

**Chesapeake Bay Preservation Area
Board Agenda**

December 19, 2018

CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

The Virginia Beach Chesapeake Bay Preservation Area Board will hold a Public Hearing on **Wednesday, December 19, 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**

ADMINISTRATIVE BUSINESS ITEM

1.

Election of 2019 Chesapeake Bay Preservation Area Board Officers

Chairman
Vice Chairman
Secretary

Page 7

OLD BUSINESS ITEMS

2.

South Linkhorn Bay Trust, et. al.
[Property Owner]

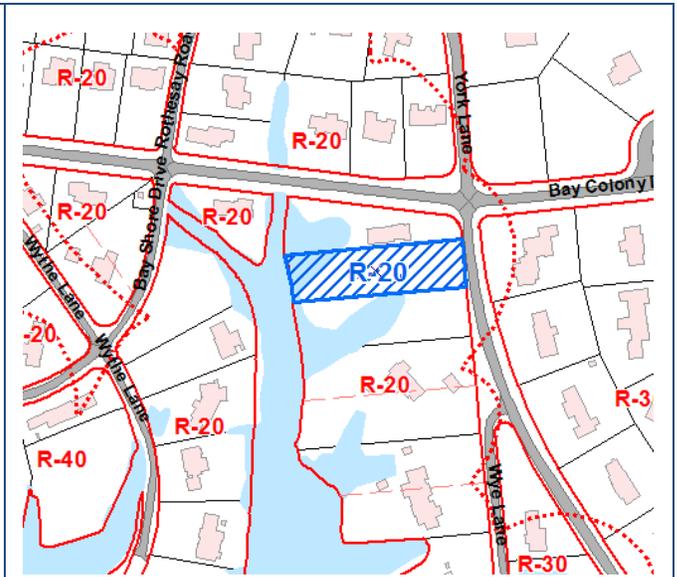
Stephen Alexander Homes
[Applicant and Contract Purchaser]

Lot 196, N. Linkhorn Park Ext., York Lane
GPIN: 2418-47-4423
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

Page 9



3.

South Linkhorn Bay Trust, et. al.
[Property Owner]

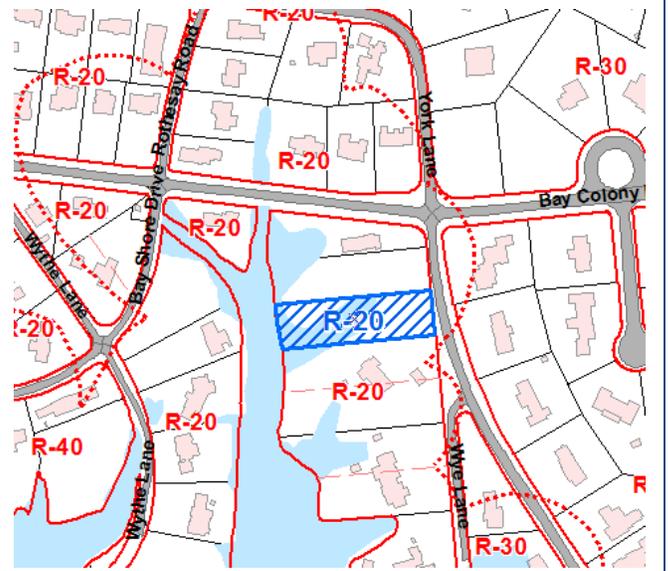
Stephen Alexander Homes
[Applicant and Contract Purchaser]

Lot 196, N. Linkhorn Park Ext., York Lane
GPIN: 2418-47-4423
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

Page 25



NEW BUSINESS ITEMS

4.

Carl and Peggy Lankford
[Property Owners and Applicants]

937 Winwood Drive
GPIN: 2418-01-8542
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

Page 41



5.

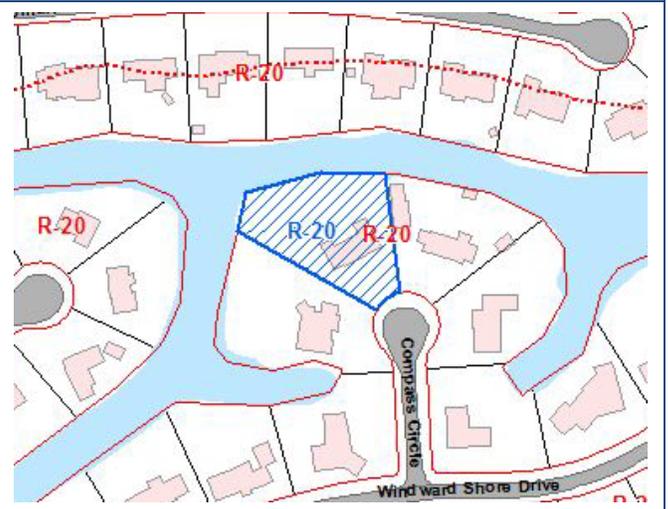
Brian Laroche and Heidi Hampson
[Property Owners and Applicants]

2009 Compass Circle
GPIN: 2409-09-3371
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Robert Simon

Staff Planner – PJ Scully

Page 55



6.

**Michael D. Zeiders Revocable Trust and
Charlotte A Zeiders Revocable Trust**
[Property Owners and Applicants]

1532 Duke of Windsor Road
GPIN: 2408-98-8105
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Eddie Bourdon

Staff Planner – PJ Scully

Page 71



7.

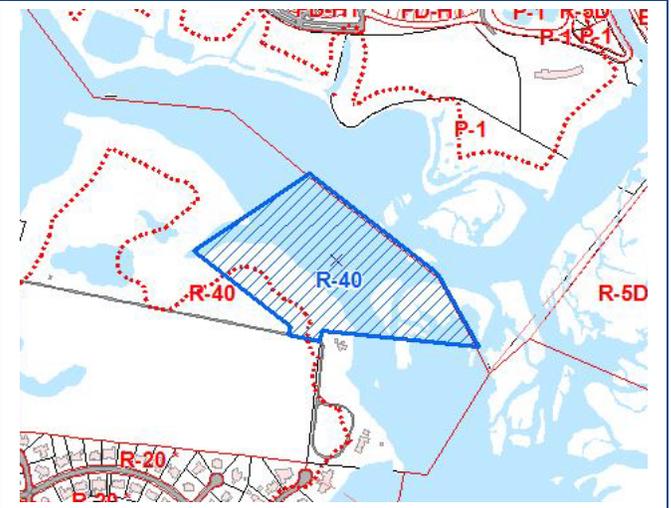
Taylor W. Franklin
[Property Owner and Applicant]

4153 First Court
GPIN: 1489-36-8231
COUNCIL DISTRICT - Bayside

Applicant's Agent – Self represented

Staff Planner – PJ Scully

Page 93



DISCLOSURE STATEMENT – OLD BUSINESS ITEMS 2 and 3

2.

South Linkhorn Bay Trust, et. al.
[Property Owner]

Stephen Alexander Homes
[Contract Purchaser]

Lot 196, N. Linkhorn Park Ext., York Lane
GPIN: 2418-47-4423
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

Page 105

3.

South Linkhorn Bay Trust, et. al.
[Property Owner]

Stephen Alexander Homes
[Contract Purchaser]

Lot 197, N. Linkhorn Park Ext., York Lane
GPIN: 2418-47-4336
COUNCIL DISTRICT - Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

Page 105

2019 CBPA PUBLIC HEARING LOCATION AND DATES

The Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold the following CBPA Board Public Hearings for 2019. **Please note the following change to the location of the informal session.**

An informal session will be held at 9:00 a.m. in the City Manager's Conference Room, Room 234 of Building 1 at the Municipal Center. During the informal session, Staff briefs the CBPA Board on agenda items. All interested persons are invited to attend. There is no opportunity for citizenry to speak at the briefing session; however, the public is invited to speak at the formal CBPA Board Public Hearing held at 10:00 a.m. in the City Council Chamber.

2019 CBPA PUBLIC HEARING DATES

Monday	January 28
Monday	February 25
Monday	March 25
Monday	April 22
Thursday	May 23
Monday	June 24
Monday	July 22
Monday	August 26
Monday	September 23
Monday	October 28
Monday	November 25
Wednesday	December 18



2018 Chesapeake Bay Preservation Area Board Members

- June Barrett-McDaniels
- Norbert Joe Dreps
- Dave France – Vice Chairman
- Dave Jester – Chairman
- Casey Jones
- Wayne McCoy
- Richard Poole – Secretary
- Reese Smith, Jr.
- Michael Steier

2019 Chesapeake Bay Preservation Area Board Election of Officers

Chairman
Vice Chairman
Secretary

2019 Chesapeake Bay Preservation Area Board Members

- June Barrett-McDaniels
- Norbert Joe Dreps
- Dave France
- Dave Jester
- Casey Jones
- Wayne McCoy
- Reese Smith, Jr.
- Michael Steier
- Al Wallace

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Property Owner **South Linkhorn Bay Trust, et al.**
Contract Purchaser **Stephen Alexander Homes**
Address **Lot 196, N. Linkhorn Park Extended, York Lane**
Public Hearing **December 19, 2018**
City Council District **Lynnhaven**

Agenda Item

2

Variance Request

Consideration to modify Condition 1 of the November 25, 2002 Chesapeake Bay Preservation Area (CBPA) variance for the construction of a single-family residence.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

2/18/1927

Map Book 8, Page 50

GPIN

2418-47-4423

SITE AREA

37,850 square feet or 0.87 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

27,361 square feet or 0.63 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,517.7 square feet or 16.5 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

4,517.7 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

50 foot Landward Buffer

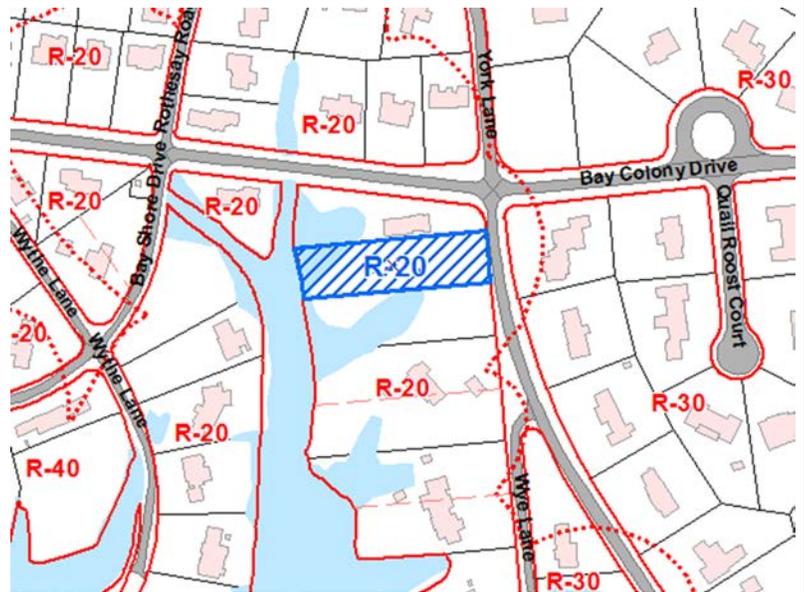
100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated driveway and walk
 - A Board of Zoning Appeals (BZA) variance required for height and encroachment into the front yard setback
- Covered 2-story wood deck
- Retaining wall

CBPA Ordinance Variance History

- This variance request was deferred at the July 23, 2018 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the August 27, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a second time at the August 27, 2018 CBPA Board Public Hearing to the October 22, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a third time at the October 22, 2018 CBPA Board Public Hearing to the November 21, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a fourth time at the November 21, 2018 CBPA Board Public Hearing to the December 19, 2018 CBPA Board Public Hearing.

On November 25, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for this parcel to construction a single family residence with the following conditions:

1. *** No portion of any site improvement shall lie within 75 feet of the designated toe-of-slope / edge of water.*
2. *No portion of the residence or the stormwater management facility shall lie below the existing 5 foot contour elevation.*
3. *All stormwater from impervious cover shall be conveyed to structural stormwater management facilities.*
4. *As offered by the applicant, payment into the Lynnhaven River Oyster Heritage Program based on 25% of proposed impervious cover (789 sq. ft.) Said payment shall be made prior to, or concurrent with site plan approval and shall be in the amount of \$723.00. Said payment shall provide for the equivalent of an approximate 789 square foot, 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
5. *Construction limits, 36" silt fence, shall lie a maximum of 15 feet outboard of improvements. Temporary construction fencing, acceptable to Civil Inspections shall be installed along and adjacent to said construction limits and shall remain in places during all phases of construction.*
6. *A preconstruction meeting is required with Civil Inspections prior to any land disturbance.*
7. *The residence shall be built into the slope with no perimeter fill.*
8. *Tree compensation shall be at a 1:1 ratio.*

9. All area outboard of construction limits shall be left in a natural state, inclusive of forest floor / leaf litter left intact, and shall be so noted on the site plan.
10. If and when the shoreline is hardened, a riprap revetment shall be installed in lieu of a vertical retaining structure (bulkhead). Said condition shall be so noted on the site plan.
11. 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.
12. If a deck is constructed on the seaward side of the residence, it shall have under deck treatment installed and shall not be enclosed.

****NOTE: It is understood that a retreat from wetland resources does not infer justification to permit setback variances. Said condition may warrant a reduction in the size of the residence or redesign.**

The November 25, 2002 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state. Maintenance should be performed to remove the fallen canopy tree within the adjacent tidal cove, limb up low hanging branches shading existing tidal marsh, and 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: 39
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: Trees being requested for removal are associated with the area of land disturbance for the construction of the proposed improvements. All trees outboard are shown as being preserved.

Evaluation and Recommendation

The Staff write-up from the July 23, 2018 CBPA Board Staff report was as follows.

“This variance request has been submitted for a reconsideration to Condition 1 of the November 25, 2002 Chesapeake Bay Preservation Area (CBPA) variance – “No portion of any site improvement shall lie within 75' of the designated toe of slope/edge of water.” As stated at the end of the 2002 CBPA variance conditions, “It is understood that a retreat from wetland resources does not infer justification to permit setback variances. Said condition may warrant a reduction in the size of the residence or redesign.” Staff is unaware of any reduction in the

size of the residence or redesign of the proposed improvements from that which was presented to the CBPA Board at the time of the November 2002 CBPA Public Hearing.

Staff met with the applicant and applicant’s agent several times regarding the request to eliminate Condition 1 and indicated during those meetings that Staff is not supportive of an increase in impervious cover nor supportive of further encroachment seaward than what was presented to the Board in 2002. To accommodate Staff’s position of no further encroachment seaward, the applicant has shifted the proposed improvements landward, which will require approval by the Board of Zoning Appeals (BZA) for a front yard setback variance for both the proposed front porch and a portion of the proposed garage (an approximate 3 ½ feet encroachment). It should be noted that the initial application submitted in June indicated that a BZA variance for the proposed height of the dwelling would be pursued, and the initial variance request noted the need for the variance on the exhibit. The applicant has also reduced the size of the rear patio. The increase in impervious cover is deemed necessary by the applicant due to a defined architectural footprint for the proposed primary structure with associated porches, as well as an increase in the width of the driveway to provide for adequate access and off-street parking. While the applicant has reduced the amount of impervious cover within the 50 foot seaward buffer by approximately 318 square feet, the overall impervious cover of the variance request has increased by 852 square feet from the 2002 CBPA Board exhibit. As for Condition 1, the strict application of “No portion of any site improvement shall lie within 75’ of the designated toe of slope/edge of water” reduces the amount of overall buildable area from 3,928 square feet to 2,812 square feet, of which the dimensions of said buildable area measured from the 50 foot front yard setback is approximately 15 feet along the southern portion of the parcel and 54 feet along the northern portion of the parcel, resulting in an awkward “building envelop.”

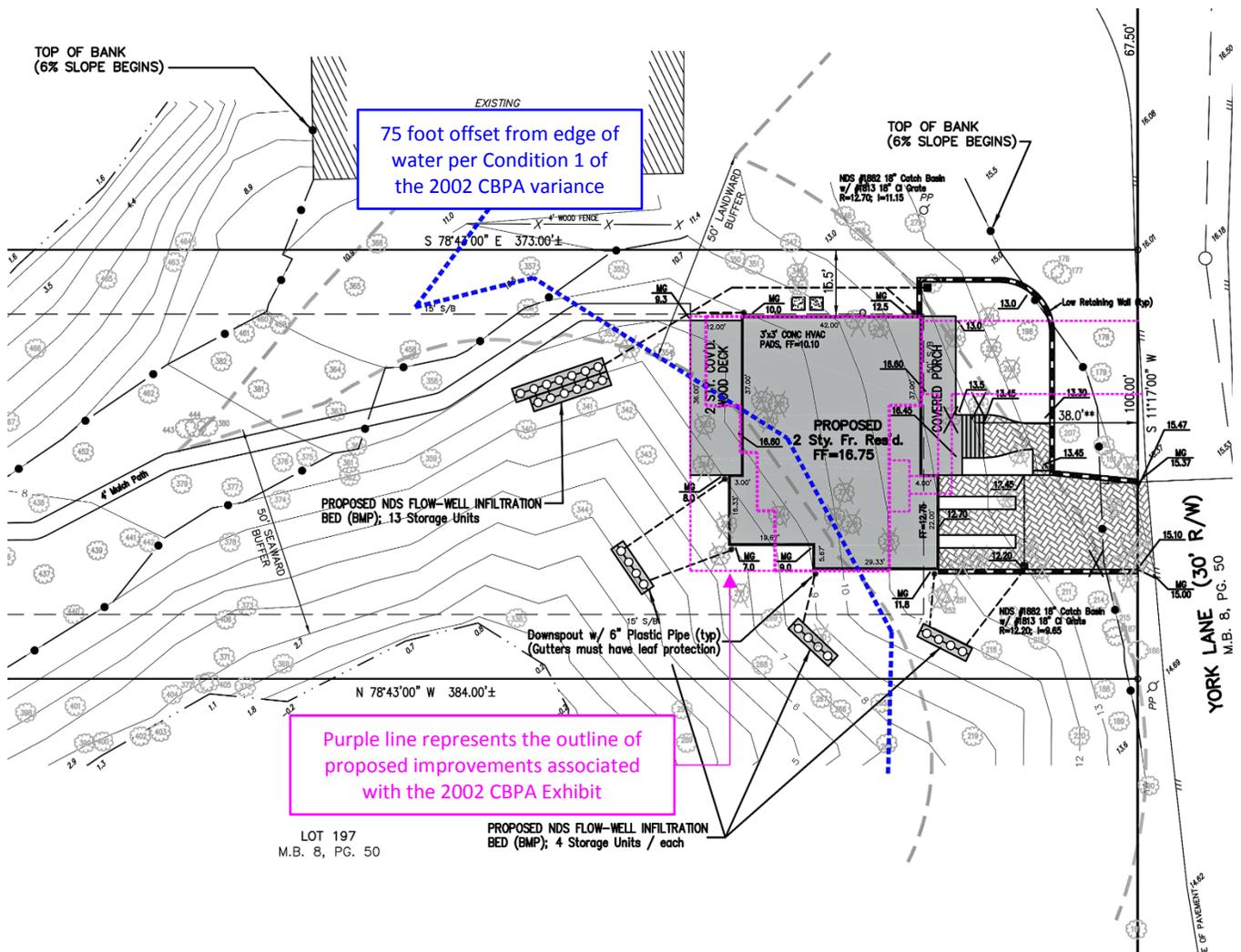
Minimal modifications to the July 2018 application have been provided throughout the multiple deferrals associated with this variance request. The overall impervious cover has been reduced by 263 square feet from 4,780 square feet to 4,517 square feet. This reduction in impervious cover has occurred at the rear of the proposed residence with the elimination of a paver patio. However, the size of the proposed covered deck has been increased to extend over the area where the paver patio was eliminated. With this variance request, reductions in impervious cover are proposed at the front walk and with paver runners within the driveway. The following chronology of changes to the total impervious cover proposed depicted on the CBPA variance exhibits is provided for the Board’s review.

- November 25, 2002 CBPA variance exhibit 3,928 square feet of impervious cover proposed
- July 23, 2018 CBPA variance exhibit 5,123 square feet of impervious cover proposed
- August 27, 2018 CBPA variance exhibit 4,780 square feet of impervious cover proposed
- October 22, 2018 CBPA variance exhibit 4,517 square feet of impervious cover proposed

A more specific comparative analysis of the approximate impervious cover of the approved 2002 variance and the current proposal is provided for the Board’s deliberation.

	2018 CBPA Variance Exhibit	2002 CBPA Variance Exhibit	Difference
Overall Impervious Cover	4,517 square feet	3,928 square feet	+589 square feet
Primary Structure Footprint	2,522 square feet	2,217 square feet	+305 square feet
Decks and porches	798 square feet	746 square feet	+ 52 square feet
Encroachment into 75 foot offset from edge of water, Condition 1 of 2002 variance	797 square feet	1,118 square feet	- 321 square feet

The blue line on the graphic below depicts the 75 foot offset from the edge of water, as required per Condition 1 of the 2002 CBPA variance. In other words, Condition 1 prohibits any site improvements between the edge of water and the blue line.



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 because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff respects the applicant's position and acknowledges that slight changes to Condition 1 could have merit; however, Staff is concerned that if approved, this variance request as submitted addresses the applicant's desire to develop the parcel for sale on a speculative basis, but may result in a subsequent variance request by the final purchaser of the parcel unaware of the discussion and conditions regarding this second variance request. While the applicant has reduced the footprint of the dwelling and has shifted improvements away from the water, Staff remains concerned with the environmental impacts this home may have on the property. Staff recommends conditions below that would modify the proposed improvements to address these concerns and the constraints associated with the property.
- 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 1927, 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 entire parcel within the RPA, as delineated by the City’s variable width buffer. However, Staff’s position is that the proposed improvements for this undeveloped parcel should not solely be debated over the adoption date of the City’s CBPA Ordinance but include in the discussion the merits of Condition 1 from the 2002 CBPA variance with respect to a layout of proposed improvements that accommodate existing site conditions.

- 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 the proposed improvements are less than 20 percent of the overall impervious cover of the parcel, Staff is of the opinion that the minimum necessary to afford relief is more in harmony with the proposed improvements associated with the 2002 CBPA variance.
- 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 storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* Given the size of the parcel, the proximity of the proposed improvements to tidal features, and the parcel being completely in a natural state, Staff is of the opinion that the future property owner’s maintenance of the site and the applicant’s adherence to construction practices designed to protect the sensitive natural resources on the site will be the ultimate measurement for whether this request will be injurious to the neighborhood, not detriment to water quality, or otherwise detrimental to the public welfare. The applicant and applicant’s agent should address the Board regarding Staff’s recommended conditions pertaining to the overall maintenance of the site during construction and how the construction activities and tradesman will be managed as to not provide any additional encroachment or detriment to the remaining portions of riparian buffer to be preserved.
- 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 has provided specific recommended conditions regarding the potential development of this parcel specific to erosion and sediment control requirements, stormwater requirements, and long term performance standards, such as permeable pavement systems.

As submitted, Staff questions the wisdom of developing this parcel with approximately 4,517 square feet of impervious cover for a single family residence given that the majority of the parcel’s topography has greater than 6 percent slopes at the location of the proposed improvements. In addition, Staff has expressed concern to the applicant regarding the future sale of this speculative project could give rise to subsequent variance requests. Given that the environmental features of the parcel encumber all of the uplands, and that the proposed improvements requested by the applicant, specifically the rear patio area being minimized to avoid encroachment within the buffer to the greatest extent practicable, it is not likely that Staff would support any additional encroachment by future variance requests. Staff has attempted to address this concern, within the recommended conditions below, specifically Condition 25 that the content of this Staff report and the required conditions of approval be disclosed to any contract purchaser, and to any agent of the contract purchaser, and to any and all potential future purchasers of this parcel be prior to the sale of the parcel.

Should the Board desire to consider granting this variance request, Staff offers the following 25 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. A double row of wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project, the required silt fence shall be installed 10 feet from improvements. **Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
4. Construction limits and all construction activities shall be contained within the limits of the delineated silt fence.
5. **All areas outside the limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field noting the requirement that "All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence."**
6. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking 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 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
8. No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
9. A certified arborist report shall be provided for review during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.

10. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
11. 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.
12. 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, and turf zones. Said buffer restoration shall be in substantial compliance with the Buffer Restoration Plan provided as a component of the CBPA Exhibit.
13. Only the eastern portion of the parcel, landward of the proposed single family residence front wall shall be devoted to turf for this parcel. All remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration 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. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

14. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
15. All proposed Best Management Practices (BMPs) shall be landward of the 7 foot contour, as shown on the CBPA Exhibit.
16. As depicted on the CBPA Exhibit – Encroachment Limits, page 23 of the Staff report for this variance request, all proposed improvements shall not be located seaward of the 8 foot contour, and in no case shall these improvements be located 55 feet beyond the minimum front yard setback of 50 feet.
17. The proposed 4 foot wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
18. The proposed covered porches, both front and rear shall be constructed as an open-pile structure with under deck treatment of sand and gravel installed under both structures.
19. 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.
20. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed below or seaward of the CBPA Exhibit's delineated Top of Bank (TOB) feature.

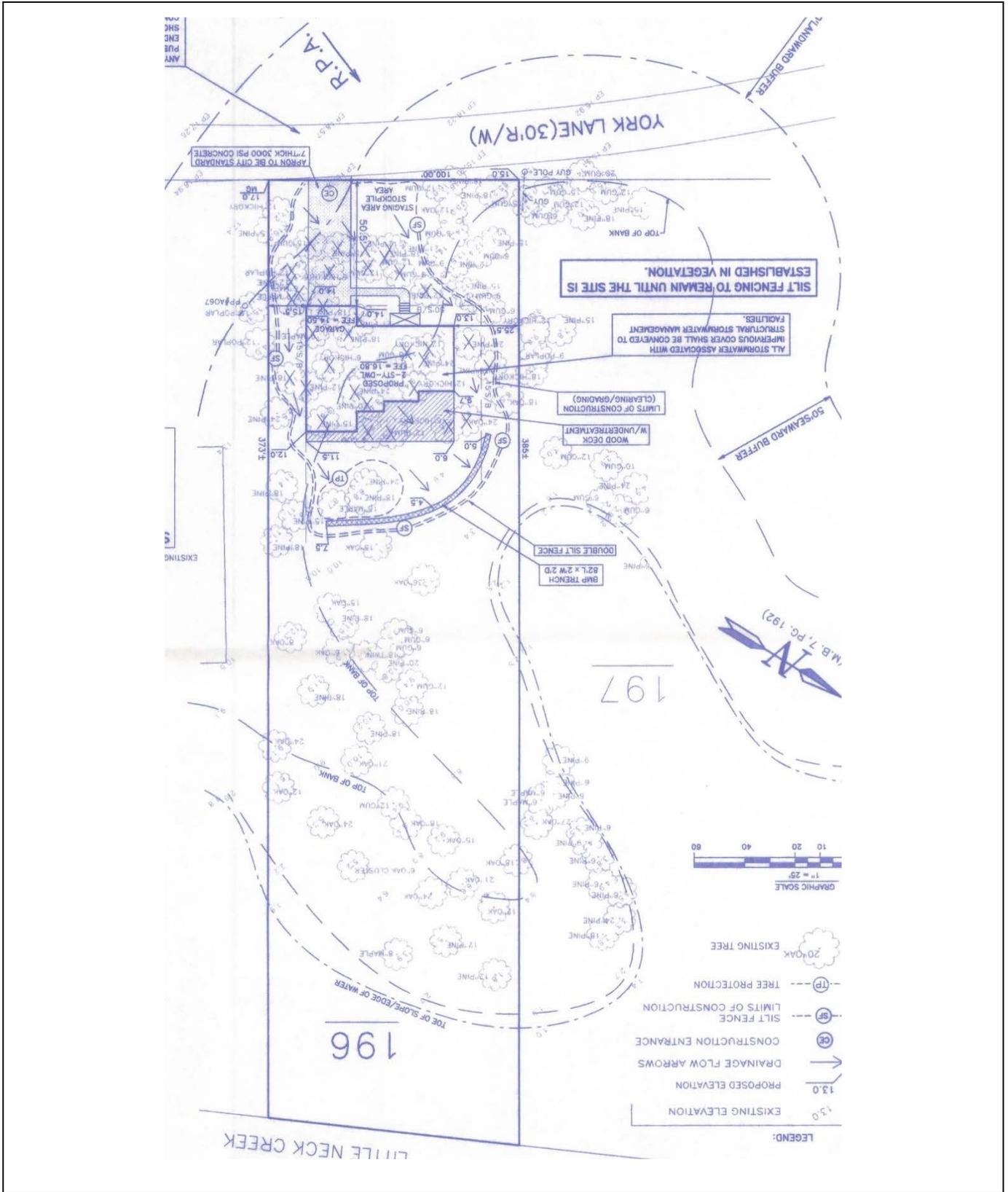
21. If and when a stabilization of the shoreline is addressed, the preferred stabilization method shall be in harmony with the Center for Coastal Resources Management Preferred Shoreline BMP recommendations for this parcel. If an alternative is desired that encroaches into the existing tidal shoreline or alters the existing shoreline habitat, CBPA Board review will be required.
22. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,095.41 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.
23. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
24. The conditions and approval associated with this variance are based on the exhibit plan dated July 12, 2018, prepared by Gallup Surveyors and Engineers, signed September 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.
25. The contract purchaser and any agent of the contract purchaser shall disclose the content of Staff report and conditions of this CBPA variance, to any and all potential purchasers of this parcel prior to the sale of the parcel from the applicant.

** 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.

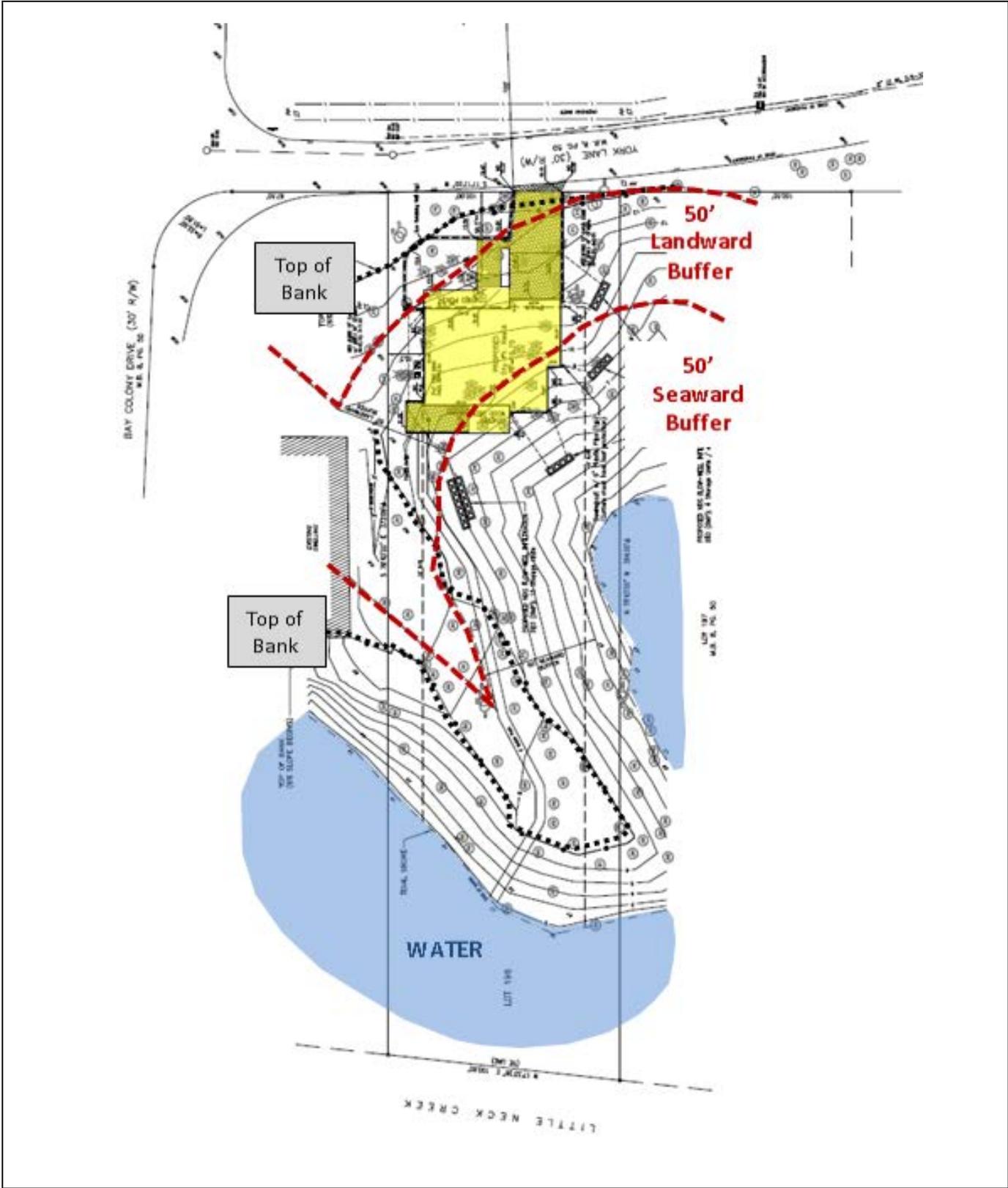
Site Aerial



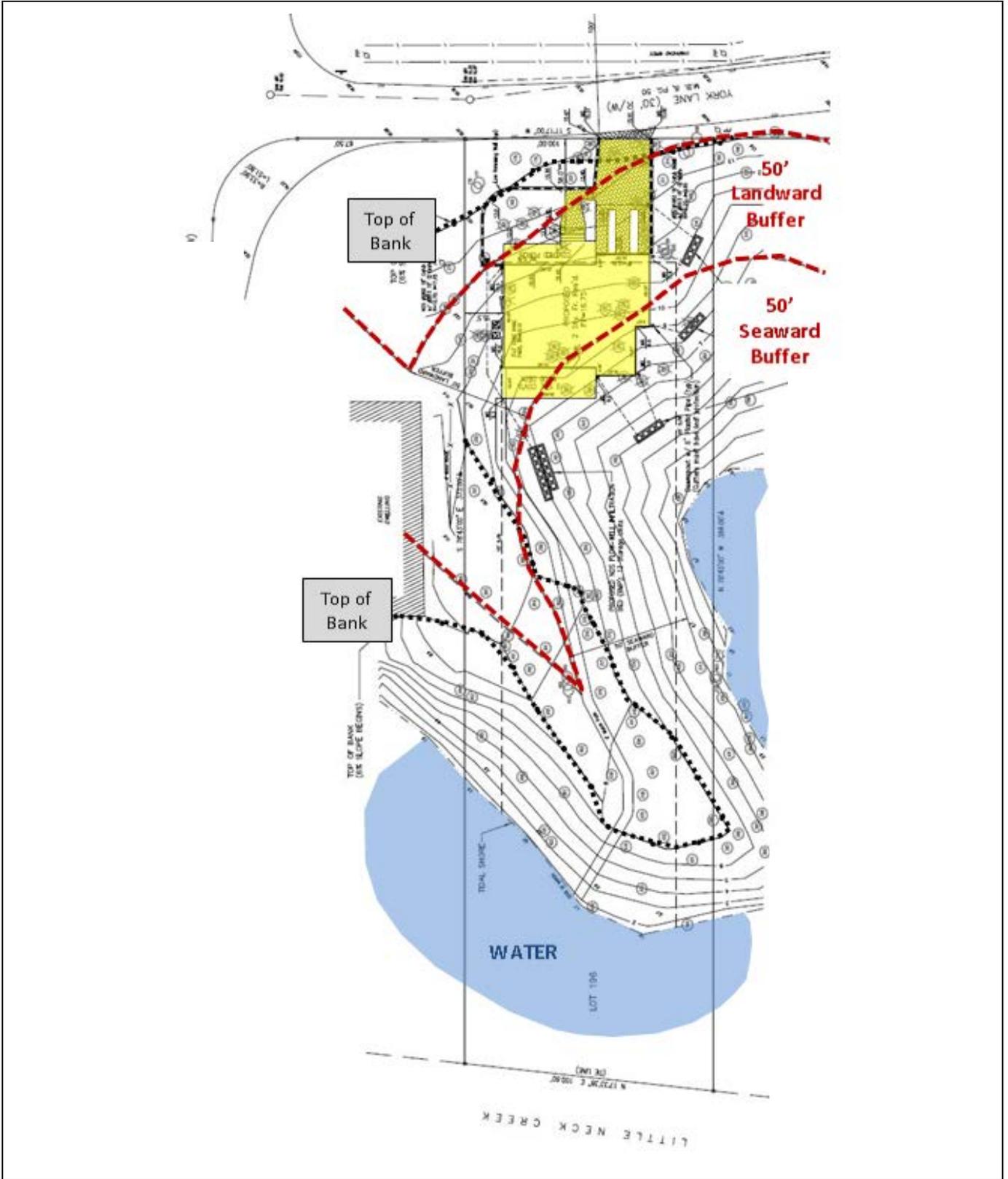


CBPA Exhibit – Existing Conditions





CBPA Exhibit – Proposed Improvements



Disclosure Statement

The Disclosure Statements for both Agenda Item 2 and Agenda Item 3 may be found at the end of this Staff Report.



Property Owner **South Linkhorn Bay Trust, et al.**
 Contract Purchaser **Stephen Alexander Homes**
 Address **Lot 197, N. Linkhorn Park Extended, York Lane**
 Public Hearing **December 19, 2018**
 City Council District **Lynnhaven**

Agenda Item

3

Variance Request

Consideration to modify Condition 7 of the December 23, 2002 Chesapeake Bay Preservation Area (CBPA) variance to construct a single-family residence.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

2/18/1927

Map Book 8, Page 50

GPIN

2418-47-4336

SITE AREA

37,950 square feet or 0.89 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

15,954 square feet or 0.37 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

3,414.2 square feet or 21.4 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,414.2 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

50 foot Landward Buffer

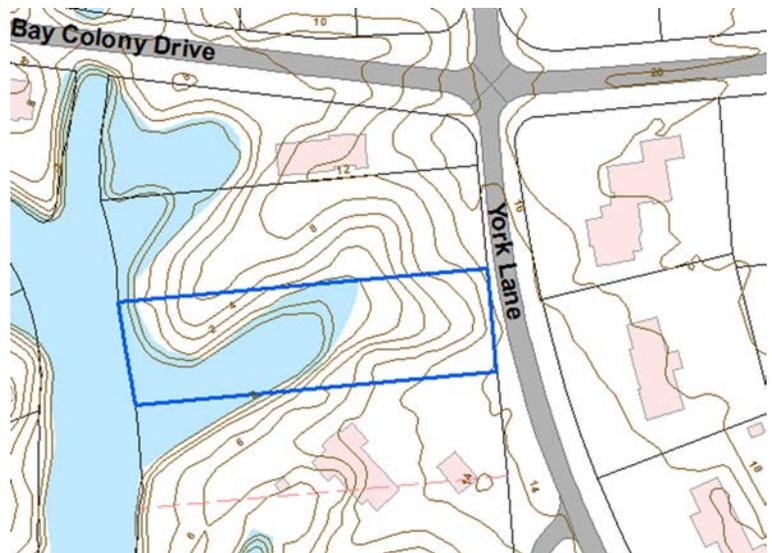
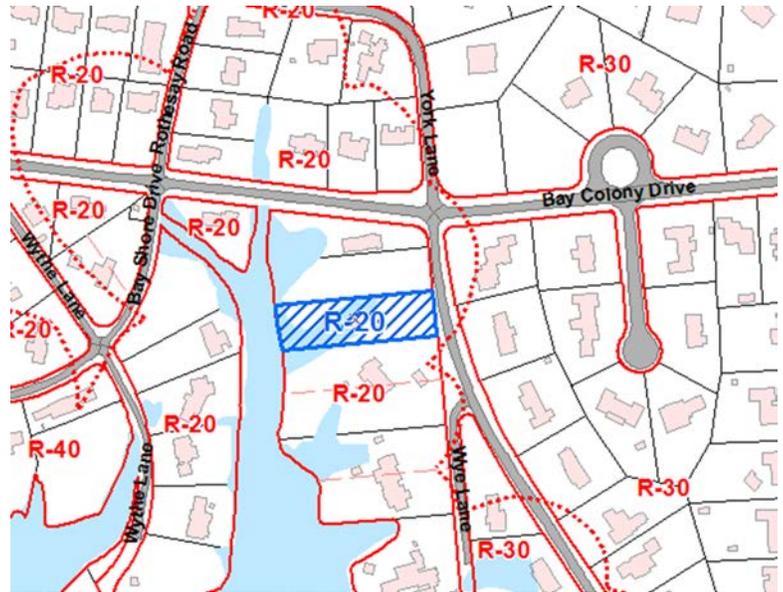
100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Deny as submitted



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated driveway and walks
 - A Board of Zoning Appeals (BZA) variance required for height and encroachment into the front yard setback
- Covered 2-story wood deck
- Retaining wall – multiple locations

CBPA Ordinance Variance History

- This variance request was deferred at the July 23, 2018 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing to the August 27, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a second time at the August 27, 2018 CBPA Board Public Hearing to the October 22, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a third time at the October 22, 2018 CBPA Board Public Hearing to the November 21, 2018 CBPA Board Public Hearing.
- This variance request was deferred for a fourth time at the November 21, 2018 CBPA Board Public Hearing to the December 19, 2018 CBPA Board Public Hearing.

On December 23, 2002, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for this parcel to construction a single family residence with the following conditions:

1. *Dual erosion and sedimentation control devices shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover is established. In addition, a temporary heavy-duty construction fence, acceptable to Civil Inspections, shall be installed adjacent to said E&S Controls and shall remain in place during all phases of construction.*
2. *The project shall be built into the slope. No perimeter fill will be permitted.*
3. *If and when the shoreline is hardened, a rip-rap revetment shall be installed in lieu of a vertical retaining structure (bulkhead). Said condition shall be so noted on the site plan.*
4. *Under deck treatment of sand and gravel shall be installed.*
5. *Stormwater from all impervious cover shall be conveyed to structural stormwater management facilities.*
6. *Construction limits shall lie a maximum of 15 feet outboard of improvements.*
7. *Structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water.*
8. *Payment into the Lynnhaven Oyster Heritage Program shall be made prior to or concurrent with site plan approval. Said payment shall be based on 25% of the proposed impervious cover (638 square feet) and shall be in*

South Linkhorn Bay Trust, et al.

Agenda Item 3

Page 26

the amount of \$585.59. Payment will provide for an approximate 638 square foot, 12 inch deep oyster shell plant within the Lynnhaven River Basin.

9. All areas outside construction limits shall be left in a natural state, inclusive of the forest floor (leaf litter) left intact. Said conditions shall be so noted on the site plan.
10. Tree compensation shall be at a 1:1 ratio. A minimum of 15 trees shall be installed.
11. A pre-construction meeting is required with Civil Inspections prior to any land disturbance.
12. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.

The December 23, 2002 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state. Maintenance should be performed to remove the fallen canopy tree within the adjacent tidal cove, limb up low hanging branches shading existing tidal marsh, and 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: 31
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: Trees being requested for removal are associated with the area of land disturbance for the construction of the proposed improvements. All trees outboard are shown as being preserved.

Evaluation and Recommendation

Staff write-up from the July 23, 2018 CBPA Board staff report.

“This variance request has been submitted for a reconsideration to Condition 7 of the December 23, 2002 Chesapeake Bay Preservation Area (CBPA) variance – “Structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water.” Initially, the current CBPA variance for this parcel was heard in November of 2002 with the adjoining parcel, Lot 196. At that time, the variance request for this parcel, Lot 197, was deferred and a modified CBPA exhibit presented to the CBPA Board. The revised CBPA exhibit was approved in December of 2002 however, Staff has evaluated both the November and December CBPA exhibits presented against condition 7 of the December 2002 variance and neither exhibits comply with the condition 7.

Staff met with the applicant and applicant’s agent several times regarding the request to eliminate Condition 7 and indicated during those meetings that Staff is not supportive of an increase in impervious cover nor supportive of further encroachment seaward than what was presented to the Board in November of 2002. To accommodate Staff’s position of no further encroachment seaward, the applicant has shifted the proposed improvements landward, which will require approval by the Board of Zoning Appeals (BZA) for a front yard setback variance for both the proposed front porch and a portion of the proposed single family residence – approximately a 4 foot further encroachment from the initial submittal. It should be noted that the initial application submitted in June indicated that a BZA variance for the proposed height of the dwelling and front yard setback would be pursued, and the initial variance request noted the need for the variance on the exhibit. As stated with the previous agenda item, the increase in impervious cover, associated with this variance request is deemed necessary by the applicant due to a defined architectural footprint for the proposed primary structure with associated porches, as well as an increase in the width of the driveway to provide for adequate access and off-street parking. While the applicant has reduced the amount of impervious cover within the 50 foot seaward buffer by approximately 458 square feet, the overall impervious cover of the variance request has increased by 1,384 square feet from the December 2002 CBPA Board exhibit. As for Condition 7, the strict application of no “structural improvements shall lie no less than 60 feet from the most landward depiction of toe of slope, edge of water” reduces the amount of overall buildable area from 3,433 square feet to 2,848 square feet.

Although the conditions of the December 2002 CBPA variance impose strict development criteria on this parcel, Staff is of the opinion that just because this parcel was platted prior to the adoption of the City’s CBPA Ordinance and Subdivision Ordinance that the development of the parcel should not solely be debated over the adoption date of these Ordinances but rather the fact that there is approximately 14,200 square feet of upland present from the delineated seaward limits of the 50 foot seaward buffer to the front property line on the R20 parcel.”

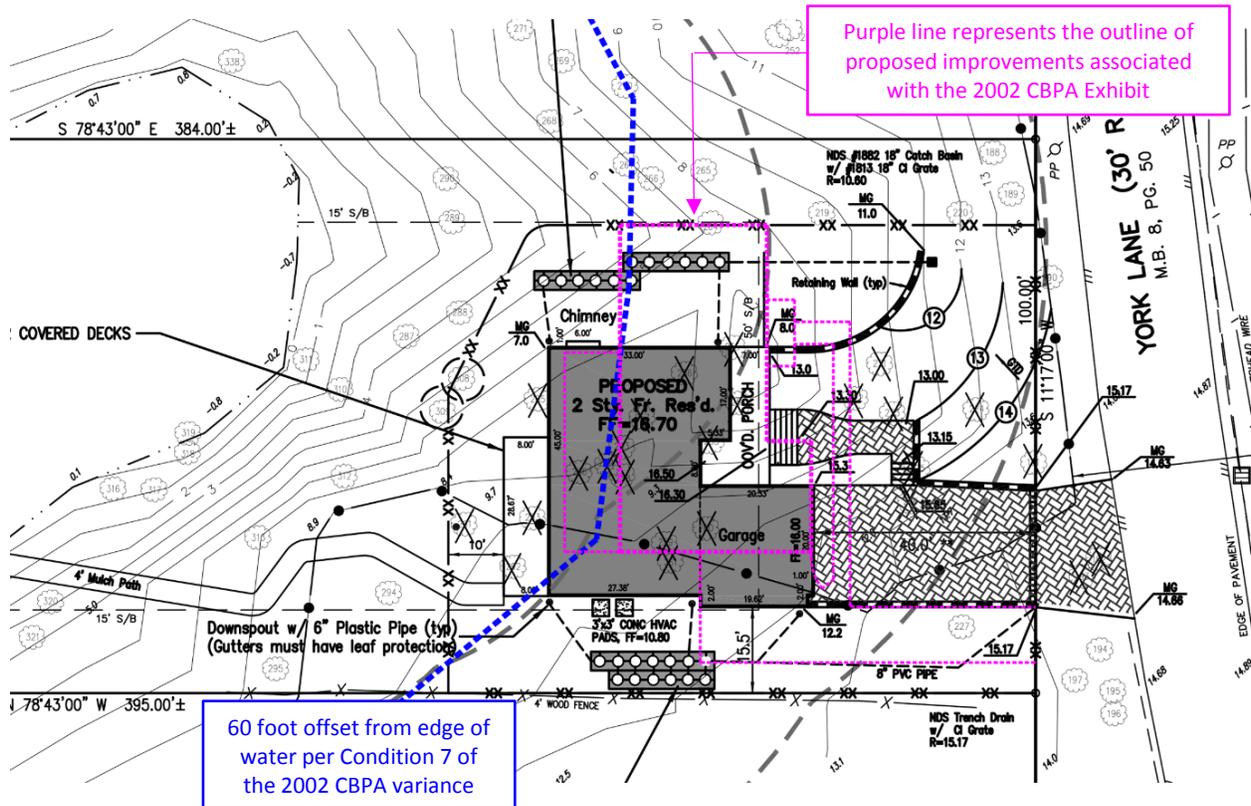
Modifications have been provided with this revised plan. As compared to the July 2018 plan, the overall impervious cover has been reduced by 1,403 square feet from 4,817 square feet to 3,414 square feet. The reduction in impervious cover occurs at the driveway with the introduction of paver runners and with revisions to the footprint of the proposed residence. With this variance request, the revised footprint to the residence offers an approximate 6 foot retreat of proposed impervious cover encroachment into the buffer, totaling an approximate 180 square foot reduction to the northern portion of the residence. This revision encroaches further into the front yard setback with the proposed garage by approximately 8 feet. Staff provides the following chronology of changes to the total impervious cover proposed depicted on the CBPA variance exhibits for the Board’s review.

- December 23, 2002 CBPA variance exhibit 3,153 square feet of impervious cover proposed
- July 23, 2018 CBPA variance exhibit 5,135 square feet of impervious cover proposed
revised – 4,817 square feet of impervious cover proposed
- August 27, 2018 CBPA variance exhibit 3,788 square feet of impervious cover proposed
- October 22, 2018 CBPA variance exhibit 3,509 square feet of impervious cover proposed
- December 19, 2018 BPA variance exhibit 3,414 square feet of impervious cover proposed

A more specific comparative analysis of the approximate impervious cover of the approved 2002 variance and the current proposal is provided for the Board’s deliberation.

	2018 CBPA Variance Exhibit	2002 CBPA Variance Exhibit	Difference
Overall Impervious Cover	3,414 square feet	3,153 square feet	+261 square feet
Primary Structure Footprint	1,781 square feet	1,723 square feet	+ 58 square feet
Decks and porches	448 square feet	418 square feet	+ 30 square feet
Encroachment into 60 foot offset from edge of water, Condition 7 of 2002 variance	797 square feet	307 square feet	+330 square feet

The blue line on the graphic below depicts the 60 foot offset from the edge of water, as required per Condition 7 of the 2002 CBPA variance. In other words, Condition 7 prohibits any site improvements between the edge of water and the blue line. Staff again would like to bring attention that this request, and all prior requests for Lot 197, do not comply with Condition 7 of the December 23, 2002 CBPA variance.



While Staff commends the applicant for providing a revised CBPA exhibit that reduces the amount of impervious cover and land disturbance as compared to the improvements presented in the July 2018 CBPA Staff Reports, the total impervious cover represents an increase above the 2002 variance request. Staff questions the wisdom of developing this parcel with approximately 3,414 square feet of impervious cover. The dwelling's footprint, as well as the encroachment towards the water have all increased above the 2002 variance.

Specific to this parcel, it is important to note that there is approximately 14,200 square feet of upland from the delineated seaward limits of the 50 foot seaward buffer to the front property line on the R-20 parcel to locate a new home, decks, driveway, etc. Therefore, Staff remains of the opinion that the development of the parcel should not solely be debated over the adoption date of the City's CBPA Ordinance and the Subdivision Ordinance. The applicant's agent has provided the comments below relative to the findings of the CBPA Ordinance specific to this variance request, and believes that the redesign 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 subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff is of the opinion that because there is not ample upland area, approximately 14,200 square feet, from the delineated seaward limits of the 50 foot seaward buffer to the front property line on an R20 parcel to

accommodate a reasonably sized dwelling, granting the variance could be construed as conferring upon the applicant a special privilege.

- 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.”* As previously stated, Staff believes that the proposed improvement of this undeveloped parcel should not solely be debated over the adoption date of the City’s CBPA Ordinance, but include in the discussion the merits of Condition 7 from the 2002 CBPA variance with respect to a layout of proposed improvements that accommodate existing site conditions.
- 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.”*
- 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 storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”*
- 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.”*

Should the Board desire to consider granting this variance request, Staff offers the following 25 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. A double row of 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, the required silt fence shall be installed 5 feet from improvements. **Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
4. Construction limits and all construction activities shall be contained within the limits of the delineated silt fence.
5. **All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. Said condition shall be so noted on the site plan and signs posted along the silt fence in the field**

South Linkhorn Bay Trust, et al.

Agenda Item 3

Page 30

noting the requirement that “All areas outside limits of construction shall be left in a natural state to include leaving the forest floor (leaf litter) intact. No construction activity permitted seaward of the silt fence.”

6. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. Said construction access way, staging area, stockpiling area and contractor parking shall be within the delineated construction limits and the number of parking spaces provided for contractor parking 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 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. **Said protective barriers shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.**
8. No trees outboard of the silt fence / limits of disturbance as shown on the CBPA Exhibit shall be removed. Any additional requests for tree removal shall be reviewed and approved by the CBPA Board.
9. A certified arborist report shall be provided for review during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
10. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
11. 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.
12. 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, and turf zones. Said buffer restoration shall be in substantial compliance with the Buffer Restoration Plan provided as a component of the CBPA Exhibit.
13. Only the eastern portion of the parcel, landward of the proposed single family residence front wall shall be devoted to turf for this parcel. All remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

The required restoration 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.

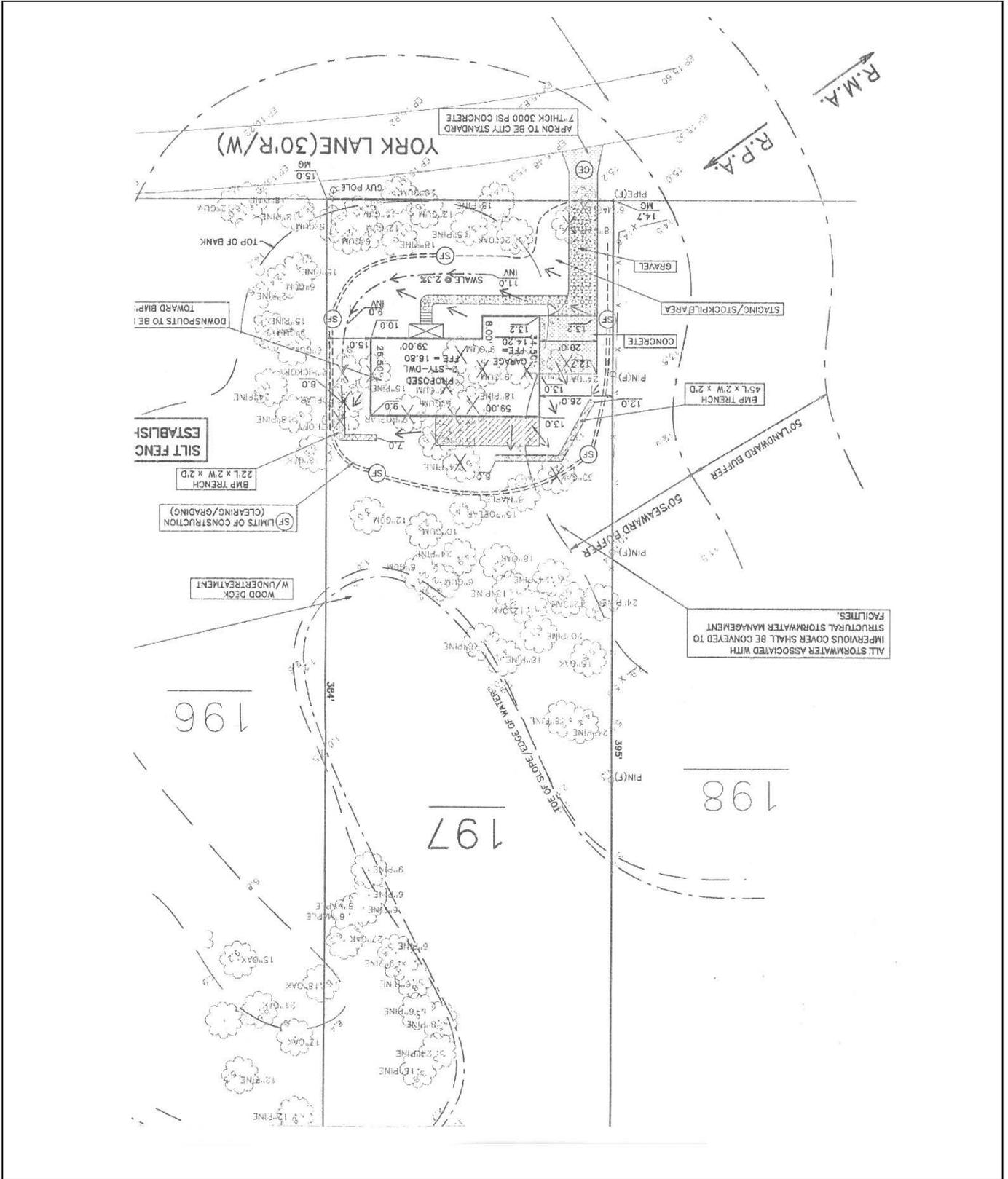
14. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
15. All proposed Best Management Practices (BMPs) shall be landward of the 6 foot contour for the northern portion of the parcel and no further than 60 feet from the front yard setback for the southern portion of the parcel, as shown on the CBPA Exhibit.
16. As depicted on the CBPA Exhibit – Encroachment Limits, page 38 of the Staff report for this variance request, all proposed improvements shall lie 50 feet landward of the delineated edge of marsh/tidal shoreline, and in no case shall these improvements be located 50 feet beyond the minimum front yard setback of 50 feet.
17. The proposed covered porches, both front and rear shall be constructed as an open-pile structure with under deck treatment of sand and gravel installed under both structures.
18. The proposed 4 foot wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
19. 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.
20. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed below or seaward of the CBPA Exhibit’s delineated Top of Bank (TOB) feature.
21. If and when a stabilization of the shoreline is addressed, the preferred stabilization method shall be in harmony with the Center for Coastal Resources Management Preferred Shoreline BMP recommendations for this parcel. If an alternative is desired that encroaches into the existing tidal shoreline or alters the existing shoreline habitat, CBPA Board review will be required.
22. **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 \$868.08 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.
23. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
24. The conditions and approval associated with this variance are based on the exhibit plan dated November 20, 2018, prepared by Gallup Surveyors and Engineers, signed November 20, 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.
25. The contract purchaser and any agent of the contract purchaser shall disclose the content of Staff report and conditions of this CBPA variance, to any and all potential purchasers of this parcel prior to the sale of the parcel.

** 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.

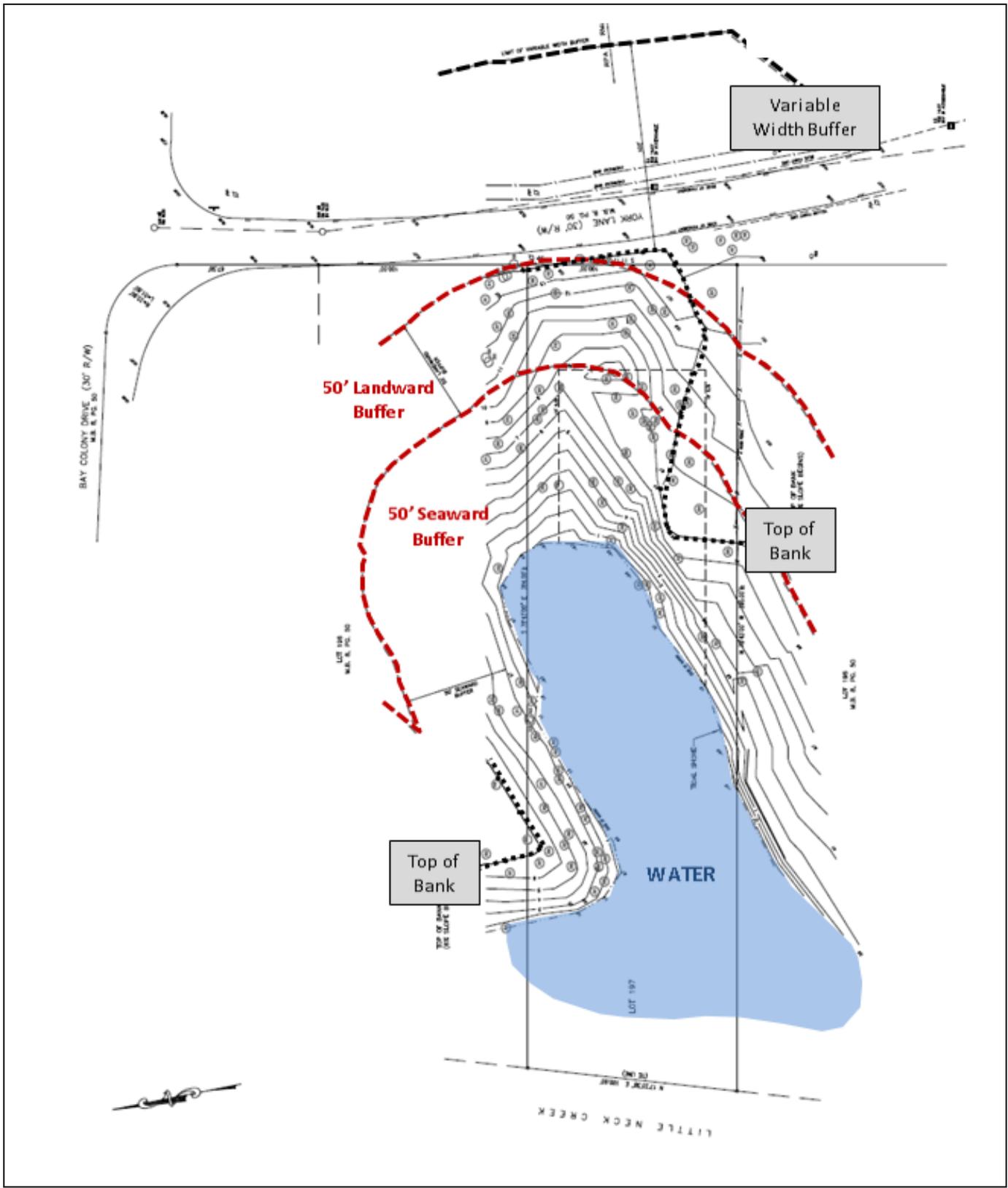
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

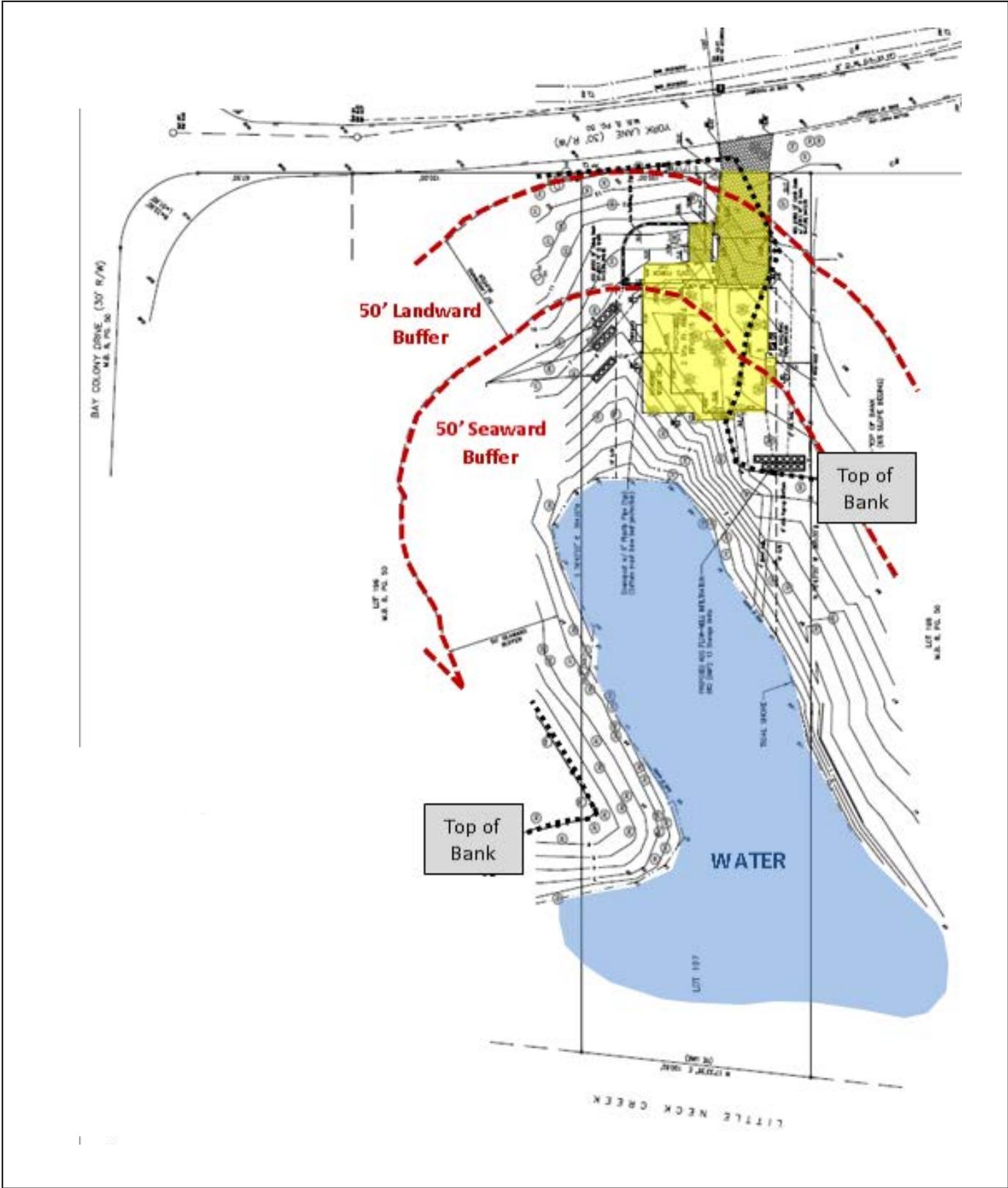




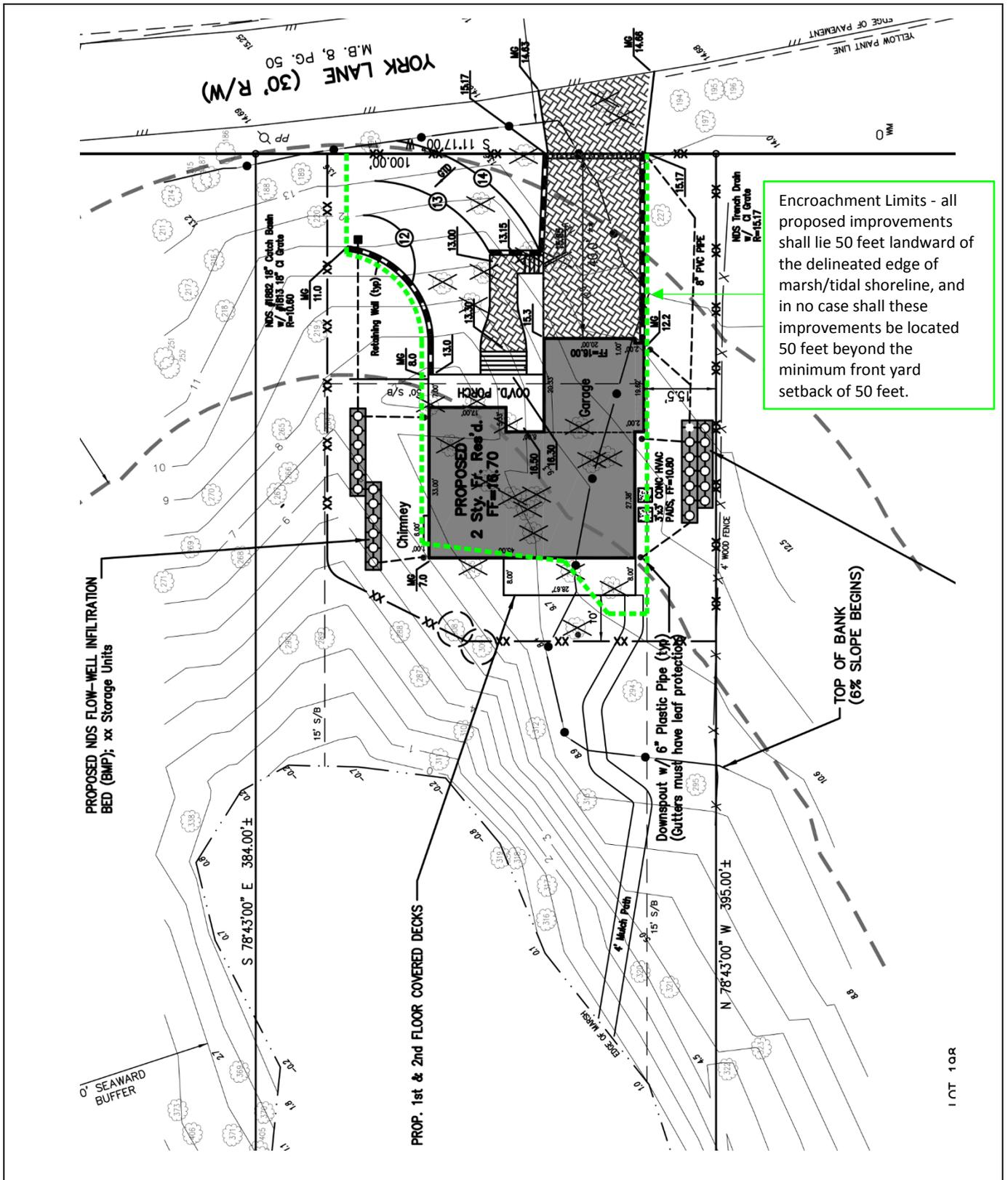
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements presented in the August 2018 Staff Report



CBPA Exhibit – Encroachment Limits per Condition 16 of the Recommended Conditions



Encroachment Limits - all proposed improvements shall lie 50 feet landward of the delineated edge of marsh/tidal shoreline, and in no case shall these improvements be located 50 feet beyond the minimum front yard setback of 50 feet.

Disclosure Statement

The Disclosure Statements for both Agenda Item 2 and Agenda Item 3 may be found at the end of this Staff Report.



Property Owner and Applicant **Carl and Peggy Lankford**
 Address **937 Winwood Drive**
 Public Hearing **December 19, 2018**
 City Council District **Lynnhaven**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer for the construction of a covered outdoor kitchen area, in-ground pool with associated concrete patio, retaining walls, redevelopment of existing driveway, and shed.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

5/5/1949

Map Book 26, Page 1

GPIN

2418-01-8542

SITE AREA

30,100 square feet or 0.691 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

29,180 square feet or 0.670 acre

EXISTING IMPERVIOUS COVER OF SITE

4,408 square feet or 15.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,849 square feet or 26.9 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,545 square feet

Location of Proposed Impervious Cover

50 foot Landward Buffer

100 foot Variable Width Buffer

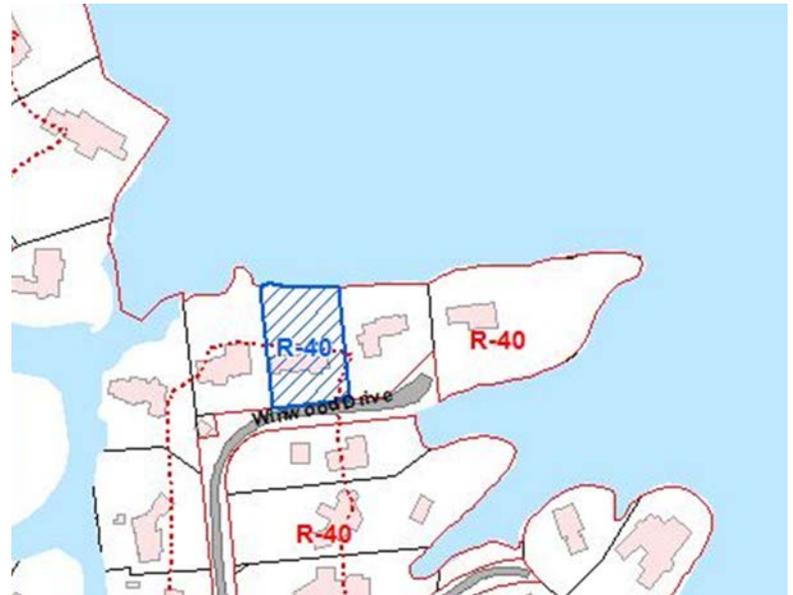
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Brick paver patios – 2 total
- Concrete driveway

Construction Details

- In-ground swimming pool with concrete patio and retaining wall
- Covered patio/outdoor kitchen area with associated retaining wall
- Redevelop and expand existing concrete driveway
- 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): 8

Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

Shoreline

Shoreline is hardened with a wood bulkhead.

Riparian Buffer

Sparsely wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: Although the 3 trees being requested for removal are outboard of the delineated limits of construction, shown as approximately 15 feet from the proposed improvements, Staff is of the opinion that these trees do pose a hazard to the existing residential structure and to the future proposed improvements. The trees are exhibiting minor signs of decline, have high canopies with limited limb structure, and have a noticeable lean to the south towards the existing residential structure.

Evaluation and Recommendation

The variance request proposes encroachment of an accessory structure within the upper limits of the 100 foot RPA buffer on a parcel that was platted in 1949, prior to the adoption of the CBPA Ordinance. The applicant has introduced tiered retaining walls to help minimize impervious cover and to limit fill material within the RPA along the seaward portion of the proposed improvements. Given the existing topography of the parcel and use of retaining walls towards

transitioning the proposed improvements to the existing grade elevations, Staff's determination is that the request is the minimal necessary to afford relief with regard to the proposed in-ground pool and pool patio.

The following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered by the applicant's agent for the Board's deliberation:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development on other parcels within the neighborhood and adjacent parcels."* Staff concurs. Several parcels within the neighborhood have been redeveloped with the majority of proposed improvements encroaching into the upper limits of the 100 foot RPA buffer.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 as *"the house was originally built in the 1950's and near the current zoning standards, therefore the only area for expansion or development is in the rear of the property. Moreover, the proposed improvements have been limited to the landward buffer."* Staff concurs and is of the opinion that the applicant's request is conscience to both the performance standards of the CBPA Ordinance and the minimum necessary to afford relief given the size of the parcel, date the parcel was recorded, and location of the RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. In addition, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay."* Staff is of the opinion that the proposed improvements will not drastically impact the RPA or be injurious to the neighborhood, or a substantial detriment to water quality because the current condition of the riparian buffer is primarily devoted to turf. With the required buffer restoration, should the variance request be granted, the restoration methods of buffer planting and stormwater management should enhance the ecological and biological function of the RPA.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *"buffer restoration and bioretention stormwater management practices will be installed to capture and treat runoff prior to discharging into the adjacent waterways."* Staff concurs.

Staff supports the application as submitted with the following 16 recommended conditions below, and is of the opinion that said improvements will not contribute to the degradation of water quality or prove detrimental to the RPA.

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. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,545 square feet x 200 percent = 3,090 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: **8 canopy trees, 8 understory trees, 16 large shrubs, and 24 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.

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. 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.
15. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$354.06 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.
16. The conditions and approval associated with this variance are based on the exhibit plan dated July 6, 2018, prepared by WPL, signed November 1, 2018 by Eric A. Gardner. 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.

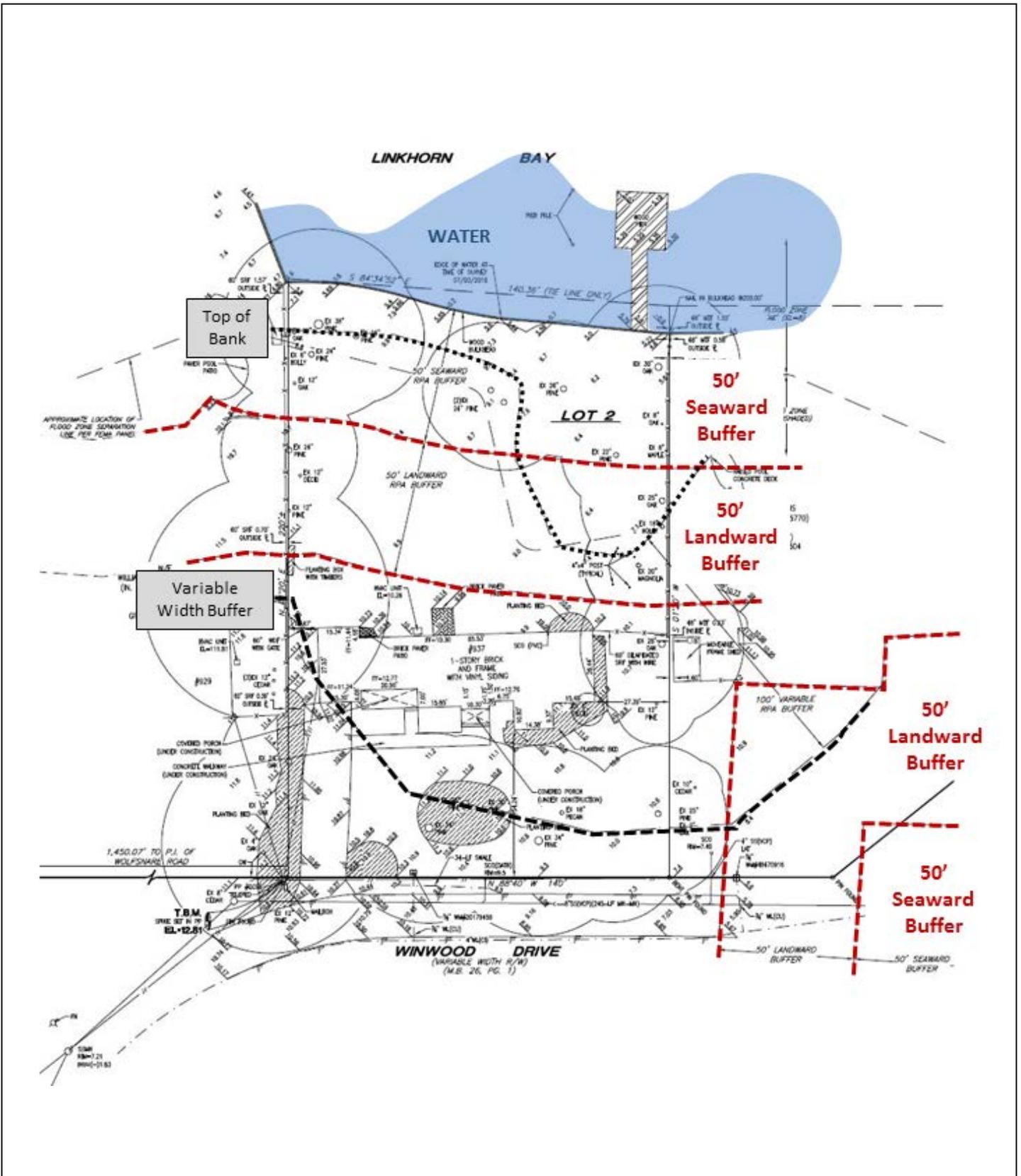
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 C.B. "Buster" Lankford

DISCLOSURE STATEMENT FORM

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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: C.B. "Buster" Lankford
If an LLC, list all member's names:
N/A

If a CORPORATION, list the 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 Applicant: *(Attach list if necessary)*

N/A

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: C.B. "Buster" Lankford
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)*

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 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	WPL
<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	Cape Henry Builders
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WPL
<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)	Towne Bank
<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?

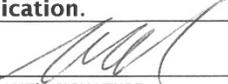
N/A



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.

	Carl B. Lankford	11-1-19
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 BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer to construct an in-ground swimming pool with associated patio areas and an outdoor kitchen.

Applicant's Agent

Robert E. Simon

Staff Planner

PJ Scully

Lot Recordation

9/3/1952

Map Book 45, Page 37

GPIN

2409-09-3371

SITE AREA

34,586 square feet or 0.79 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

34,586 square feet or 0.79 acres

EXISTING IMPERVIOUS COVER OF SITE

6,804 square feet or 19.67 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,728 square feet or 25.2 percent of site

Area of Redevelopment in RPA

180 square feet

Area of New Development in RPA

1,923 square feet

Location of Proposed Impervious Cover

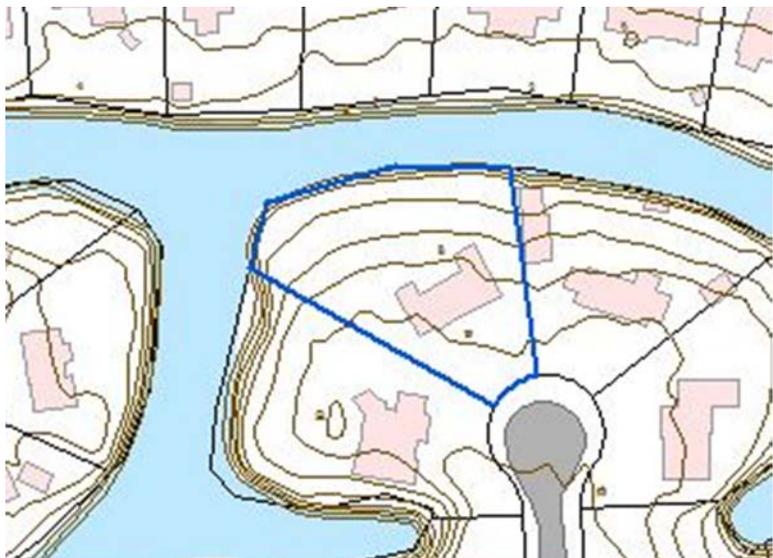
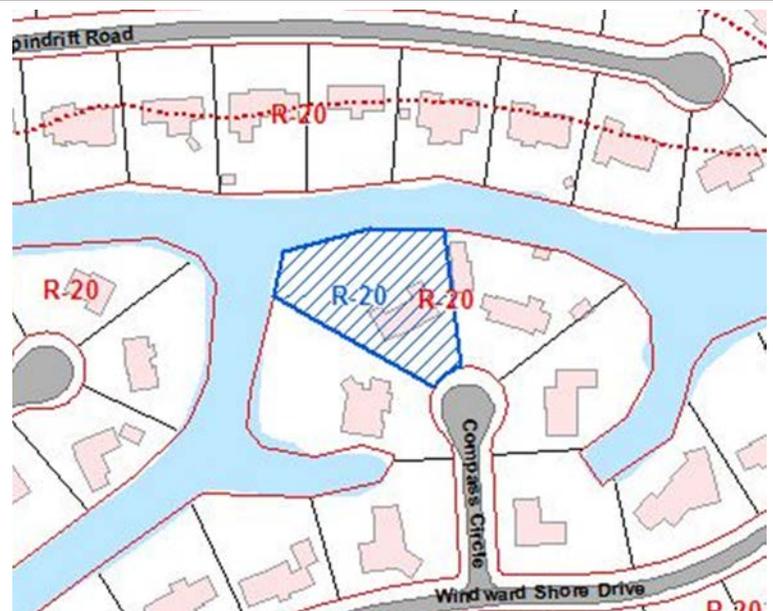
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portion of existing gravel path

Construction Details

- In-ground swimming pool with concrete pool patio
- Outdoor kitchen
- 24-inch retaining wall

CBPA Ordinance Variance History

January 24, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for structural repairs, second story additions, paver installation, front porch expansion, roof overhang and deck construction with the following conditions:

1. A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.
2. Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.
3. A heavy duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E&S controls and shall be maintained during all phases of construction.
4. Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.
5. Construction limits shall lie a maximum of 15' seaward of improvements.
6. The construction access way shall be noted on the site plan, as well as the stockpile staging area.
7. All stormwater from new and existing proposed impervious cover shall be conveyed to structural stormwater management facilities.
8. Under deck treatment of sand and gravel shall be installed.
9. Buffer restoration totaling 1,126 sq. ft. shall be installed which is equal to 100% of new proposed impervious cover for the deck, roof overhang and room addition. Said restoration shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.
10. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.
11. A minimum of six (6) trees shall be installed and shall be comprised of 50% evergreen and 50% deciduous species.

12. The conditions and approval associated with this variance are based on the site plan dated December 17, 2004, prepared by Hayden Frye and Assoc. Inc.
13. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.

The January 24, 2005 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened with a vinyl bulkhead.

Riparian Buffer

Sparsely wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 5
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: One of trees being requested for removal is within the delineated limits of construction. While the applicant's agent did not indicate within the Water Quality Impact Assessment (WQIA) the reason for the tree removal, based on Staff's assessment during the site visit, Staff is of the opinion that the other 4 trees requested for removal are either diseased or in decline. Therefore, Staff supports the request.

Evaluation and Recommendation

The proposed accessory structures – an in-ground swimming pool with associated concrete patio areas and outdoor kitchen, are proposed in the least sensitive portion of the buffer area. The topography in this area of the buffer is relatively flat and construction access will be via a paved surface, therefore limiting land disturbance. Staff is of the opinion that the scope of the improvements, reestablishment of a riparian buffer as conditioned below, and minimal land disturbance anticipated with the construction of the proposed improvements, are the minimum necessary to afford relief, will not be detrimental to water quality, nor be an increase in nonpoint source pollution load into the adjacent tidal waters. As submitted, Staff supports this variance request and offers the following comments relative to the findings of the CBPA Ordinance for the Board's deliberation.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are at 25.2 percent of the*

site within the RPA, below the standard 30 percent threshold with no portion of the proposed impervious cover encroaching into the 50 foot seaward buffer.” Outboard of the overall impervious cover of the parcel being below 30 percent, Staff offers that the proposed improvements are in harmony with other improvements on adjacent parcels within the neighborhood that have been redeveloped with encroachments into the RPA buffer.

- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this 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 improvements are at 26.9 percent of the site within the RPA.”* While the applicant’s agent makes a valid point regarding the overall amount of impervious cover on the parcel, Staff is of the opinion that the proposed improvements provide sufficient function and ability for pedestrian circulation as proposed, and are the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the site currently is not served by any BMPs and the entire lot drains toward the man-made canal. With this plan, BMP’s will be installed downslope of the house and pool patio.”* Staff is of the opinion that the proposed improvements will not adversely impact the RPA, be injurious to the neighborhood, or pose a substantial detriment to water quality because the current condition of the riparian buffer is primarily devoted to turf. With the required buffer restoration, should the variance request be granted, the restoration methods of buffer planting and stormwater management should enhance the ecological and biological function of the RPA.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, that applicant’s agent provided that *“there will be a net reduction of non-point source runoff due to the installation of BMP’s. The entire site currently drains into the canal.”* Staff offers that the installation of buffer restoration to establish a healthy riparian ecosystem, coupled with the required stormwater management of run-off, will provide a means to ensure that there be no net increase in nonpoint source pollution load.

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

Recommended Conditions

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

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

5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
13. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,923 square feet x 200 percent = 3,846 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 11 understory trees, 20 large shrubs, and 30 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.

14. 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.
15. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$440.68 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.**
16. This variance and associated conditions **are in addition to** the conditions of the Board variance granted January 24, 2005.
17. The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, signed December 3, 2018 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.

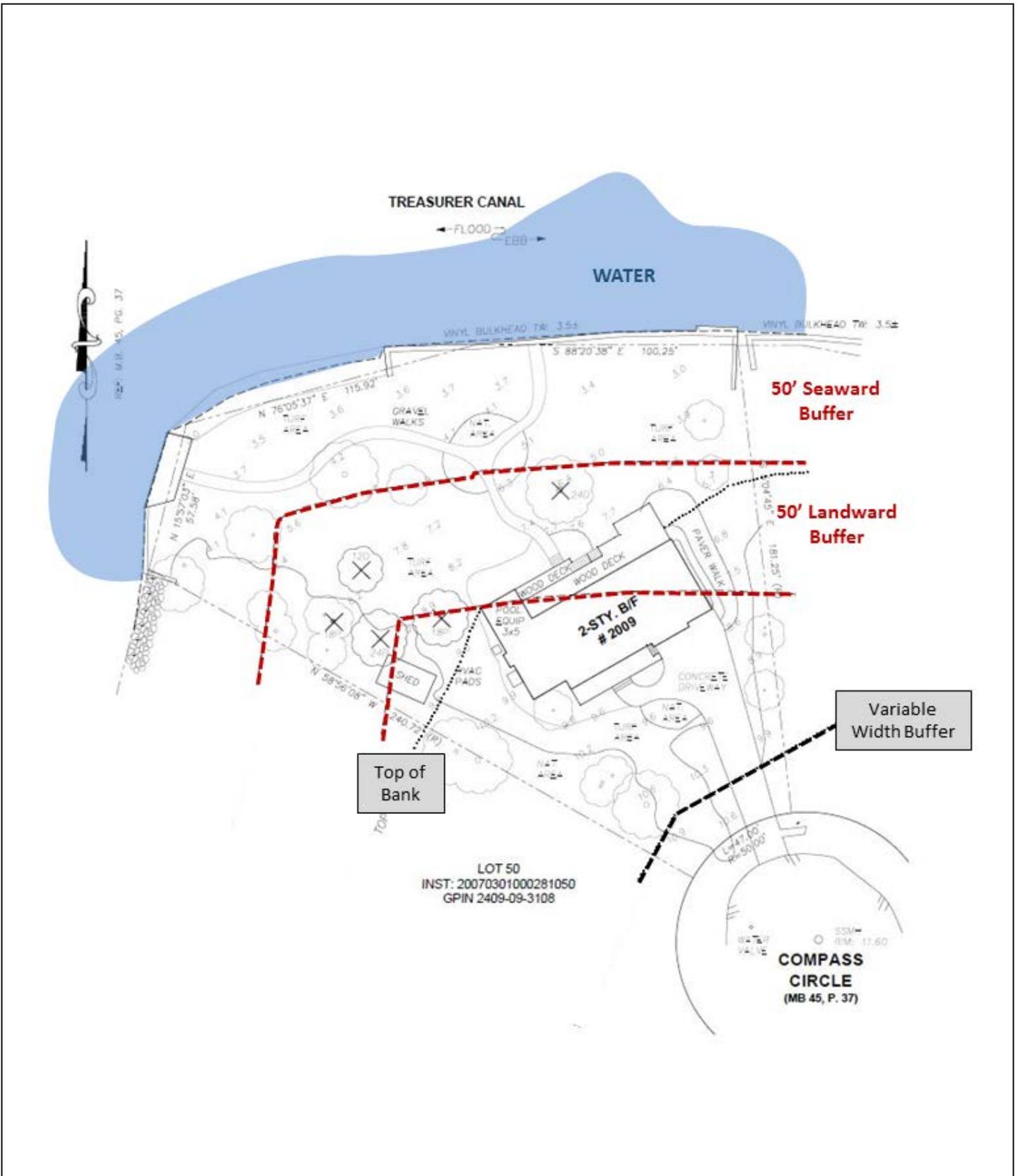
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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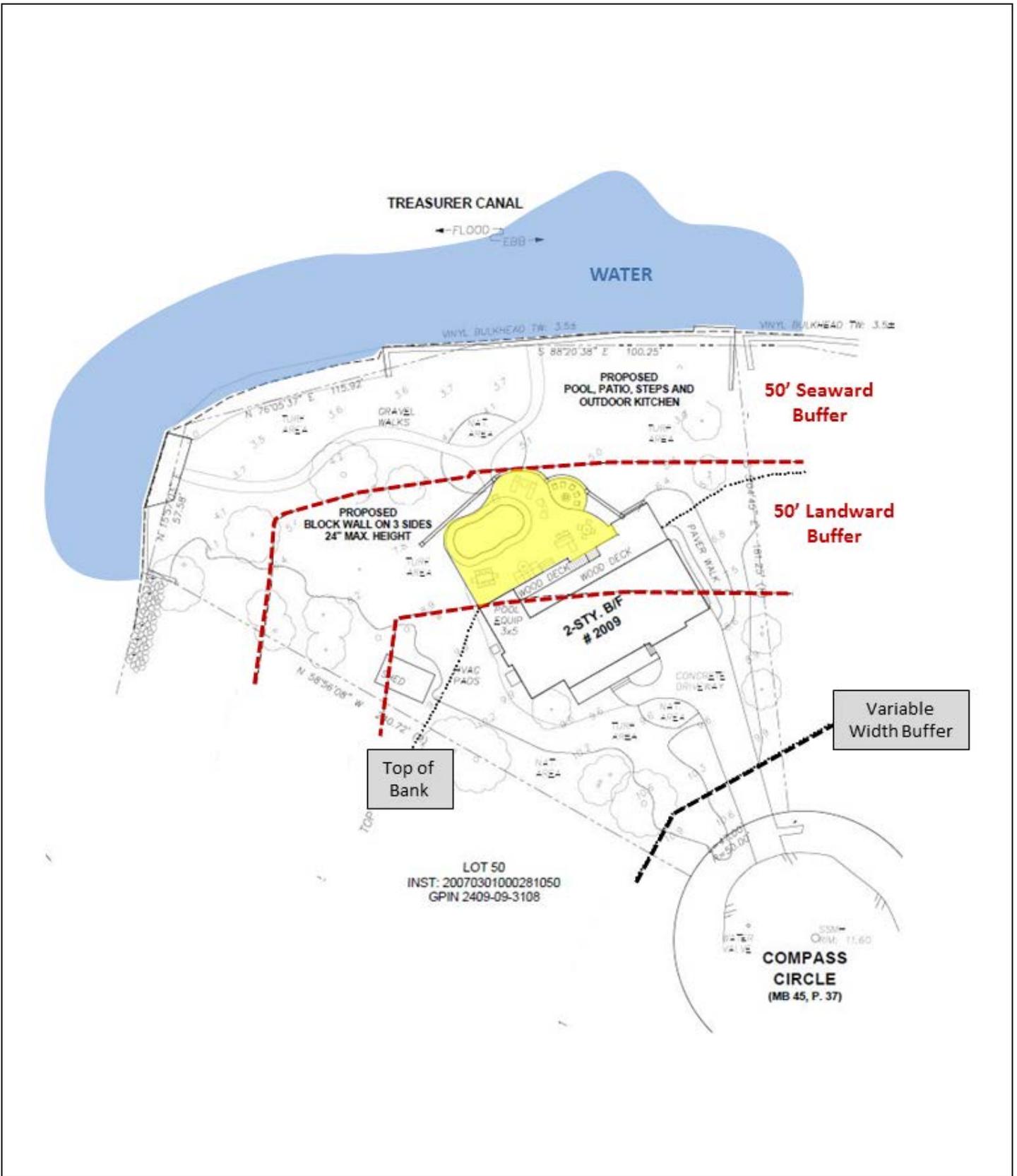
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Brian J. LaRoche and Heidi B. Hampson

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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: Brian J. LaRoche and Heidi B. Hampson
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: _____
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	Gary Pecher
<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	Project out for bid
<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)	1st Wells Fargo Bank
<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?
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If yes, what is the name of the official or employee and what is the nature of the interest?



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	Brian J. LaRoche and Heidi B. Hampson	10/22/12
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 BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) 50 foot landward buffer for the construction of a guest house and associated paver walkway.

Applicant's Agent

Eddie Bourdon

Staff Planner

PJ Scully

Lot Recordation

06/30/1958

Map Book 45, Page 14

GPIN

2408-98-8105

SITE AREA

56,044 square feet or 1.287 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

56,044 square feet or 1.287 acres

EXISTING IMPERVIOUS COVER OF SITE

18,536 square feet or 33.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

19,968 square feet or 35.6 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,432 square feet

Location of Proposed Impervious Cover

50 foot Landward Buffer

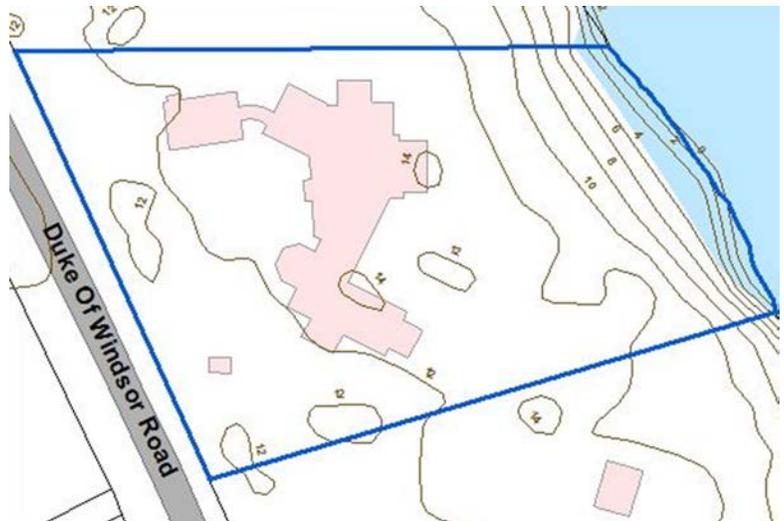
100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- None

Construction Details

- Guest house – 28 foot x 38 foot
- Paver walkway

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)

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

Shoreline

Shoreline is hardened with a wood bulkhead.

Riparian Buffer

Moderately to heavily wooded parcel.

- Number of existing canopy trees requested for removal within the RPA: 3
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing 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

During the application review process, Staff evaluates the merits of a variance request with regard to both existing conditions and proposed improvements for the entire parcel. The applicability of the CBPA Ordinance is applied by Staff to the entire parcel when evaluating the variance request to the findings of the CBPA Ordinance even if only a portion of the parcel is within the RPA buffer. As submitted, Staff is concerned with the overall proposed impervious cover of this variance request being at 19,968 square feet or 35.6 percent of the parcel. With regard to the overall increase in impervious cover for the parcel, the following analysis of impervious covers as it applies to this variance request within the 100 foot RPA, the variable width buffer, and the Resource Management Area (RMA) of the Chesapeake Bay is provided for the Board's deliberation.

- Approximately 2,731 square feet or 4.8 percent of the overall impervious cover of the parcel is within the 100 foot RPA buffer. Of the 2,731 square feet, approximately 1,334 square feet of new impervious cover is proposed.

- Approximately 9,343 square feet or 16.7 percent of the overall impervious cover of the parcel is within the variable width buffer of the RPA. Of the 9,343 square feet, approximately 99 square feet of new impervious cover is proposed.
- Approximately 7,894 square feet or 14 percent of the overall impervious cover of the parcel is within the RMA. No new impervious cover is proposed within the RMA.

The above analysis of impervious cover throughout the parcel provides merit towards the majority of, and distribution of impervious cover being located outboard of the most sensitive portion of the parcel – the 100 foot RPA buffer. Relative to the management of stormwater on the parcel, a highpoint is located at the center of the parcel. As such, half of the property drains to the front of the parcel and the other half drains to the rear of the parcel. The existing street does not have a storm drain system so stormwater run-off is primarily being managed through planting beds, lawn areas, and vegetated swales. As for the rear of the parcel, approximately 35 percent of the overall impervious cover of the property sheetflows towards the adjacent waterway. The applicant’s agent has proposed a bioretention planting bed seaward of the proposed improvements to address the additional stormwater run-off volume.

Should the Board desire to consider granting this variance request, the applicant’s agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request, and believes that 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 current variance request is similar to other minor projects in the RPA.”* While this statement from the applicant’s agent provides merit towards the variance request given the impervious cover within the 100 foot RPA buffer being less than 5 percent of the overall impervious cover of the parcel, Staff is of the opinion that the request to encroach within the 100 foot RPA is similar to other encroachments into the RPA within the neighborhood.
- 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 or predecessor in title 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 guest house is situated above top of bank close to existing improvements.”* While the amount of impervious cover within the 100 foot RPA may be minimal – approximately 5 percent impervious cover, Staff is concerned with the overall impervious cover of the parcel proposed at 35.6 percent with no reductions of impervious surfaces in the RPA or absent additional mitigation proposed to address stormwater run-off of the parcel. To address this concern, Staff has provided
- 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 *“improvements sited above top of bank, close to existing improvements and meets zoning requirements.”* Staff concurs and further offers the recommended conditions below as a means to prevent the overall improvements of the parcel from contributing to the detriment of water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, that applicant’s agent has stated that *“BMPs will be utilized and buffer restoration provided.”* Staff concurs and has conditioned that the maximum proposed impervious cover of the parcel not exceed the current impervious cover of the parcel – 18,536 square feet or 33.1 percent of the site outside of water and wetlands.

Although Staff has expressed concerns with the application as submitted, the following 18 recommended conditions relative to the performance standards of the CBPA Ordinance specific to this variance request are offered 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 along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. The maximum impervious cover of the parcel shall not exceed 18,536 square feet or 33.1 percent of the site outside of water and wetlands.

13. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,432 square feet x 200 percent = 2,864 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: **4 canopy trees, 8 understory trees and 12 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.

14. 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.
15. Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
16. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$118.70 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.**
17. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
18. The conditions and approval associated with this variance are based on the exhibit plan dated October 22, 2018, prepared by Gallup Surveyors & Engineers, signed October 10, 2018 by David Butler. 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





APPLICANT'S NAME Michael D. Zeiders, Trustee

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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.

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- 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: Michael D. Zeiders Revocable Tru
If an LLC, list the member's names:



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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	BDO
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	KebCo
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

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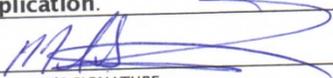
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	Michael D. Zeiders	11/29/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE



OWNER

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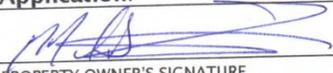
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PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



APPLICANT'S NAME Charlotte A. Zeiders, Trustee

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Page 1 of 7

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<i>Charlotte A. Zeiders</i>	Charlotte A. Zeiders	11/29/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE



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<i>Charlotte A. Zeiders</i>	Charlotte A. Zeiders	11/29/18
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



Property Owner and Applicant **Taylor W. Franklin**
 Address **4153 First Court Road**
 Public Hearing **December 19, 2018**
 City Council District **Bayside**

Agenda Item

7

Variance Request

Encroachment into the 100 foot Resource Protection Area (RPA) 50 Foot Landward Buffer to construct an accessory structure – elevated wooden playhouse for children.

Applicant’s Agent

Robert A. Hewett

Staff Planner

PJ Scully

Lot Recordation

05/03/1996
 Map Book 251, Page 55

GPIN

1489-36-8231

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

100 square feet

Location of Proposed Impervious Cover

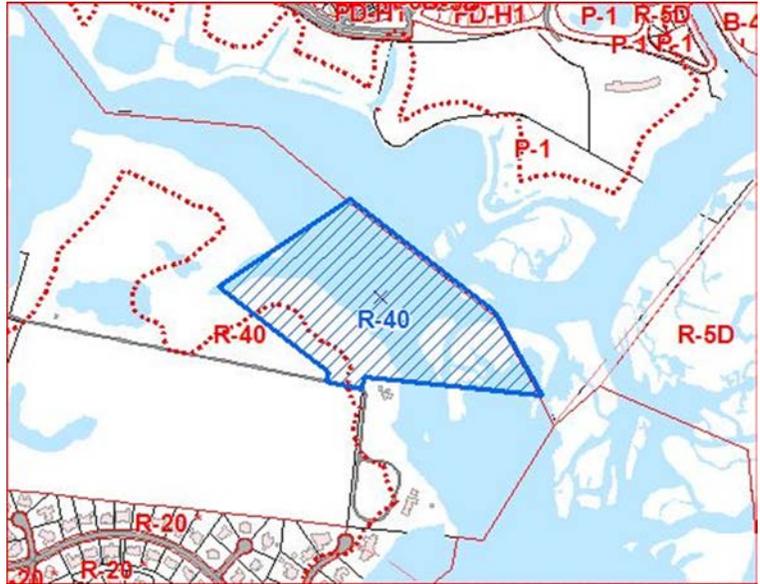
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- None

Construction Details

- Elevated wooden playhouse for children – 10 feet by 10 feet.

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)

Rappahannock Series (deep and poorly drained soils) located below the toe of the slope

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

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Sparsely wooded parcel.

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

Evaluation and Recommendation

The applicant's request is to construct an elevated playhouse within the 50 foot landward buffer of the RPA. The playhouse will be elevated 4 feet above the existing grade by 4 wooden piers. Each wooden piers will have a nominal dimension of 6 inches by 6 inches. No vegetation will be removed with the construction of the proposed improvement.

The following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered for the Board's deliberation.

- 1) Staff offers that granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the current variance request is similar to other minor projects in the RPA, such as sheds and wood decks that have minimal impacts to the RPA buffer with limited disturbance to natural drainage patterns and existing vegetation.

Taylor W. Franklin

Agenda Item 7

Page 94

- 2) Staff offers that the encroachment into the RPA on this parcel is based upon conditions or circumstances that have been imposed by the applicant's predecessor in title; however, the request as per the general performance standards for development and redevelopment set forth in Section 106(A) of the CBPA Ordinance is deemed acceptable due to the land disturbance being limited to the minimal area necessary to provide for the proposed use and existing vegetation being preserved to the maximum extent practicable.
- 3) The variance is the minimum necessary to afford relief because *"the size of the playhouse has been kept to a minimum to lessen any impact on the area."* Staff concurs given the extent of riparian buffer vegetation that has been retained on the parcel and the minimal footprint of accessory structures within the RPA feature.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this small structure is to be elevated above ground sitting on posts, so there will be minimal disturbed area."* Staff concurs with the preservation of riparian buffer vegetation along the seaward portion of the proposed improvements and the minimal increase in overall impervious cover for the site in the 100 foot RPA buffer.
- 5) *"This small structure is to be elevated above ground sitting on posts, so there will be minimal disturbed area"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Staff is of the opinion that the land disturbance associated with this request is minimal and supports this request as submitted and offers 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. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
3. 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.
4. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **100 square feet x 200 percent = 200 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **1 canopy tree, 2 understory trees 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.

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, 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.

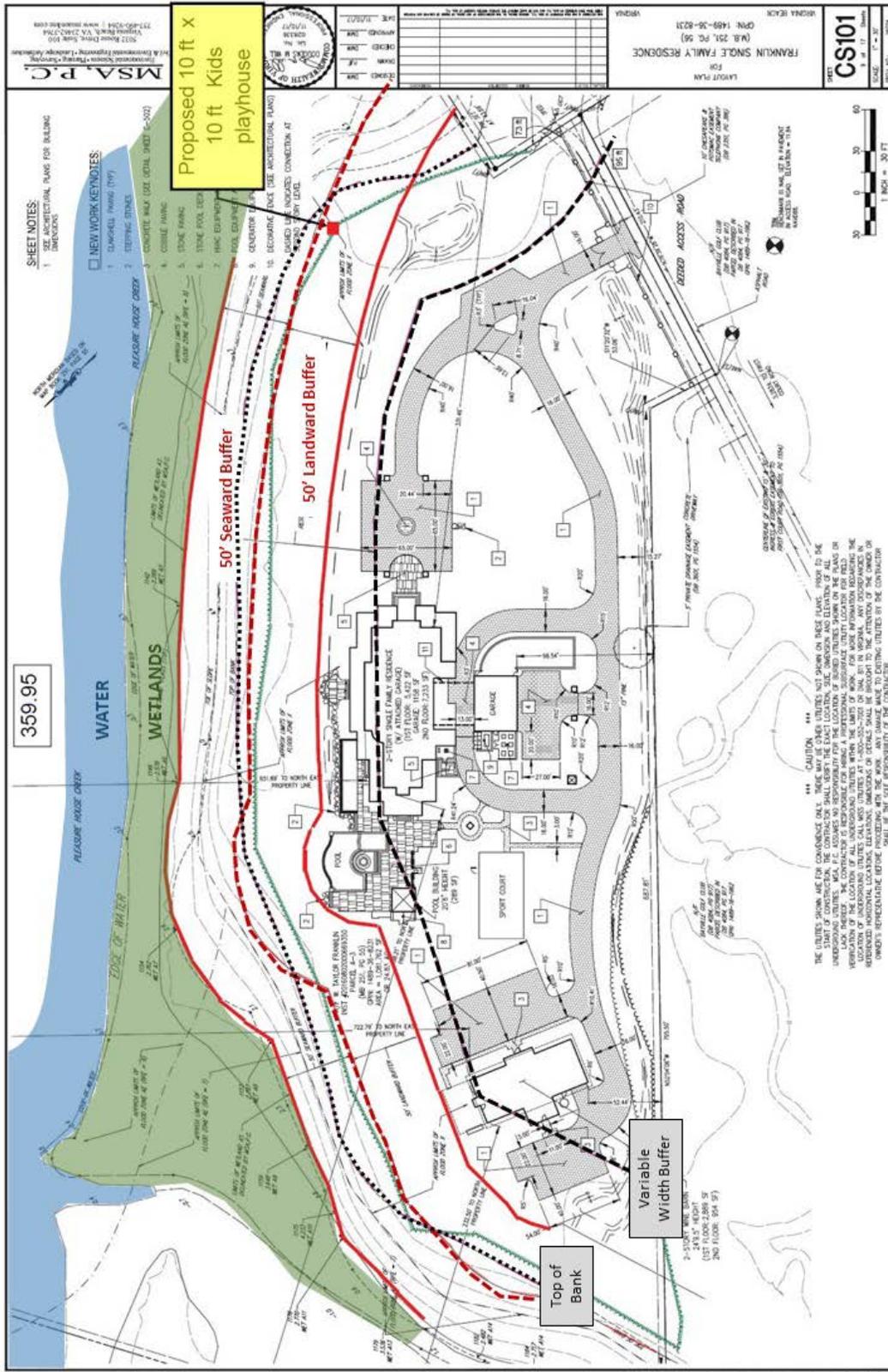
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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 – Proposed Improvements





APPLICANT'S NAME Taylor W. Franklin

DISCLOSURE STATEMENT FORM

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<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
<input type="checkbox"/>	NO CHANGES AS OF	DATE:	
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Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

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(A) List the Applicant's name: Robert Hewett
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

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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: Wendell Taylor Franklin
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.

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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	Wall Einhardt Charit
<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)	
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Engineers / Surveyors/ Agents	
<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)	Towne Bank
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
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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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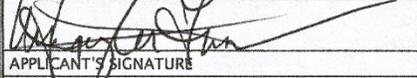


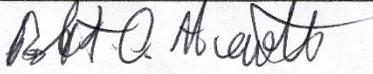
CERTIFICATION:

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.

REAR

	Wendell Taylor Franklin	11/8/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

 ROBERT HEWITT 11-9-18

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

AS NEEDED, PAGE LEFT



APPLICANT'S NAME Grandy Trust FBO Carter Bernert, SunTrust Trustee

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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Susan Pender Laurin Watson Jonathan Decker

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	David P. Preston, VP, SunTrust	05/01/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE



OWNER

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
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	David P. Preston, VP, SunTrust	05/01/18
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



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 <small>dotloop verified 04/20/18 2:18PM EDT MKTQLEZAM-TLV-HPYV</small>	Cyrus W. Grandy V	
APPLICANT'S SIGNATURE	PRINT NAME	DATE



OWNER

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<i>Cyrus W. Grandy V</i> <small>dotloop verified 04/20/18 3:18PM EDT VVCB-IVCZ-8R1W-MZVS</small>	Cyrus W. Grandy V	
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



APPLICANT'S NAME Grandy Trust FBO Hatch, SunTrust Trustee

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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: See attached
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.

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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	Hassell & Folkes, P.C.
<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	Gallup Surveyors & Engineers, Ltd.
<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 / GPC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Susan Pender Laurin Watson Jonathan Decker

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.**

	David P. Preston, VP, SunTrust	05/01/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE



OWNER

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	Hassell & Folkes, P.C.
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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?
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	David P. Preston, VP, SunTrust	05/01/18
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



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

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(A) List the Applicant's name: see attached
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See next page for information pertaining to footnotes¹ and ²

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

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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	
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Susan Pender Laurin Watson Jonathan Decker

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:

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<i>Nelle Tyler McCabe</i>	dotloop verified 05/01/18 11:51AM EDT XTEW-VPB6-SAGU-4317H	Nelle Tyler McCabe	
APPLICANT'S SIGNATURE	PRINT NAME	DATE	



OWNER

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	Hassell & Folkes, P.C.
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Susan Pender Laurin Watson Jonathan Decker

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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 <small>dotloop verified 05/01/18 11:51AM EDT VURG-CVZ-0JF-WGCV</small>	Nelle Tyler McCabe	
PROPERTY OWNER'S SIGNATURE	PRINT NAME	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: see attached
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See next page for information pertaining to footnotes¹ and ²

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SECTION 3. SERVICES DISCLOSURE

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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	
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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?



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	<small>dotloop verified 04/30/18 8:32PM EDT C19T-3F3C-V0D1-VQ7N</small>	Sallie Carter Tyler	
APPLICANT'S SIGNATURE	PRINT NAME	DATE	



OWNER

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	Hassell & Folkes, P.C.
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 <small>dotloop verified 04/30/18 8:32PM EDT CHBR-6XG1-KYCW-19DC</small>	Sallie Carter Tyler	
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE



APPLICANT'S NAME Caroline Tyler Watson

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: see attached
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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.

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APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
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SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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<i>Caroline Tyler Watson</i>	<small>dotloop verified 05/01/18 8:05AM EDT DDAK-WELH-FBD-MKZD</small>	Caroline Tyler Watson	
APPLICANT'S SIGNATURE		PRINT NAME	DATE



OWNER

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
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<i>Caroline Tyler Watson</i> <small>dotloop verified 05/07/18 8:05AM EDT 627-0394-3-WP-14200</small>	Caroline Tyler Watson	
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE