the proposed off-site restoration, ensures that these variance requests are in harmony with the purpose and intent of the ordinance and are not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to public welfare.”* Staff concurs.
- 5) *“When properly coordinated, the Applicant’s proposed development, including the implementation of buffer restoration and riparian buffer preservation, combined with an additional purchase of oyster beds for off-site mitigation and the implementation of any stormwater management facilities is provided as a means to manage towards a no net increase in nonpoint source pollution load.”* Staff concurs.

The proposed encroachments into the RPA are consistent with the location of other improvements in the vicinity, are in keeping with the character of the neighborhood, which includes other attached townhomes, and are the minimum necessary to achieve a reasonable buildable area on each lot. Due to the size of each lot, on-site buffer restoration is limited. 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 pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. 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.
10. 2,500 square feet of buffer restoration shall be installed in substantial compliance with the proposed mitigation areas as shown on Sheet 2 of the submitted CBPA Exhibit. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

11. The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.

14. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$827.75 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.

15. The conditions and approval associated with this variance are based on the exhibit plan dated August 6, 2018, prepared by MSA, P.C., signed August 6, 2018 by Jason M. Thomas. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

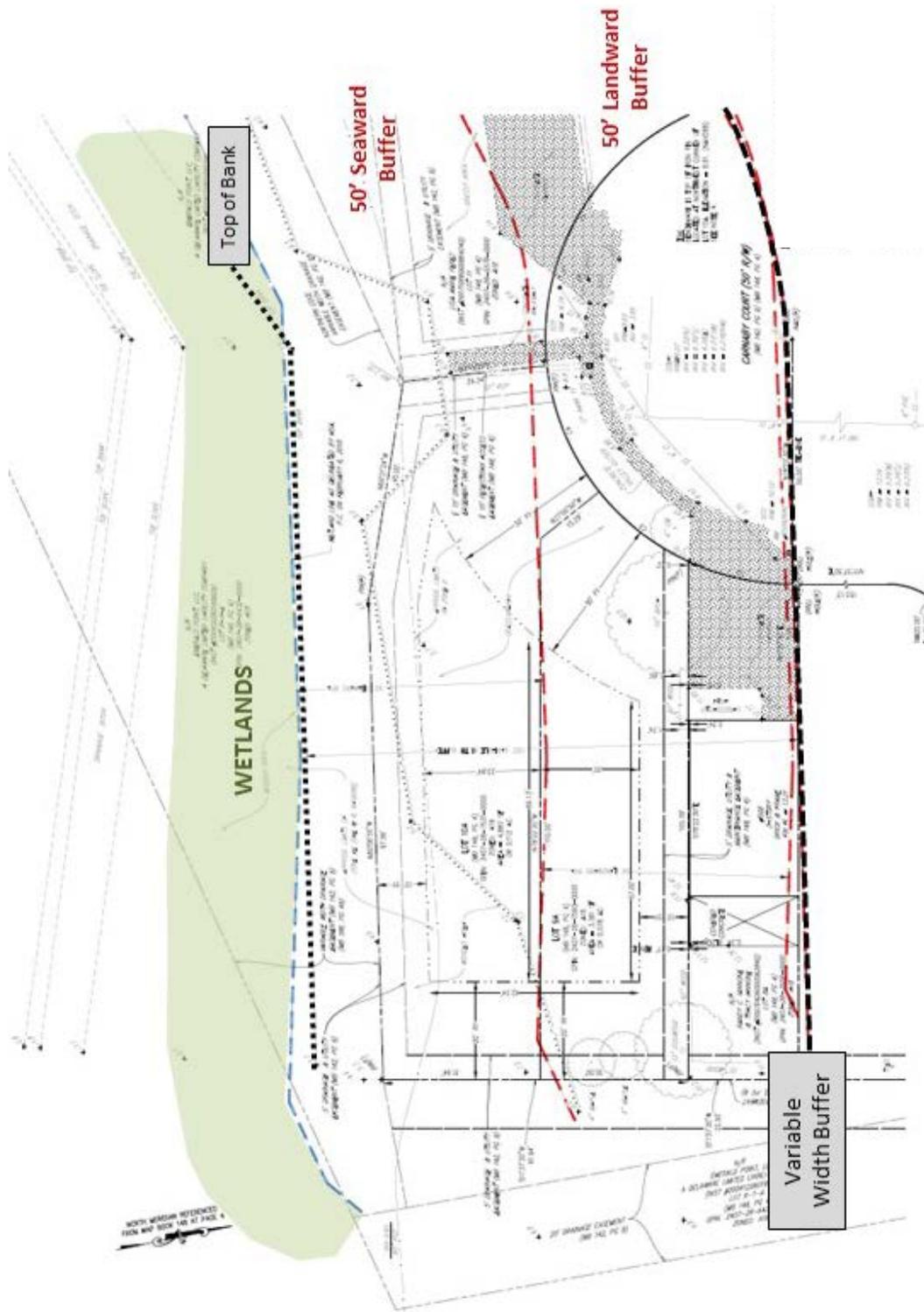
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Existing Conditions





APPLICANT'S NAME Lynnhaven Area Properties, LLC

DISCLOSURE STATEMENT FORM

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	License Agreement	

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SECTION 1 / APPLICANT DISCLOSURE

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Page 1 of 7

<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Lynnhaven Area Properties, LLC
If an LLC, list all member's names:

Cheryl P McLeskey
William Wilcox

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

(B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See attached

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Dixon Hughes Goodman
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Progressive Designs
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	n/a
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	MSA PC
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

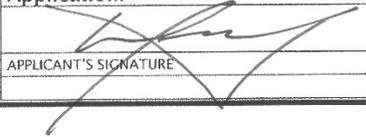
YES	NO	Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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



CERTIFICATION:
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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	WILLIAM WILCOX	8/6/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

McLeskey & Associates, LLC
 Entities (Companies)

co#	name
01	Cheryl P. McLeskey - personal
02	WASHINGTON SQUARE TOWNHOUSES, LLC
03	Bel-Aire LLC
04	Virginia Beach Fishing Center LLC
05	FWM RESIDENTIAL RENTAL PROPERTIES, LLC
06	2859 VBB, LLC
07	
09	Elizabeth City Development Company LLC
11	Elizabeth City Airport Industrial Park, Inc.
12	LDSM Properties LLC
13	
14	
16	Mortons Baye LLC
17	J&W Investors, LLC
18	RADCLIFFE TOWNHOUSES, LLC
19	Cepco LLC
20	COLONY PINES APARTMENTS, LLC
21	Coastal Investors LLC
23	
26	
27	Norfolk-Virginia Beach Airport LLC
29	2648 VBB, LLC
30	Lynnhaven Shopping Center, LLC (dba MarketSquare)- Div. 20
31	Satellite A- Division 21 of Co. 30 (all included in Co.30)
32	Satellite B- Division 22 of Co. 30
33	Riverwalk LLC
35	NEWTOWN CONVENIENCE CENTER, LLC
36	
38	Front Street Investors LLC
40	MGM Associates
41	Furberfax LLC
42	Terri-Fic Company
43	
46	Lotsalisa LLC
49	
52	
53	AIR TACO, LLC
54	103, LLC
83	CPM Properties LLC
84	VBFC PROPERTIES, LLC
85	BAYLINER BUILDING, LLC
87	LITTLE NECK COMMERCIAL PROPERTY, LLC
88	
90	McLeskey & Associates, LLC
91	SHORE DRIVE AREA PROPERTIES LLC
92	LYNNHAVEN AREA PROPERTIES, LLC
93	LITTLE CREEK ROAD PROPERTIES, LLC
94	RUDEE HEIGHTS PROPERTIES, LLC
73	F. Wayne McLeskey, Jr., QTIP Marital Trust
74	FWM Memorial Marlin Open Inc.
75	The McLeskey Family Foundation, Inc.
	Regency Hilltop Associates, LLP
55	Croupier LLC

C:\Users\cindy\Documents\Cindy excel\Company listing\Listi
 2016.xlsxCompan



Property Owner and Applicant **Shore Drive Area Properties, LLC**
 Address **3925 Shore Drive**
 Public Hearing **September 24, 2018**
 City Council District **Bayside**

Agenda Item

6

Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer and variable width buffer to construct 2 single family residences with a shared driveway.

Applicant's Agent

Lisa Murphy, Esq.

Staff Planner

PJ Scully

Lot Recordation

12/01/1972
 Map Book 94, Page 33

GPIN

1489-18-4463

SITE AREA

151,849 square feet or 3.48 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

66,387 square feet or 1.52 acres

EXISTING IMPERVIOUS COVER OF SITE

1,248 square feet or 0.08 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,688 square feet or 16.0 percent of site
 Proposed Unit 1: 5,573 square feet or 14 percent
 Proposed Unit 2: 5,115 square feet or 19.4 percent

Area of Redevelopment in RPA

2 square feet

Area of New Development in RPA

9,762 square feet

Location of Proposed Impervious Cover

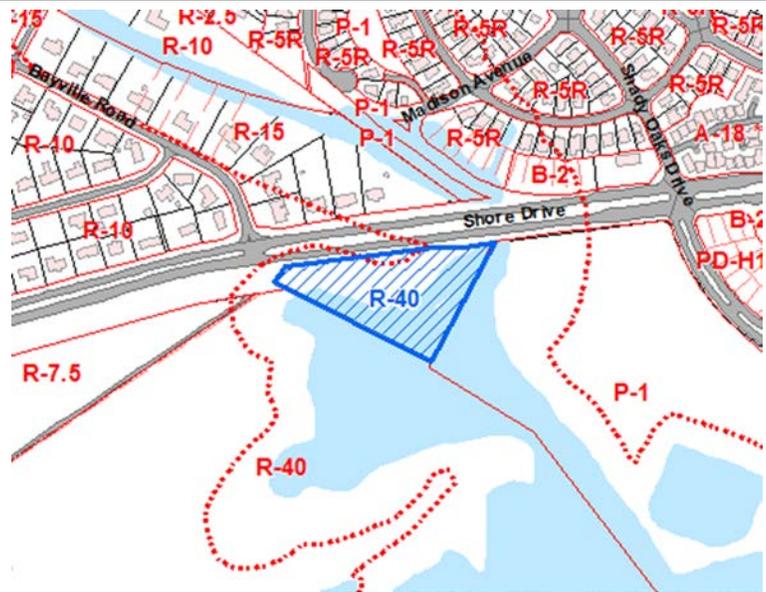
- 50 foot Landward Buffer
- 100 foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated walkways – 2 in total
- Swimming pool with concrete pool deck – 2 in total
- Driveway – to service the proposed residences

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Bojac Series (fine, sandy loam soils)

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

Shoreline

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

Riparian Buffer

Heavily wooded, undeveloped parcel

- Number of existing canopy trees requested for removal within the RPA: 17, 230 square feet of clearing.
- Evaluation of existing tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as approximately 10 feet outboard of the proposed improvements.

Evaluation and Recommendation

The applicant is proposing to construct 2 single family homes with a shared driveway on the subject lot. As the property is zoned R-40 Residential District, two units on one lot are not permitted as proposed on the concept plan. In order to accomplish the construction of both dwellings, the property must be subdivided and a plat recorded depicting two lots that meet the provisions of the Zoning Ordinance. In addition, an appropriately sized shared ingress/egress easement and drainage easement must be recorded with the plat. The recordation of the subdivision plat will be required prior to the approval of any site plans. Each home will be approximately 3,000 square feet, plus an attached garage, with swimming pools and pool decks as accessory structures. The outdoor space for each home is reasonably sized to allow for reasonable accessory uses. The outdoor space for each is also outside the 50 foot seaward buffer. The parcel is

currently undeveloped; however, there are remnants of an existing foundation, the majority of which is located in the 50 foot seaward buffer, which will be removed.

The overall impervious cover associated with the improvements for proposed unit/lot 1 is 14 percent and the improvements for proposed unit/lot 2 is 19.4 percent outside of water and wetlands. There will be no encroachment in the 50 foot seaward buffer, or beyond the top of bank. The 633 square feet of existing foundation, the majority of which is in the 50 foot seaward buffer will be removed.

For the Board's deliberation, the applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 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 parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act ("CBPA" or "Act") and the City's CBPA Ordinance. The application of the Act places a majority of the property within the RPA and would result in the loss of nearly all of the buildable area on this parcel. Since the enactment of the Act and CBPA Ordinance, countless property owners in this area have received similar variances for similar improvements."* As the property will be subdivided, this position is not valid. Staff's review is that encroachments are limited and reasonable, and consistent with developed properties in the vicinity.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but *"rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance therefore placing portions of this property is within the RPA."* As stated above, this position is not valid should the variance be granted and the lot subdivided. Staff is of the opinion that the discussion of a hardship is based off of the geometry of the lot being approximately 652 feet wide and approximately 159 feet deep. Whether developed with 1 single family residence, or developed as proposed, not encroaching into the 100 foot RPA would be difficult to design for with the residual area landward of the 100 foot RPA measuring approximately 100 feet in width and approximately 7 feet in depth – taken from the 50 foot front yard setback.
- 3) The variance is the minimum necessary to afford relief *"given the retreat of the existing encroachment into the 50' seaward buffer and the fact that all of the proposed improvements will be located landward of the 50 foot seaward buffer, together with the fact that this is a uniquely situated lot where nearly the entire lot falls within the RPA, the proposed encroachment being 16 percent of the overall parcel outside water and wetlands is the minimum necessary to achieve a reasonable buildable area on this property."* Staff concurs.
- 4) *"The overall size of the improvements are the minimum necessary to afford relief and have been placed outside of the most sensitive portion of the riparian buffer. Moreover, turf areas are limited to pathways to walk around the houses. Those facts coupled with the preservation of the riparian buffer ecosystem ensures that this variance request 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."* Staff concurs.
- 5) *"When properly coordinated, the Applicant's proposed development, including the retention of nearly $\frac{3}{4}$ of an acre of existing naturalized forest, the implementation of buffer restoration and of any stormwater management facilities, together with the removal of an existing foundation, will provide a means to manage towards a no net increase in nonpoint source pollution load."* Staff concurs.

Staff offers the following 16 reasonable and appropriate conditions as a means towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. All proposed improvements, both residences and associated swimming pools, shall be constructed concurrent.
2. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
3. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
4. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
5. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
6. 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.**
7. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
10. Individual site plans 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.
11. 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.
12. 16,288 square feet of buffer restoration shall be installed in substantial compliance with the proposed mitigation areas as shown on Sheet 2 of the submitted CBPA Exhibit. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent

with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,237.12 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
15. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
16. The conditions and approval associated with this variance are based on the exhibit plan dated August 6, 2018, prepared by MSA, P.C., signed August 6, 2108 by Jason M. Thomas. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

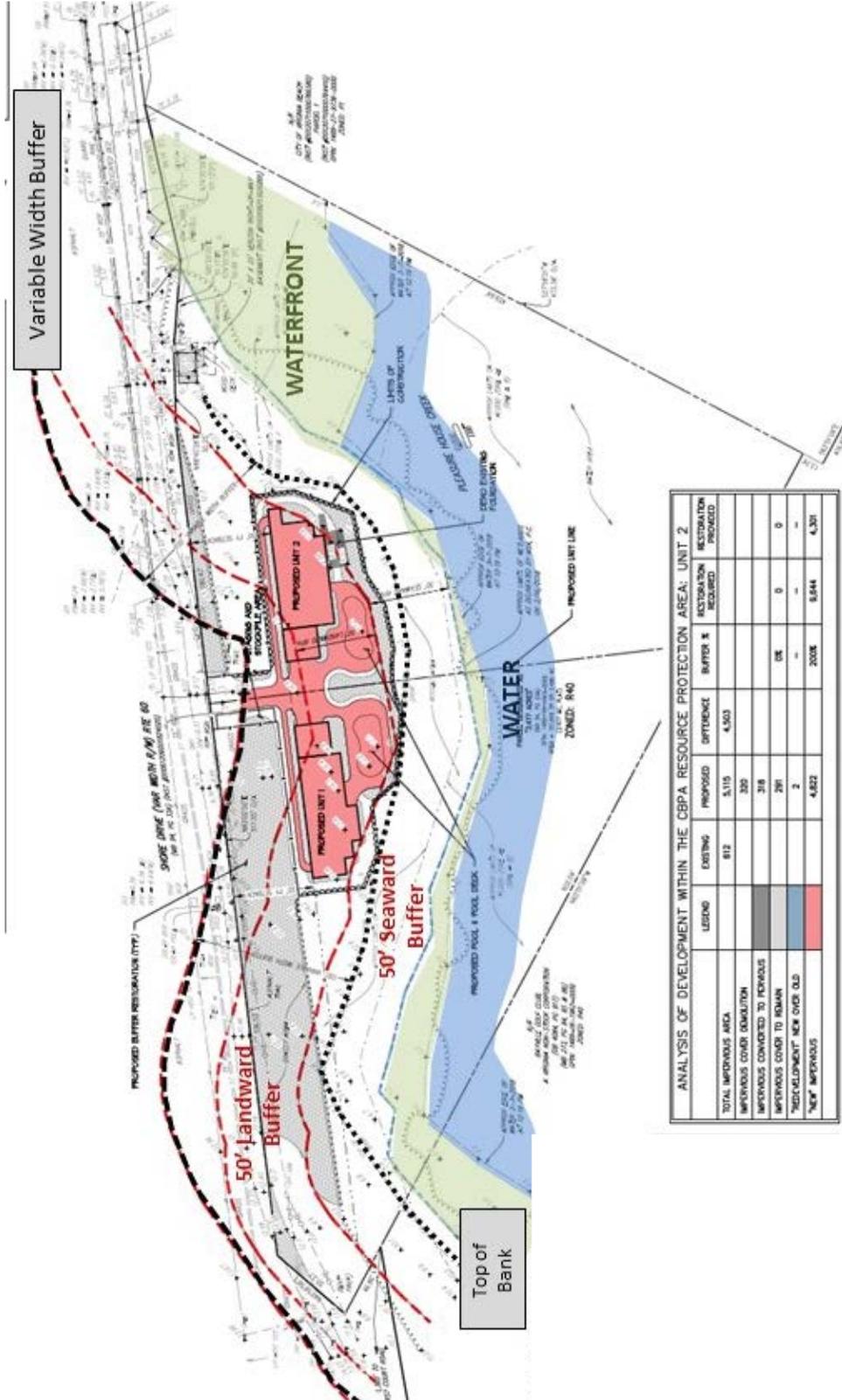
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Shore Drive Area Properties, LLC

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).		
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE: _____
<input type="checkbox"/>	NO CHANGES AS OF	DATE: _____
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE: _____

Page 1 of 7



Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Shore Drive Area Properties, LLC

If an LLC, list all member's names:

Cheryl P McLeskey
William Wilcox

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

(B) List the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See attached

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____

If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Dixon Hughes Goodman
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Progressive Designs
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	n/a
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	MSA PC
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

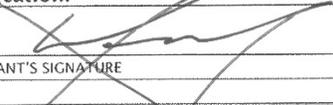
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	WILSON WILCOX	8/6/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

McLeskey & Associates, LLC
 Entities (Companies)

co#	name
01	Cheryl P. McLeskey - personal
02	WASHINGTON SQUARE TOWNHOUSES, LLC
03	Bel-Aire LLC
04	Virginia Beach Fishing Center LLC
05	FWM RESIDENTIAL RENTAL PROPERTIES, LLC
06	2859 VBB, LLC
07	
09	Elizabeth City Development Company LLC
11	Elizabeth City Airport Industrial Park, Inc.
12	LDSM Properties LLC
13	
14	
16	Mortons Baye LLC
17	J&W Investors, LLC
18	RADCLIFFE TOWNHOUSES, LLC
19	Cepco LLC
20	COLONY PINES APARTMENTS, LLC
21	Coastal Investors LLC
23	
26	
27	Norfolk-Virginia Beach Airport LLC
29	2648 VBB, LLC
30	Lynnhaven Shopping Center, LLC (dba MarketSquare)- Div. 2
31	Satellite A- Division 21 of Co. 30 (all included in Co.30)
32	Satellite B- Division 22 of Co. 30
33	Riverwalk LLC
35	NEWTOWN CONVENIENCE CENTER, LLC
36	
38	Front Street Investors LLC
40	MGM Associates
41	Furberfax LLC
42	Terri-Fic Company
43	
46	Lotsalisa LLC
49	
52	
53	AIR TACO, LLC
54	103, LLC
83	CPM Properties LLC
84	VBFC PROPERTIES, LLC
85	BAYLINER BUILDING, LLC
87	LITTLE NECK COMMERCIAL PROPERTY, LLC
88	
90	McLeskey & Associates, LLC
91	SHORE DRIVE AREA PROPERTIES LLC
92	LYNNHAVEN AREA PROPERTIES, LLC
93	LITTLE CREEK ROAD PROPERTIES, LLC
94	RUDEE HEIGHTS PROPERTIES, LLC
73	F. Wayne McLeskey, Jr., QTIP Marital Trust
74	FWM Memorial Marlin Open Inc.
75	The McLeskey Family Foundation, Inc.
	Regency Hilltop Associates, LLP
55	Croupier LLC

C:\Users\cindy\Documents\Cindy excel\Company listing\List
 2016.xlsx\Commar

Variance Request

Encroachment into the 100 foot Resource Protection Area (RPA) with a two-story addition to the primary structure and accessory wood deck.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

6/23/1952

Map Book 32, Page 84

GPIN

1499-59-5344

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

442 square feet

Area of New Development in RPA

54 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

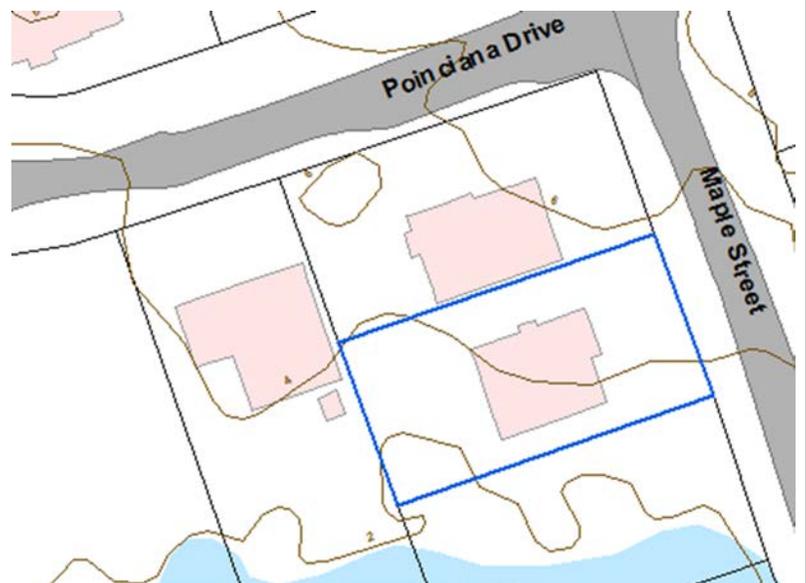
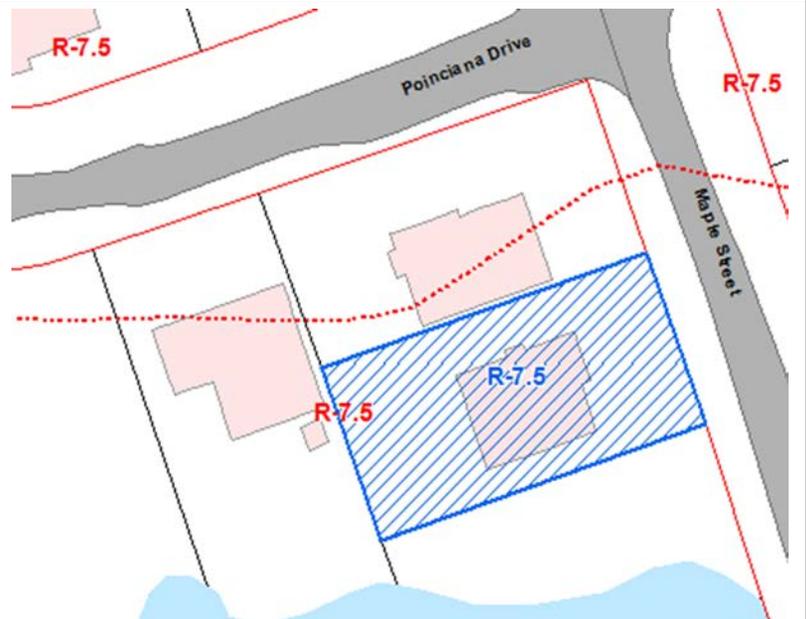
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Attached shed and shower stall
- Wood deck
- Paver patio

Construction Details

- Two-story room addition
- Uncovered wood deck
- Extension to existing wood deck – Board of Zoning Appeals (BZA) variance required

CBPA Ordinance Variance History

June 24, 2013 a Chesapeake Bay Preservation Area (CBPA) Small Project in the RPA Board variance was granted for the construction of a shed, paver patio area, and to enclose the existing wood deck the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *If necessary, wire re-enforced 36" erosion and sedimentation control measures (silt fences), shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed 15 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *If necessary, prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*
6. *Construction limits shall lie a maximum of 15' outboard of improvements.*
7. *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.*

8. *Where mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.*
9. *The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.*
10. *The existing 9 foot by 14 foot concrete slab shall be removed and disposed of in a lawful manner.*
11. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (226 sq. ft. x 200% = 452 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. **Said buffer restoration shall be noted on the approved site plan and will be verified in the field by Civil Inspections.***
12. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (69 sq. ft. x 100% = 69 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. **Said buffer restoration shall be noted on the approved site plan and will be verified in the field by Civil Inspections.***

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

Environmental Conditions

Flood Zone

AE – Base Flood Elevation (BFE): 7

Soil Type(s)

Newhan-Corolla Series (deep, nearly level, excessively well-drained soils)

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded parcel.

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

Evaluation and Recommendation

The majority of the proposed improvements are within the 50 foot seaward buffer and represent an approximate 54 square feet increase in the overall impervious cover of the parcel. However, the proposed wood deck is elevated above grade and the underlying on-grade patio, shower stall and attached shed will be removed. The conversion of these existing impervious areas will provide additional infiltration of rainwater given the underlying soil conditions. In addition, Staff has conditioned the approval such that under treatment associated with the proposed uncovered deck area be installed as a means to abate future erosion potential.

For the Board's deliberation, the applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated "*as this house was built prior to the adoption of the Bay Act and avoidance of the buffer is impossible.*" Staff is of the opinion that the proposed improvements are similarly situated with other improvements on properties within the immediate neighborhood and do not confer upon the applicant any special privileges.
- 2) Staff provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance therefore placing portions of this property is within the RPA.
- 3) The variance is the minimum necessary to afford relief by "*the owners limiting the size of the new additions to as small as possible to allow for the additional living space. We have tried to keep the overall lot coverage as low as possible but the lot is very small in size and thus non-conforming for the R7.5 zoning district which makes it hard to accommodate the addition.*" Given the amount of redevelopment provided by the applicant and the removal of on-grade impervious cover to promote infiltration, Staff is of the opinion that the request is the minimal necessary to afford relief.
- 4) Staff offers that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with the conditioned buffer restoration, and applicant's use of existing impervious cover with regards to the location of the proposed improvements. In addition, the applicant owns the adjacent parcel to the south and maintains the existing ecosystem in harmony with the adjacent tidal flats.

Jeffrey and Kelly Taylor

Agenda Item 7

Page 86

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *“the owner will be installing buffer restoration as mitigation for the new impervious cover and the contractor will install erosion and sedimentation measures during all phases of construction to protect adjacent waters while construction is on-going.”* Staff concurs.

Staff recommends the following 11 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended 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. 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.
4. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
5. 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.
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. 400 square feet of buffer restoration shall be installed. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 2 understory, and 3 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.

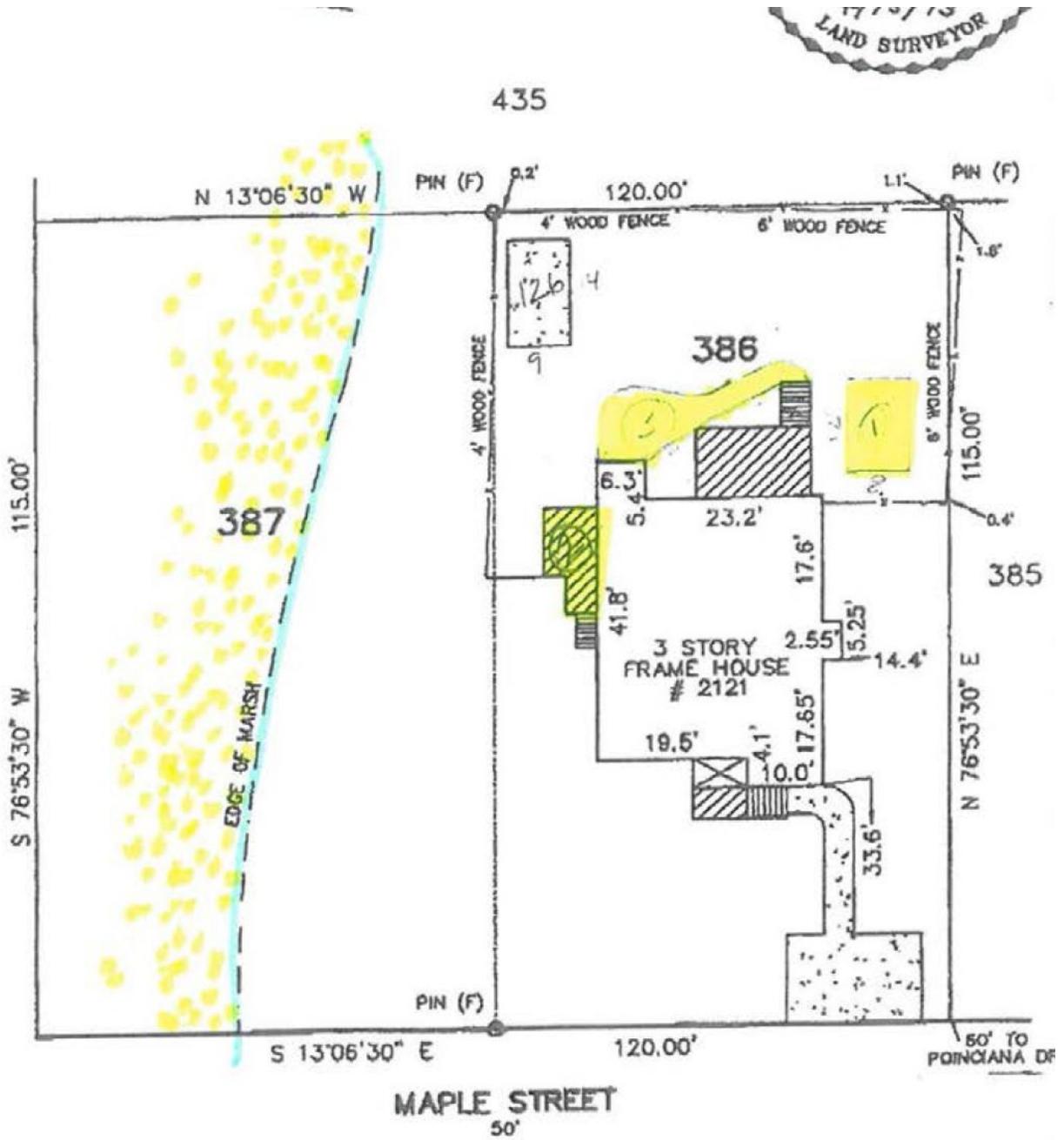
8. Under deck treatment of sand and gravel shall be installed.
9. No perimeter fill is authorized outboard or seaward of the proposed improvements.
10. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
11. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit.

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

Site Aerial

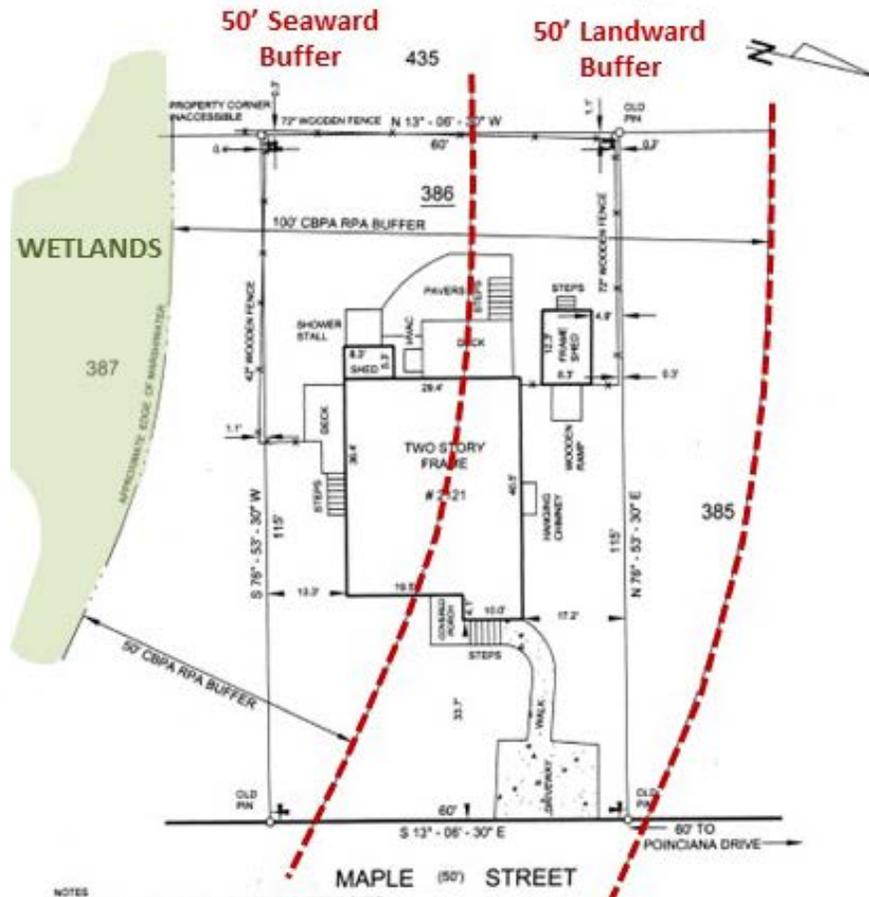
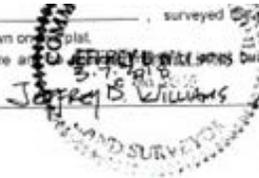




CBPA Exhibit – Existing Conditions

This is to certify that I, on _____, surveyed _____ property shown on this plat, and that the title lines and the walls of the buildings are as shown on this plat. The buildings stand strictly within the title lines and there are no buildings on the property, except as shown.

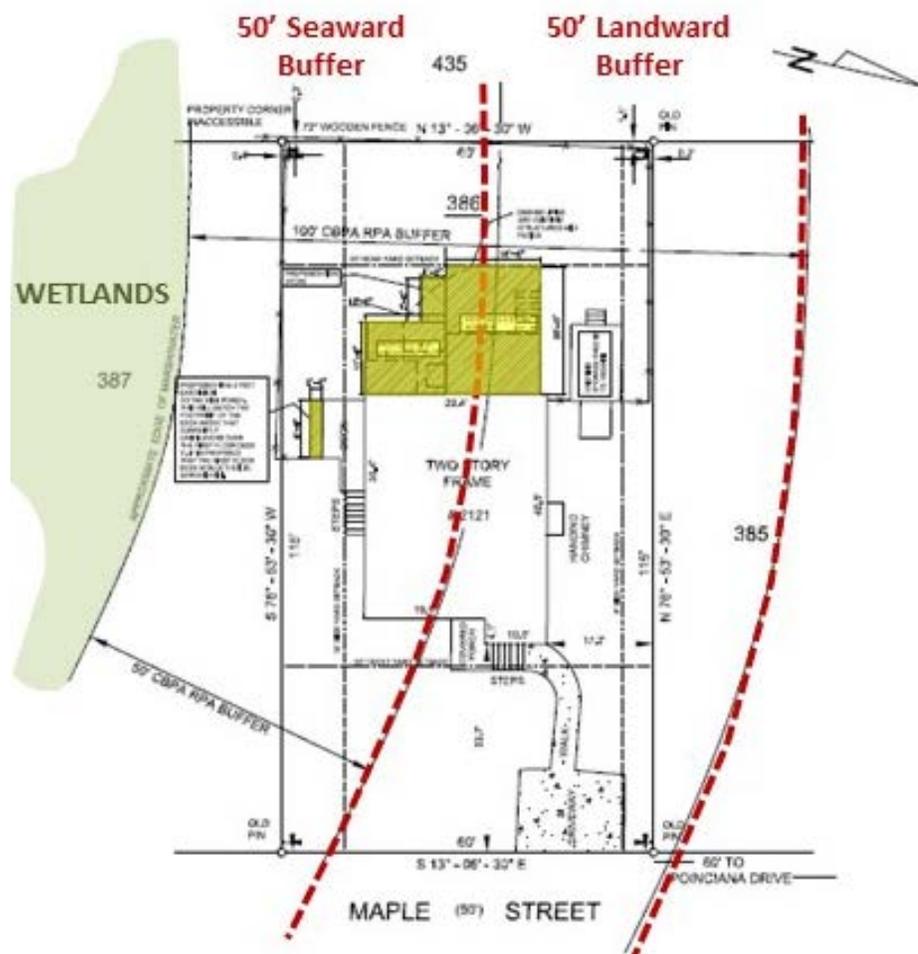
Signed: Jeffrey S. Williams



- NOTES
1. PROPERTY APPEARS TO FALL WITHIN ZONE AE (SPECIAL FLOOD HAZARD AREA SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD; 100-YEAR FLOOD); (BASE FLOOD ELEVATION = 7.2, NAVD83) AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM MAP FOR THE CITY OF VA. BEACH DATED JAN. 18, 2015 MAP NUMBER 5153105410
 2. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY OR MAY NOT SHOW ALL MATTERS OF TITLE AFFECTING PROPERTY SHOWN HEREON.

PHYSICAL SURVEY
OF
LOT 386, CAPE STORY BY THE SEA, PLAT NO. 2

CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME JEFFREY AND KELLY TAYLOR

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).		
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE
<input type="checkbox"/>	NO CHANGES AS OF	DATE
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: Jeffrey and Kelly Taylor
If an LLC, list all member's names:

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

(B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: Jeffrey and Kelly Taylor
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the Property Owner: *(Attach list if necessary)*

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

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

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Robin A. Harvey, CPA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	TODD V. SAVAGE AIA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Tim Daffron Construction
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	JOHN E. SIRINE & ASSOCIATES
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Bank of America
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

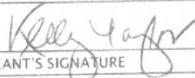
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Kelly Taylor	8/6/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

AS NEEDED, PAGE LEFT



Variance Request

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

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

01/09/1953
Map Book 34, Page 43

GPIN

2409-82-3546

SITE AREA

84,900 square feet or 1.949 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

62,600 square feet or 1.437 acres

EXISTING IMPERVIOUS COVER OF SITE

4,250 square feet or 6.7 percent of site
(Quantity inclusive of previously demolished single family residence)

PROPOSED IMPERVIOUS COVER OF SITE

19,256 square feet or 30.8 percent of site

Area of Redevelopment in RPA

3,540 square feet

Area of New Development in RPA

15,452 square feet

Location of Proposed Impervious Cover

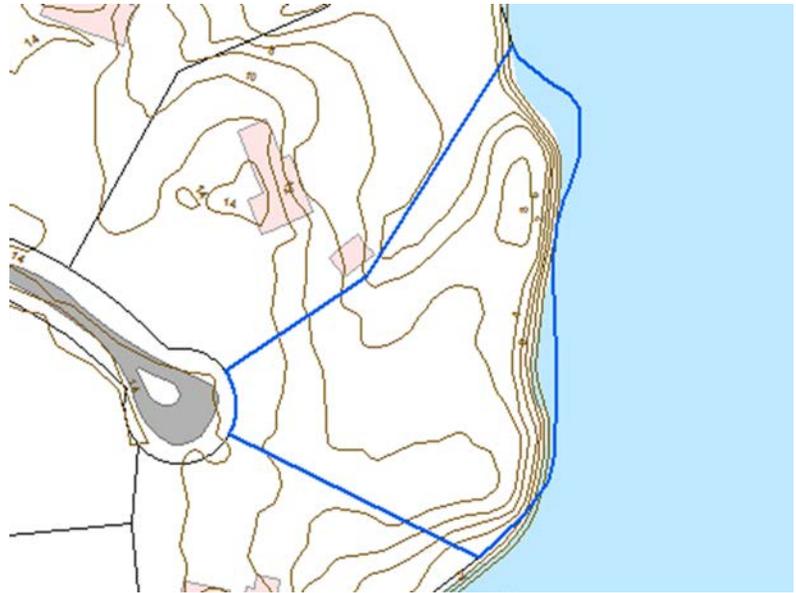
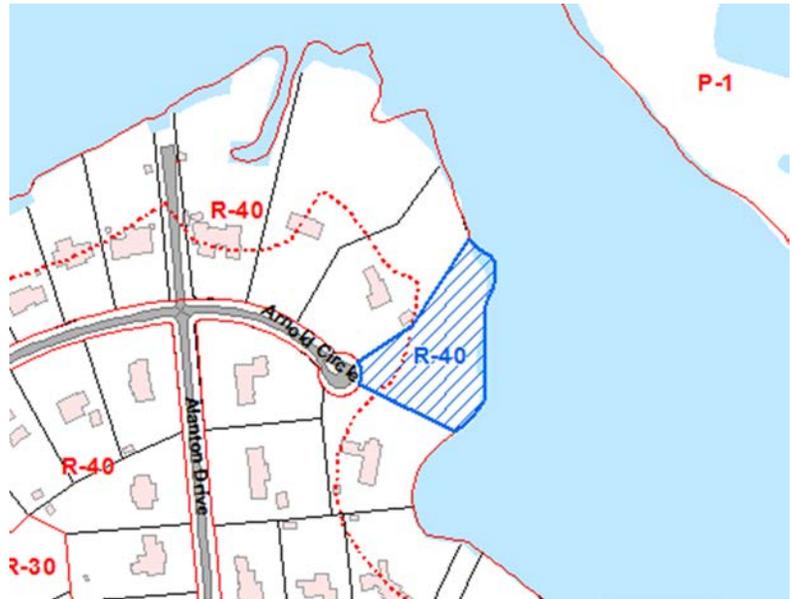
- 50 foot Landward Buffer
- 100 foot Variable Width Buffer
- Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Asphalt driveway

Construction Details

- Single family residence
- Concrete driveway with concrete entry
- Swimming pool with concrete pool patio
- Outdoor covered living area

CBPA Ordinance Variance History

September 24, 2007 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a two-story residence and associated accessory structures with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *A heavy duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.*
4. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 15' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
8. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of the proposed revetment shall be installed 5' landward of the existing saltmeadow hay located midway of the eastern shoreline. Grade elevations seaward of said toe realignment shall be consistent with adjoining grades and denuded area sprigged with saltmeadow hay 12 inch on center. The toe of any other revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
9. *The pool and associated seaward decking shall be relocated 3' closer towards the residence. This will result in a 17' patio versus 20' as shown.*
10. *The pool shall be constructed prior to or concurrent with the residence.*

11. *The existing shed, concrete patio, and concrete steps shall be removed.*
12. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$4,004.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 4,368 sq. ft., 12- inch deep oyster shell plant within the Lynnhaven River Basin.*
13. *Within the northern ravine, no fill material shall be installed below the existing 4' contour line. The applicant or applicant's agent shall speak to the need to fill said natural ravine (approximately 853 total cubic yards of material) to the extent proposed.*
14. *Buffer restoration shall be as proposed (90% of remaining pervious cover) and shall utilize bayscape landscaping principles. Said restoration shall incorporate a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, tree compensation shall be at a 4:1 ratio (approximately seventy six (76) trees) and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. The submitted restoration/landscape plan does not provide for any riparian buffer along the eastern shoreline. The applicant or applicant's agent shall comment on impacts and means to abate negative impacts to existing trees earmarked to remain from proposed fill. Said restoration shall be installed prior to the issuance of the certificate of occupancy and shall be so noted on the site plan.*
15. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
16. *The proposed ramp from the pool area to tidal waters shall be a maximum of 5' in width and shall be constructed of pervious pavers with a maximum impervious rating of 20%.*
17. *The conditions and approval associated with this variance are based on the revised site plan dated August 17, 2007 prepared by John E. Sirine & Associates.*
18. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*
19. *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.*
20. *Relocate generator pad to behind pool and pull house forward to greatest extent practicable.*

The September 24, 2007 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Bojac Series (fine, sandy loam soils)

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

Shoreline

Shoreline is hardened with a riprap revetment.

Riparian Buffer

Sparsely wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 1

Evaluation and Recommendation

The applicant's agent has provided an existing site survey that delineates the Resource Protection Area (RPA) 100 foot buffer further landward than the delineated buffer shown with the September 2007 CBPA Exhibit. This difference in delineations accounts from an approximate 70 to 75 foot linear increase landward to the RPA feature. As for the proposed impervious cover, the variance request does increase the impervious cover within the landward buffer by 1,044 square feet. However, this increase in impervious cover occurs along the southern portion of the parcel, in an area that is less sensitive than the northern portion of the parcel. With regards to the northern portion of the parcel, the applicant has retreated from the 2007 CBPA variance approved footprint by approximately 1,621 square feet due to the RPA buffer being delineated further landward and with respect to not encroaching into the 50 foot seaward buffer.

For the Board's deliberation, the applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because, *"the proposed dwelling and associated improvements are in keeping with the neighborhood."* Staff is of the opinion that the applicant has provided a CBPA exhibit that depicts the dwelling at the front yard setback along Arnold Circle and at both side yard setbacks. Placing the proposed residence closer to the street would be out of character with the neighborhood and would require a variance from the Board of Zoning Appeals.
- 2) Staff provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property is within the RPA.
- 3) The variance is the minimum necessary to afford relief *"as the owners have designed the proposed improvements to be minimal."* Staff is of the opinion that the applicant has worked within the unique constraints of the property – geometry of the platted parcel, existing shoreline, and topography of the property with regard to the variance being the minimum necessary to afford relief. In addition to the applicants use of alternative materials as a means to comply with the performance standards of the CBPA Ordinance towards the promotion of infiltrating stormwater into the ground, consistent with the use of structural urban best management practices [City Code, Appendix F, Section 106 (A)(3)(a)(3)].
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed dwelling and improvements are in keeping with the neighborhood and the site currently does not have any stormwater treatment."* Staff is of the opinion that the applicant's desire to

redevelop the property with a custom designed residence has merit to being in harmony with the purpose and intent of the Ordinance given the location of the proposed improvements, preservation of the 50 foot seaward buffer, and the installation of buffer restoration as a means to prevent the request from being a degradation to water quality.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“bioretention beds will be placed seaward of the improvements to store and treat the proposed impervious cover prior to being released into the adjacent waterway.”* Staff is of the opinion, when properly coordinated, the applicant’s investment in redeveloping the uplands portion of the property with associated buffer restoration and stormwater management, coupled the use of a permeable paver driveway, will provide a means to manage towards a no net increase in nonpoint source pollution load.

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

Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. 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.

10. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **15,452 square feet x 200 percent = 30,904 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 to the greatest extent practicable.

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

11. The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$3,541.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
14. The conditions and approval associated with this variance are based on the exhibit plan dated August 2, 2018, prepared by WPL, signed September 7, 2018 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

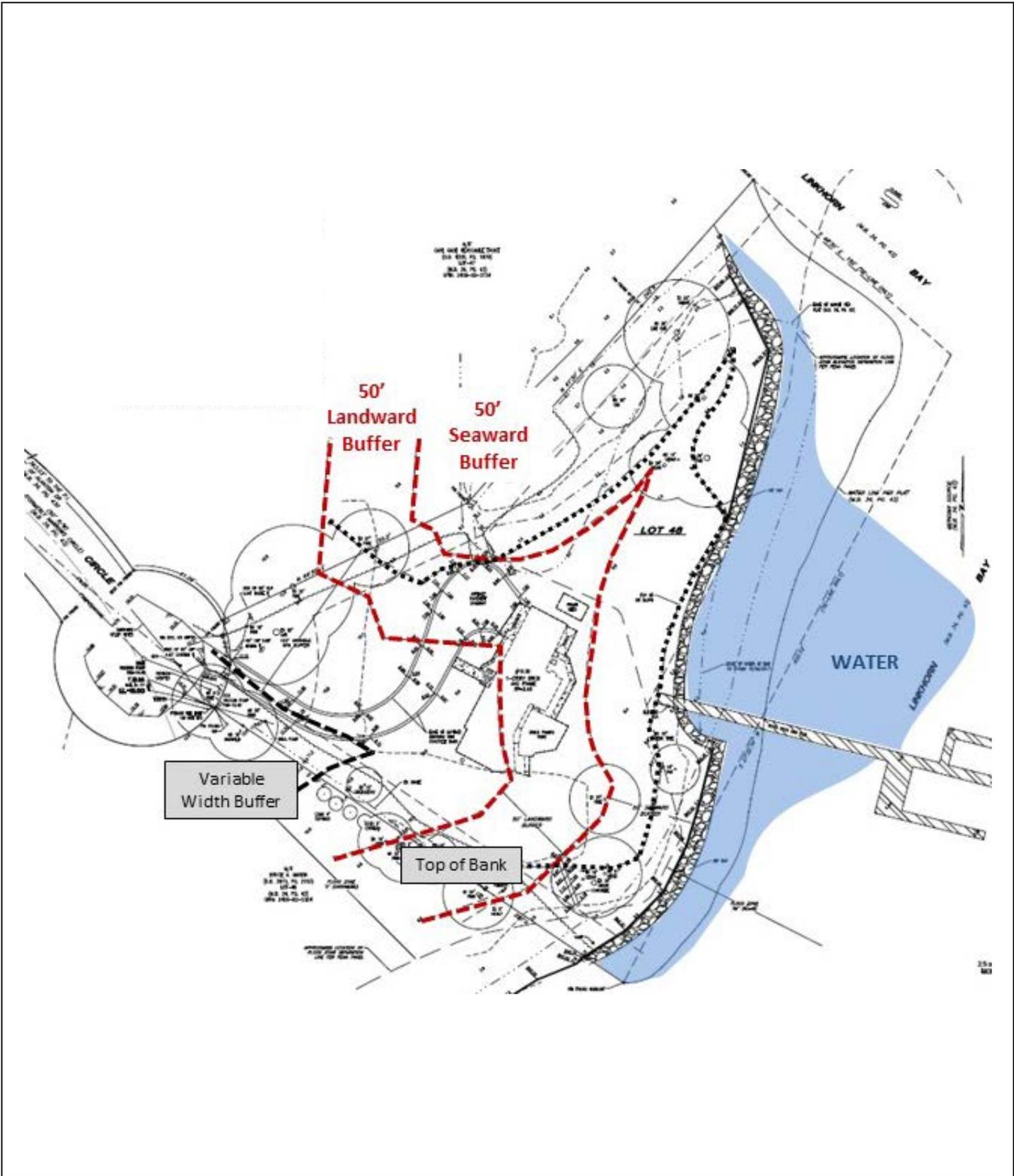
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

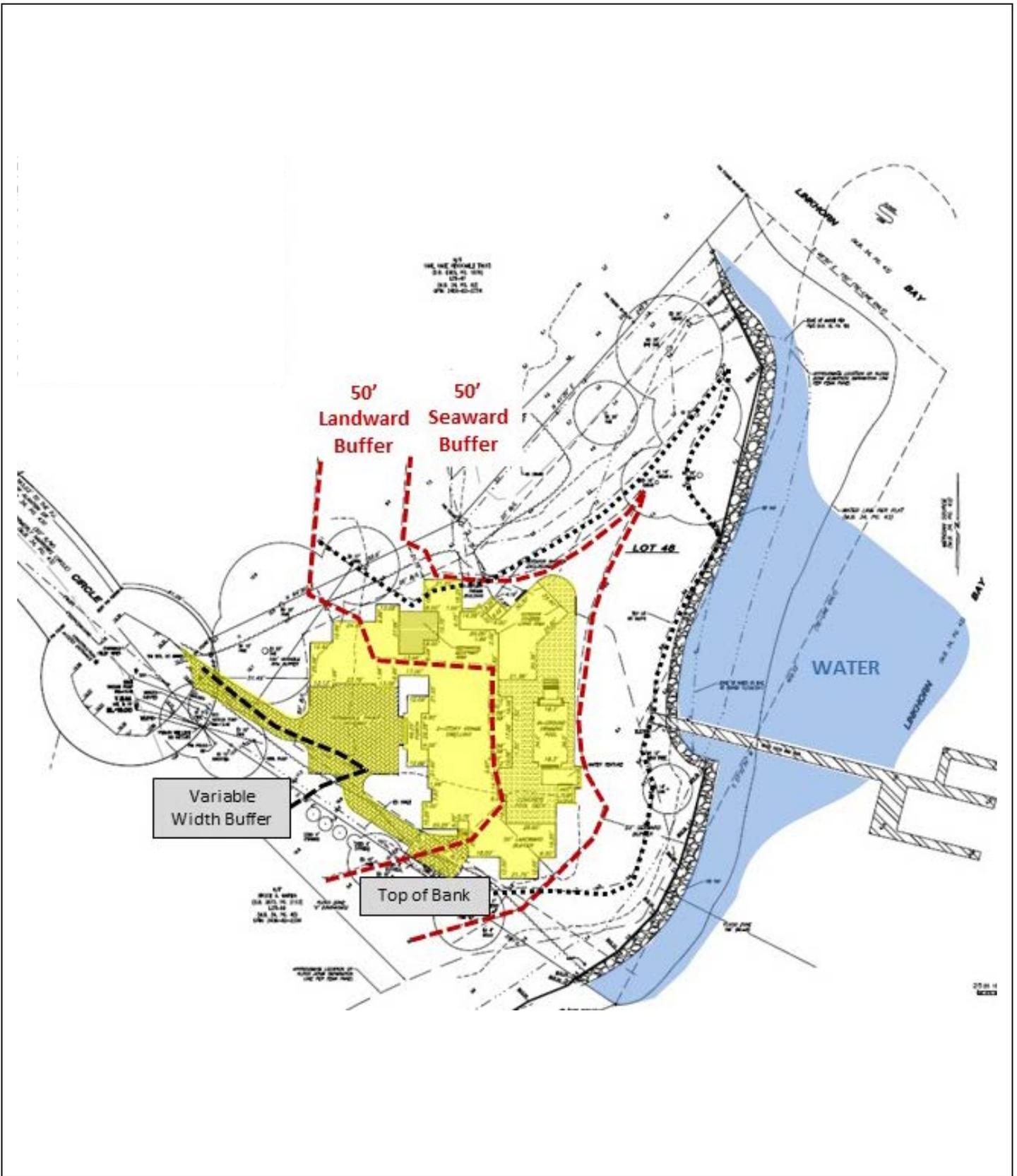
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: 1600 Arnold Circle, LLC
If an LLC, list all member's names:
Brad Peterson, Joanna Peterson

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

(B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Applicant: *(Attach list if necessary)*
N/A

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: 1600 Arnold Circle, LLC
If an LLC, list the member's names: Brad Peterson, Joanna Peterson

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

N/A

- (B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Becker Morgan Group
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Jackson Andrews Building & Design
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WPL
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	GPC, Inc. Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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

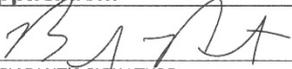
N/A



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Brad Peterson	8/22/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer with the construction of a wood deck and room addition.

Applicant's Agent

Self-Represented

Staff Planner

PJ Scully

Lot Recordation

9/31/1952

Map Book 45, Page 37

GPIN

1499-99-8075

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

100 square feet

Area of New Development in RPA

690 square feet

Location of Proposed Impervious Cover

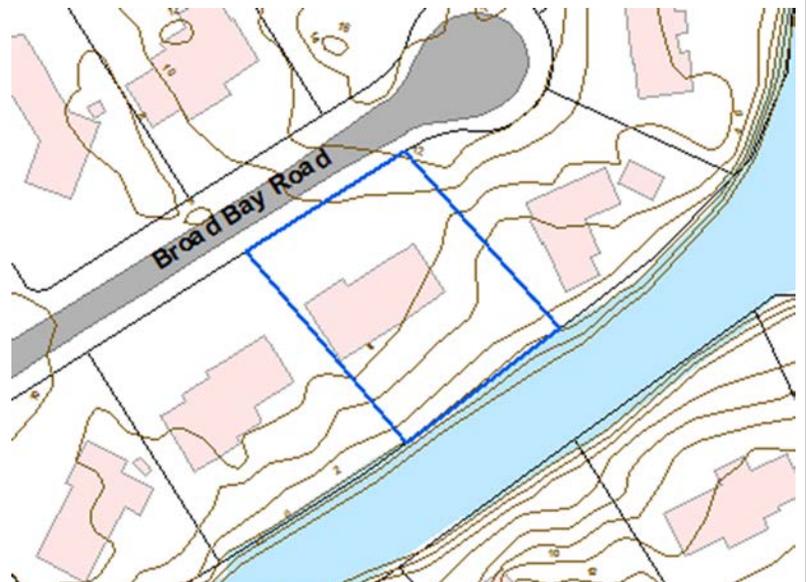
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Paver patio

Construction Details

- Wood deck
- Room addition

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened by a bulkhead.

Riparian Buffer

Sparsely wooded parcel

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

Evaluation and Recommendation

During the site visit, Staff walked the parcel with the owner who spoke about his desire to redevelop the property in phases. The desire for the deck is to provide a reasonable outdoor space to gather while connecting multiple doors along the rear and side of the residence. The proposed room addition is to accommodate for an interior renovation of the existing kitchen. Lastly, there is a long-term desire to construct a second story addition over the existing garage. This improvement will not increase the amount of impervious cover, nor be a further encroachment seaward.

Staff is of the opinion that the proposed improvements, specifically the wood deck is the minimum necessary to afford relief given the applicants' desired function of the wood deck and minimal width proposed along the rear of the residence. As such, Staff 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, as the proposal conforms to other properties within this neighborhood, which

are subject to the provisions of the CBPA Ordinance and are similarly situated where development has occurred within the 100 foot RPA buffer.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing the majority of this property within the RPA.
- 3) Staff is of the opinion that the variance is the minimum necessary to afford relief, given that the expansion of an accessory structure is within the upper reach of the 50 foot landward buffer in an area currently devoted to turf.
- 4) Staff is of the opinion that the variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, as the encroachment into the RPA is consistent with the location of improvements on other properties in the vicinity, and not of substantial detriment to water quality due to the access to and limits of expansion within the RPA in areas currently devoted to turf, nor will it be detrimental to the public welfare.
- 5) Staff is of the opinion with the proposed improvements situated within an area of flat topography, coupled with underdeck treatment and the installation of buffer restoration as a means to manage erosion and sedimentation, that the proposed improvements provide merit to a no net increase in nonpoint source pollution load.

Finally, Staff recommends the following 7 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended 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. 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.
4. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **690 square feet x 200 percent = 1,380 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, and 6 large shrubs, and 9 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.

5. Under deck treatment of sand and gravel shall be installed.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, 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 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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial





- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: John Dunn
If an LLC, list all member's names:

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

(B) List the businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: _____
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Engineers / Surveyors/ Agents	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.**

	John Dunn	8/15/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

AS NEEDED, PAGE LEFT



Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer with the placement of fill material to create a sculpted landscape of vegetative berms.

Applicant's Agent

Scott Acey, P.E.

Staff Planner

PJ Scully

Lot Recordation

5/27/1910

Map Book 4, Page 47

3/29/2018

Inst No. 20180329000256910

GPIN

2417-40-4823

SITE AREA

3,002,603 square feet or 68.93 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

2,438,209 square feet or 55.97 acres

EXISTING IMPERVIOUS COVER OF SITE

120,661 square feet or 4.9 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

750,539 square feet or 30.7 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,147 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

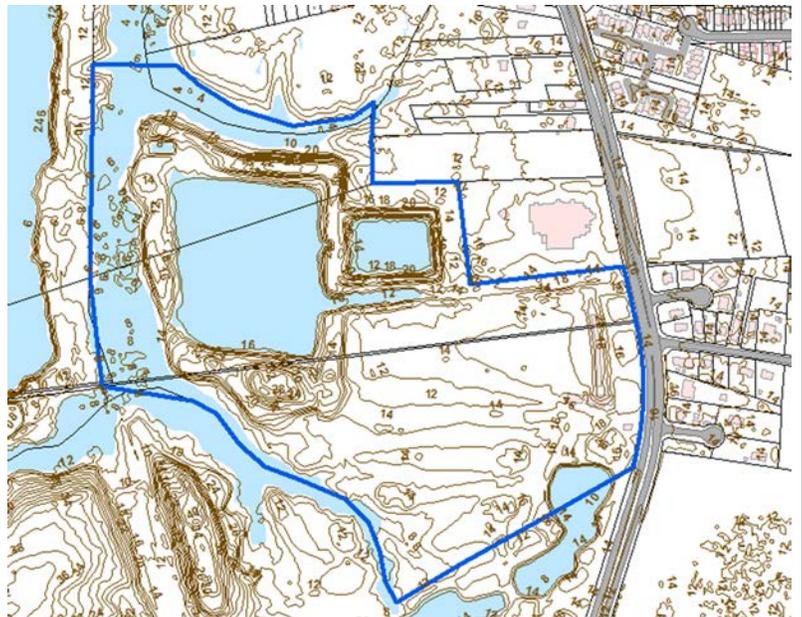
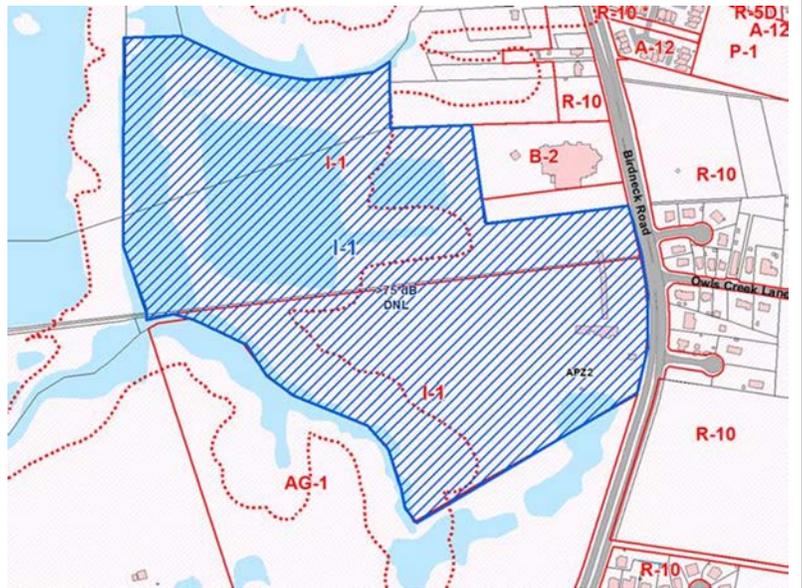
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of existing concrete golf cart path
- Portions of existing BMP outfall

Construction Details

- Riprap BMP outfalls
- Grading associated with placement of fill material

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): 9. Floodway is present within the parcel.

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Acerdale Series (deep, nearly level, and poorly drained soils)

Nawney Series (deep, nearly level, and very poorly drained soils). Typical of floodplains and drainage ways.

Shoreline

Shoreline is in a natural state. The applicant has been diligent with debris removal from the RPA. Approximately 28 tandem dump trucks loads of illegally discarded materials have been removed consisting of rubber tires, various wood materials, concrete construction rubble, old car parts, metals, etc.

Riparian Buffer

Sparse to moderately wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: The applicant's agent has provided that no impacts to existing woody vegetation within the RPA will occur as a result of the proposed placement of the fill material.

Evaluation and Recommendation

The applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request's associated land disturbance, and believes that the sculpting of the placed fill material will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 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 reasons for disturbance in the RPA is to provide the*

Owl Creek Energy, LLC

Agenda Item 10

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minimum access width required by the City for BMP maintenance access, fit the existing BMP with riprap to protect the RPA, clean up the trash in the RPA, and provide a sculpted landscape.” Staff provides that the existing grade elevations within the 50 foot seaward buffer, as shown on the CBPA exhibit, will not be manipulated with the request to place fill material within the 100 foot RPA. The placement of fill material is limited to the 50 landward buffer of the RPA and only impacts existing grade elevations of 11 feet and higher.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather *“to better the existing conditions in the RPA and downstream wetlands.”* Staff adds that the original plat of this parcel occurred prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief as *“limits of impacts were minimized to provide the minimum access width required by the City for BMP maintenance and access, to clean up trash in the RPA, and provide a sculpted landscape.”* Staff provides that the proposed development, as defined by the City’s CBPA Ordinance definition of development, which is based off of land disturbance associated with the placement of fill material and not associated with the introduction of additional impervious cover within the RPA, will not decrease the permeability of the site or negatively impact water quality.
- 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 limits of this impact are only to provide grading where necessary to meet the minimum requirements for BMP access, add riprap to control the velocity discharge from the existing BMP, and remove porting of the concrete cart path in the RPA.”* Staff provides that the voluntary removal of illegally discarded materials and trash in the RPA by that applicant, and the request to grade an accessible route to the existing BMP that is collecting a significant portion of the local watershed provides significant merit towards not being injurious to the neighborhood, not being of substantial detriment to water quality, or be otherwise detrimental to the public welfare.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the limits of impacts were minimized to provide the minimum access width required by the City for BMP maintenance access.”* Staff provides that the applicant is not proposing an increase in the amount of impervious cover within the RPA and offers that maintaining a vegetative cover within the entire 100 foot RPA buffer provides merit towards effectively retarding runoff, preventing erosion, and filtering nonpoint source pollution.

Staff is of the opinion that the applicant’s Engineer of Record has provided viable reasoning towards the placement of fill material in the portion of the RPA relative to providing access to the existing stormwater BMP. The existing BMP system drains and treats stormwater runoff from a significant portion of the immediate area. The redevelopment of the existing outfalls, access to, and future maintenance of this functioning system offers protection from potential erosion and sedimentation migration from the surrounding upland developments. A further evaluation of the variance request offers that the applicant will place the proposed fill material in a manner that concentrates land disturbance in areas currently devoted to turf associated with the existing golf course layout, and does not propose any fill material within the 50 foot seaward buffer. Impacts to existing canopy trees are avoided. In addition, the placement of fill material does not involve the use of retaining walls or slopes over a maximum of 3:1 ratio. The applicant’s intent is to provide a manageable and natural side slope for the naturalization of and migration of plant material. Given the extent of land disturbance associated with the proposed fill material, the volume of material being placed outboard of the RPA associated with this request, and the amount of upland improvements occurring in the RMA, Staff does have concerns regarding the stabilization of the proposed fill material, the sequencing associated with the placement of fill material in

multiple areas, and the presence of a floodway within this property that drains through the culvert near the terminus of Southern Boulevard.

Staff offers that should the Board desire to consider granting this variance request, the following 11 recommended conditions relative to the performance standards of the CBPA Ordinance specific to this variance request, as a means towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. A pre-construction meeting shall be held with the on-site Civil/Stormwater Inspector from Permits and Inspections prior to any land disturbance associated with the placement of fill material within the Resource Protection Area (RPA).
2. A double row of wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit. The base of the fill material shall be a minimum of 5 feet landward of the inner most silt fence.
3. All construction activity and limits of disturbance 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.**
4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
5. The placement of fill shall be performed in phases and sequenced so that one stockpile is completed, graded and stabilized before moving on to the next area of fill. The sequencing shall be documented on the site plan for the placement of fill and their locations for review.
6. There shall be a generally flat area of 5 to 7 feet between the location of the silt fence and the toe of fill for the northern most stockpile area. This will also allow for construction equipment access around the northern side of the stockpile.
7. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
8. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
9. All areas within the 50 foot seaward buffer shall be designated as no-mow zones to allow for a grow-out of grassland or meadow areas and migration of woody plants.
10. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$262.85 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**

11. The conditions and approval associated with this variance are based on the exhibit plan dated September 11, 2018, prepared by MSA, P.C., signed September 11, 2018 by John I. Bloom III. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

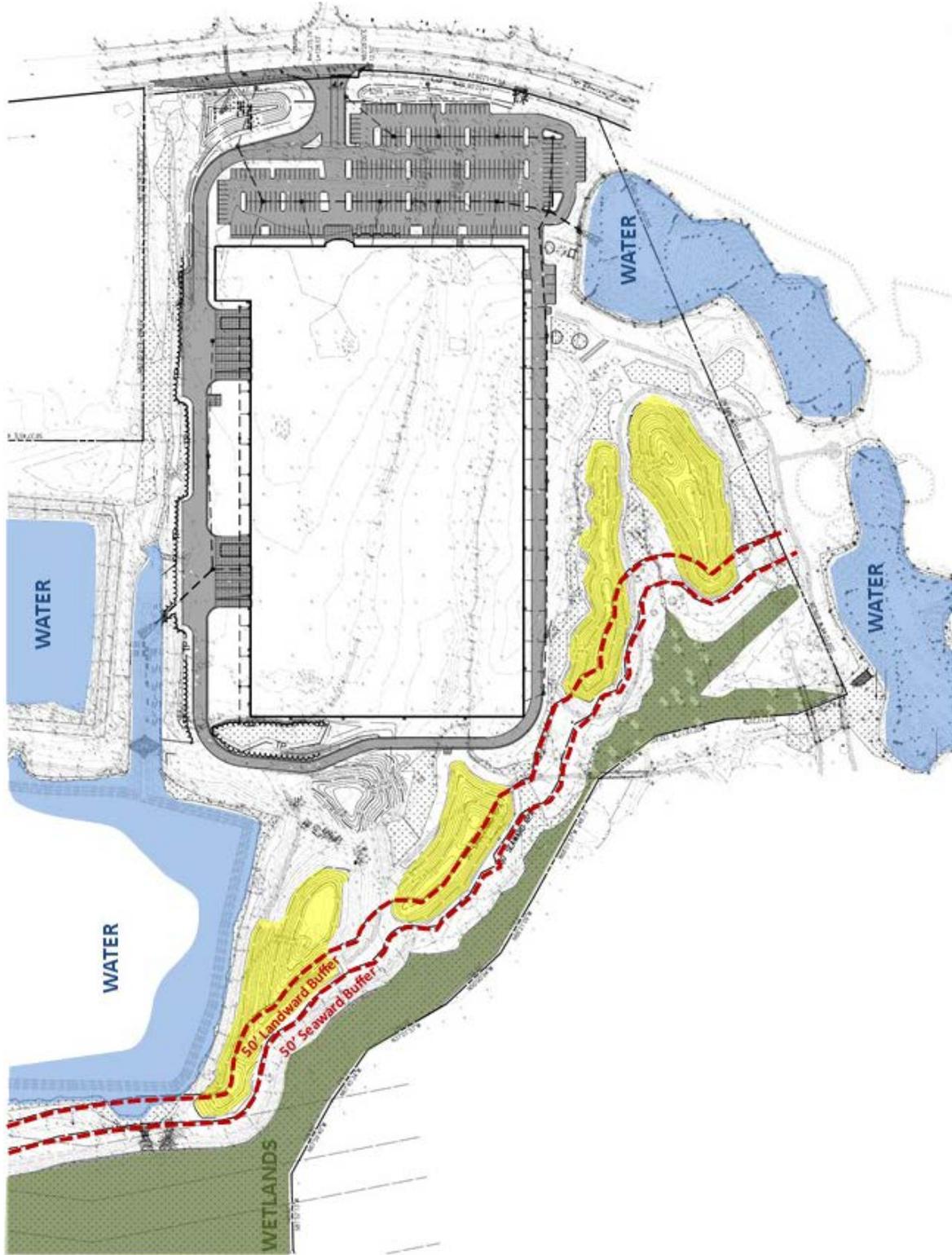
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

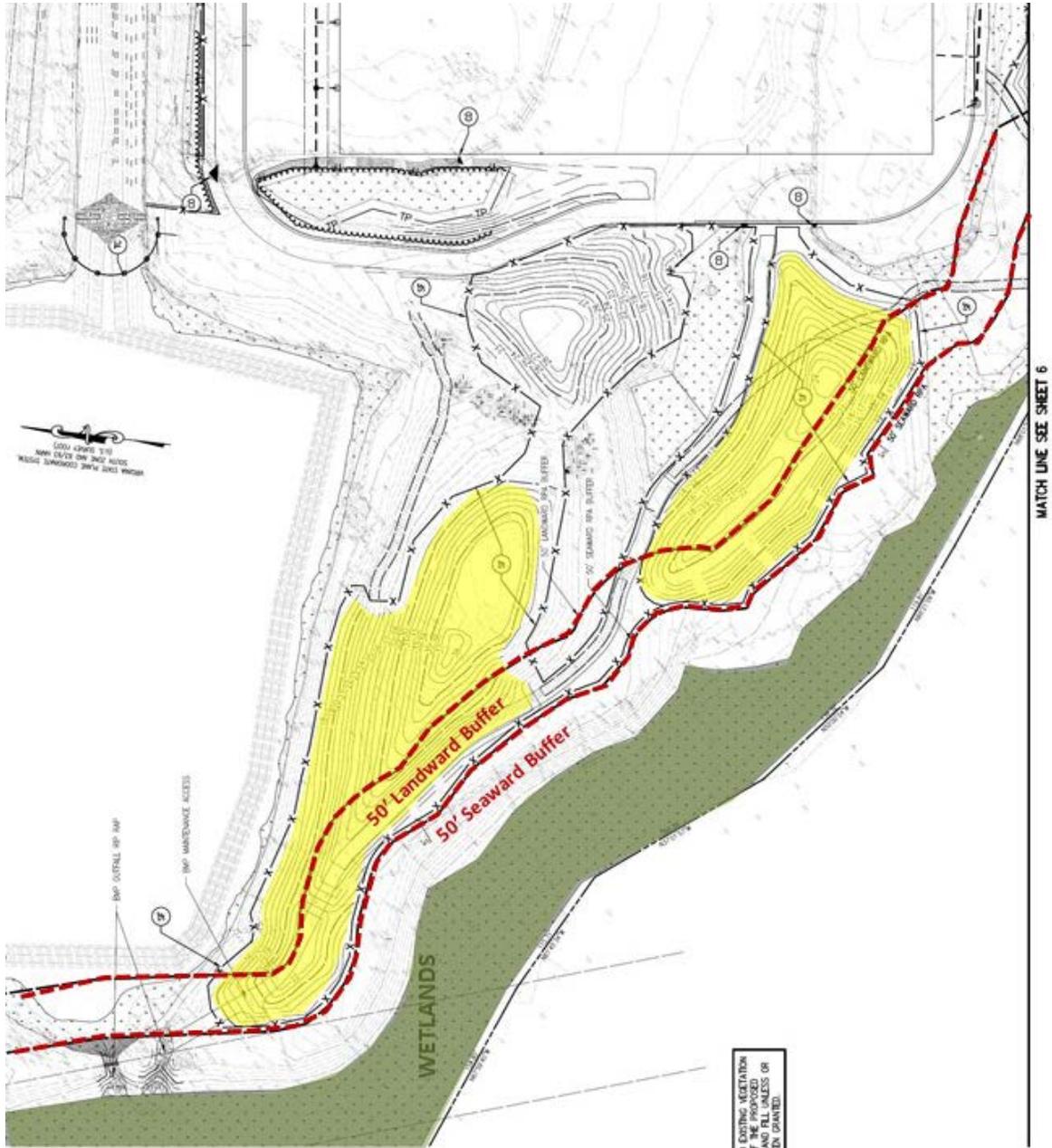
Site Aerial



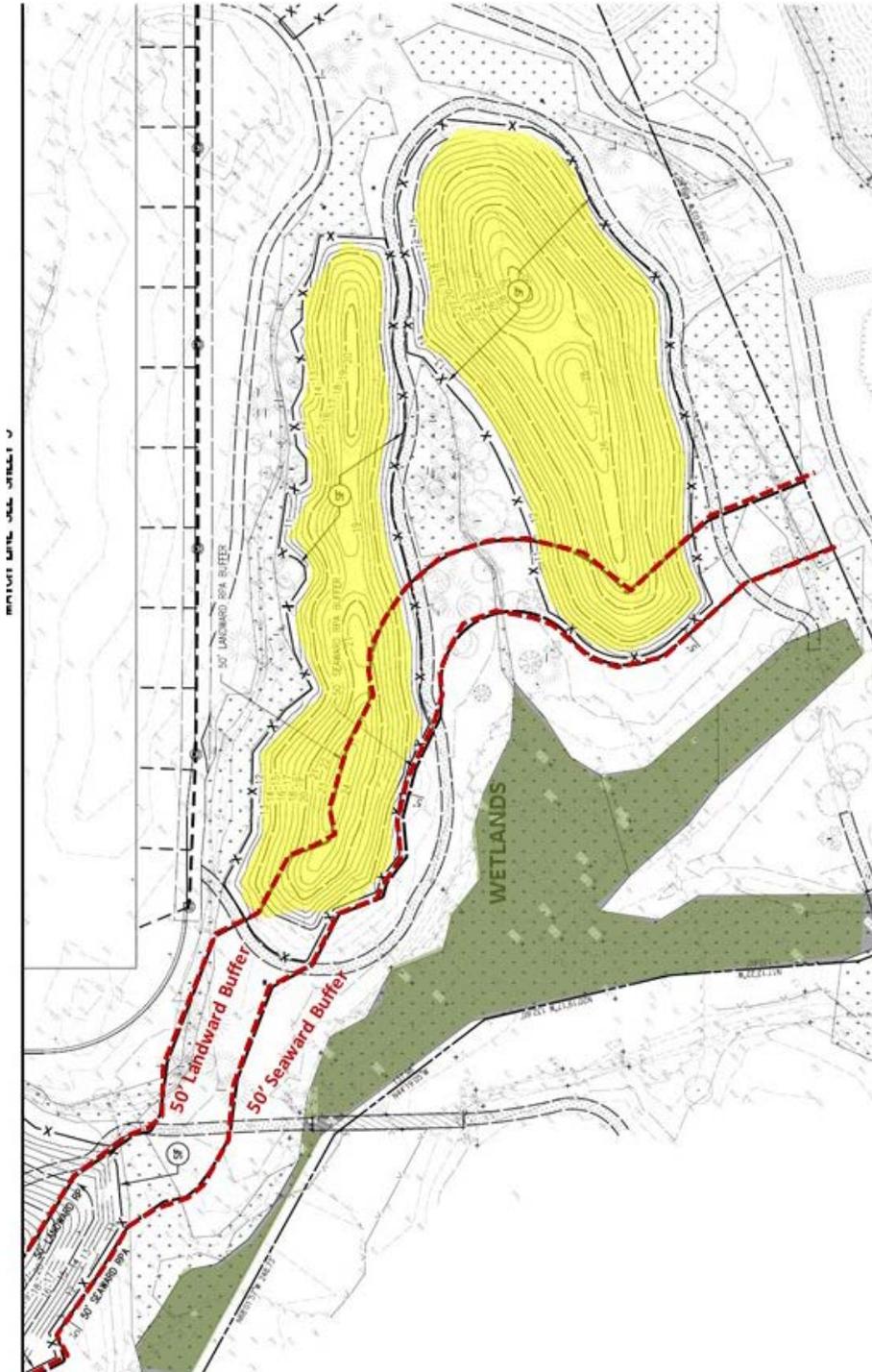
CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Proposed Improvements, Enlarged Area



CBPA Exhibit – Proposed Improvements, Enlarged Area



THESE SHALL BE NO IMPACTS TO EXISTING VEGETATION WITHIN THE RPA AS A RESULT OF THE PROPOSED PLACEMENT OF THE STOCKPILES AND FILL UNLESS OR UNTIL A CBPA VARIANCE HAS BEEN GRANTED.



APPLICANT'S NAME Owl Creek Energy LLC

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).

Page 1 of 7

<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.
- (A) List the Applicant's name: Owl Creek Energy LLC
If an LLC, list all member's names:
Terry L. Spitzer, member
Yusun J. Spitzer, member

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

- (B) List the businesses that have a parent-subsiary ¹ or affiliated business entity ² relationship with the Applicant: *(Attach list if necessary)*
Affiliate one: Management Services Group Inc., DBA, Global Technical Systems (GTS);
Affiliate two: Seahawk LLC; Affiliate three: Sparq Global LLC

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
- (A) List the Property Owner's name: _____
If an LLC, list the member's names: _____



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Cherry Bekaert LLP
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Siska Araund / GMA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	ARCO/Murray national Construction
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	MSA, P.C. / American Engineering
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	BB&T
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Vandeventer Black
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES	NO	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?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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



CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Yusun J. Spitzer	8-28-18
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

AS NEEDED, PAGE LEFT BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer with the construction of a wood deck.

Applicant's Agent

Self-Represented

Staff Planner

PJ Scully

Lot Recordation

4/13/1964

Map Book 60, Page 513

GPIN

1487-68-1393

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

24 square feet

Area of New Development in RPA

288 square feet

Location of Proposed Impervious Cover

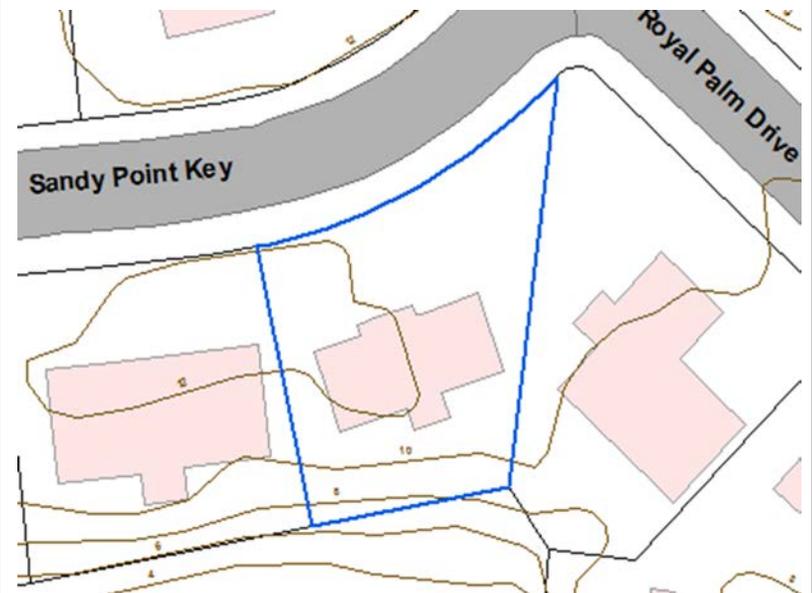
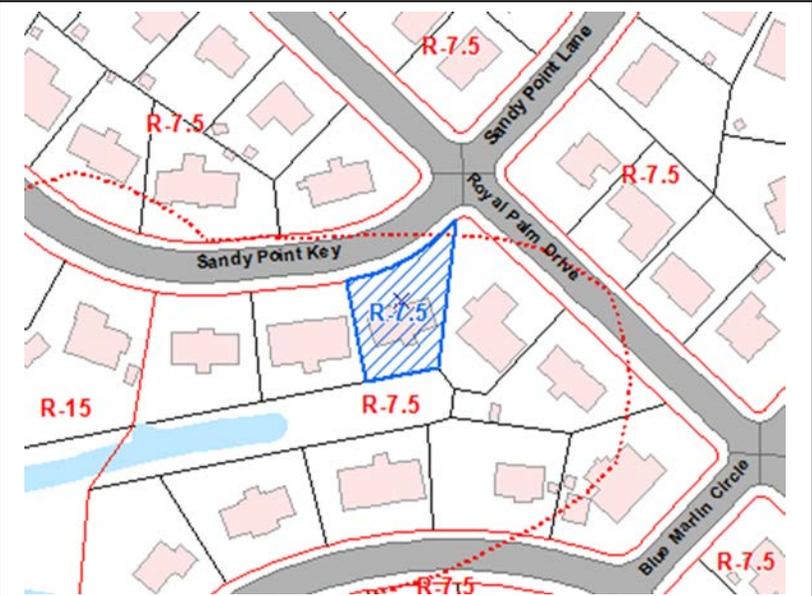
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated walkways
- Gravel driveway with concrete entry court adjacent to residence

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Chapanoke Series (deep, poorly drained soils)

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

Shoreline

Portions of the shoreline are in a natural state with an upland wood retaining wall traversing portions of the parcel.

Riparian Buffer

Sparsely wooded parcel

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

Evaluation and Recommendation

The proposed wood deck is being requested to provide for a reasonable outdoor gathering space. Given the topography of the rear yard and the existing, denuded grade conditions where the improvements are proposed, Staff supports the request as it will provide a means to address the existing erosion and is of the opinion that the increase in impervious cover will not be detrimental to Resource Protection Area features.

The following comments are offered relative to the findings of the CBPA Ordinance specific to this variance request for the Board's deliberation, and Staff has provided the recommended conditions below specific to this variance request.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated because the proposed improvements are in keeping with the neighborhood, minimal in respect to the request for a wood deck, and will not result in any alteration to the existing topography or vegetation.

Jamie Collins-Facteau

Agenda Item 11

Page 144

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief with the proposed wood deck being comparatively a typical size for a single family residences.
- 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 as the improvements are minimal and placed where there are no trees or shrubs to be removed, while large enough to satisfy the applicant's needs.
- 5) Staff offers that the proposed improvements are not located in the most sensitive portions of the parcel – the 50 foot seaward buffer, and that the retention of the existing riparian buffer canopy trees coupled with the existing vegetative area outboard of the parcel provides a natural means to manage towards a no net increase in nonpoint source pollution load.

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. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
3. 400 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy trees, 1 understory tree, 2 large shrubs, and 3 small shrubs.**

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

4. Under deck treatment of sand and gravel shall be installed.

5. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, 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 113(E) of the Chesapeake Bay Preservation Area Ordinance.

Site Aerial



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Jamie Collins-Facteau

DISCLOSURE STATEMENT FORM

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 board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

Acquisition of Property by City	Disposition of City Property	Modification of Conditions or Proffers
Alternative Compliance, Special Exception for	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Board of Zoning Appeals	Encroachment Request	Rezoning
Certificate of Appropriateness (Historic Review Board)	Floodplain Variance	Street Closure
Chesapeake Bay Preservation Area Board	Franchise Agreement	Subdivision Variance
Conditional Use Permit	Lease of City Property	Wetlands Board
	License Agreement	

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.

SECTION 1 / APPLICANT DISCLOSURE

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 application(s).

<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE:	



- Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **APPLICANT IS** a corporation, partnership, firm, business, or other unincorporated organization.

(A) List the Applicant's name: _____
If an LLC, list all member's names:

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

(B) List the businesses that have a parent-subsidiary ¹ or affiliated business entity ² relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

Complete Section 2 only if property owner is different from Applicant.

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.

(A) List the Property Owner's name: Jamie Collins-Facteau
If an LLC, list the member's names:



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

- (B) List the businesses that have a parent-subsiary¹ or affiliated business entity² relationship with the Property Owner: *(Attach 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.

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Engineers / Surveyors/ Agents	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

YES NO 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?

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

CERTIFICATION:

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 Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

APPLICANT'S SIGNATURE



PRINT NAME

Jamie Collins-Facteau

DATE

9/11/18

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.

AS NEEDED, PAGE LEFT