

Chesapeake Bay Preservation Area Board Agenda

October 28, 2019

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CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

The City of Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold a Public Hearing on **Monday, October 28, 2019, at 10:00 a.m.** in the City Council Chamber, Virginia Beach Municipal Center, Virginia Beach, Virginia.

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 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.

The Staff reviews all of the items on this agenda and offer recommendation for consideration by the Board, in the event they should approve the application. However, it should not be assumed that those conditions constitute all 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 Department of Planning and Community Development Staff.

The Board asks that speakers not be repetitive or redundant in their comments. Do not repeat something that someone else has already stated. Petitions may be presented and are encouraged. If you are part of a group, the Board requests, in the interest of time, that you use a spokesperson, and the spokesperson is encouraged to have his or her supporters stand to indicate their support.

Those members of the public interested in speaking in support or in opposition to an agenda item shall be limited to 3 minutes in which to address the Board. At the discretion of the Board 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 Department of Planning and Community Development at (757) 385-4621.**



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **October 28, 2019**

9:00 AM

- INFORMAL STAFF BRIEFINGS OF PUBLIC HEARING AGENDA ITEMS. STAFF BRIEFINGS HELD IN THE CITY MANAGER'S CONFERENCE ROOM.

10:00 AM

- FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS. FORMAL REVIEW HELD IN THE CITY COUNCIL CHAMBER.

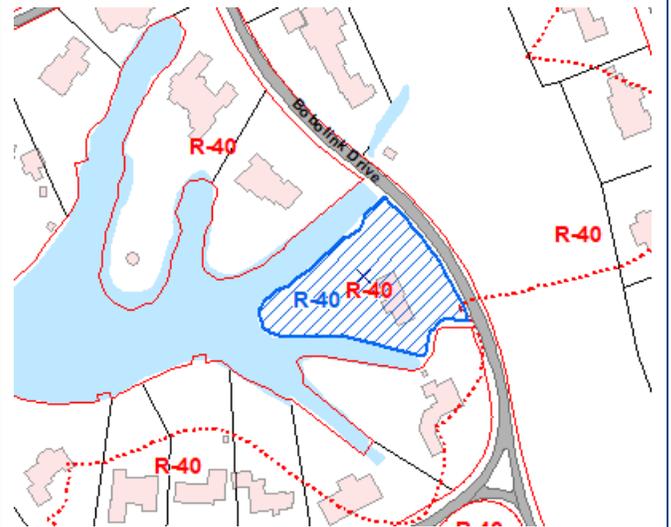
OLD BUSINESS AGENDA ITEMS

1. Krambias Properties LLC
[Applicant & Property Owner]

921 Bobolink Drive
GPIN 2418-22-7567
Council District – Lynnhaven
Accela Record 2019-CBPA-00035

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop the single-family residence and construct associated accessory structures.

Staff Planner – PJ Scully
Staff Report – page 7

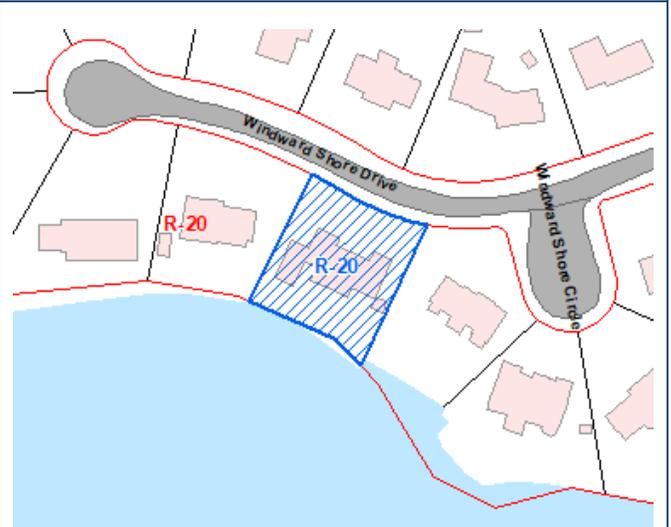


2. James Belote
[Applicant & Property Owner]

2429 Windward Shore Drive
GPIN 1499-98-1228
Council District - Lynnhaven
Accela Record 2019-CBPA-00039

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop existing driveway, walks and swimming pool and construct retaining wall with associate backfill.

Staff Planner – PJ Scully
Staff Report – page 9



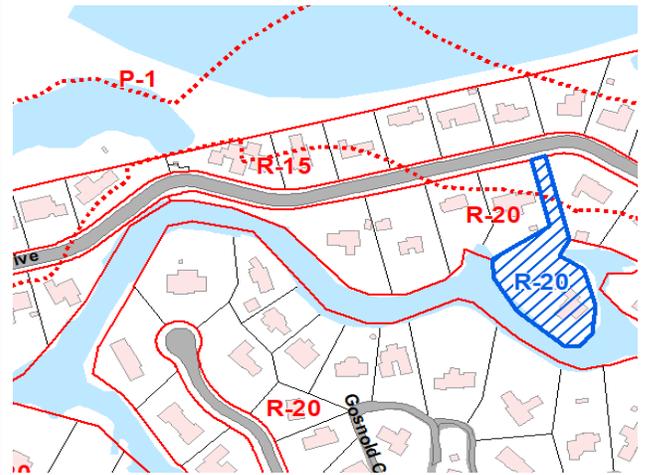
NEW BUSINESS AGENDA ITEMS

- 3. Jeramy & Natalie Biggie**
[Applicant & Property Owner]

409 Susan Constant Drive
GPIN 2419-61-4826
Council District – Lynnhaven
Accela Record 2019-CBPA-00044

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a room addition, swimming pool and associated patio area.

Staff Planner – PJ Scully
Staff Report – page 25



- 4. NLSM Conservation, LLC**
[Applicant & Property Owner]

4152 Ewell Road
GPIN 1479-90-3329
Council District – Lynnhaven
Accela Record 2019-CBPA-00045

Variance Request – Modification to the June 25, 2018 CBPA variance to construct a single-family residence.

Staff Planner – PJ Scully
Staff Report – page 39



SHOW CAUSE AGENDA ITEMS

- 5. Kathleen E. & Trudy M. Hoff**
[Applicant & Property Owner]

3729 Lynnfield Drive
GPIN 1489-40-2271
Council District – Lynnhaven
Accela Record 2019-CBPV-00004

Noncompliance – Encroachment into the Resource Protection Area (RPA) buffer with the construction of an unauthorized tiered wood deck and steps.

Staff Planner – PJ Scully
Staff Report – page 59



6. **Robert L. & Andrea E. Lunsford**
[Applicant & Property Owner]

2701 Shepherds Quarter
GPIN 1497-57-6960
Council District – Beach
Accela Record 2019-CBPV-00003

Noncompliance – Encroachment into the Resource Protection Area (RPA) buffer with the construction of an unauthorized wood deck expansion and asphalt drive.

Staff Planner – PJ Scully
Staff Report – page 65



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The applicant is requesting a deferral of this application to the Monday, November 25, 2019 CBPA Board Public Hearing to allow additional time to address Staff’s concerns. Staff supports the request to defer.

Variance Request

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

Applicant’s Agent

Eddie Bourdon

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 193
Recorded 7/30/1926

GPIN

2418-22-7567

SITE AREA

62,550 square feet or 1.436 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

51,417 square feet or 1.180 acres

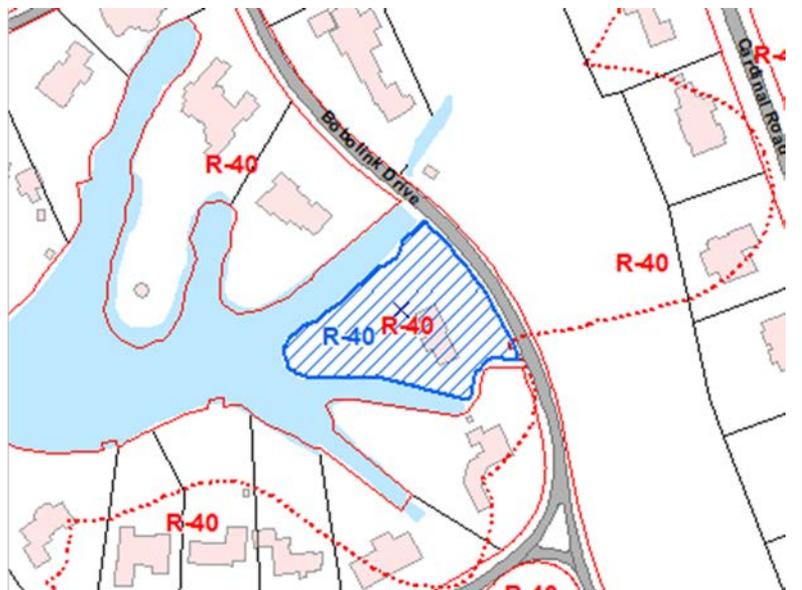
EXISTING IMPERVIOUS COVER OF SITE

7,158 square feet or 13.9 percent of site

Variance Request History

This variance request was deferred at the August 26, 2019 Public Hearing to the September 23, 2019 Public Hearing.

The variance request was deferred at the September 23, 2019 Public Hearing to the October 28, 2019 Public Hearing



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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop and expand existing walks, patio areas, decks and swimming pool surround and construct retaining wall with associate backfill.

Applicant's Agent

David Kledzik

Staff Planner

PJ Scully

Lot Recordation

8/15/1958

Map Book 45, Page 37

GPIN

1499-98-1228

SITE AREA

20,883 square feet or 0.48 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

20,535 square feet or 0.47 acre

EXISTING IMPERVIOUS COVER OF SITE

9,402 square feet or 45.79 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,452 square feet or 46.03 percent of site

Area of Redevelopment in RPA

1,389 square feet

Area of New Development in RPA

607 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

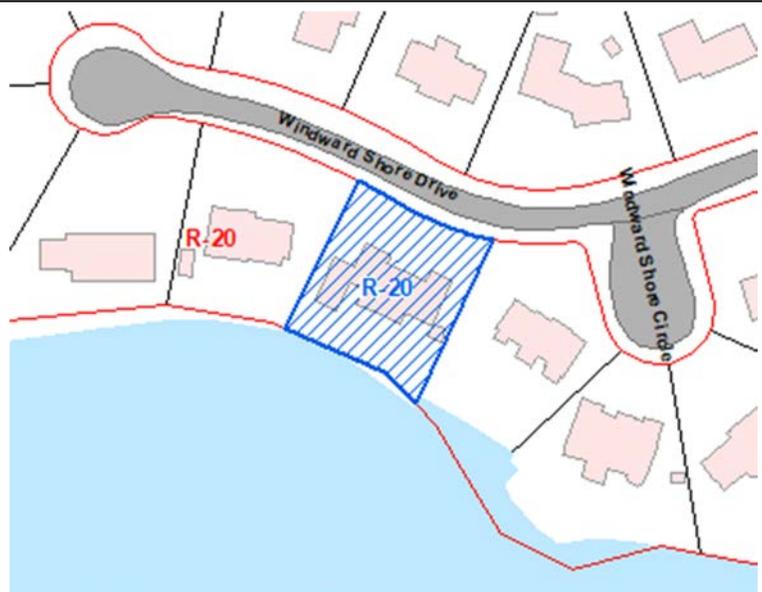
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete pool deck and surround
- Timber decks – 2 in total
- Wood retaining wall
- Sidewalk and walkway adjacent to the existing bulkhead
- Patio area and associated walls adjacent to the front entrance of the residence

Construction Details

- Replace and expand existing concrete pool surround
- Replace and expand existing paver patio area
- Replace and expand/connect timber decks – 2 in total
- Stone walkway connecting front and rear yard
- Replace and extend retaining wall with associated backfill

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened with a riprap revetment

Riparian Buffer

Sparsely wooded lot

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

Evaluation and Recommendation

The variance request was deferred at the September 23, 2019 Chesapeake Bay Preservation Area (CBPA) Board public hearing. Prior to the deferral, Staff met with the applicant and applicant's agent to discuss the following concerns.

- The increase in the amount of proposed impervious cover (1,420 square feet) located within the 100-foot Resource Protection Area (RPA) buffer from 45 percent to 50 percent. Staff's position was that the proposed improvements were not representative of the minimum necessary to afford relief.

- The extent of the proposed swimming pool surround being redeveloped from approximately 3 feet wide to 8 feet wide along the seaward portion of the existing swimming pool. Staff understands the needs to address the structural issues present with the existing pool and retaining wall however, did not offer support towards the applicant's desire to expand the pool surround further seaward to the extent proposed.
- The location of and expansion to the proposed retaining wall. Staff supports the use on a retaining wall and associated backfill material given the existing conditions present in the 50-foot seaward buffer – steep topography and turf. Staff's position is that the proposed retaining wall offers a means to reduce stormwater runoff velocities from upland improvements, would promote the infiltration of rainwater with the proper selection of porous backfill material, and provides an area for indigenous ground cover adjacent the existing riprap revetment, especially woody vegetation, towards preventing site erosion.

The revised CBPA Exhibit for this variance request has been modified as a result of this meeting. A summary of those changes is provided below.

- An 813 square foot reduction in the amount of proposed impervious cover within the 100-foot RPA buffer from 1,420 square feet to 607 square feet.
- A reduction in the proposed expansion of the existing swimming pool surround from a width of 8 feet to a width of 4 feet. The proposed 4-foot-wide pool surround is a 1-foot increase to the width of the existing pool surround and is an increase of 84 square feet of new impervious cover.
- Relocation of the proposed retaining offering a landward retreat ranging from approximately 2 feet along the western portion of the lot to approximately 15 feet along the center portion of the lot. The landward retreat provides a reduction of approximately 500 square feet of fill area and reduces the height of the proposed retaining wall by approximately 2 feet.

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

- 1) The applicant's Engineer of Record offer 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 others have been approved to do similar improvements."* Staff reviews each variance application based on the unique features, location and scope of a project. Staff is of the opinion that the recommend conditions below, specifically conditions 3, 11, 12 and 13, offer the applicant the ability to redevelop the lot within the provisions of the CBPA Ordinance.
- 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 or predecessor in title because *"the applicant has not created the need for this project. The project is needed to replace existing features and facilitate a better quality of life through an increase and improvement of usable areas."* Staff offers that the improvements are necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing this lot within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the current outdoor living space is currently inadequate. The additional area is needed to provide reasonable space for family activities."* Staff offers that the redevelopment of the lot increases the overall impervious cover by 50 square feet, from 9,402 square feet to 9,452 square feet, as merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the project will provide better control of stormwater and improve water quality. Improved space*

for family use will result in increased property values to benefit neighborhood.” Staff concurs with the applicant’s agent that the proposed improvements offer a better control of stormwater, will improve water quality with a potential to reduce stormwater runoff velocities from upland improvements, will promote the infiltration of rainwater with the proper selection of porous backfill material, and will provide an area for indigenous ground cover adjacent to the existing riprap revetment (especially woody vegetation), all contributing towards preventing site erosion.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *“anticipate lower back yard will be converted to a natural bayscaped area to comply with buffer requirements. The retaining wall & buffer will reduce lawn maintenance activities and improve stormwater capture.”* Staff has provided the recommended conditions below to manage towards a no net increase in nonpoint source pollution loading into the adjacent waterways.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **607 square feet x 200 percent = 1,214 square feet.**

The required restoration shall be located in the 50-foot seaward buffer of the Resource Protection Area, in areas currently devoted to turf to the greatest extent practicable and transition landwards as needed to fulfill the required buffer restoration square footage. Areas of the lot inundated by abnormal high tides or storm surge may be converted to no-mow zones as a component of the required buffer restoration. Said buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, grasses and groundcovers suitable for the existing grade elevations and environmental conditions. The following quantities are required: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 grasses and/or groundcovers.** 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.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Dual wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements with a secondary silt fence installed along the toe of slope, adjacent to the existing rip rap revetment.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under all wood decks and stairs.
- 12) Backfill material associated with the retaining wall shall be well drained sandy material consistent with the properties and characteristics of the Fripp soil series.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$139.10 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 16) The conditions and approval associated with this variance are based on the exhibit plan prepared by Marine Engineering, LLC and signed October 1, 2019 by David Kledzik. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

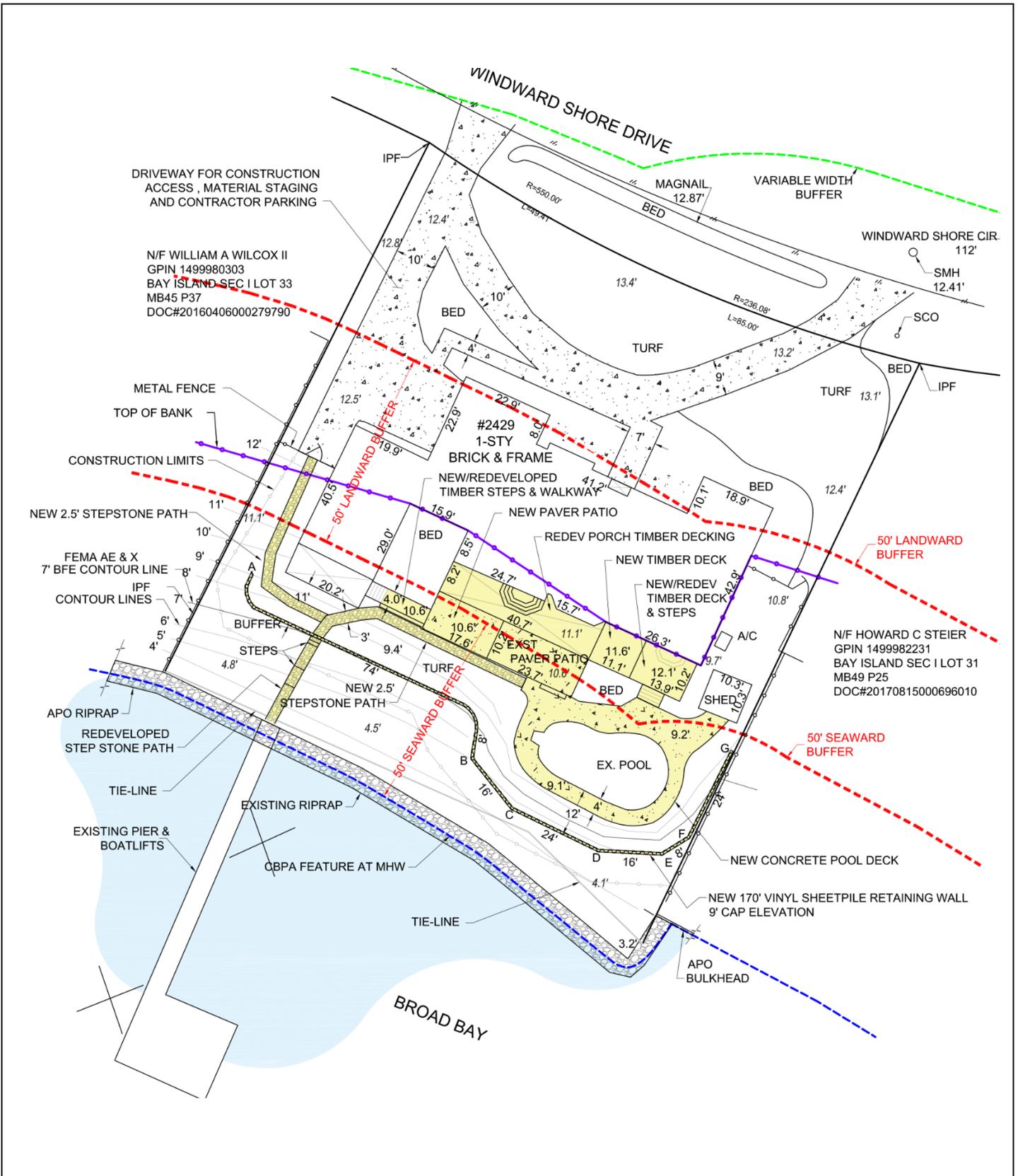
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

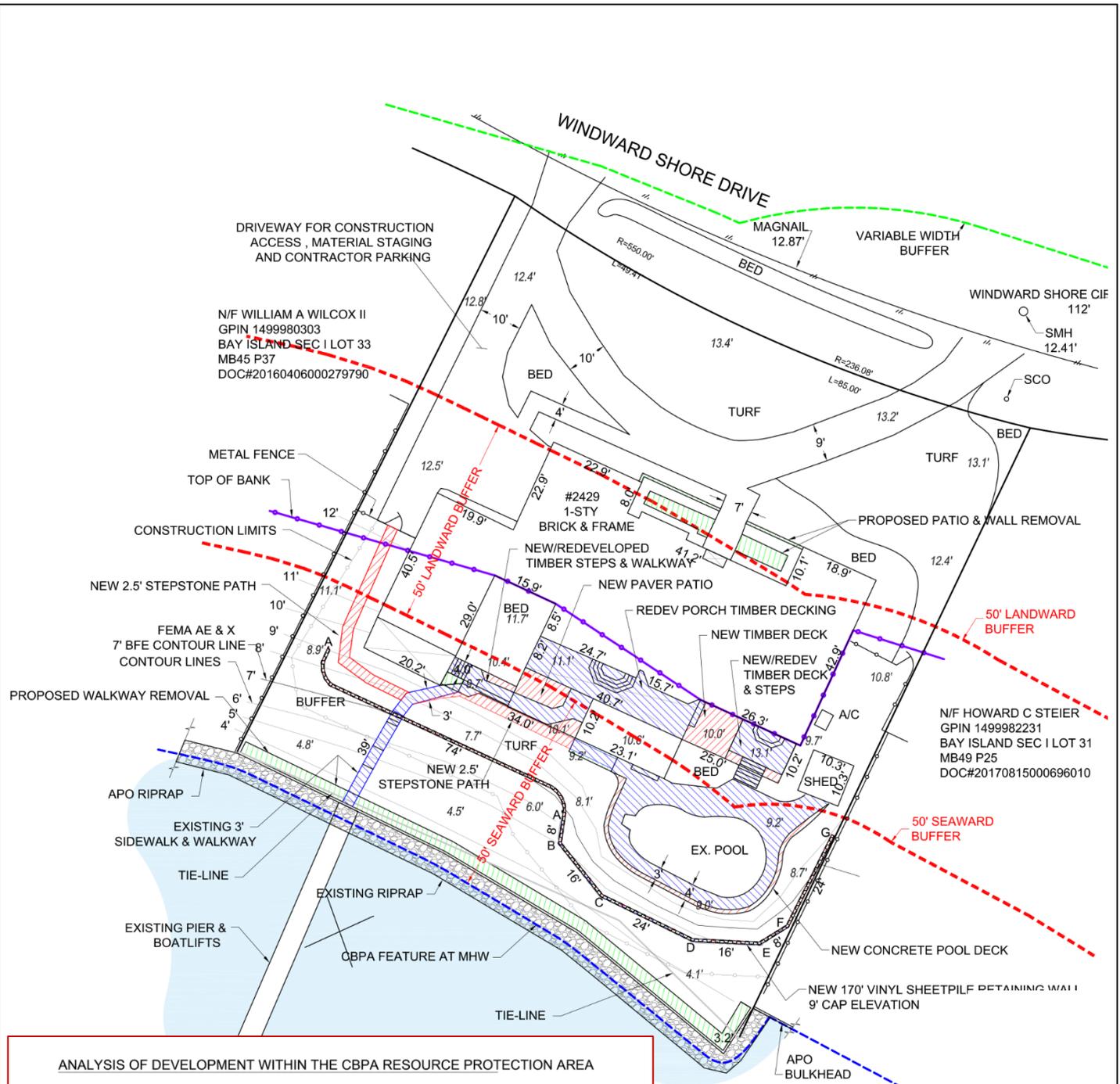
Site Aerial



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Color Exhibit

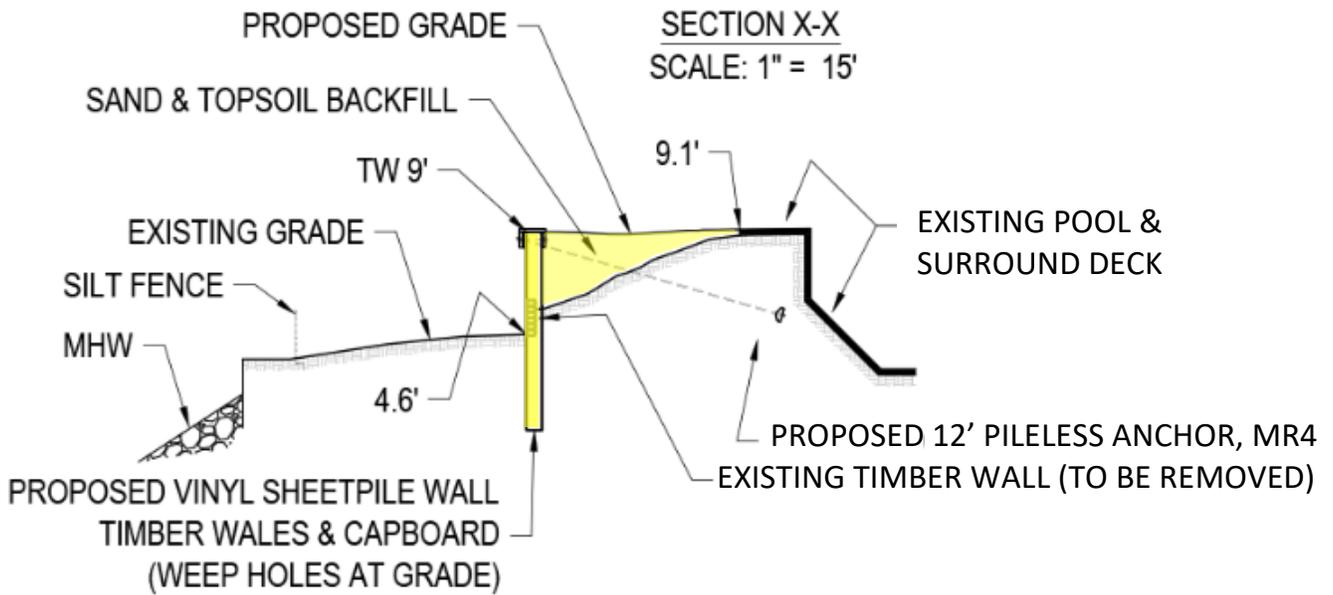


ANALYSIS OF DEVELOPMENT WITHIN THE CBPA RESOURCE PROTECTION AREA

	EXISTING	PROPOSED	DIF	BUFFER % RESTORATION REQUIRED	RESTORATION PROVIDED
TOTAL IMPERVIOUS AREA	9402	9452	50		
IMPERVIOUS COVER DEMOLITION		2619			
IMPERVIOUS CONVERTED TO PERVIOUS		557			
IMPERVIOUS COVER TO REMAIN		7456			
REDEVELOPMENT NEW OVER OLD		1389		*10%	
NEW IMPERVIOUS		607		200%	1214

* OPTION SELECTED FOR 10% REDUCTION IN POLLUTANT LOAD

CBPA Exhibit – Retaining Wall Cross Section





APPLICANT'S NAME JAMES P BELOTE

DISCLOSURE STATEMENT FORM

The completion and submission of this form is required for all applications that pertain to City real estate matters or to the development and/or use of property in the City of Virginia Beach requiring action by the City Council or a board, commission, or other body appointed by the City Council. Such applications and matters include, but are not limited to, the following:

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

The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law.

SECTION 1 / APPLICANT DISCLOSURE

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

Page 1 of 7

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



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

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

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

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

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"/>	

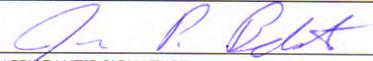
If yes, what is the name of the official or employee and what is the nature of the interest?



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.**

	James P. Belote	8/5/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

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Applicant & Property Owner **Jeremy & Natalie Biggie**
 Address **409 Susan Constant Drive**
 Public Hearing **October 28, 2019**
 City Council District **Lynnhaven**

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing driveway and construct a room addition, swimming pool and associated patio area.

Applicant's Agent

Robert Simon

Staff Planner

PJ Scully

Lot Recordation

Map Book 60, Page 30

Recorded 2/28/1964

GPIN

2419-61-4826

SITE AREA

41,896 square feet or 0.9 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

41,896 square feet or 0.9 acre

EXISTING IMPERVIOUS COVER OF SITE

9,678 square feet or 23.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,636 square feet or 27.7 percent of site

Area of Redevelopment in RPA

2,764 square feet

Area of New Development in RPA

1,958 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

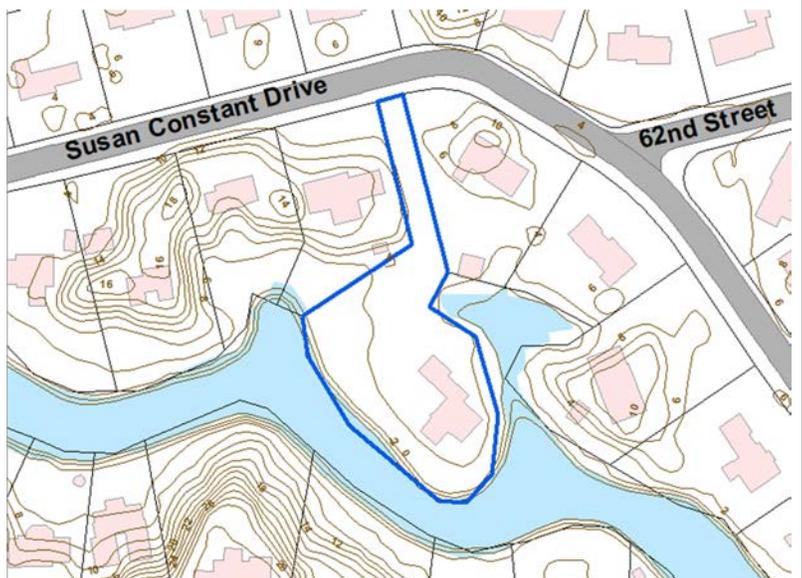
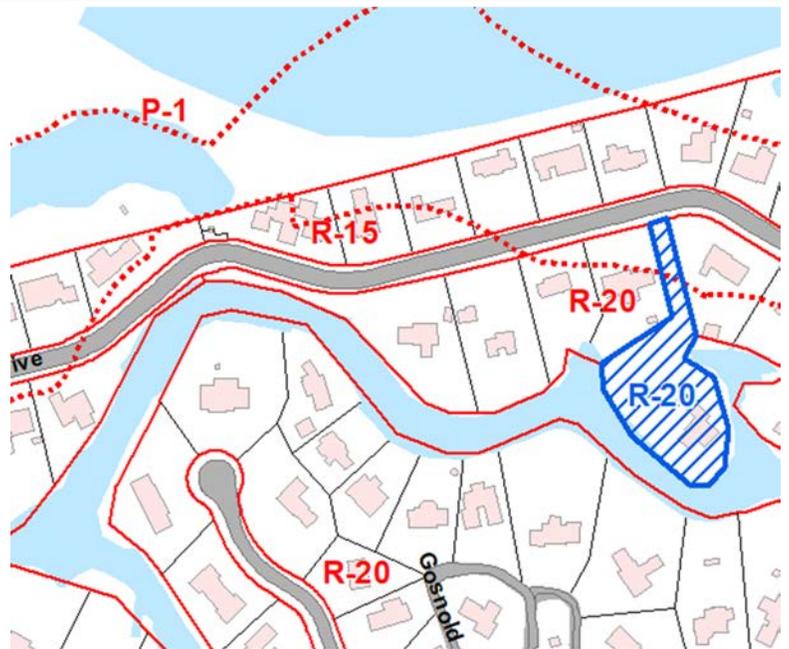
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Deny as submitted



Summary of Proposal

Demolition Details

- Front porch

Construction Details

- Covered front porch
- Room addition – master bedroom
- Swimming pool with associated patio area

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

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

Shoreline

Shoreline is hardened with a riprap revetment.

Riparian Buffer

Moderately to sparsely wooded lot

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

Evaluation and Recommendation

Staff notified the applicant's agent regarding concern with the extent of the proposed encroachment into the 50-foot seaward buffer associated with the variance request and acknowledged significant challenges to the redevelopment of the lot, specifically the lot being platted in 1964 and the existing single-family residence constructed in 1969. Staff suggested that a buffer restoration plan accompany the variance request; however, at the time of the writing of this report the applicant had not provided such a plan. A buffer restoration exhibit provides visual affirmation that the buffer restoration can be accomplished based on the location and quantities of plant material depicted. The restoration of the buffer will provide maximum erosion control and reduce overland flow of stormwater, thereby enhancing water quality. In the absence of anything less than the buffer restoration standard equal to 2 times the proposed impervious cover in the Resource Protection Area (RPA) [City Code, Appendix F, Sec. 106(C)(1)(a)], in addition to the 1:1 replacement ratio for the 12 trees removed with the Wetland Board approval for rehardening the shoreline, Staff does not support the variance request.

Jeremy & Natalie Biggie

Agenda Item 3

Page 26

Should the Board desire to consider granting this variance request as submitted, the following comments relative to the findings of the CBPA Ordinance are offered by the applicant's agent for 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 26.1 percent of the site within the RPA, below the standard 30 percent threshold. The entire peninsula is bisected by the 50-foot seaward buffer with the balance encompassed by the 50-foot landward buffer."* Staff recognizes that the peninsula-shaped lot creates challenges, as encroachment into the 50-foot seaward buffer is likely with any addition. Regardless, encroachment into the 50-foot seaward buffer often warrants additional consideration.
- 2) This variance request is not based upon conditions or circumstances that are or have been created because *"the lot was recorded in 1964 and the single-family residence was constructed in 1969. The original platting and development of this site in no way conforms to the CBPAO as adopted in 1990."* Staff concurs that the recordation date of the plat was well in advance of the Chesapeake Bay Act adoption; however, through the variance process, development can occur subject to conditions unique to each application. In this case, the restoration of the buffer is particularly germane to Staff's position.
- 3) The variance is the minimum necessary to afford relief because *"the subject request is reasonable in that it is at 26.1 percent and attached to the existing structure."* Staff recognizes that the peninsula-shaped lot creates challenges, as encroachment into the 50-foot seaward buffer is likely with any addition. Regardless, encroachment into the 50-foot seaward buffer often warrants additional consideration.
- 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 is not currently served by any BMPs and the entire site drains to Stratton's Creek unabated. With this plan, BMPs will be installed downslope of all improvements."* While BMPs are proposed, a buffer restoration plan is essential to provide confirmation that such restoration can be accomplished, as it is the plant material that provides a significant reduction in stormwater runoff and as well as erosion control.
- 5) *"There will be a net reduction of the non-point source runoff with the installation of BMPs"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that while BMPs are proposed, the installation of at least 200 percent of buffer restoration is essential to towards establishment of a riparian ecosystem, further ensuring a significant reduction in stormwater runoff, and to enhance erosion control.

Given the above comments provided by the applicant's agent and the absence of a buffer restoration plan as suggested by Staff to accompany this variance request, the following 15 reasonable and appropriate conditions are provided by Staff for the Board's consideration towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,964 square feet x 200 percent = 3,928 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 consisting of **10 canopy trees, 10 understory trees, 20 large shrub, and 30 small shrubs.** Said buffer restoration is in addition to the 1:1 replacement ratio for the 12 trees removed with the Wetlands Board approval to reharden the shoreline. Both mitigation requirements shall be shown on the CBPA Site Plan, Buffer Restoration Plan.

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

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

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$450.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated September 5, 2019, prepared by Chesapeake Bay Site Solutions, Inc. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

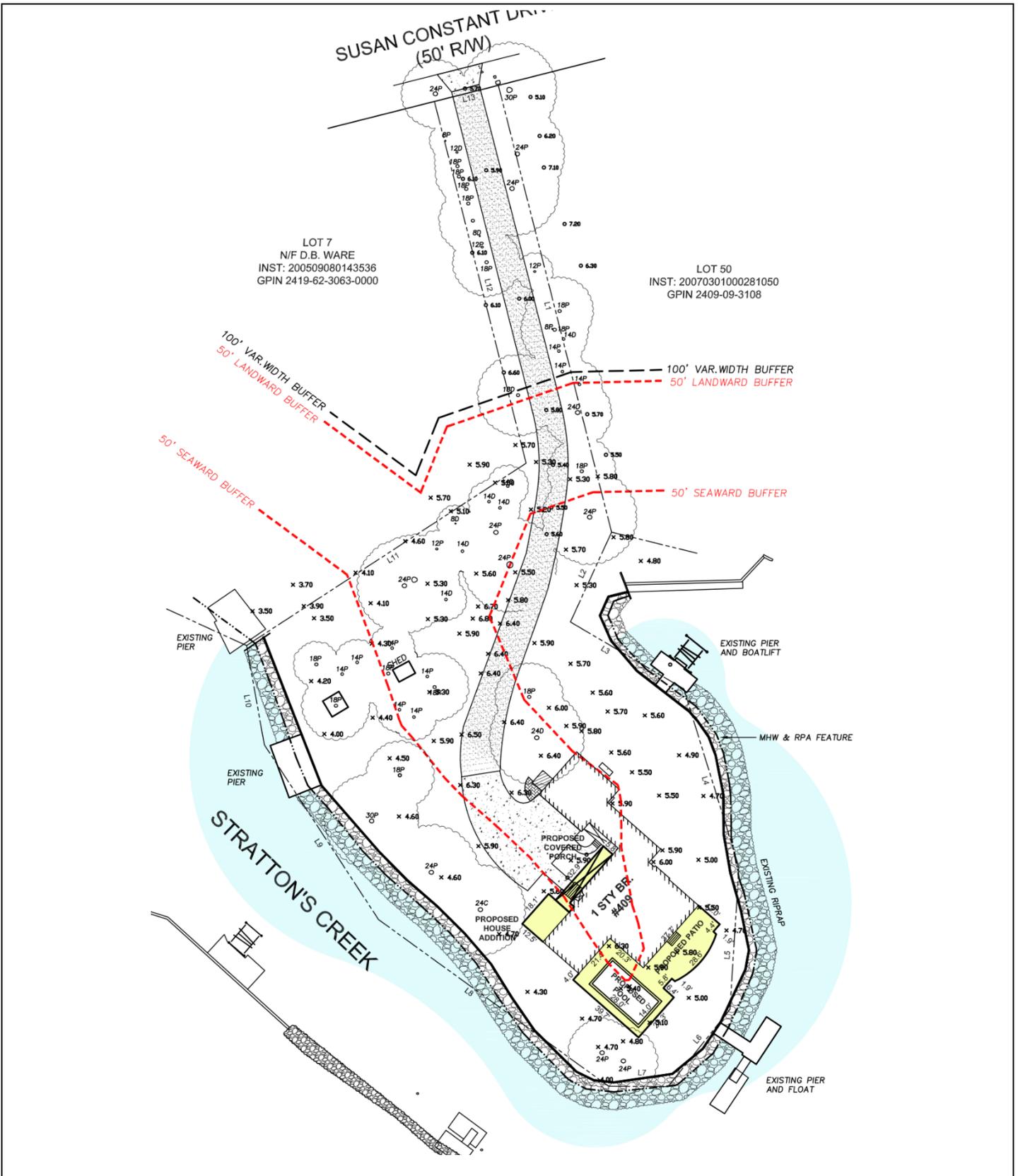
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Proposed Improvements, Entire Site





APPLICANT'S NAME Jeramy and Natalie Biggie

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: Jeramy and Natalie Biggie
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Ginger Pickett
<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)	Navy Federal Credit Union
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

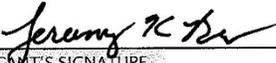
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

I certify that all of the information contained in this Disclosure Statement Form is complete, true, and accurate.

I understand that, upon receipt of notification that the application has been scheduled for public hearing, I am responsible for updating the information provided herein two weeks prior to the Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.

	Jeremy K. and Natalie Biggie	July 25, 2018
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Modification to the June 25, 2018 CBPA
 Variance to construct a single-family residence

Applicant's Agent

Self-Represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 31, Page 41
 Recorded 12/17/1954

GPIN

1479-90-3329

SITE AREA

102,301 square feet or 2.349 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

67,480 square feet or 1.549 acres

EXISTING IMPERVIOUS COVER OF SITE

3,240 square feet or 4.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,688 square feet or 15.8 percent of site

Area of Redevelopment in RPA

2,388 square feet

Area of New Development in RPA

8,300 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Undeveloped parcel

Construction Details

- Single family residence with associated walkways
- Gravel parking court with drive

CBPA Ordinance Variance History

June 25, 2018 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence with the following conditions:

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
3. *The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.***
4. *Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time 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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.***
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. *A maximum of 4,600 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50-foot seaward buffer or below the top of bank feature. 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 installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.
13. *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
14. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,820.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
15. *Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.*
16. *The conditions and approval associated with this variance are based on the exhibit plan dated May 3, 2018, prepared by MSA, P.C. and Wernerfield Architects, signed May 3, 2018 by Braxton Werner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*

The June 25, 2018 CBPA Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

X

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

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

Riparian Buffer

Heavily wooded, undeveloped parcel

- Number of existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing tree removal request: The layout of the proposed improvements and location within the existing parcel does not require any tree removal with this request. Staff commends the applicant for designing a project that complements the existing conditions of the parcel.

Evaluation and Recommendation

Staff performed an analysis of impervious cover within the RPA that compares the CBPA Exhibit provided with the June 25, 2018 CBPA Variance to the 2019 CBPA Variance request. The 2019 request modifies the proposed improvements within the 50-foot landward buffer as described below.

	2018 CBPA Variance	2019 CBPA Variance Exhibit
Overall impervious cover in RPA	6,703 square feet	6,797 square feet
	The modification of the proposed improvements increases the impervious cover within the RPA, specific to the 50 landward buffer and variable width buffer by approximately 94 square feet. An exhibit of this analysis is provided on page 51 of the Staff Report.	
Seaward encroachment analysis	2018 CBPA Exhibit 888 square feet	2019 CBPA Variance Exhibit 1,360 square feet
	The modification of the proposed improvements along the seaward portion of this request increases by approximately 472 square feet. All modifications to the proposed improvements are within the 50-foot landward buffer and this request remains consistent with the 2018 CBPA Variance in that no encroachment into the 50-foot seaward buffer is proposed. An exhibit of this analysis is provided on page 52 of the Staff Report.	

Given the location of the proposed improvements and the preservation of the existing riparian buffer ecosystem, Staff is of the opinion that the request to modify the proposed improvements associated with the June 25, 2018 CBPA Variance

limits land disturbance to a minimum area necessary to provide for the proposed redevelopment and is in harmony with the purpose and intent of the CBPA Ordinance.

Staff agrees with the following comments relative to the findings of the CBPA Ordinance specific to this variance request provided by the applicant.

- 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 variance allows for reasonable development given the hardship that exists on the site while minimizing the environmental impact.”*
- 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 given that *“this variance request is dictated by contours of the land and the desire to preserve the existing trees.”* Staff adds that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance therefore placing portions of this property is within the RPA.
- 3) The variance is the minimum necessary to afford relief with *“the design of the improvements created as a minimum footprint necessary to construct a home while avoiding removal of any trees.”*
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare as *“this project is a custom design that addresses the specific site requirements while minimizing impacts to the environment.”* In addition, *“feedback was sought from all neighbors on the street during the design process.”*
- 5) *“A site-specific design to avoid the seaward buffer”* to the variance request as a means to manage towards a 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) The conditions of this variance will supersede the June 25, 2018 CBPA Variance for the property located at 4152 Ewell Road.
- 2) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) A maximum of 4,600 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50-foot seaward buffer or below the top of bank feature. 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 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) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) 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.
- 8) 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.**
- 9) 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.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
- 11) 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.
- 12) 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.
- 13) 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.
- 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 \$1,902.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

- 16) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.

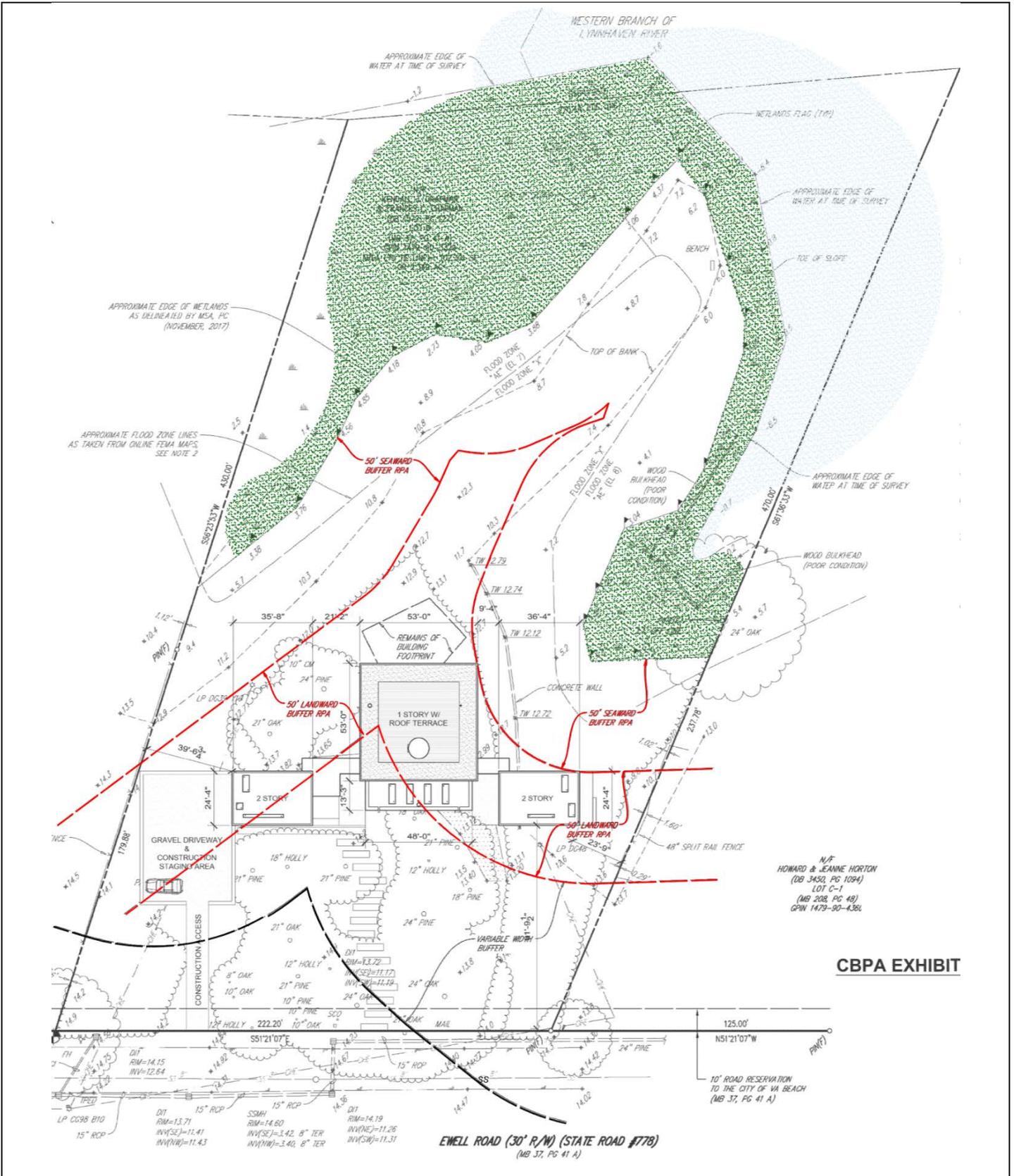
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated December 14, 2017, prepared by MSA, P.C. and signed and dated by Braxton Werner of Wernerfield Architects, September 25, 2019. The conditions and approval associated with this variance are based on the 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 – Architectural Rendering

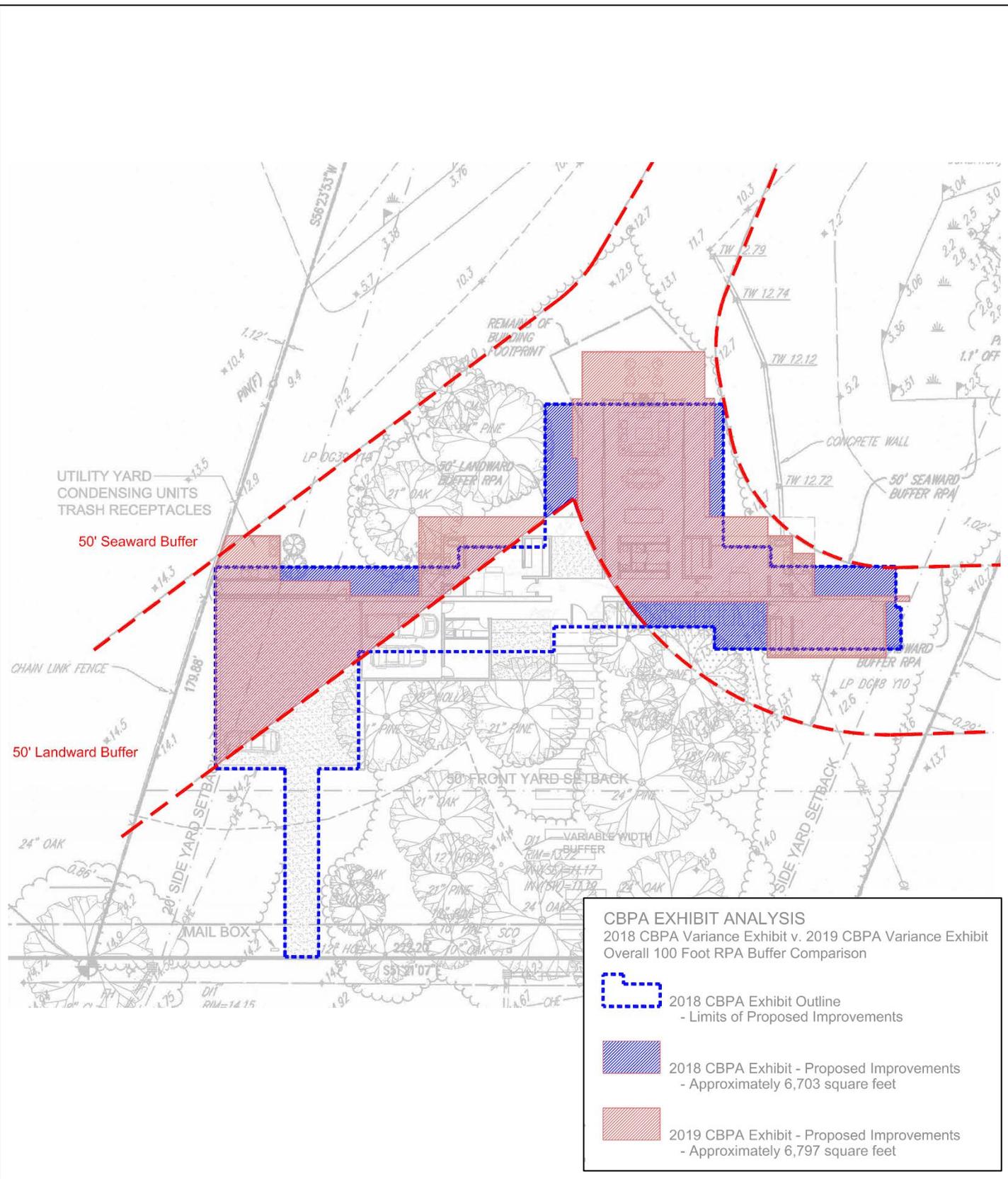
LEGEND

- 1 STONE
- 2 WOOD SIDING
- 3 BLACK STEEL AND GLASS WINDOWS
- 4 CONCRETE FOUNDATION
- 5 WOOD SLIDING DOORS
- 6 NOT USED
- 7 GRAVEL ROOF
- 8 WOOD ENTRY DOOR
- 9 CONCRETE FLOOR AND STEPS
- 10 ENTRY WALK
- 11 GRAVEL PARKING
- 12 GRAVEL DRIVE
- 13 PLANTING AREA
- 14 EXISTING TREES
- 15 NATIVE LANDSCAPE

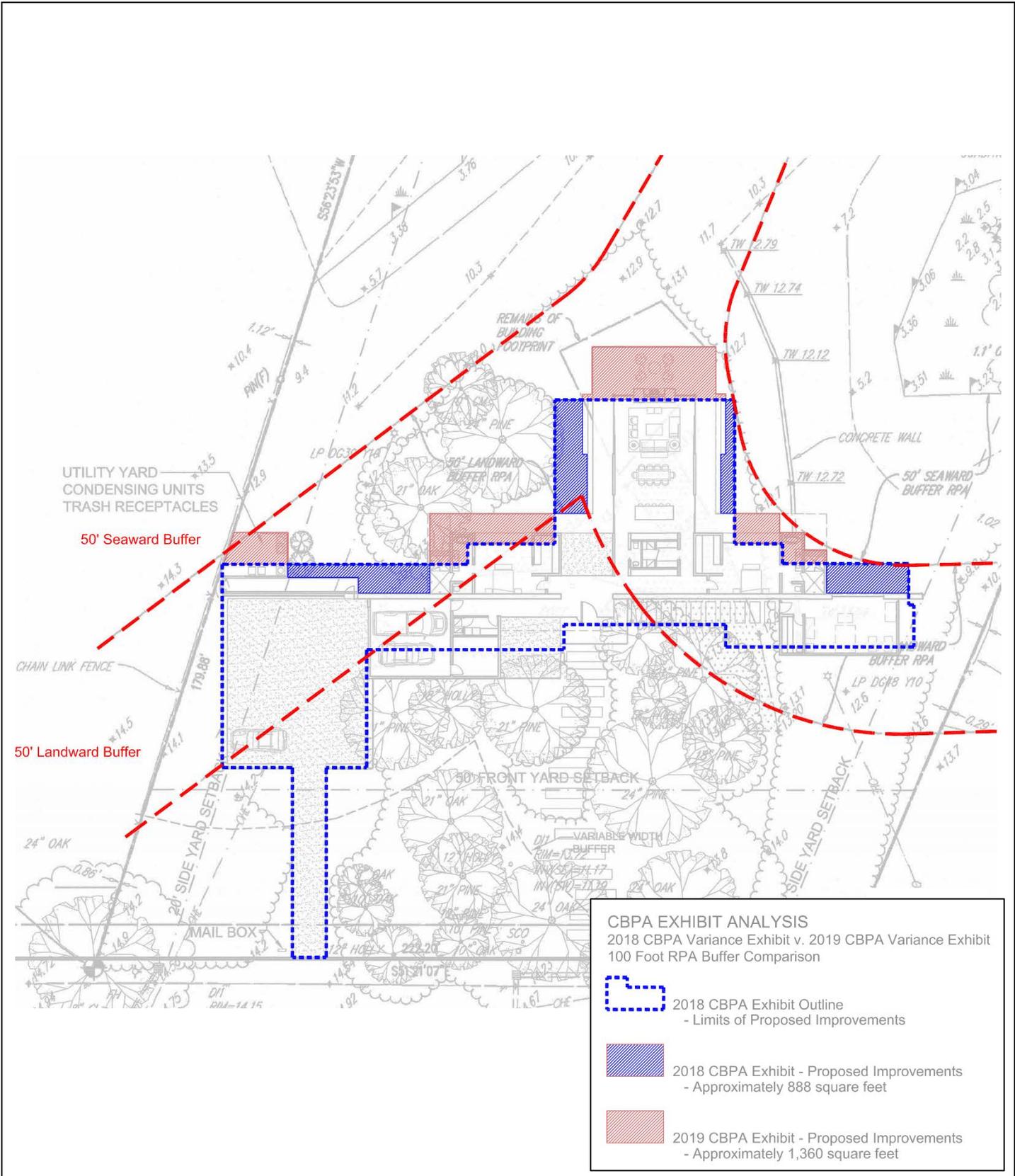


CHESAPEAKE
SCHEME H
2019-8-14

CBPA Exhibit Analysis – 2018 Variance v. 2019 Exhibit, Overall Impervious Cover in RPA



CBPA Exhibit Analysis – 2018 Variance v. 2019 Variance, Seaward Encroachment





APPLICANT'S NAME _____

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: NLSM CONSERVATION LLC
If an LLC, list all member's names:

Brian Ferguson, sole member of NLSM OPERATING LLC,
the sole member of NLSM CONSERVATION LLC.

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

Brian Ferguson, sole member / managing member of NLSM OPERATING LLC,
the sole member / managing member of NLSM CONSERVATION LLC.

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

Brian Ferguson, owns NLSM OPERATING LLC, which owns
NLSM CONSERVATION LLC.

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

names: Brian Ferguson, sole member of NLSM OPERATING LLC,
the sole member of NLSM CONSERVATION LLC.



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

Brian Ferguson, sole member / managing member of NLSM OPERATING LLC, the sole member / managing member of NLSM CONSERVATION LLC.

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

Brian Ferguson, owns NLSM OPERATING LLC, which owns NLSM CONSERVATION LLC.

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	Burchell, Denson & Morrison, P.C.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Wernerfield (Dallas, Texas)
<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	MSA, P.C.
<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	Michael Inman
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



CERTIFICATION:

I certify that all of the information contained in this Disclosure Statement Form is complete, true, and accurate.

I understand that, upon receipt of notification that the application has been scheduled for public hearing, I **am responsible for updating the information provided herein two weeks prior to the Planning Commission, Council, VBDA meeting, or meeting of any public body or committee in connection with this Application.**

	Brian Ferguson	3 Sep 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



Address of Noncompliance **3729 Lynnfield Drive**
 Property Owner **Kathleen E. & Trudy M. Hoff**
 Public Hearing **October 28, 2019**
 City Council District **Lynnhaven**

Agenda Item

5

Property Owner’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 50, Page 16
 Recorded 7/19/1960

Lot Description

Subdivision of Lynnfield – Lot 3, 3729 Lynnfield Drive

GPIN

1489-40-2271

Current Property Owner

Kathleen E. & Trudy M. Hoff

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Encroachment into the Resource Protection Area (RPA) buffer with the construction of an unauthorized tiered wood deck and steps.

Location of Unauthorized Improvements

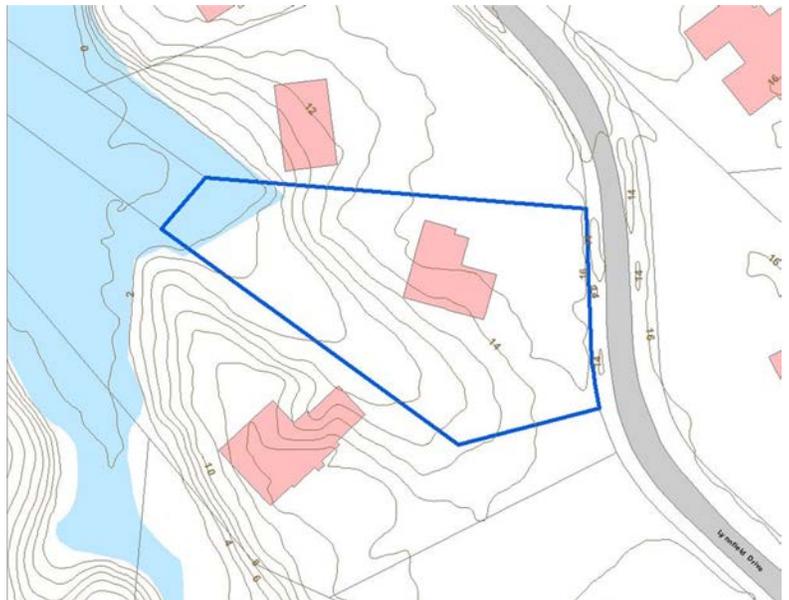
50-foot Seaward Buffer
 50-foot Landward Buffer

CBPA Ordinance

- The unauthorized improvements constitute a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet



CBPA Ordinance Variance History

A Chesapeake Bay Preservation Area (CBPA) Administrative variance was issued on December 13, 2016 for an addition to the primary structure and the associated site plan approved by the Development Services Center on January 11, 2017. The approved improvements associated with the CBPA Administrative variance have been constructed.

History of Noncompliance

To Staff's knowledge, Kathleen E. Hoff and Trudy M. Hoff have no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the description of noncompliance.

Chronology of Noncompliant Event

- August 1, 2019 Civil Inspections visited the property located at 3729 Lynnfield Drive to investigate the construction of a wood deck and walkway reported by a Building Inspector. At that time, it was observed that a matter of noncompliance to the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance may have occurred.
- September 10, 2019 Staff sent a Notice to Comply letter to the property owners that stated a noncompliance to the provisions of the CBPA Ordinance had occurred. A 30-day timeframe was provided to remove the unauthorized improvements within the RPA and restore the area to a natural state.
- September 30, 2019 CBPA Staff visited the site to review the unauthorized improvements within the RPA.
- October 7, 2019 Staff was contacted by the consultant for the property owner. During that conversation, the Show Cause process was discussed. Mitigation for the unauthorized improvements was also discussed however, Staff informed the consultant that the process would need to be followed prior to any restoration requests discussed.
- October 10, 2019 Staff sent a Show Cause letter to the property owners to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Monday, October 28, 2019.

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance, construction of an unauthorized tiered wood deck and steps was performed after the construction of the improvements associated with the CBPA Administrative Variance obtained by the current property owners. The tiered wood deck and steps were not reviewed, approved or permitted by Staff. Staff estimates that the land disturbance associated with the unauthorized improvements is less than 2,500 square feet.

Environmental Impact

The subject area of noncompliance lies within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area, RPA buffer and adjacent to a tidal waterway of the Lynnhaven River.

The subject activity of noncompliance appears to have been constructed within an area devoted to turf, no vegetation appears to have been removed, and no signs of sediment migration into the adjacent tidal waterway were present when Staff visited the site.

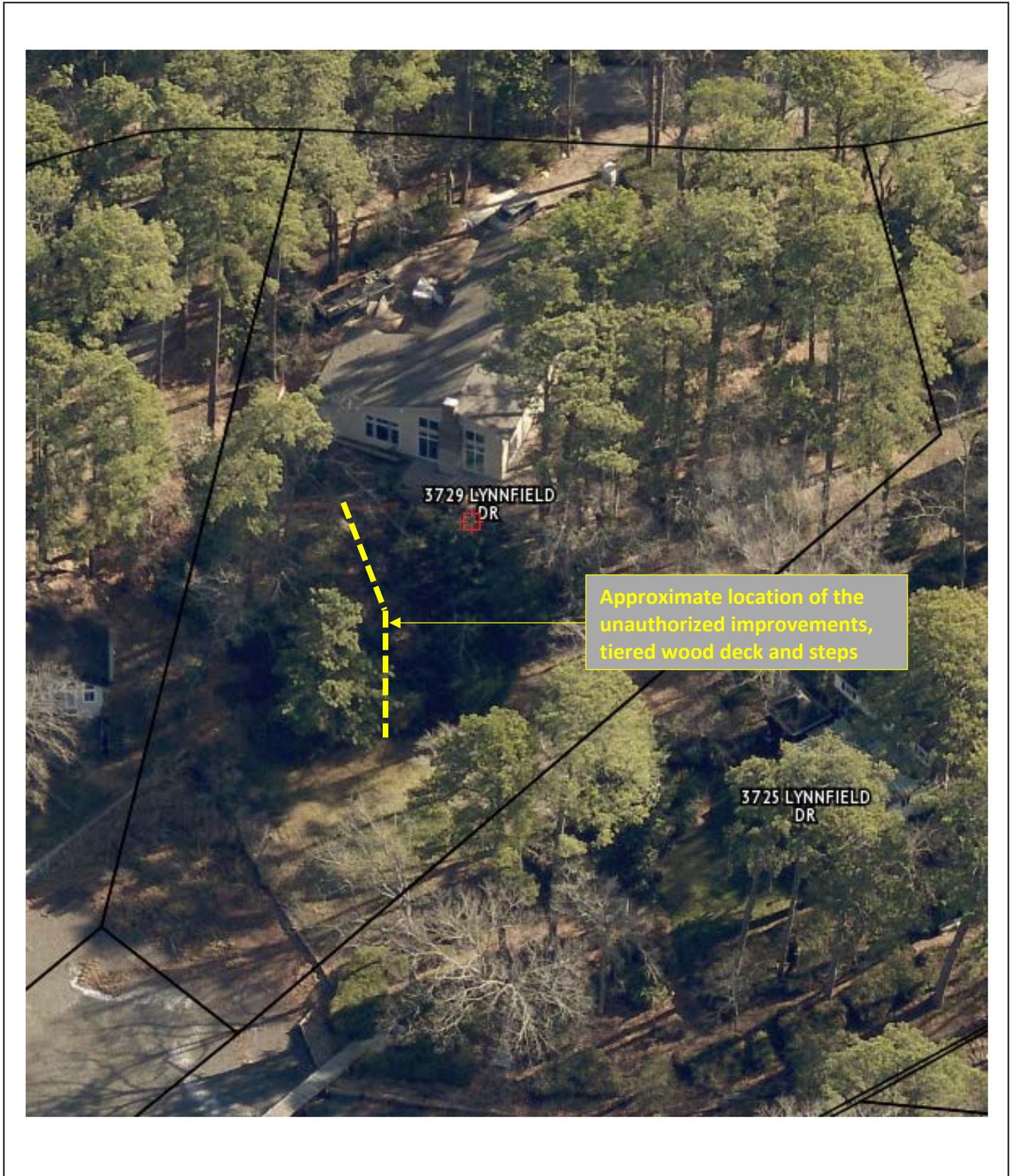
Recommendation

It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been high and the environmental impact has been low.

Site Aerial



Exhibit – Approximate Area of Unauthorized Improvements



Property Owner's Agent
Self-represented

Staff Planner
PJ Scully

Lot Recordation
Map Book 44, Page 18
Recorded 11/6/1957

Lot Description
Chesapeake Colony, Section Three, Lot 108 –
2701 Shepherds Quarter

GPIN
1497-57-6960

Current Property Owner
Robert L. & Andrea E. Lunsford

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Encroachment into the Resource Protection Area (RPA) buffer with the construction of an unauthorized wood deck expansion and asphalt drive.

Location of Unauthorized Improvements

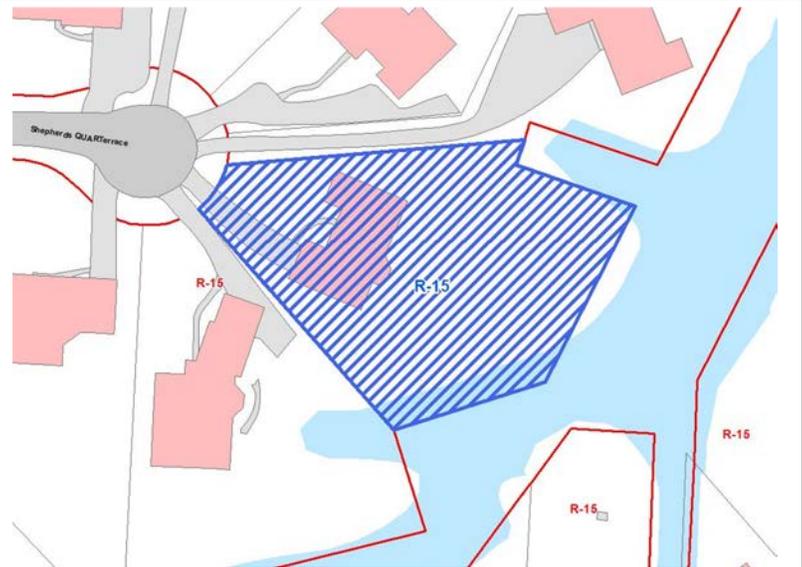
50-foot Seaward Buffer
 50-foot Landward Buffer
 100 Variable Width Buffer

CBPA Ordinance

- The unauthorized improvements constitute a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet



CBPA Ordinance Variance History

No known prior Chesapeake Bay Preservation Area Board variance history

History of Noncompliance

To Staff's knowledge, Robert and Andrea Lunsford have no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the description of noncompliance.

Chronology of Noncompliant Event

- | | |
|--------------------|--|
| August 1, 2019 | Civil Inspections visited the property located at 2701 Shepherds Quarter to investigate a citizen's complaint. At that time, it was observed that a matter of noncompliance to the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance may have occurred with the construction of a wood deck and asphalt drive. |
| September 10, 2019 | Staff sent a Notice to Comply letter to the property owners that stated a noncompliance to the provisions of the CBPA Ordinance had occurred. A 30-day timeframe was provided to remove the unauthorized improvements within the RPA and restore the area to a natural state. |
| September 24, 2019 | CBPA Staff visited the site to review the unauthorized improvements within the RPA and walked the lot with the property owners. |
| October 10, 2019 | Staff sent a Show Cause letter to the property owners to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Monday, October 28, 2019. |

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance, construction of an unauthorized wood deck expansion and asphalt drive was performed without Staff review, approval and permitting. Staff estimates that the land disturbance associated with the unauthorized improvements is less than 2,500 square feet.

Environmental Impact

The subject area of noncompliance lies within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area, RPA buffer and adjacent to a tidal waterway of the Lynnhaven River.

The subject activity of noncompliance appears to have been constructed within an area devoted to turf, no vegetation appears to have been removed, and no signs of sediment migration into the adjacent tidal waterway were present when Staff visited the site.

Recommendation

It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been medium and the environmental impact has been low.

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