

Chesapeake Bay Preservation Area Board Agenda

November 25, 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, November 25, 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 **November 25, 2019**

- 9:00 AM INFORMAL STAFF BRIEFING OF PUBLIC HEARING AGENDA ITEMS. STAFF'S BRIEFING IS HELD IN THE CITY MANAGER'S CONFERENCE ROOM.
- 10:00 AM FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS. FORMAL REVIEW IS HELD IN THE CITY COUNCIL CHAMBER.

December 2019 Chesapeake Bay Preservation Area Board Public Hearing

Please be advised that the December 2019 Chesapeake Bay Preservation Area Board public hearing will be held on Wednesday, December 18, 2019. The time and location of the informal Staff briefing, and the formal public hearing will remain the same.

2020 Chesapeake Bay Preservation Area Board Public Hearing Dates

Please note that the public hearing dates for the Chesapeake Bay Board will transition to the first Monday of the month starting Monday, April 6th, 2020.

Monday	January 27 th	Monday	July 6 th
Monday	February 24 th	Monday	August 3 rd
Monday	March 23 rd	Thursday	September 10 th
Monday	April 6 th	Monday	October 5 th
Monday	May 4 th	Monday	November 2 nd
Monday	June 1 st	Monday	December 7 th

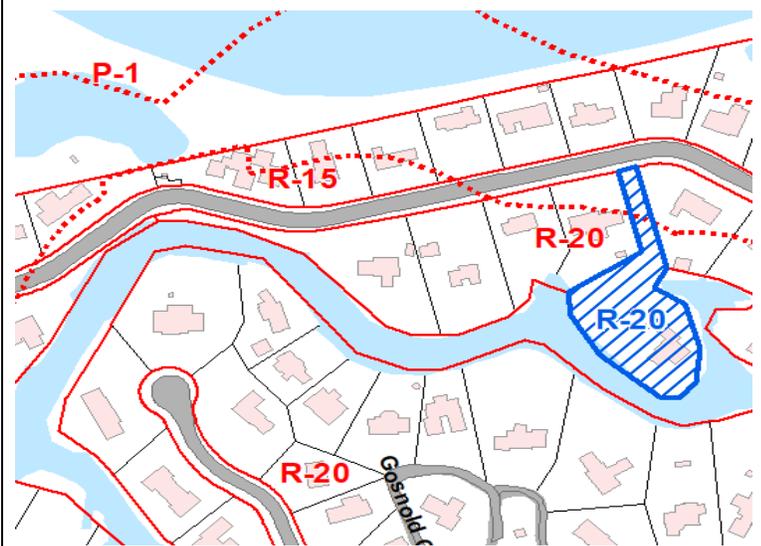
OLD BUSINESS AGENDA ITEMS

1. 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 redevelop the existing driveway and construct a room addition, swimming pool and associated patio area.

Staff Planner – PJ Scully
Staff Report – page 9



2. 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 23



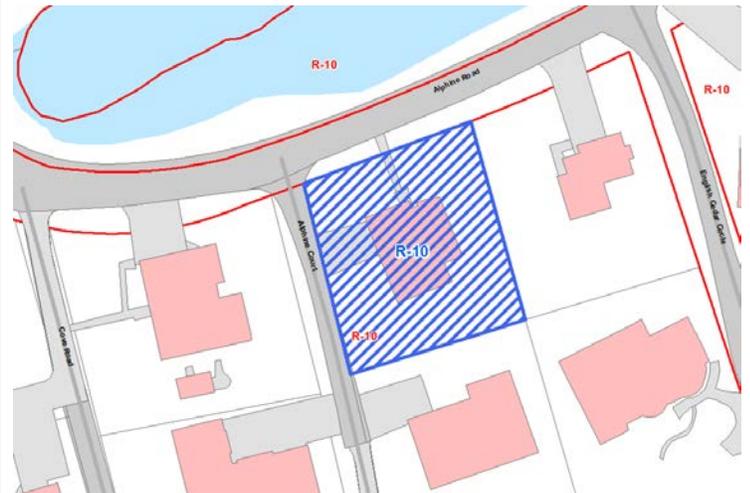
NEW BUSINESS AGENDA ITEMS

3. Linwood C. & Courtney R. Nelms
[Applicant & Property Owner]

2025 Alphine Road
GPIN 1499-78-7150
Council District – Lynnhaven
Accela Record 2019-CBPA-00054

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a one-story building addition with driveway and redevelop the existing swimming pool and patio with retaining wall.

Staff Planner – PJ Scully
Staff Report – page 43

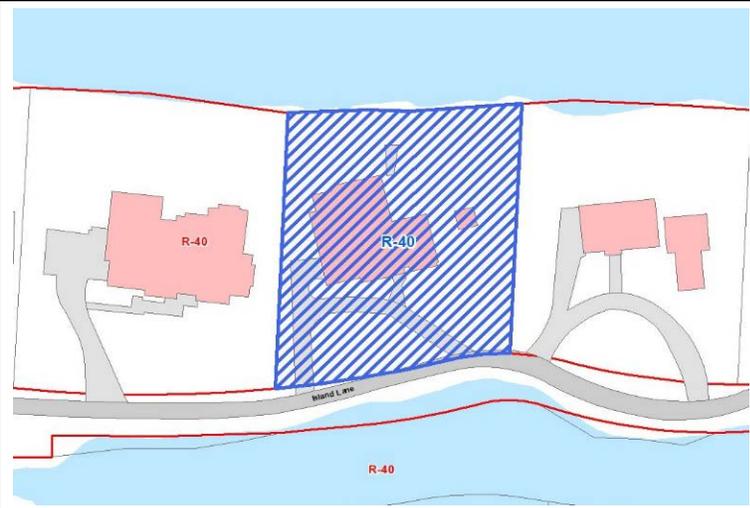


4. Bennett & Elizabeth Thomas
[Applicant & Property Owner]

3016 Island Lane
GPIN 1499-17-0438
Council District – Lynnhaven
Accela Record 2019-CBPA-00049

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct two wooden decks.

Staff Planner – PJ Scully
Staff Report – page 59



5. **Loretta M. Rinaldi**
[Applicant & Property Owner]

2001 English Cedar Circle
GPIN 1499-78-8080
Council District – Lynnhaven
Accela Record 2019-CBPA-00047

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a concrete pad / hot tub area.

Staff Planner – PJ Scully
Staff Report – page 71

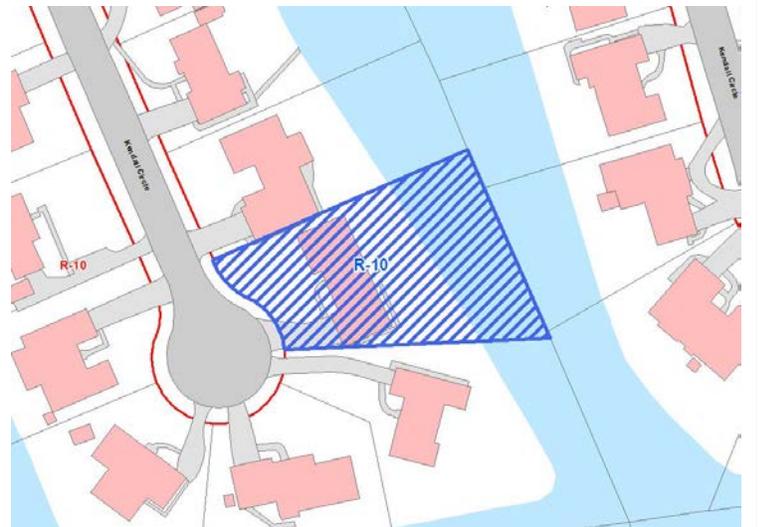


6. **Robert A. Remsing**
[Applicant & Property Owner]

2108 W. Kendall Circle
GPIN 1499-79-3822
Council District – Lynnhaven
Accela Record 2019-CBPA-00050

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the construction of an enclosed all seasons room, paver/patio walkways, driveway, and storage shed

Staff Planner – PJ Scully
Staff Report – page 83

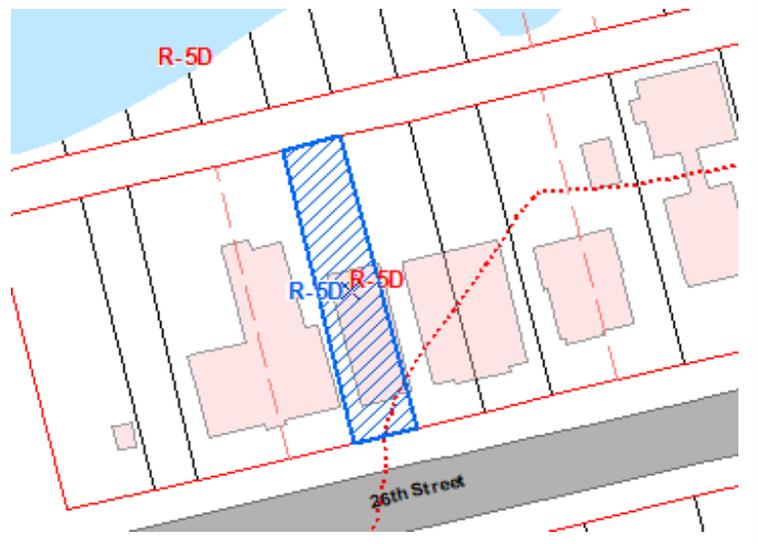


7. **Kara & Jeremiah Wilkinson**
[Applicant & Property Owner]

523 26th Street
GPIN 2418-90-2068
Council District – Beach
Accela Record 2019-CBPA-00053

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a paver patio with elevated planters/retaining walls, and storage shed

Staff Planner – PJ Scully
Staff Report – page 95

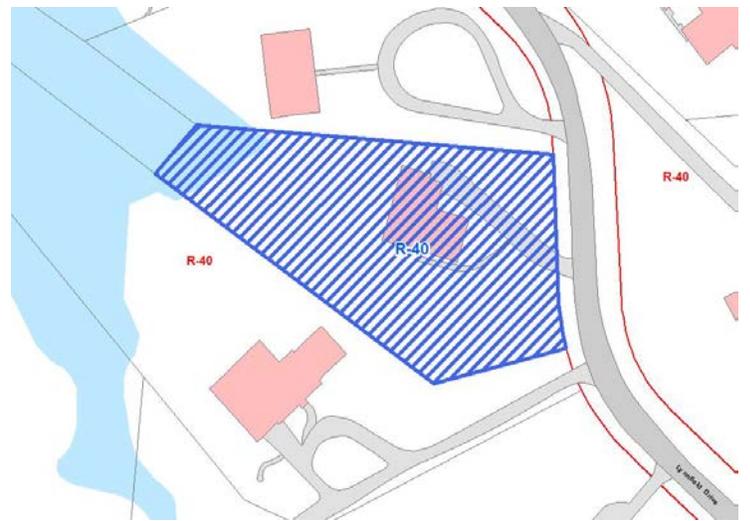


8. Kathleen E. & Trudy M. Hoff
 [Applicant & Property Owner]

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

Variance Request – After-the-fact variance request within the Resource Protection Area to retain an unauthorized tiered wood deck and steps.

Staff Planner – PJ Scully
Staff Report – page 107

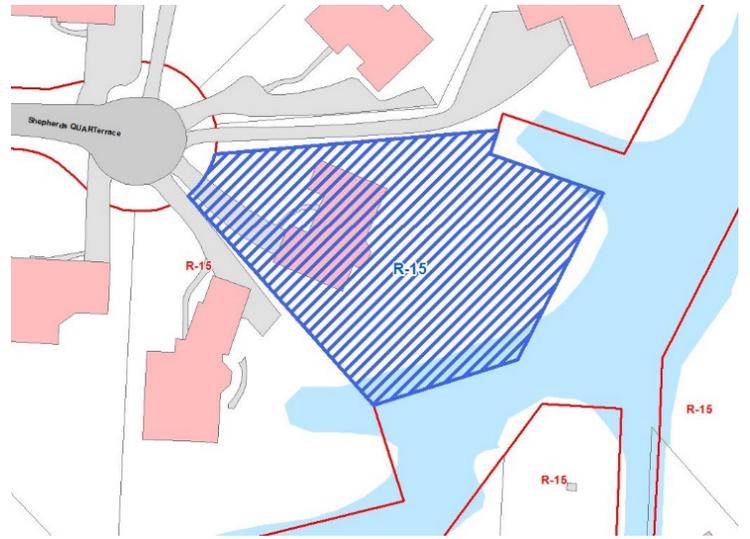


9. Robert L. & Andrea E. Lunsford
 [Applicant & Property Owner]

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

Variance Request – After-the-fact variance request to retain an unauthorized wood deck expansion and asphalt drive.

Staff Planner – PJ Scully
Staff Report – page 121



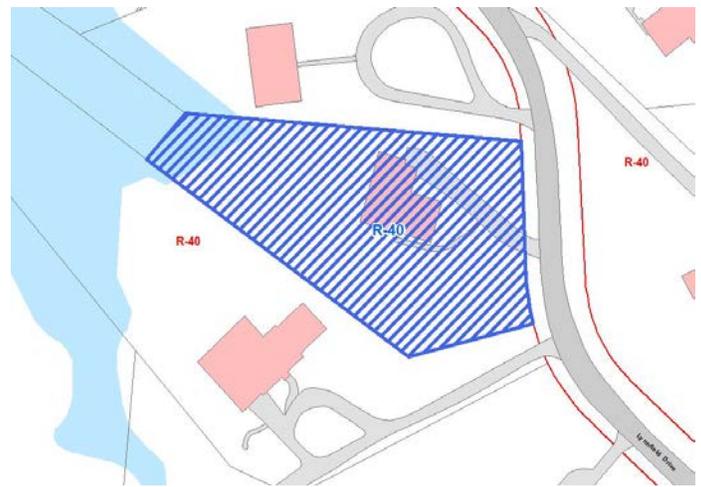
RESTORATION HEARING AGENDA ITEMS

10. 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 133



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

2701 Shepherds Quarter

GPIN 1497-57-6960

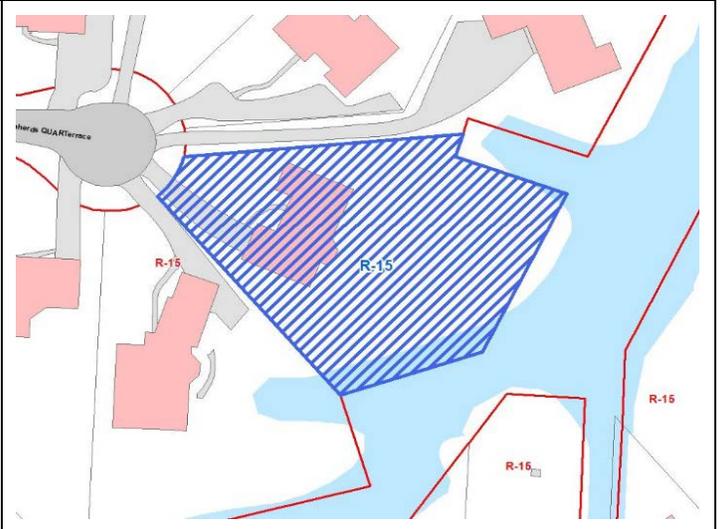
Council District – Beach

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 139



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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

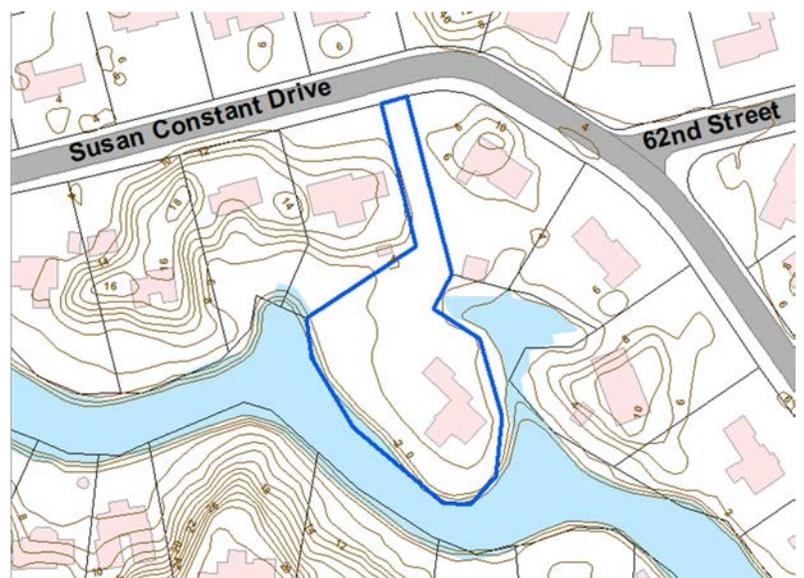
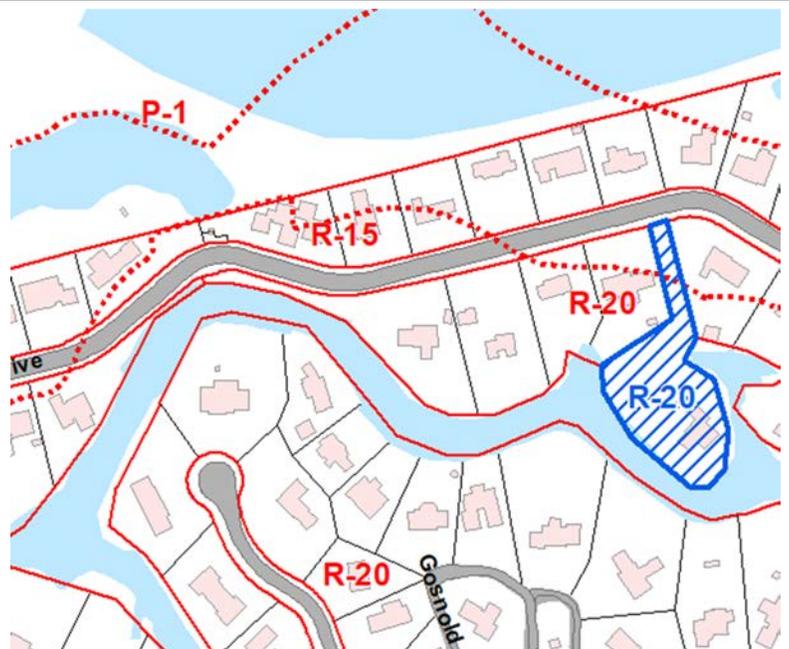
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval 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

The variance request was deferred at the October 28, 2019 Public Hearing to the November 25, 2019 Public Hearing.

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's write-up from the October 28, 2019 CBPA Staff Report.

"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."

Since the October 28, 2019 deferral, the applicant's agent has provided the following items to support the merits of this variance request.

- Specifying the methodology of restoring the riparian buffer ecosystem. The submitted buffer restoration plan depicts 8,074 square feet of buffer restoration consisting of 13 canopy trees, 13 understory trees and 62 shrubs, thereby exceeding the minimum standard. The location of the proposed buffer restoration is primarily located within the 50-foot seaward buffer and is provided at a rate of approximately 4 times the proposed impervious cover of 1,964 square feet. The submitted buffer restoration plan is provided on page 17 of this Staff report with the specified plant list and quantities.
- Verifying that the proposed addition to the primary structure will comply with the Floodplain Ordinance. The base flood elevation for this lot is 7.0 and the finished floor elevation of the proposed improvements will exceed the existing residential structure.

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, the buffer restoration plan demonstrates that the proposed 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 in substantial compliance with the Landscape Plan prepared by Chesapeake Bay Site Solutions as a component of the CBPA variance application.

Buffer restoration shall be installed equal to **8,074 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 **13 canopy trees, 13 understory trees, and 62 shrubs**.

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. 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) 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.

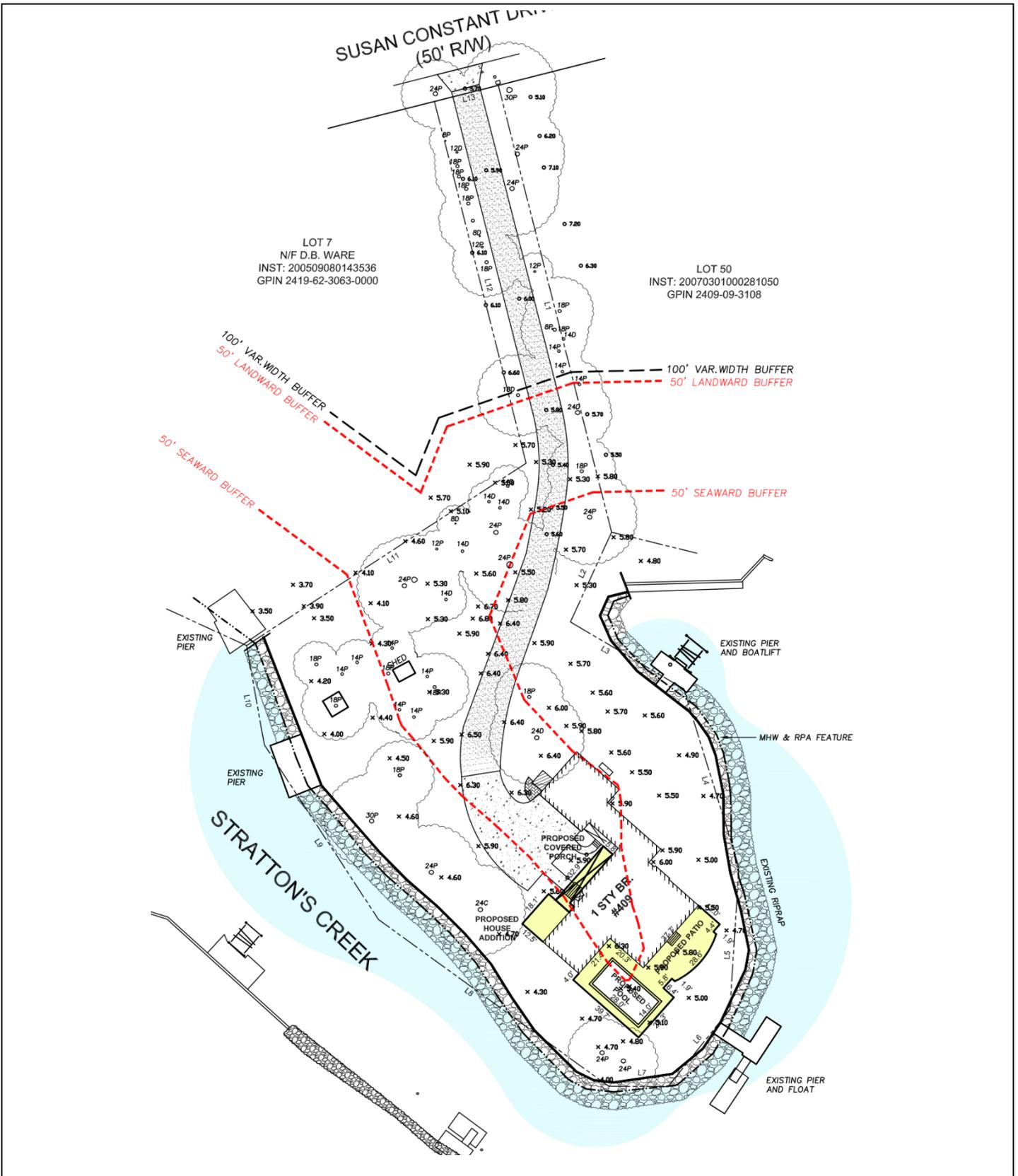
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

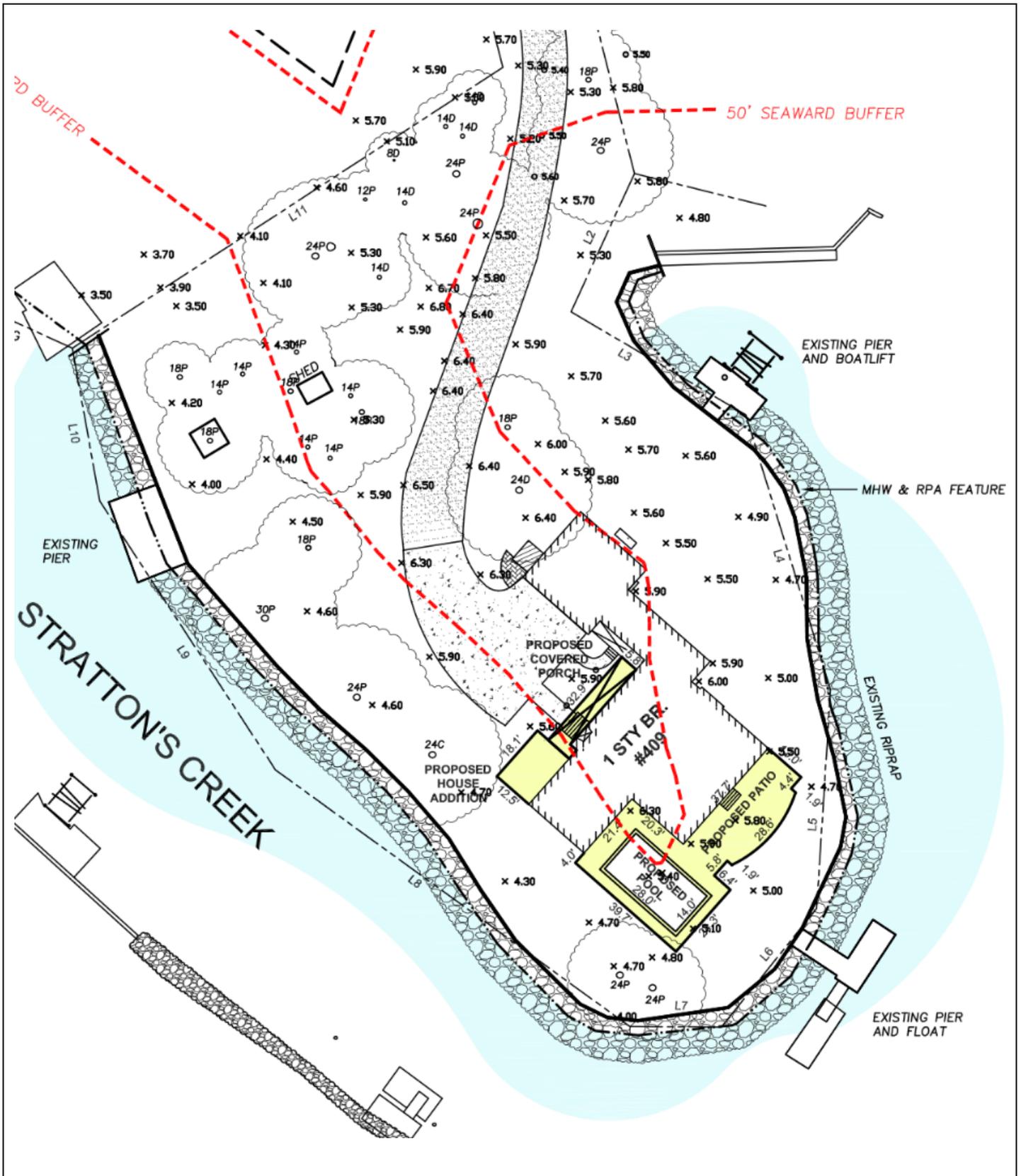
Site Aerial



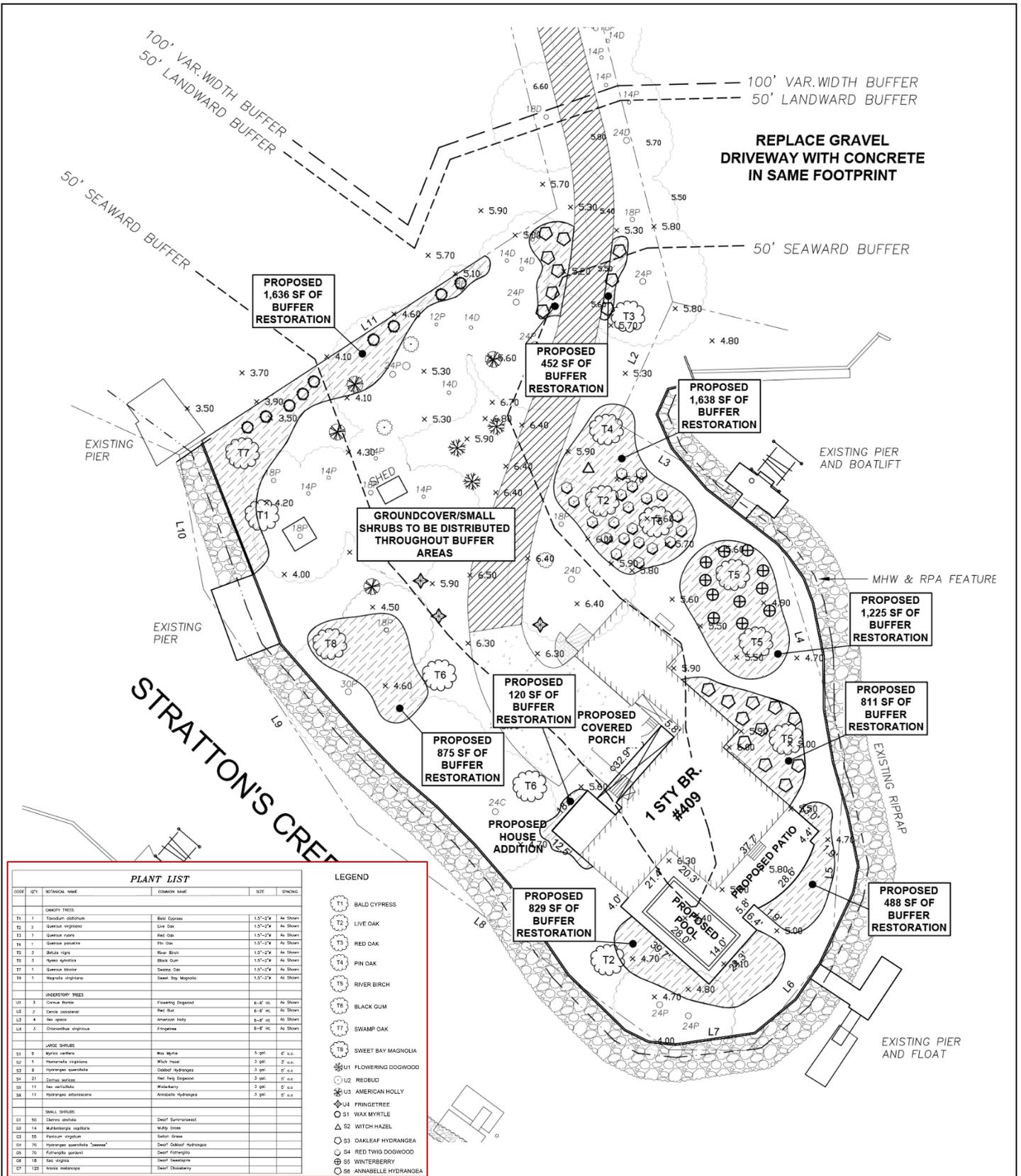
CBPA Exhibit – Proposed Improvements, Entire Site



CBPA Exhibit – Proposed Improvements, Detailed Area



CBPA Exhibit – Buffer Restoration Plan



PLANT LIST					
CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
DECIDUOUS TREES					
T1	1	Taxodium distichum	Bald Cypress	1.5"-2"	As Stems
T2	2	Quercus virginiana	Live Oak	1.5"-2"	As Stems
T3	1	Quercus rubra	Red Oak	1.5"-2"	As Stems
T4	1	Quercus prinus	Pin Oak	1.5"-2"	As Stems
T5	2	Betula nigra	River Birch	1.5"-2"	As Stems
T6	3	Liquidambar styraciflua	Black Gum	1.5"-2"	As Stems
T7	1	Quercus bicolor	Swamp Oak	1.5"-2"	As Stems
T8	1	Hesperis matronalis	Queen Ivy Magnolia	1.5"-2"	As Stems
UNDECIDUOUS TREES					
U1	3	Cornus florida	Flowering Dogwood	6"-8" Ht.	As Stems
U2	2	Cornus sericea	Red Dog	6"-8" Ht.	As Stems
U3	4	Ilex opaca	American Holly	6"-8" Ht.	As Stems
U4	3	Disanthus virgatus	Fringetree	6"-8" Ht.	As Stems
LARGE SHRUBS					
S1	5	Myrica carterii	Wax Myrtle	5 gals	0' c.c.
S2	14	Hemodorum virginicum	Witch Hazel	3 gals	2' c.c.
S3	8	Hydrangea serrata	Oldfield Hydrangea	3 gals	2' c.c.
S4	21	Samolus parviflorus	Red Dog	3 gals	2' c.c.
S5	11	Ilex verticillata	Wineberry	3 gals	2' c.c.
S6	11	Hydrangea arborescens	Annabelle Hydrangea	3 gals	2' c.c.
SMALL SHRUBS					
S7	50	Chamaecyparis stricta	Dwarf Summergreen		
S8	14	Mathonella virginiana	Wax Myrtle		
S9	80	Hamamelis virginica	Witch Hazel		
S10	70	Hydrangea serrata	Oldfield Hydrangea		
S11	70	Hydrangea serrata	Oldfield Hydrangea		
S12	70	Fatsia japonica	Dwarf Fatsia		
S13	18	Ilex verticillata	Wineberry		
S14	180	Ilex verticillata	Wineberry		

LEGEND	
T1	BALD CYPRESS
T2	LIVE OAK
T3	RED OAK
T4	PIN OAK
T5	RIVER BIRCH
T6	BLACK GUM
T7	SWAMP OAK
T8	SWEET BAY MAGNOLIA
U1	FLOWERING DOGWOOD
U2	REDDOG
U3	AMERICAN HOLLY
U4	FRINGETREE
U5	WAX MYRTLE
S2	WITCH HAZEL
S3	DAKLEAF HYDRANGEA
S4	RED TWIG DOGWOOD
S5	WINTERBERRY
S6	ANNABELLE HYDRANGEA



APPLICANT'S NAME Jeremy 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"/>	

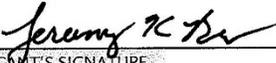
If yes, what is the name of the official or employee and what is the nature of the interest?



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	Aug 25, 2018
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

The variance request was deferred at the October 28, 2019 Public Hearing to the November 25, 2019 Public Hearing.

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 the 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 location and layout of the proposed improvements does not require any tree removal. Staff commends the applicant for designing a project that complements the existing conditions of the parcel.

Evaluation and Recommendation

Staff's comments provided in the October 28, 2019 CBPA Staff Report stated the following.

“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.

	2018 CBPA Exhibit	2019 CBPA Variance Exhibit
Seaward encroachment analysis	888 square feet	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.”

At the direction of the CBPA Board, Staff requested that the applicant be present at the November 2019 CBPA Public Hearing. Staff’s position of support for the variance request has not changed from the October public hearing and 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.

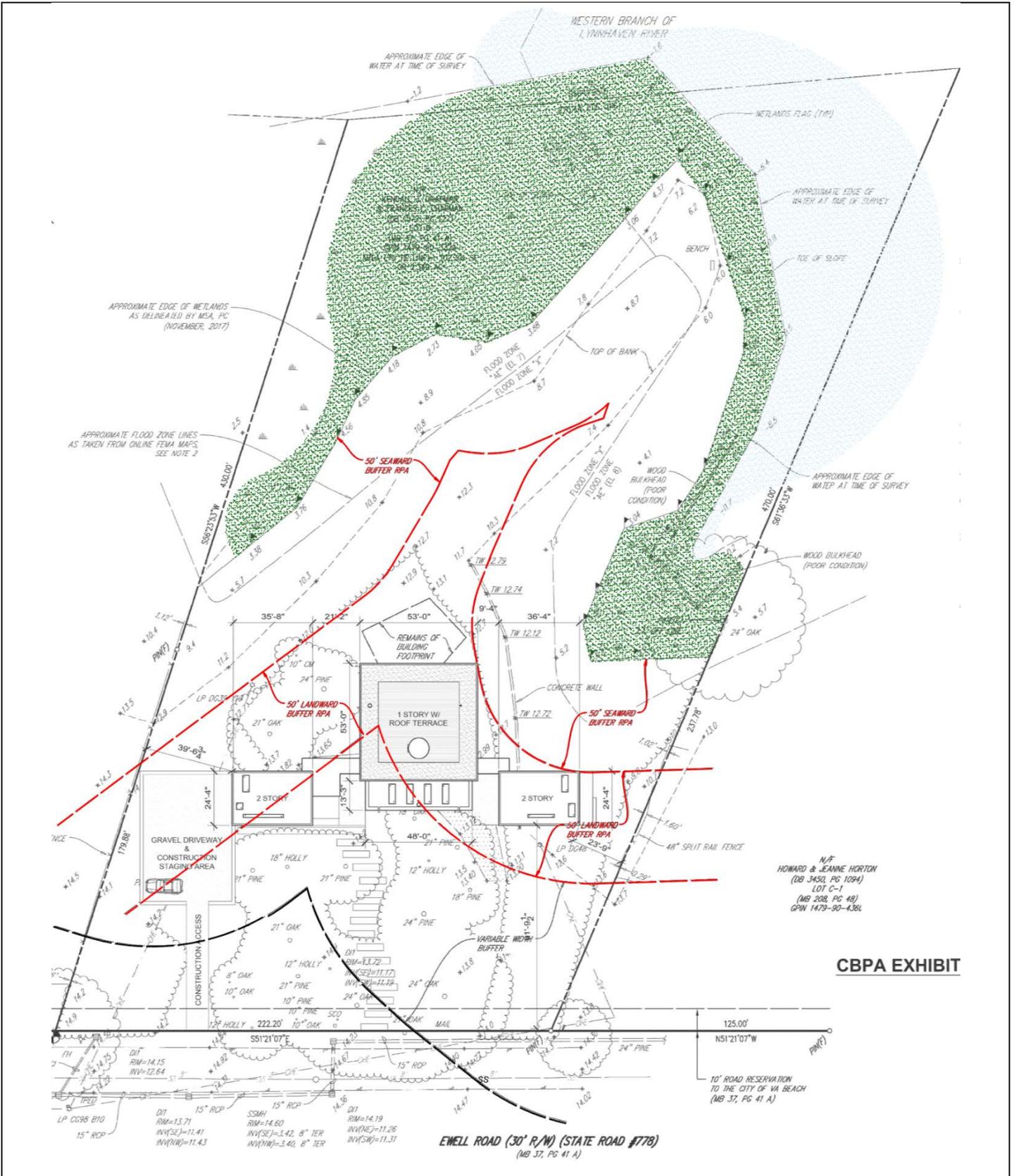
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent 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

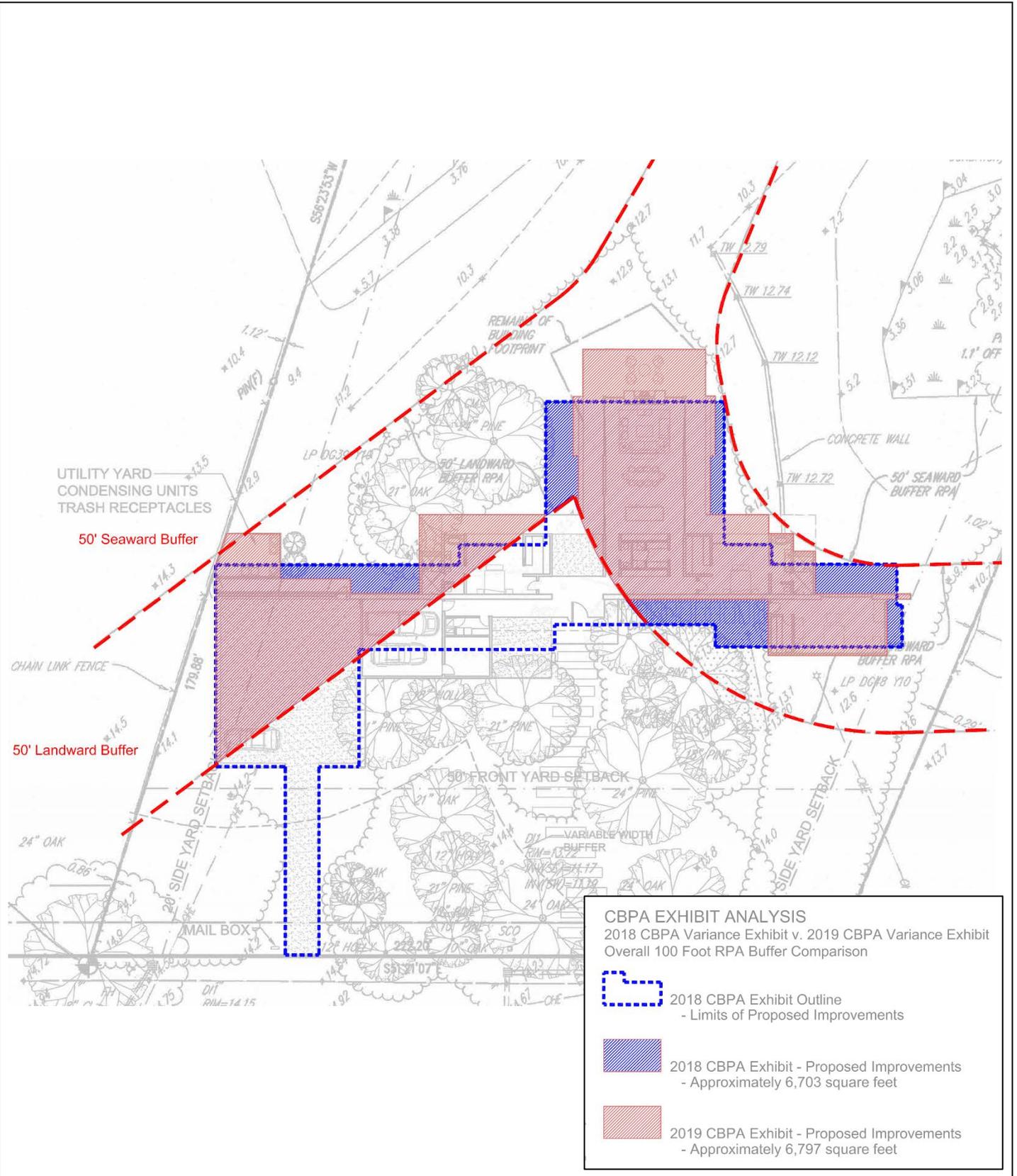




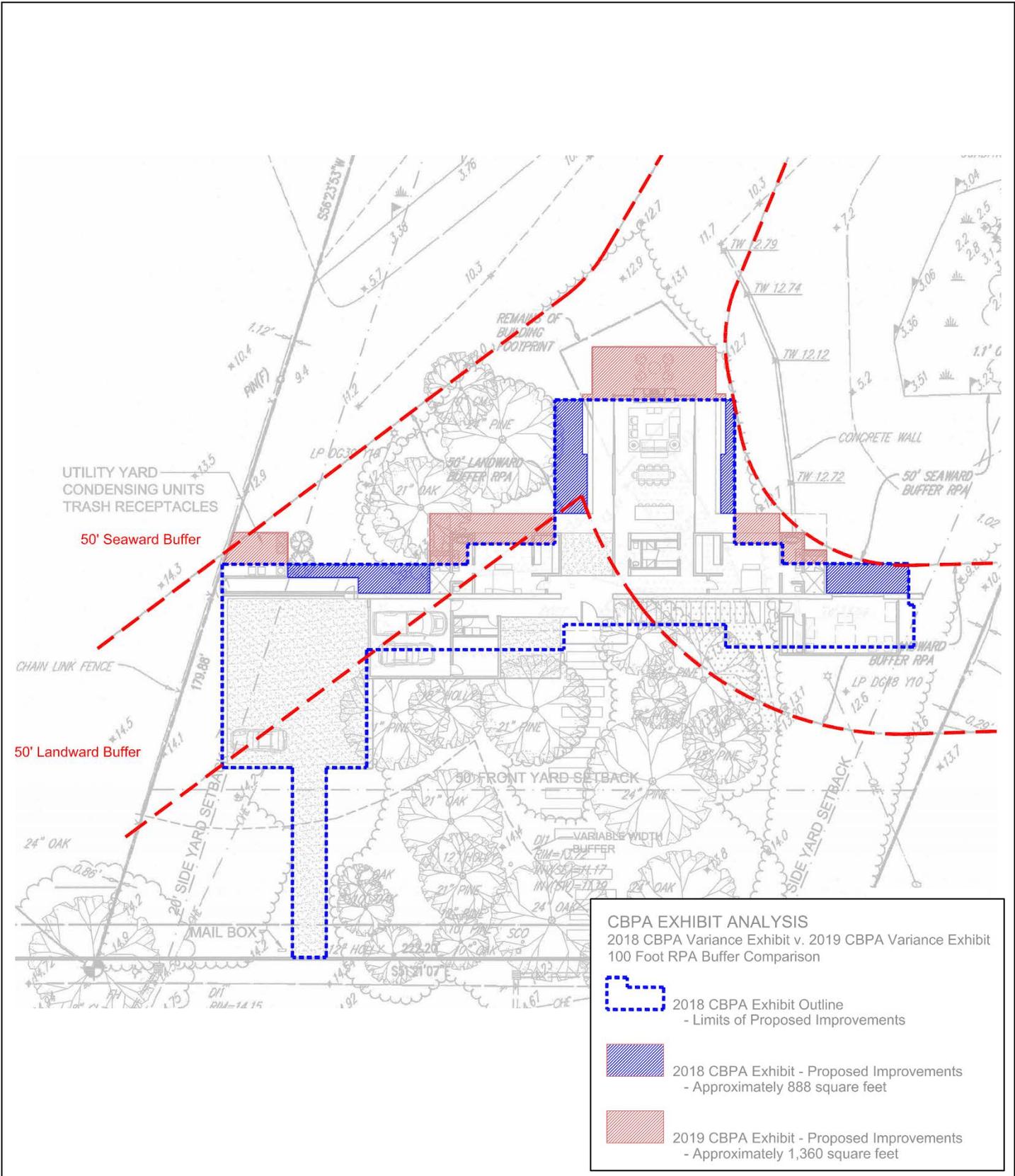
CBPA Exhibit – Architectural Rendering



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.

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<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.

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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	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



Applicant & Property Owner **Linwood C. & Courtney R. Nelms**
Address **2025 Alpine Road**
Public Hearing **November 25, 2019**
City Council District **Lynnhaven**

Agenda Item

3

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a one-story building addition with driveway and redevelop the existing swimming pool and patio with retaining wall.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 29, Page 48

Recorded 3/27/1952

GPIN

1499-78-7150

SITE AREA

9,525 square feet or 0.219 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

9,525 square feet or 0.219 acres

EXISTING IMPERVIOUS COVER OF SITE

4,742 square feet or 49.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,815 square feet or 50.5 percent of site

Area of Redevelopment in RPA

1,491 square feet

Area of New Development in RPA

616 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

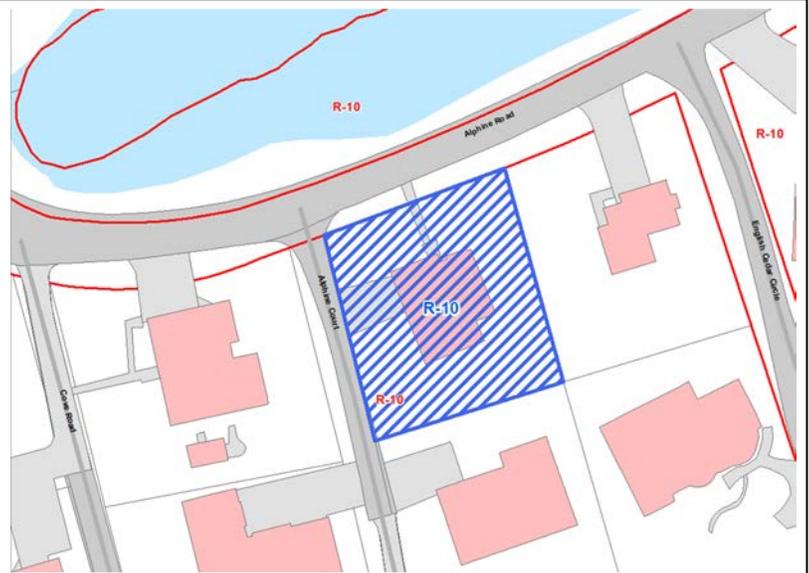
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Swimming pool with associated concrete patio
- Wood deck

Construction Details

- Residential addition to the primary structure
- Swimming pool with associated paver patio
- Permeable paver driveway and sidewalk

CBPA Ordinance Variance History

December 16, 1991 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a single-family residence with associated wood decks with the following conditions:

- 1. A landscape plan is required to identify all new vegetation, limits of clearing, and a seeding and plant schedule.*
- 2. All construction limits must be relocated away from the residence to ensure adequate access for construction equipment and building materials. Tree mitigation and protection is required for all trees within the construction limits.*
- 3. The BMP facility located at the toe-of-slope must be more irregular in shape to better reflect the existing site conditions and shall be screened by a vegetative buffer (four feet high or less) adjacent to the right-of-way.*
- 4. BMP calculations on the proposed BMP facility are required for review and approval by the City's Engineer's Office prior to the issuance of a building permit.*
- 5. A site plan must be submitted to the Development Services Center for plan of development review and approval and appropriate bonds posted prior to the issuance of a building permit.*

The December 16, 1991 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)

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

Shoreline

The subject lot is not immediately adjacent to the shoreline as Alphine Road exists between the lot and the waterway.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 7
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction.

Evaluation and Recommendation

The applicant's primary desire is to redevelop the lot to provide additional living space for aging family members. As such, portions of the proposed improvements associated with this variance request encroach into the 50-foot seaward buffer. The amount of encroachment into the 50-foot seaward buffer is limited to approximately 305 square feet of a permeable paver driveway with underlying soil conditions conducive to infiltration of stormwater given the sandy composition.

With the redevelopment of the existing swimming pool and associated patio area, the applicant's design team has attempted to balance the requested development in the RPA by reducing the existing amount of impervious cover associated with the swimming pool and patio area. The swimming pool and associated patio area will be replaced within a reduced footprint with a more permeable material, such as pavers. As a result, the overall impervious cover of the lot increases by only 73 square feet from 4,742 square feet to 4,815 square feet. In adherence with the performance standards set forth within the Chesapeake Bay Preservation Area Ordinance, which require a no net increase in nonpoint source pollution from new development and redevelopment on previously developed land, Staff supports the use of a permeable paver system towards minimizing impervious surface and promoting infiltration of stormwater.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated "*as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.*" Staff offers that up to 12 CBPA variances for similar encroachments into the 100-foot RPA buffer have been granted within a quarter mile radius of the lot, as the entire neighborhood was platted prior to the adoption of the CBPA Ordinance. While each variance is considered based on the unique conditions found on a lot, many of these lots where redevelopment is proposed must obtain relief from the CBPA Ordinance due to the prevalence of the RPA throughout the area.
- 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 lot has topographic relief starting at the front of the existing house and being that the lot was created prior to the CBPA Ordinance, the impacts are unavoidable.*" The applicants and their design team understand the suitability of the lot in relation to accommodate additional living space for family need. As such, approximately 1,495 square feet of the redevelopment proposed will result in a net reduction in accessory structures.
- 3) The variance is the minimum necessary to afford relief "*because the house was originally built in 1992 in its current location on the lot, we feel the best areas for expansion/redevelopment for the property as shown for the property to help avoid additional impacts to the resource and meet the current needs of the property*

owners.” Staff is of the opinion that the terms “minimum necessary to afford relief” is inherently a subjective standard that must be considered on a case-by-case basis, considering the specifics of a request. With this request, only a minimal increase in impervious cover is proposed. A reduction in the size of existing accessory structures, along with the layout and location of the proposed improvements, in Staff’s view, maximizes the redevelopment to the greatest extent practicable. The design uses the existing grade elevations to minimize land disturbance.

- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare *“with the proposed improvement keeping with the development of the neighborhood and adjacent parcels. Also, the site currently does not offer stormwater mitigation for the canal, however, if approved the proposed redevelopment will be required to have treatment provided between the improvements and the waterway.”* Staff is of the opinion that the proposed improvements will not drastically impact the RPA, be injurious to the neighborhood, or be a substantial detriment to water quality given the use of permeable pavers to promote infiltration of stormwater.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“buffer restoration and bioretention stormwater management will be placed between the improvements and the canal to capture and treat runoff prior to discharging into the river.”* Staff is of the opinion that the redevelopment of the lot, use of permeable pavers, natural condition of the lot and underlying soil conditions conducive of infiltration given the sandy composition, all provides merit towards a no net increase in impervious cover.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present
- 3) 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) All remaining pervious areas shall remain in a natural state as shown on the CBPA exhibit submitted with the variance application. The pervious areas shall be supplemented with buffer restoration planting units that 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) 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 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) The proposed driveway and associated walkway 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.
- 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 \$141.16 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted December 16, 1991.

17) The conditions and approval associated with this variance are based on the exhibit plan dated August 26, 2019, prepared by WPL. 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.

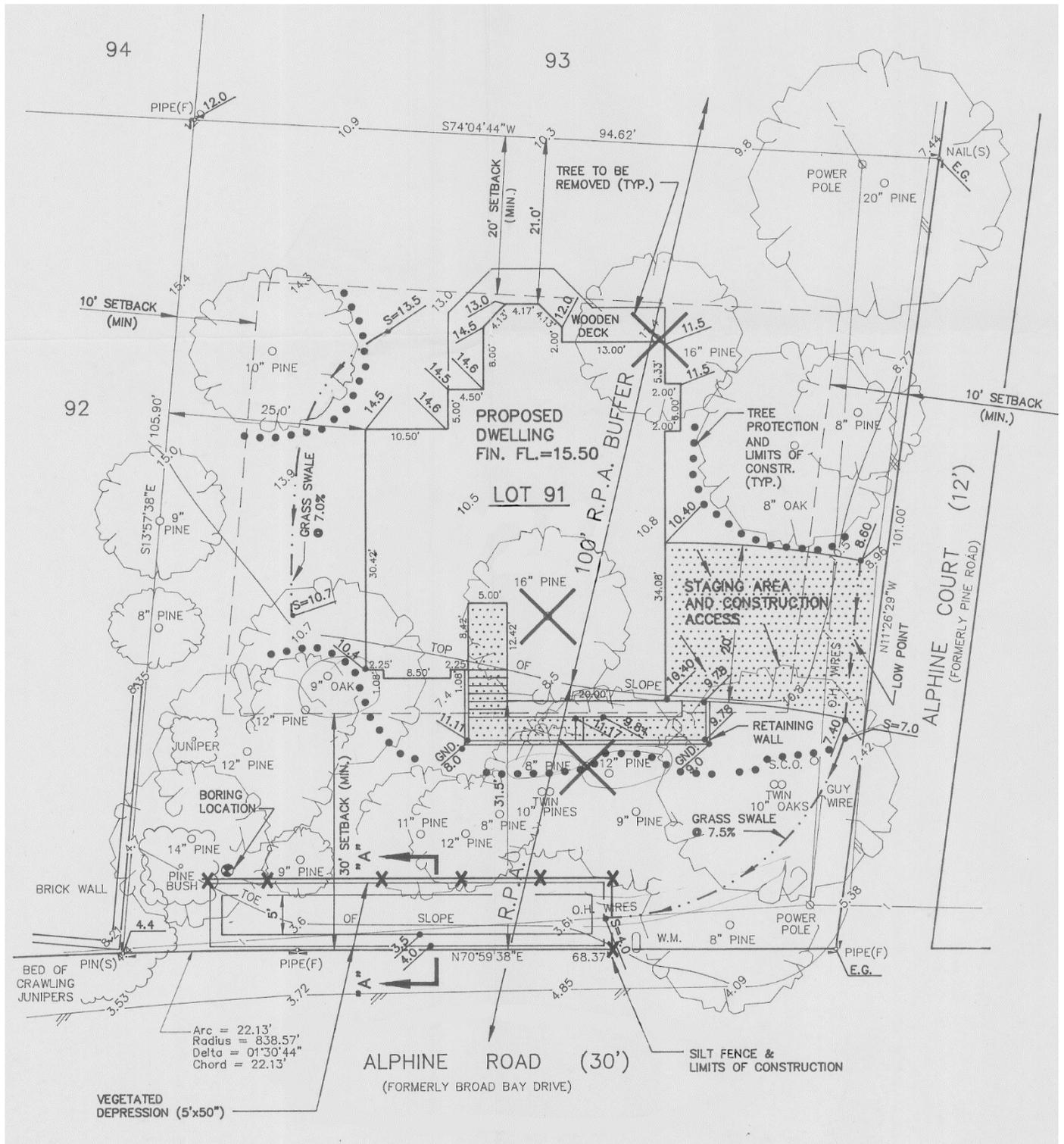
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

***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.

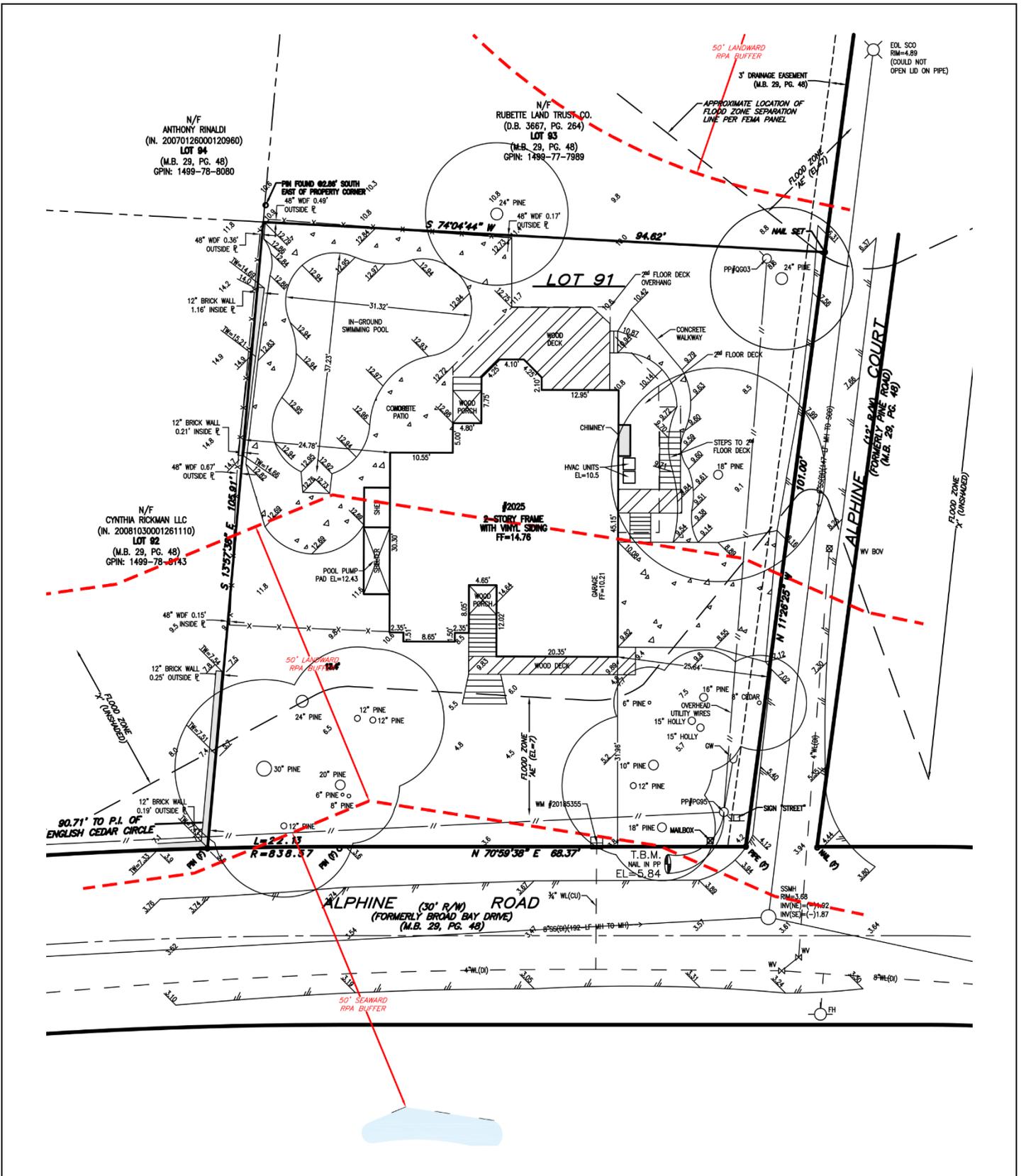
Site Aerial



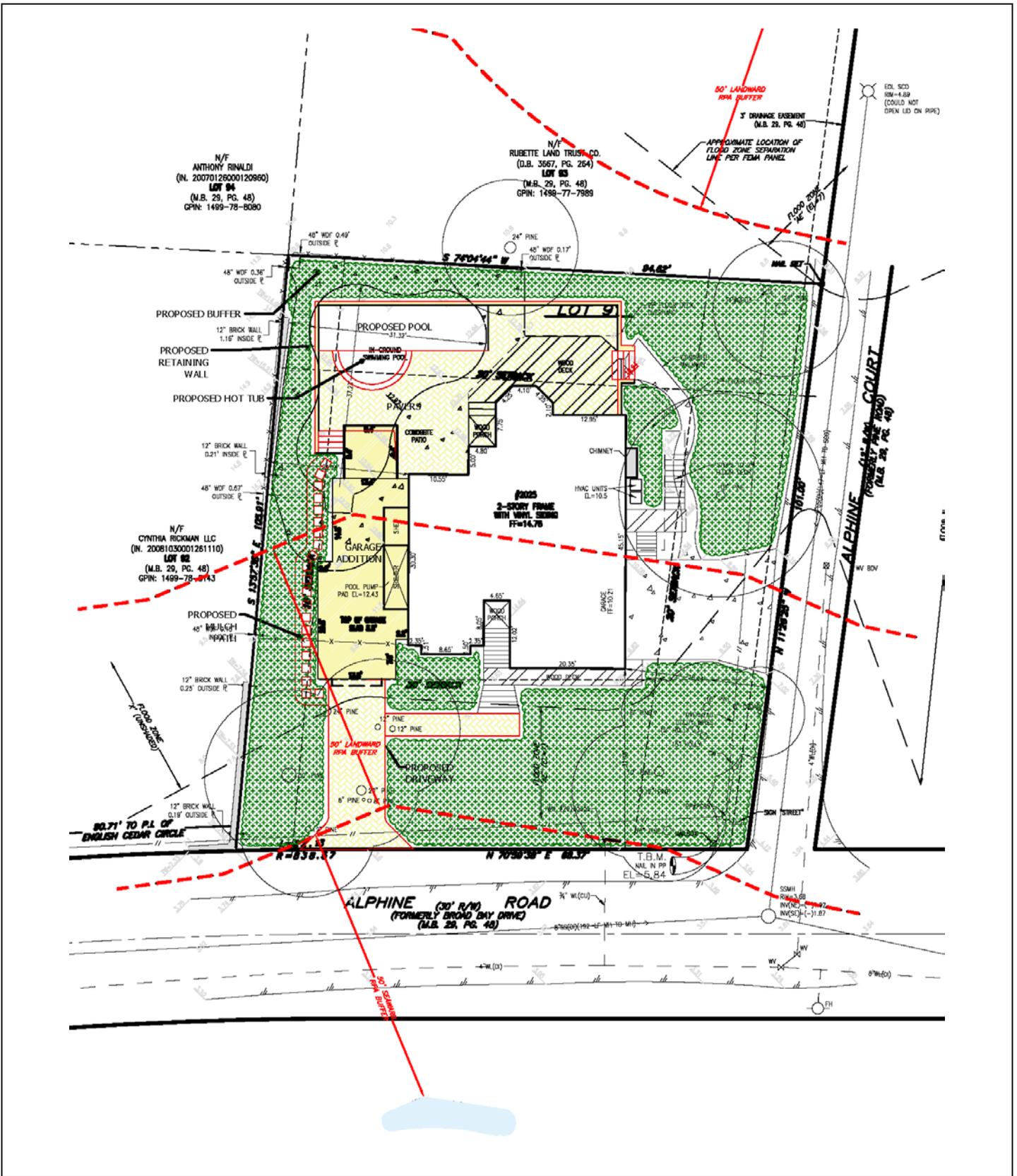
December 1991 CBPA Board Variance Exhibit



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Linwood C. & Courtney R. Nelms

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: Linwood C. & Courtney R. Nelms
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)*

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: Linwood C. & Courtney R. Nelms
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 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	Richard G Poole Architecture
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<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	Billy Garrington, GPC, Inc
<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?

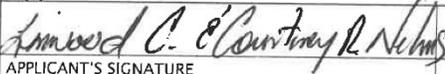
N/A



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.

	Linwood C & Courtney R Nelms	10/29/19
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

Encroachment into the Resource Protection Area (RPA) buffer to construct two wooden decks and an at-grade patio area.

Applicant's Agent

Self-Represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 24, Page 46
 Recorded 9/30/1949

GPIN

1499-17-0438

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

64 square feet

Area of New Development in RPA

583 square feet

Location of Proposed Impervious Cover

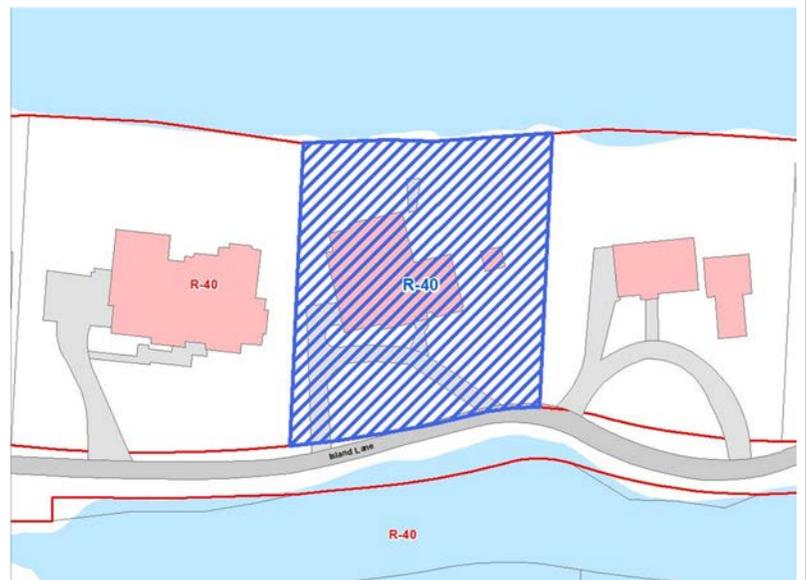
50-foot Seaward Buffer
 50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Redevelop existing wood deck

Construction Details

- Wood deck – 2 in total
- At-grade wood patio

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 in a natural state.

Riparian Buffer

Heavily 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

An established riparian buffer, albeit minimum in width, exists with a mature forest floor between the proposed improvements and the shoreline. The applicant intends to preserve the natural conditions of the lot and preserve the existing forest floor to the greatest extent practicable. Given the limited scope of the improvements, established riparian buffer and minimal land disturbance anticipated with the construction of the improvement, Staff is of the opinion that the existing water quality benefit afforded by the existing buffer will not be compromised by the proposal.

Staff supports the application as submitted with the recommended conditions below and offers the following comments, provided by the applicant relative to the findings of the CBPA Ordinance specific to this variance request for the Board's consideration.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property because the *“redevelopment of the lot is consistent with the constructed improvements on adjacent properties.”* Staff concurs and offers that the proposed improvements

associated with this variance request do not require removal of any existing vegetation, nor will it encroach further seaward than existing improvements on adjacent parcels.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this neighborhood was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing the majority of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief, with *"the size of the proposed improvements being the minimal to provide ingress/egress to the residence."* Although a minimal increase in overall impervious cover is proposed, Staff is of the opinion that the materials associated with the proposed improvements offer merit towards ecological benefits by providing minimal water quality maintenance and rainwater infiltration.
- 4) Staff is of the opinion with the established canopy cover, existing mature forest floor, and underlying soil conditions will not be injurious to the neighborhood, nor be of substantial detriment to water quality given the applicant's intent to preserve the natural conditions of the lot and preserve the existing forest floor to the greatest extent practicable.
- 5) The use of underdeck treatment is a recommended condition of approval as a means to manage erosion and sedimentation control towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following 6 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. A maximum of 1,500 square feet of turf is permitted for this property. Said turf shall not be permitted within the 50-foot seaward buffers. Within the RPA, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed with all remaining pervious areas preserved as riparian buffer. 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable: **3 understory trees, 6 large shrubs, and 9 small shrubs.**

The required restoration shall be located in the Resource Protection Area and 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.

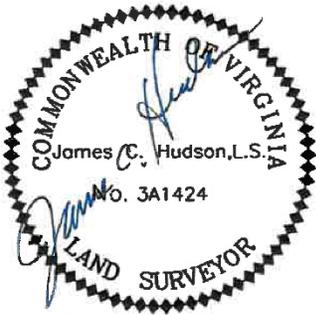
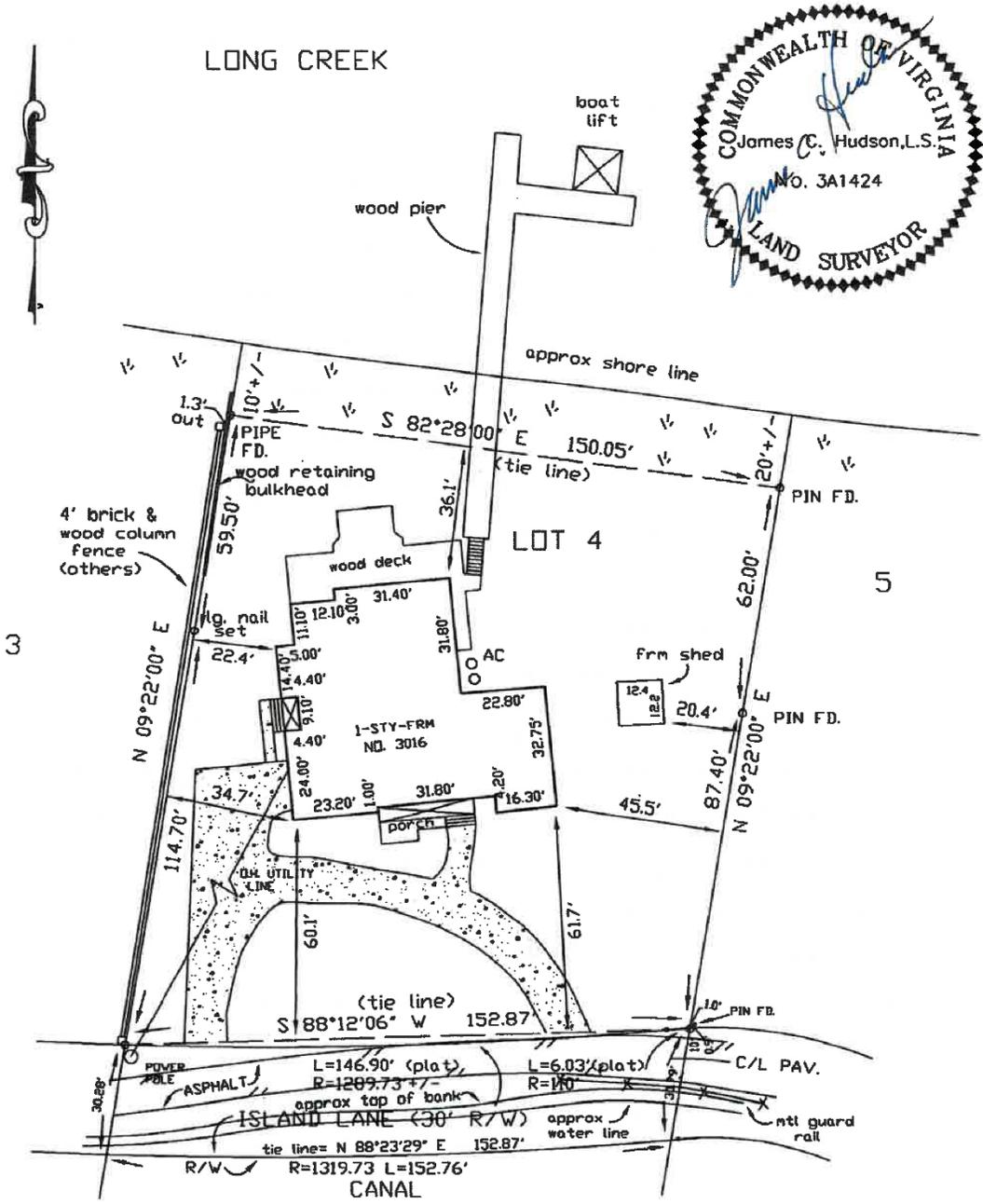
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
5. For all trees to be preserved outboard of the limits of construction 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.
6. Under deck treatment of sand and gravel shall be installed.

***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

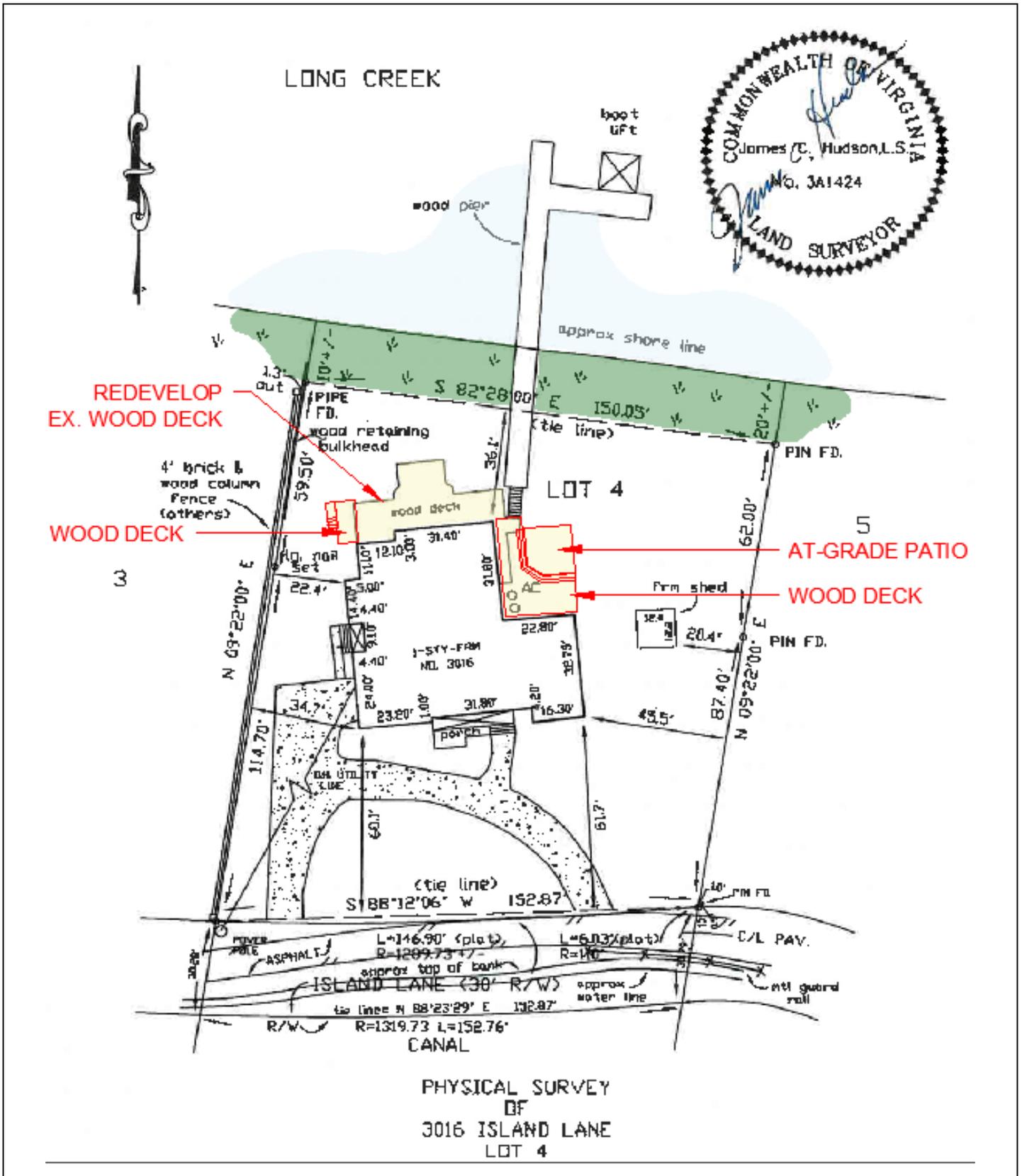


CBPA Exhibit – Existing Conditions



PHYSICAL SURVEY
 OF
 3016 ISLAND LANE
 LOT 4
 SYER TRACT
 and Parcel of land on south side road extending from R/W to North bank
 of canal as referenced in INST. NO. 20080807000933620
 (M.B. 24, PG. 46)
 Virginia Beach, Virginia
 Exclusively for
 BENNETT ALLEN & ELIZABETH T. THOMAS

CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME _____

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

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

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<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: Bennett & Elizabeth Thomas
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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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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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	BDO - Nicole Wood Sabo
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Flores Design Studios
<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	THE HOME CONSTRUCTION
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Engineers / Surveyors/ Agents	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



CERTIFICATION:

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

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

	Bennett & Elizabeth Thomas	10-4-2019
APPLICANT'S SIGNATURE	PRINT NAME	DATE



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a concrete pad / hot tub area.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 29, Page 48
Recorded 3/27/1952

GPIN

1499-78-8080



SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

128 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

Construction Details

- Concrete pad / hot tub area

CBPA Ordinance Variance History

September 23, 1991 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a wood deck and walkway adjacent to the existing bulkhead with the following conditions:

1. *Adequate erosion and sedimentation control measures must be provided around the construction area.*
2. *A landscape bond is required.*
3. *The applicant must submit a revised site plan, meeting the above conditions, to the Development Services Center for review and approval by the Planning Department and Landscape Services and appropriate bonds must be posted prior to the issuance of a building permit.*

The September 23, 1991 CBPA 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)

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

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

Shoreline

Shoreline is hardened by a wood bulkhead and rip rap 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 proposed improvements include the construction of a concrete pad totaling 128 square feet, approximately 70 linear feet landward of the edge of the existing bulkhead. The change in grade elevation between the proposed improvements and the existing bulkhead is minimal and a well-established planted area exists. The property does not

exhibit any signs of erosion or run-off detriment to the adjacent tidal waters. During the Staff's site visit, the applicant stated that no fertilizers and other chemicals typically used by the landscape industry are applied on this property. Staff is of the opinion that the location of the proposed improvements, scope of the variance request, and minimal land disturbance anticipated with the construction 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.

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

- 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 placement of the concrete pad will be on the two sides facing the water surrounded by a garden bed and some grass."* Staff is of the opinion that should the Board grant the variance to encroach into the RPA feature with the proposed concrete pad, that a special privilege will not be afforded to the applicant that other owners of property in the neighborhood have been similarly afforded with the improvement of their lots.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) Staff offers that the variance is the minimum necessary to afford relief given the dimensions of the concrete pad are sized solely to accommodate the width and length of the desired hot tub. The applicant is not requesting additional impervious cover for a walkway around the hot tub and intends to utilize the existing walkway for access.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with the applicant's intention to *"use bagged gravel to prepare for the concrete pad and pour the pad using a long chute or by hand. No trucks will drive on the property."* Given the method of construction provided by the applicant and minimal land disturbance, Staff is of the opinion that the variance request is in harmony with the purpose and intent of the Ordinance.
- 5) Staff offer that as a means to manage towards a no net increase in nonpoint source pollution load; all existing vegetation is being retained, land disturbance will be limited to less than 200 square feet, and any run-off produced from the proposed improvements has approximately 70 linear feet of pervious cover to sheet-flow across before draining into tidal waters.

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

Recommended Conditions

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

2. 400 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA.

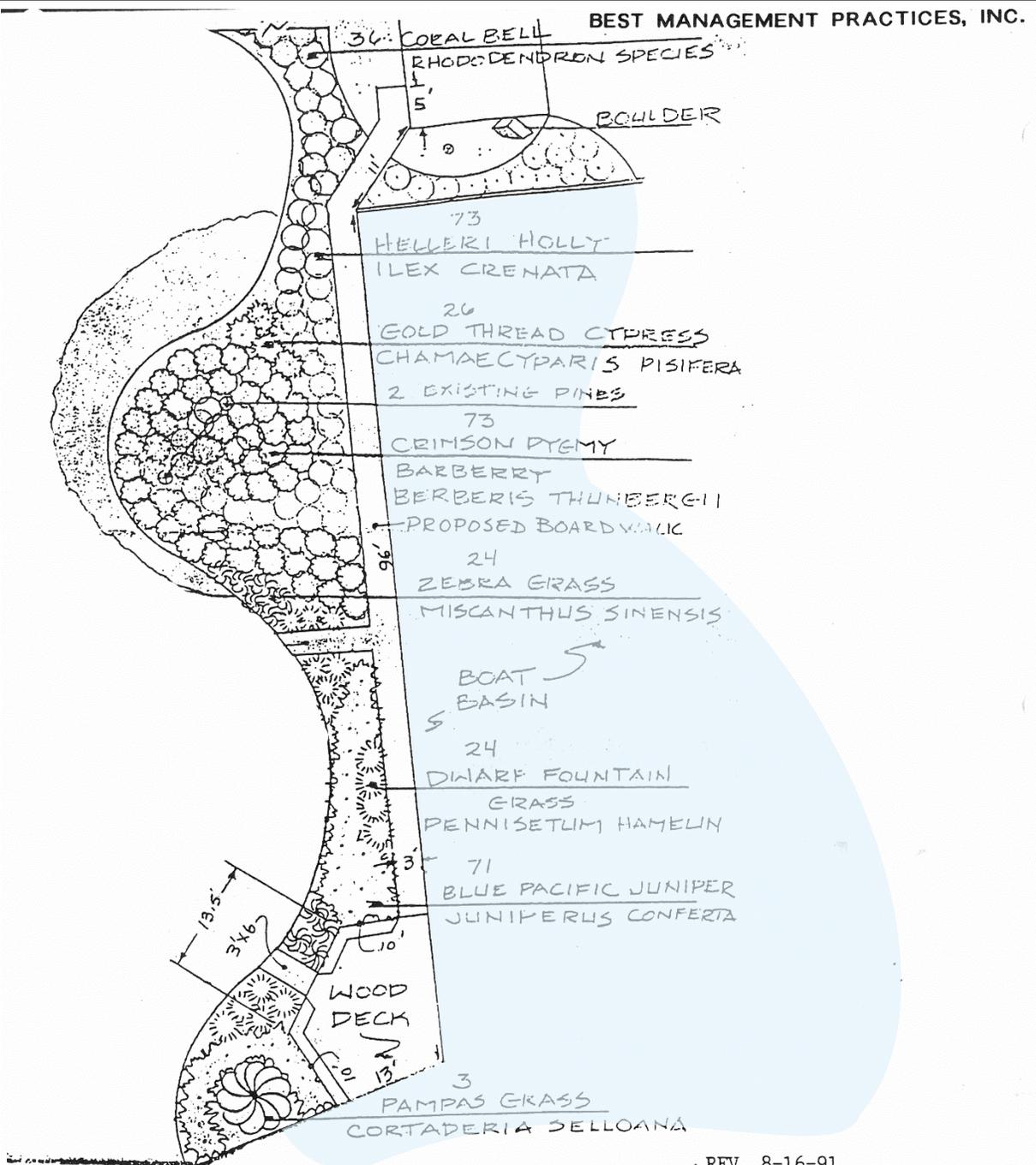
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable

3. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
4. This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 23, 1991.

***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





REV. 8-16-91

PURPOSE: EROSION CONTROL
 DATUM: MSL
 ADJACENT PROPERTY OWNERS:
 1. A. NOTTINGHAM
 2. H. PITTS, JR.

**BEST
 MANAGEMENT
 PRACTICES, INC.**
 PHONE: (804) 422-3898

PROPOSED RIP RAP & PIER
 IN: BROAD BAY
 AT: 2001 ENGLISH CEDAR CR.
 CITY OF: VIRGINIA BEACH
 STATE: VIRGINIA
 APPLICATION BY:

WAYNE L. DUNCAN

LANDSCAPING

SHEET 3 OF 3 DATE: 7-12-91



APPLICANT'S NAME Loretta M. Rinaldi

DISCLOSURE STATEMENT FORM

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

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

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

SECTION 1 / APPLICANT DISCLOSURE

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

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



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

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

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

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

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

¹ "Parent-subiliary 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-subiliary 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	Tiger Rose Enterprises, Smithtown, NY 11787
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	DSG Dennis Talfambas #002199
<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)	Specialized Loan Servicing
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Jeanne West - sold to us Tim Cochran - for future

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.

	Loretta Rinaldi	10/7/19
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE

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

Loretta M. Rinaldi

Agenda Item 5

Page 82

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to expand the driveway and construct a shed, paver patio with associated walkways and an all seasons room.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 67, Page 18
 Recorded 11/24/1965

GPIN

1499-79-3822

SMALL PROJECT IN THE RPA

SITE AREA

13,583 square feet or 0.31 acre

EXISTING IMPERVIOUS COVER OF SITE

4,419 square feet or 32.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

5,282 square feet or 38.8 percent of site

Area of Redevelopment in RPA

1,529 square feet

Area of New Development in RPA

863 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

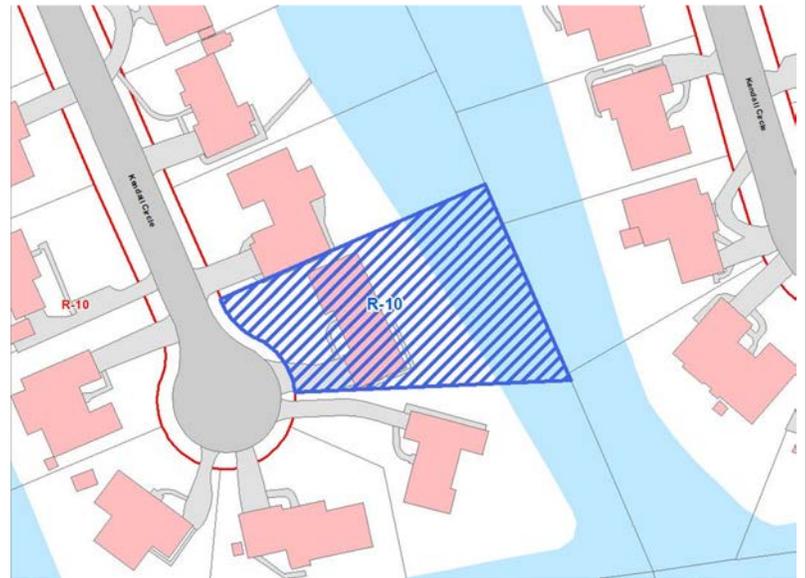
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete driveway and associated walkways

Construction Details

- All seasons room with adjacent paver patio
- Storage shed
- Paver driveway and associated front walk – no increase in impervious cover

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Psamments Series (well-drained and moderately well-drained soils, sandy material)

Shoreline

Shoreline is hardened with a wood bulkhead.

Riparian Buffer

Non-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

As a means to make the lot more resilient to environmental conditions, the applicant has made improvements to the primary residential structure to be compliant with flood zone requirements, redeveloped the existing bulkhead with a new structure to address upland erosion, and is in the process of applying to an urban cost share program through the Soil and Water Conservation District to redevelop the existing driveway and associated walks with a permeable paver system. Currently, the applicant is harvesting rainwater through downspout collection of approximately one-third of the stormwater run-off area from the existing roof.

With the intent to prevent a net increase in nonpoint source pollution by both new development and redevelopment of previously developed land, Section 106 (A)(3) of the CBPA Ordinance states that land development shall minimize impervious cover to promote infiltration of stormwater through the incorporation of structural or nonstructural urban best management practices. Given the permeability of the underlying soils and the applicant's efforts to redevelop a lot that predates the CBPA and Stormwater Management Ordinances with sustainable urban best management practices,

Staff is of the opinion that the use of structural (permeable paver system) best management practices coupled with Staff's recommended condition for nonstructural (buffer restoration) best management practices for stormwater treatment does provide merit towards this variance request being in harmony with the findings of Section 110 (H) of the CBPA Ordinance.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the *"requested variance is well within existing approved projects and existing structures (sheds/additions) within Cape Henry Shore and does not disturb the harmony of the neighborhood. All improvements will add value and curb appeal to the home and neighborhood and are IAW all VB and neighborhood HOA covenants."* Staff concurs. The request of improvements associated with the redevelopment of this lot is consistent with similar variance requests from adjacent properties granted by prior CBPA Boards dating back to 1991.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA with the *"property being built in 1969 and improvements to the exterior structure being done since built. The addition of semi permeable pavers will allow for improved drainage to the entire property."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief *"due to current setbacks/buffer regulations and single point of entry to backyard, the five-foot variance for the shed allows for optimum (aesthetically and functionally) entry to the backyard."* The 'five-foot variance' mentioned pertains to the zoning setback requirements for an R-10 Residential District lot. With the variance request to the CBPA Ordinance, Staff is of the opinion that the application is the minimum necessary to afford relief, as only approximately 863 square feet of new impervious cover is proposed. The applicant's initiative includes the redevelopment of approximately 35 percent or 1,529 square feet of the existing impervious cover with a permeable pavement system.
- 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 *"variance approval allows for optimum (both aesthetically and functionally) single point of entry to the backyard area."* Staff offers that the applicant's efforts to redevelop a lot that predates the CBPA and Stormwater Management Ordinances with sustainable urban best management practices is in harmony with the purpose and intent of the Ordinance.
- 5) *"All existing concrete on the property is to be removed and replaced with semi permeable pavers utilizing the VCAP program"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff commends the applicants for their approach and thoroughness with the redevelopment of this lot integrating resiliency and sustainability to both the primary and accessory structures.

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

Recommended Conditions

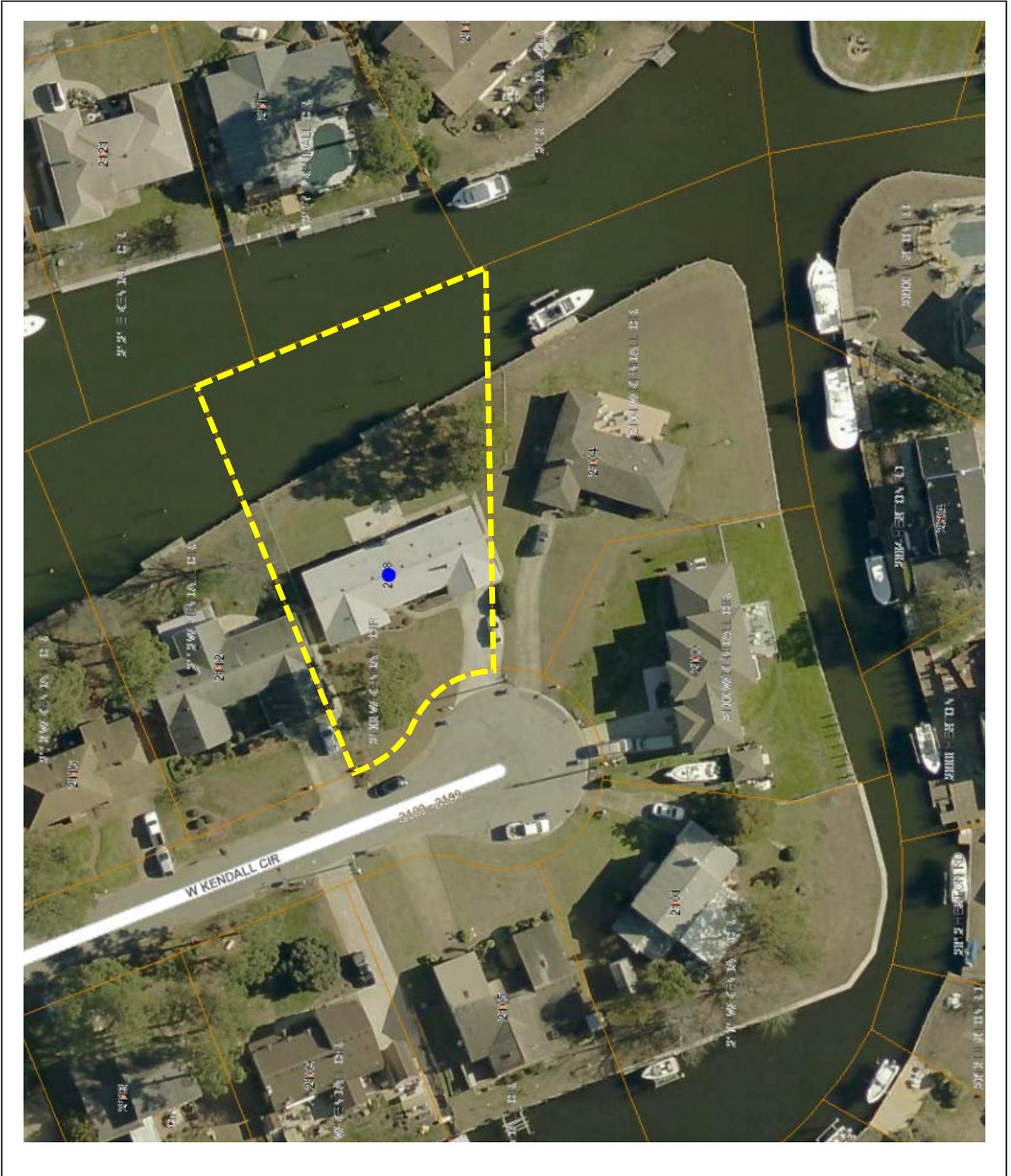
1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 863 square feet of buffer restoration shall be installed on the lot. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs and 6 small shrubs.**

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

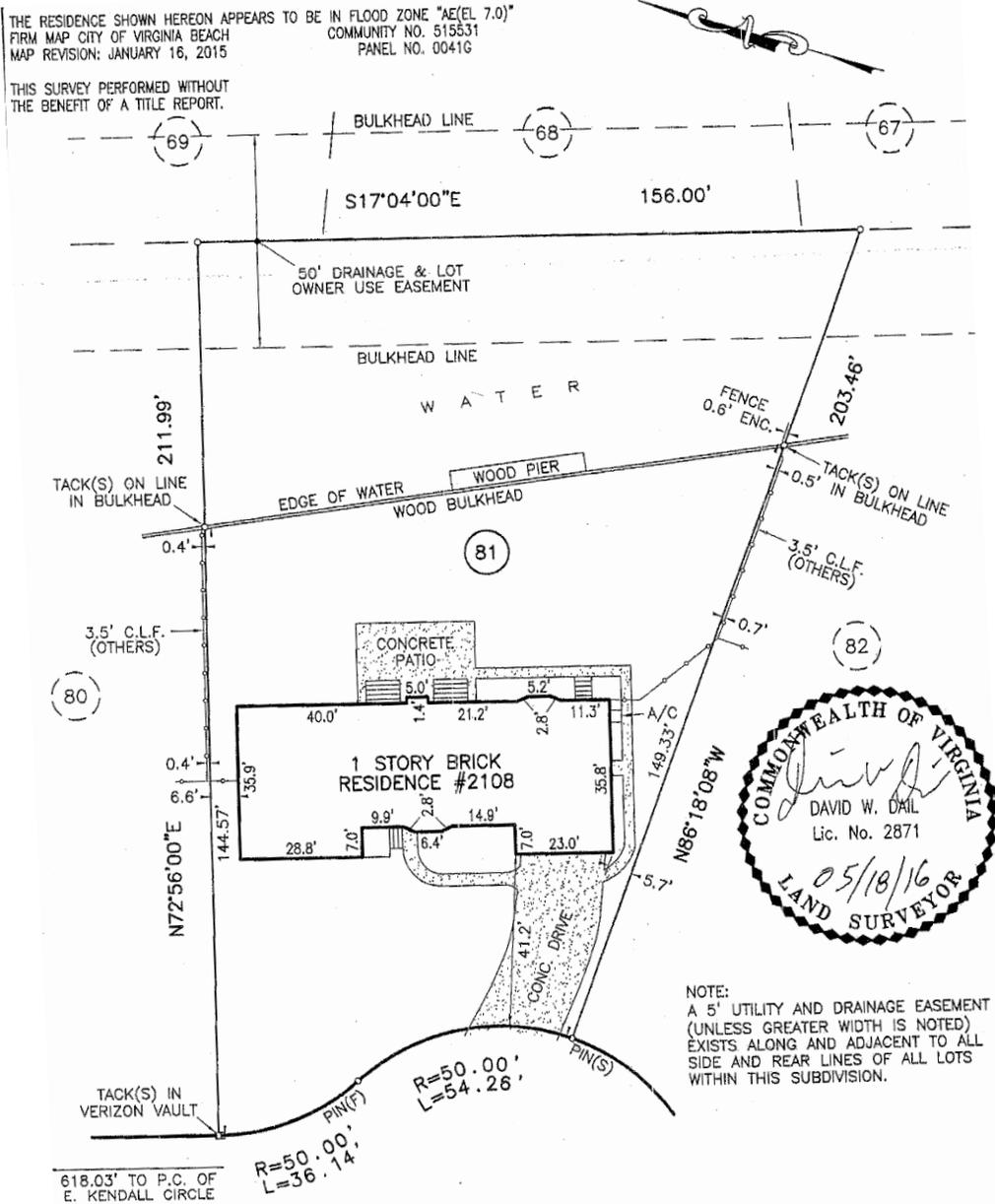
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.

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

Site Aerial



CBPA Exhibit – Existing Conditions

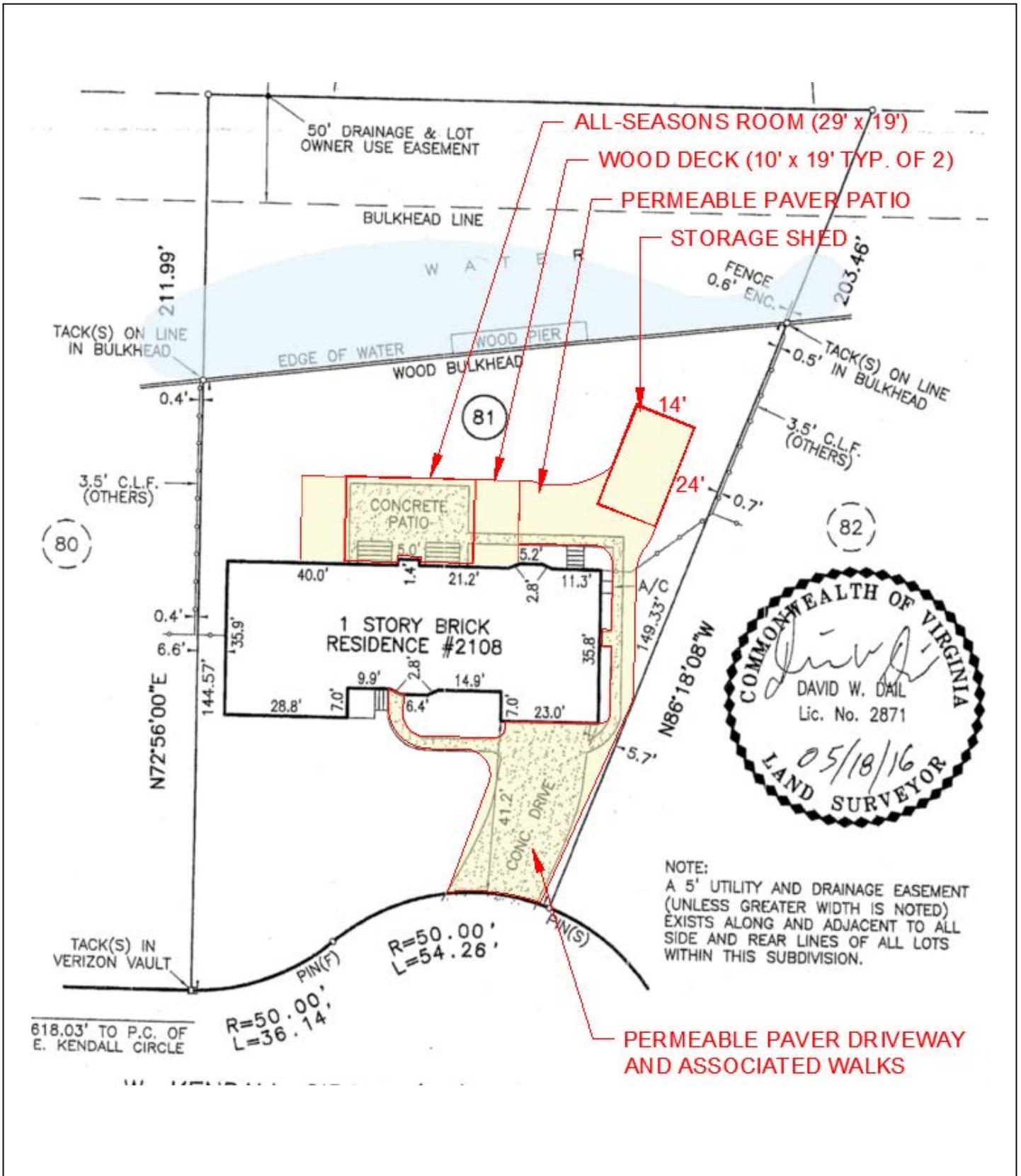


W. KENDALL CIRCLE (50' R/W)
 (KENDALL CIRCLE WEST-PLAT)
PHYSICAL SURVEY
 OF
 2108 W. KENDALL CIRCLE, VIRGINIA BEACH, VIRGINIA
 LOT 81
AMENDED SUBDIVISION OF CAPE HENRY SHORES
 SECTION TWO
 M.B. 64, PG. 2
 FOR: ROBERT A. REMSING & LISA B. REMSING
 STEPHEN I. BOONE & ASSOCIATES, P.C.
 LAND SURVEYORS
 PORTSMOUTH, VIRGINIA

SCALE: 1" = 30'

DATE: MAY 18, 2016

CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME _____

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

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<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: Robert and Lisa Remsing
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-subsidiary 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: _____
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-subsidary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach list if necessary)*

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

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

SECTION 3: SERVICES DISCLOSURE

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



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	TBD
<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	TBD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Steven Boone Surveyors
<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)	Flagstar 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?
<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.

	Robert A. Remsing	3 OCT 19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Robert A. & Lisa B. Remsing

Agenda Item 6

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Applicant & Property Owner **Jeremiah & Kara Wilkinson**
 Address **523 26th Street**
 Public Hearing **November 25, 2019**
 City Council District **Beach**

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a paver patio with elevated planters/retaining walls, and storage shed.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 5, Page 103
 Recorded 6/4/1915

GPIN

2418-90-2068

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

120 square feet

Area of New Development in RPA

443 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood deck

Construction Details

- Paver patio with associated elevated planters/retaining walls
- Storage shed

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)

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

Yeopim Series (deep and moderately well-drained soils)

Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the 50-foot seaward buffer.

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 current condition of the 100-foot Resource Protection Area (RPA) buffer primarily consists of barren soil adjacent to the residence that transitions into a vegetative buffer overgrown with non-native invasive vine species. The high marsh and woody upland community adjacent to the tidal marsh is in a transitional stage dominated by the overgrowth of a *Phragmites australis*, Common Reed grass monoculture. Erosion is occurring on the existing bank within the 100-foot RPA buffer due to stormwater sheet flow from the adjacent property. An element of this variance request addresses this on-going erosion by introducing a series of retaining walls and elevated planters with plant material.

The request to encroach into the RPA buffer with the proposed improvements initially included a two-tiered 586 square foot paver patio area that extended to the edge of the 50-foot seaward buffer. Working with Staff, the encroachment

Jeremiah & Kara Wilkinson

Agenda Item 7

Page 96

has been reduced by approximately 143 square feet, shifting the proposed impervious cover landward of the 50-foot seaward buffer by approximately 10 feet. Staff's analysis of the existing site conditions and opinion of the project is that the RPA buffer has been degraded over time by upland development stress, human use and lack of management and maintenance to the existing woody vegetation. With the construction of the proposed improvements utilizing existing grade elevations with retaining walls and steps, the introduction of vegetative cover within the RPA buffer, and the proposed abatement of the ongoing erosion to the existing bank, Staff offers that the structural and non-structural elements of the variance request provide merit towards reestablishing the ecological benefit of the buffer. Due to these measures, water quality maintenance will improve while allowing the RPA to function as intended by not introducing an extensive amount of fill material or severely altering existing site conditions.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the house was originally built in 2002 in its current location on the lot, the size of the lot limits the development footprint. The proposed improvements have been limited to landward buffer except for a minor encroachment for a stairway."* Staff offers that the request to encroach into the RPA buffer with the proposed improvements initially provided a two-tiered paver patio area that consisted of approximately 586 square feet, extending to the edge of the 50-foot seaward buffer. Working with Staff, the applicant's agent reduced the encroachment request by approximately 143 square feet, shifting the proposed impervious cover landward of the 50-foot seaward buffer by approximately 10 feet, as a means to address environmental issues while 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* With the construction of the proposed improvements utilizing existing grade elevations with retaining walls and steps, the introduction of vegetative cover within the RPA buffer, and abatement of the ongoing erosion to the existing bank, the functions of the buffer will be restored, consistent with the intent of the ordinance.
- 5) *"Planting buffer restoration will be placed between the improvements and the marsh to capture runoff prior to discharging into the bay"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the proposed improvements better the current conditions of the RPA and provide merit towards reestablishing an ecological benefit by provided better water quality maintenance while allowing the RPA to function as intended by not introducing an extensive amount of fill material or severely altering existing site conditions

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

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit plan dated January 29, 2019 prepared by WPL, signed November 4, 2019 by Eric A. Garner and presented to the Board, the application submitted and the sworn presentation to the Board. A Single-Family RPA Small Projects 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. Said site-plan shall provide existing spot elevations along the rear property lines and proposed elevations of all hard surfaces – patios, retaining walls, etc. All drainage shall be contained on the property.
2. Buffer restoration shall be installed per the described areas on the CBPA Exhibit presented to the Board. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers to the greatest extent practicable.

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

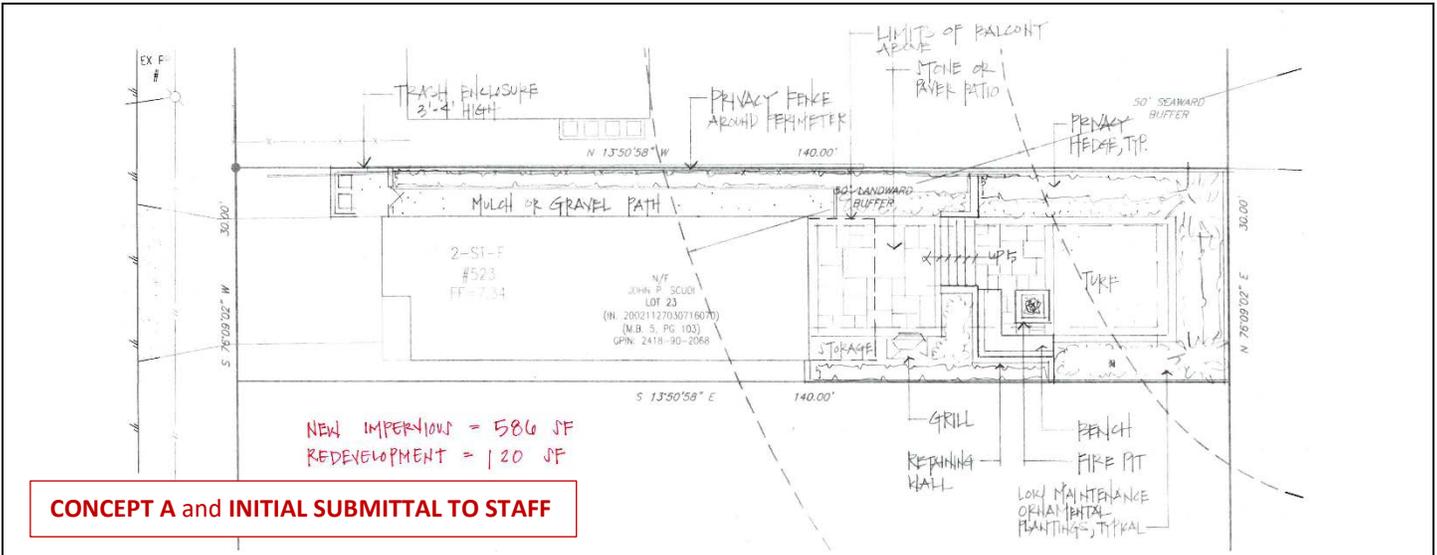
3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.

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

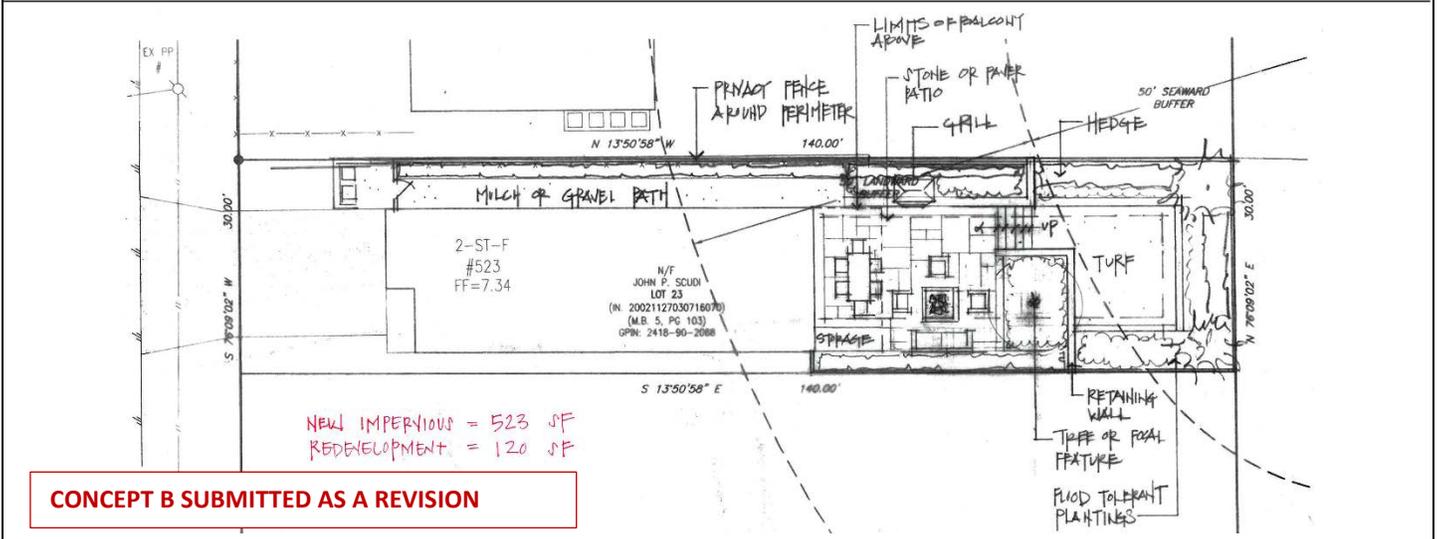
Site Aerial



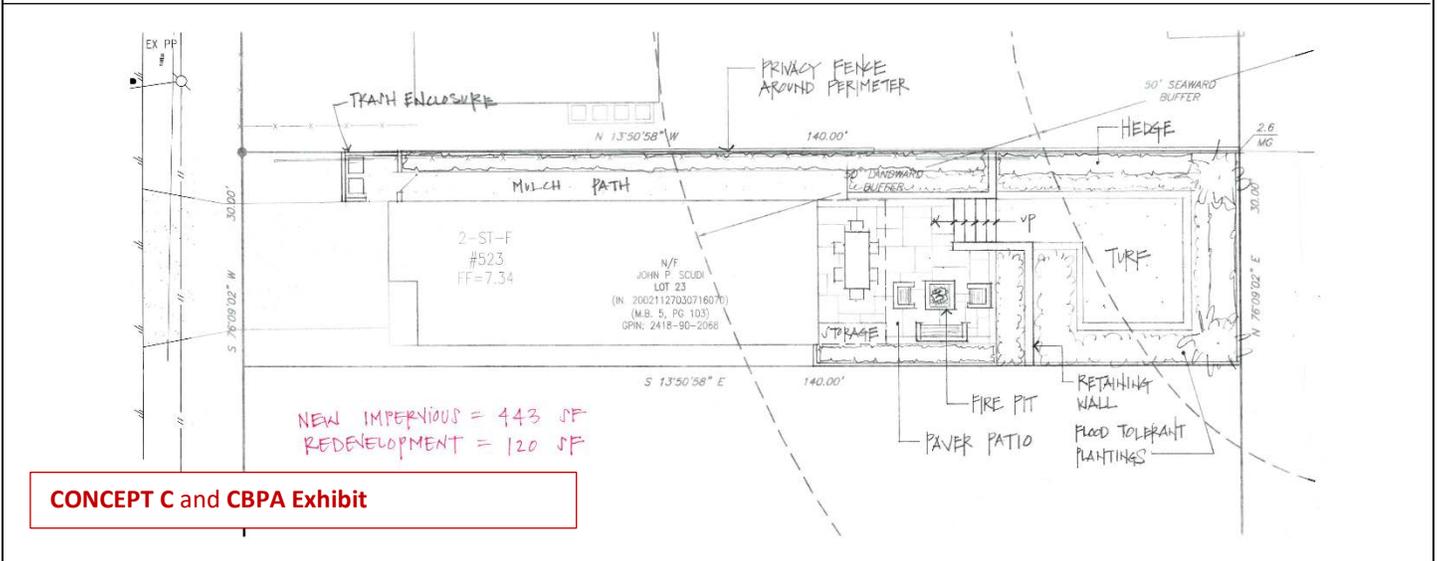
CBPA Exhibit – Schematic Analysis/Design Modifications



CONCEPT A and INITIAL SUBMITTAL TO STAFF

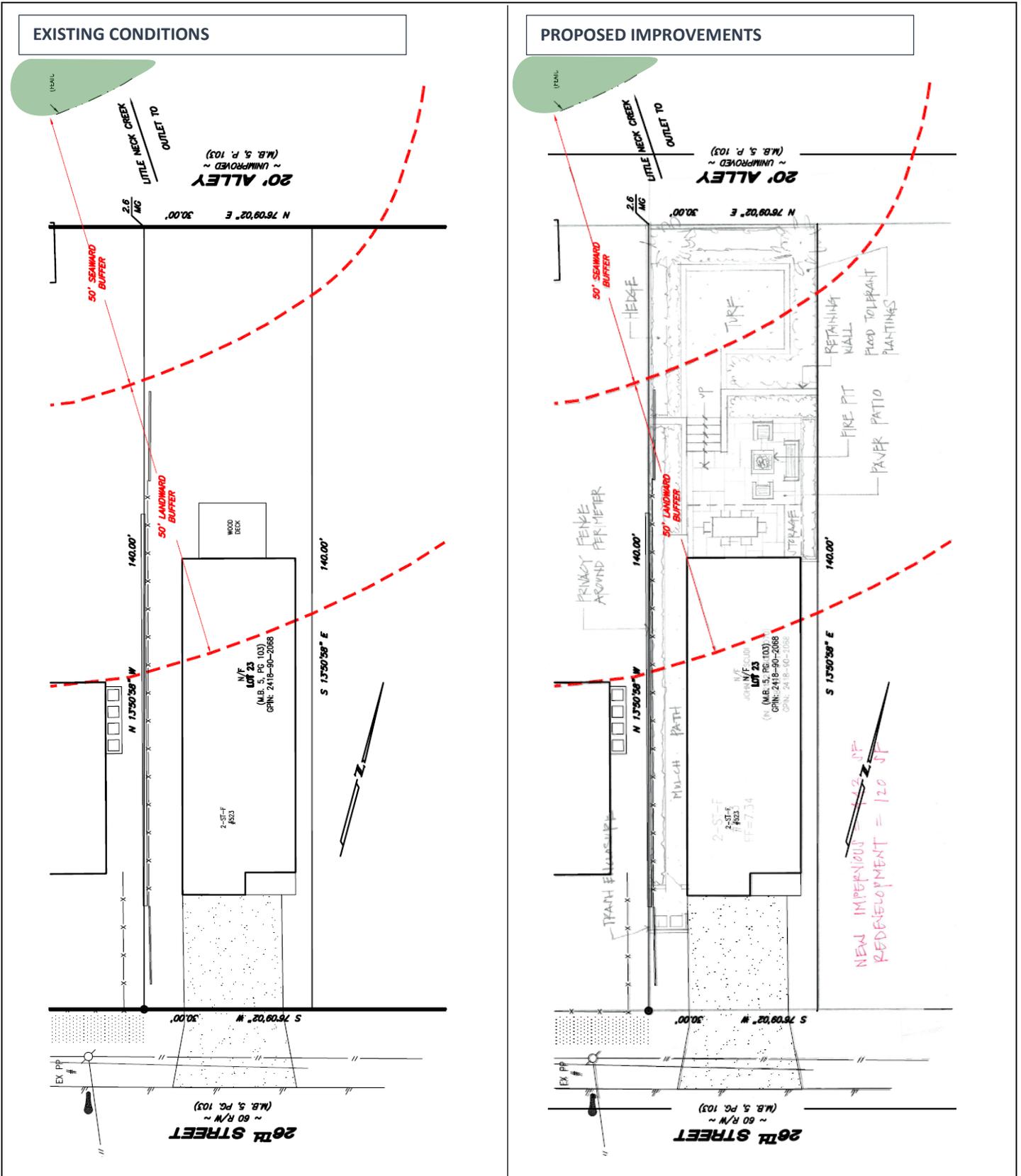


CONCEPT B SUBMITTED AS A REVISION



CONCEPT C and CBPA Exhibit

CBPA Exhibit – Existing Conditions & Proposed Improvements





APPLICANT'S NAME Jeremiah & Kara Wilkinson

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: Jeremiah & Kara Wilkinson
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: Jeremiah & Kara Wilkinson
If an LLC, list the member's names:

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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Anderson and Associates
<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 type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<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)	Capital Center, LLC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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.

	Jeremiah Wilkinson	10/6/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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



Applicant & Property Owner **Kathleen E. & Trudy M. Hoff**
 Address **3729 Lynnfield Drive**
 Public Hearing **November 25, 2019**
 City Council District **Lynnhaven**

Agenda Item

8

Variance Request

Encroachment into the Resource Protection Area (RPA) with an after-the-fact variance request to retain an unauthorized tiered wood deck and steps.

Applicant’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

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

GPIN

1489-40-2271

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

435 square feet

Location of Proposed Impervious Cover

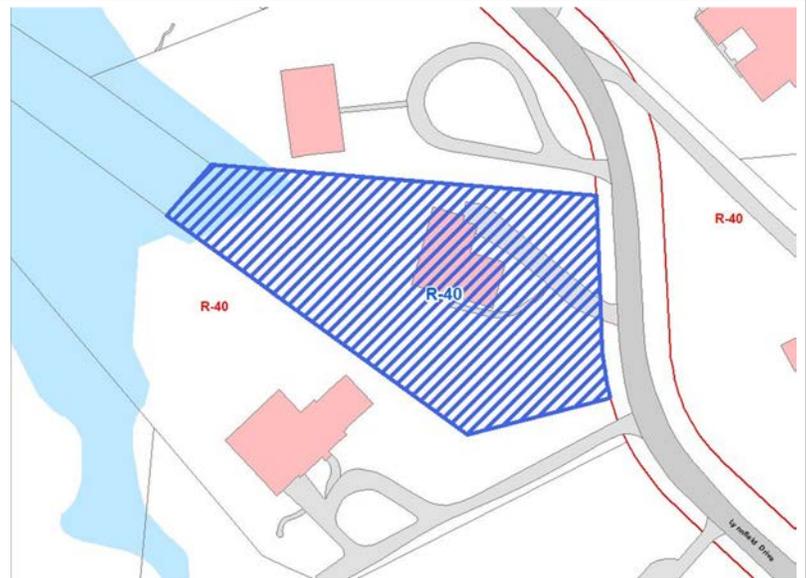
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- After-the-fact tiered wood deck and steps

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report. A Show Cause hearing was held and a finding of Noncompliance was made by the Board on October 28, 2019.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened by a wood bulkhead. The high marsh and woody upland community adjacent to the existing bulkhead is in a transitional stage primarily consisting of a *Phragmites australis*, Common Reed grass monoculture.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees removed within the RPA: 0
- Evaluation of existing riparian buffer disposition: Staff evaluated the area of noncompliance during the site visit and did not observe any unauthorized removal of jurisdictionally regulated vegetation associated with the unpermitted improvements.

Evaluation and Recommendation

The CBPA Board held a Show Cause hearing on October 28, 2019 and a finding of noncompliance with the provisions of the CBPA Ordinance was found. As a result, the Board ordered a restoration hearing. As a component of the restoration hearing, an after-the-fact variance request was submitted for the unauthorized tiered wood deck and associated steps.

The current condition of the 100-foot Resource Protection Area (RPA) buffer primarily consists of managed turf landward of the existing bulkhead and transitions into a vegetative buffer along the existing bank feature primarily covered by mature Azalea shrubs. The marsh area adjacent to the existing bulkhead is vegetated with *Phragmites australis*, Common Reed grass, and the applicant's consultant has provided a wetland restoration proposal to restore approximately 0.06 acres of wetlands along the shoreline with a 2-year monitoring agreement. The wetland restoration is coupled with a woody planting mitigation proposal of large shrubs within the RPA as a component of the restoration hearing and after-the-fact variance request for the unauthorized improvements. A copy of the Mitigation Proposal is provided below for the Board's review.

Kathleen E. & Trudy M. Hoff

Agenda Item 8

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The after-the-fact tiered wood deck and steps are approximately 435 square feet in size and was constructed to transverse approximately 65 linear feet of grade transitioning from elevation 15.3 feet to approximately 5.54 feet above sea level. The applicant's agent has provided that the after-the-fact tiered wood deck and steps are located within the 50-foot landward buffer and during the site visit, Staff did not observe any signs of erosion due to the construction of the improvements.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as several variances to the CBPA Ordinance have been granted in the vicinity of this lot to redevelop property within the RPA since the adoption of the Ordinance. In addition, several properties have wood piers between 32 feet to 164 feet in length for access to the water. While this site does not have pier for water access as other property owners in the vicinity have constructed, the retention of the existing tiered deck and steps does provide this property owner with a reasonable alternative for access and enjoy the shoreline.
- 2) The applicant's agent provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant because "*the variance is asked for due to the acquisition of a rear entertainment area that did not require the installation of impervious cover or the construction of earthen steps which require entrenching of the RPA.*" Staff offers that the lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because "*all structures installed were done so with raised base or foundation using impervious cover materials (decking).*" Staff evaluated this finding of the CBPA Ordinance based off the applicant's redevelopment of this lot and retention of existing vegetation. A typical request to redevelop within the RPA buffer often encroaches further seaward. In this case, redevelopment was held to a no net increase in impervious cover and no further encroachment seaward with the primary structure, excluding the after-the-fact variance request.
- 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 "*all structures were installed using a raised foundation or base. No mechanized or tracked equipment was used to install the structures and no fill was added or removed creating an unstable soil structure causing slope erosion.*" Outboard of the 435 square foot size of the tiered deck and steps, Staff agrees with the applicant's agent regarding the minimal amount of land disturbance associated with the construction of the improvements and all activity strictly defined by the construction footprint. Staff offers that the strict adherence of land disturbance to the construction footprint, albeit after-the-fact, does comply with the general performance standards set forth within the CBPA Ordinance.
- 5) The applicant's agent provided that "*raised construction was used*" as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that the minimal amount of land disturbance and the provided mitigation plan provides merit towards a no net increase in nonpoint source pollution load from the unauthorized improvements.

Given the above comments, Staff offers the following 2 reasonable and appropriate conditions for the Board's consideration towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. Upon granting of a variance, an as-built survey shall be submitted to the Department of Planning, Development Services Center within 90 days from the date of this hearing. Once the as-built survey has been received and reviewed, a **CBPA / CIVIL Permit** must be obtained within 30 days.
2. Buffer restoration shall be installed per the following.

Upland Restoration

Mitigation plantings shall be installed in the RPA on a 2:1 ratio totaling 30 stems.

All stems shall be native species. Stem size requirements shall be as follows:

1 stem = 1, 2" caliper tree or 2, 1-gallon shrubs

All plantings will be installed and monitored for 2 consecutive growing seasons, showing no less than a 95% survivability. Monitoring reports shall be submitted to the Environmental Planning Coordinator at the end of each growing season and no later than October 31 of each consecutive year.

Wetland Restoration

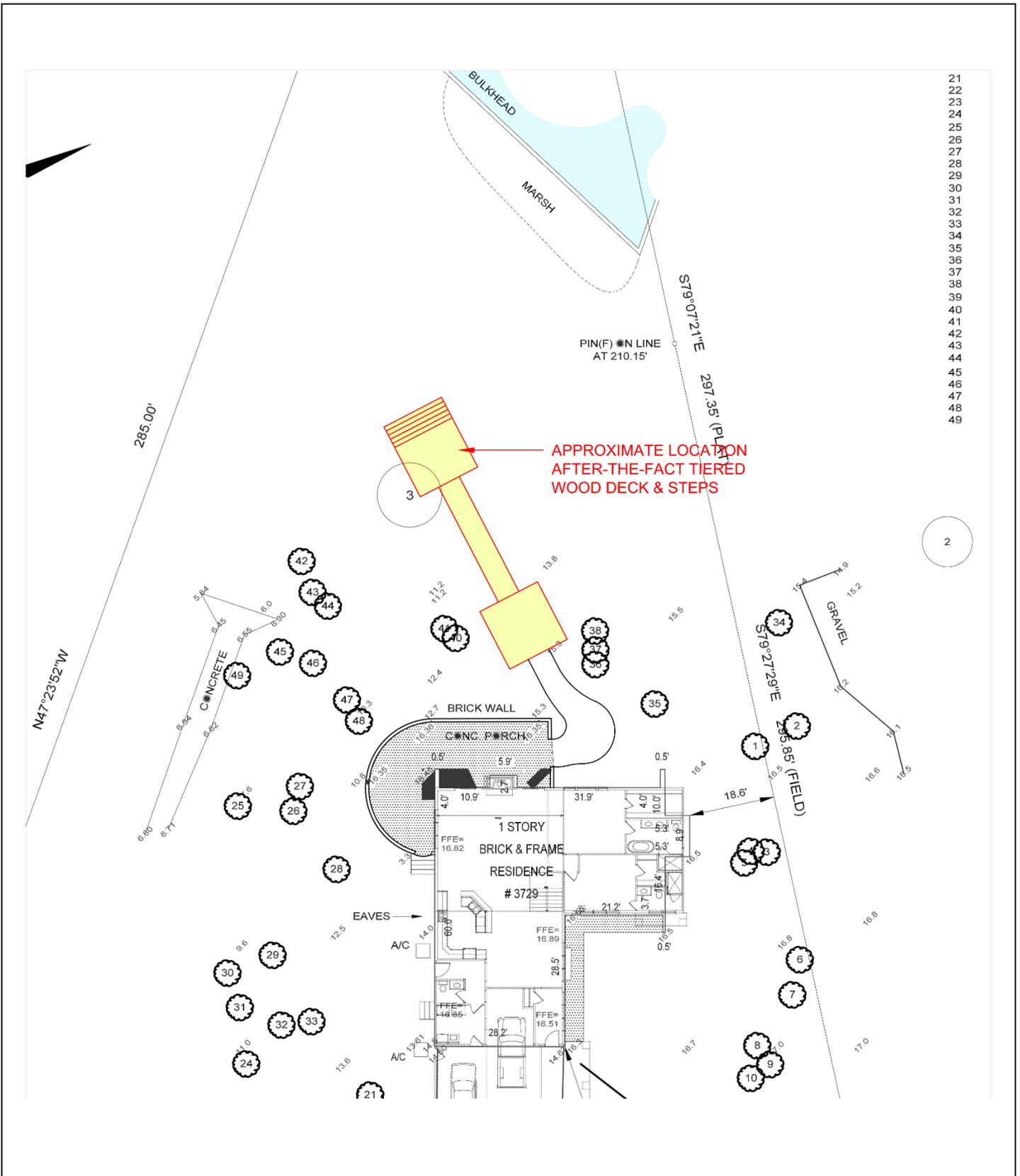
The property owner shall restore +/-0.06 acres of wetlands found along the shoreline of this property. Currently this area consists of a wetland structure that is dominated by common reed (*Phragmites australis*). Subject to obtaining the required permissions and permits, and unless an alternative treatment is approved with the concurrence of the Department of Planning & Community Development Staff, this area shall be sprayed using an aquatic herbicide and subsequent invasive vegetation removed. The wetland area shall then be planted using native obligate wetland species on a 2'x 2' spacing. The area shall then be entered into a 2-year monitoring agreement with a success criterion of no less than 85% native, non-invasive cover using a meter square analysis methodology. Monitoring reports shall be submitted to the Environmental Planning Coordinator at the end of each growing season and no later than October 31 of each consecutive year.

***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



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2



October 25, 2019

Mr. PJ Scully
Environmental Planning Coordinator
City of Virginia Beach
Planning and Community Development
2875 Sabre Street
Suite 500
Virginia Beach, VA 23452

**RE: Mitigation Proposal for Undocumented Deck
Hoff Property – 3729 Lynnfield Drive
Virginia Beach, VA**

Mr. Sculley,

In response to the Notice to Comply letter sent to my client dated September 10, 2019 regarding the undocumented structure (deck) constructed in the rear portion of the residence we offer the following.

Impact Summary

In the spring of 2019 in concurrence several permitted home renovations, 15 azalea shrubs were removed from the rear of the structure and an approximately 435 sqft wooden deck was constructed in the landward 50' of the Resource Protection Area (RPA). This structure was built structurally to code; however, no permits were obtained for this structure and no coordination was made with the Environmental Planning Coordinator in the form of site plan approval or mitigation for this RPA encroachment. On September 10, 2019 a Notice to Comply letter was authored to the Hoff's asking for compliance to city ordinance. On October 2, 2019 contact was made with Mr. Scully and a proposal of mitigation was made to the City on behalf of the Hoff's. Let the following serve as a proposed mitigation plan outline for the aforementioned violation.

Plantings

Mitigation plantings will be installed in the RPA on a 2:1 ratio totaling 30 stems. All stems will be native species. Stem size requirements will be as follows:

1 stem = One 2" caliper tree or two 1gal shrubs

All plantings will be installed and monitored for two consecutive growing seasons, showing no less than a 95% survivability. Monitoring reports will be submitted to the Environmental Planning Coordinator at the end of each growing season by October 31 of each consecutive year.

Wetland Restoration

The property owner will agree to restore +/-0.06ac of wetlands found along the shoreline of their property. Currently this area consists of a wetland structure that is dominated by common reed (*Phragmites australis*). This area will be sprayed using an aquatic herbicide and subsequent invasive vegetation removed. The wetland area will then be planted using native obligate wetland species on a 2'x 2' spacing. The area will then be entered into a 2-year monitoring agreement with a success criteria of no less than 85% native, non-invasive cover using a meter square analysis methodology. Monitoring reports will be submitted to the Environmental Planning Coordinator at the end of each growing season by October 31 of each consecutive year.

Permits

The Hoffs will retroactively pay for all permitting that would have been required as well as ensure deck was constructed to City code.

In conversation had with the City on October 2, 2019, the only recommendation asked for in regards to code compliance was the installation of a "level spreader" on the seaward side of the deck where it is deemed applicable. This change will be made and photos sent to the Environmental Planning Coordinator in a timely manner.

Should you have any questions, comments or concerns regarding this proposed mitigation plan, please feel free to contact me at (757) 871-9103 or via email at brian@ecosolutionsva.com to arrange a meeting.

With regards,

A handwritten signature in black ink, appearing to read 'Brian Daliege', with a stylized flourish at the end.

Brian Daliege

Environmental Specialist



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: Kathleen Hoff
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-subsidary 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-subsiary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach list if necessary)*

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

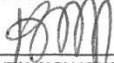
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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

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

	Kathleen Hoff	11/8/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Kathleen E. & Trudy M. Hoff

Agenda Item 8

Page 120

Variance Request

Encroachment into the Resource Protection Area (RPA) with an after-the-fact variance request to retain an unauthorized wood deck expansion and asphalt drive.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

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

GPIN

1497-57-6960

SITE AREA

31,183 square feet or 0.71 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

29,033 square feet or 0.66 acres

EXISTING IMPERVIOUS COVER OF SITE

4,568 square feet or 15.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,258 square feet or 24.8 percent of site

Area of Redevelopment in RPA

264 square feet

Area of New Development in RPA

1,802 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- After-the-fact wood deck expansion
- After-the-fact asphalt drive

CBPA Ordinance Variance History

No known Chesapeake Bay Preservation Area (CBPA) Board variance history to report. A Show Cause hearing was held and a finding of Noncompliance was made by the Board on October 28, 2019.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X, 0.2% annual chance, and Zone AE – Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is hardened by a rip rap revetment.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees removed within the RPA: 0
- Evaluation of existing riparian buffer disposition: Staff evaluated the area of noncompliance during the site visit and did not observe any unauthorized removal of jurisdictionally regulated vegetation associated with the unpermitted improvements.

Evaluation and Recommendation

The CBPA Board held a Show Cause hearing on October 28, 2019 and a finding of Noncompliance with the provisions of the CBPA Ordinance was determined. As a result, a restoration hearing was ordered. As a component of the restoration hearing, an after-the-fact variance request was submitted for the unauthorized wood deck expansion and asphalt drive.

The current condition of the 100-foot Resource Protection Area (RPA) buffer consists of managed turf and mature canopy trees. Within the 100-foot RPA buffer, Staff estimates the amount of impervious cover to be 1,802 square feet. Of the 1,802 square feet, the wood deck was expanded by approximately 1,007 square feet – approximately 66 square feet in the 50-foot seaward buffer and 941 square feet in the 50-foot landward buffer. The asphalt drive encroaches in the 100-foot RPA buffer by approximately 895 square feet – approximately 169 square feet in the 50-foot seaward buffer and 726 square feet in the 50-foot landward buffer. The after-the-fact improvements are approximately 42 linear feet landward of the existing rip rap revetment.

The property does not exhibit any signs of erosion or extensive run-off detrimental to the adjacent tidal waters as a result of the after-the-fact improvements. Staff is of the opinion that the amount of land disturbance associated with the construction activities was relatively defined within the unpermitted construction footprints.

Should the Board desire to consider granting this variance request, the following comments relative to the findings of the CBPA Ordinance specific to this variance request are offered 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, as several lots within this neighborhood are entirely within the 100-foot RPA.
- 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 necessitated by the lot being platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) Staff evaluated this finding of the CBPA Ordinance based off the applicant's redevelopment of this lot and retention of existing vegetation as merit towards the variance being the minimum necessary to afford relief. A typical request to redevelop within the RPA buffer within this neighborhood often results in further encroachment into the 100-foot RPA buffer.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the encroachments into the RPA, specifically the 50-foot seaward buffer, is typical of a Small Project in the RPA. The amount of impervious cover, 235 square feet, is limited. In addition, the minimal amount of land disturbance associated with the construction of the improvements and all activity strictly defined by the construction footprint, Staff offers that the strict adherence of land disturbance to the construction footprint, albeit after-the-fact, does comply with the general performance standards set forth within the CBPA Ordinance.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, Staff is of the opinion that 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, Staff offers the following 5 reasonable and appropriate conditions for the Board's consideration towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. Upon granting of a variance, an as-built survey shall be submitted to the Department of Planning, Development Services Center within 90 days from the date of this hearing. Once the as-built survey has been received and reviewed, a **CBPA / CIVIL Permit** shall be obtained within 30 days. Failure to comply with this condition may result in a show cause hearing.
2. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA:
1,802 square feet x 200 percent = 3,604 square feet.

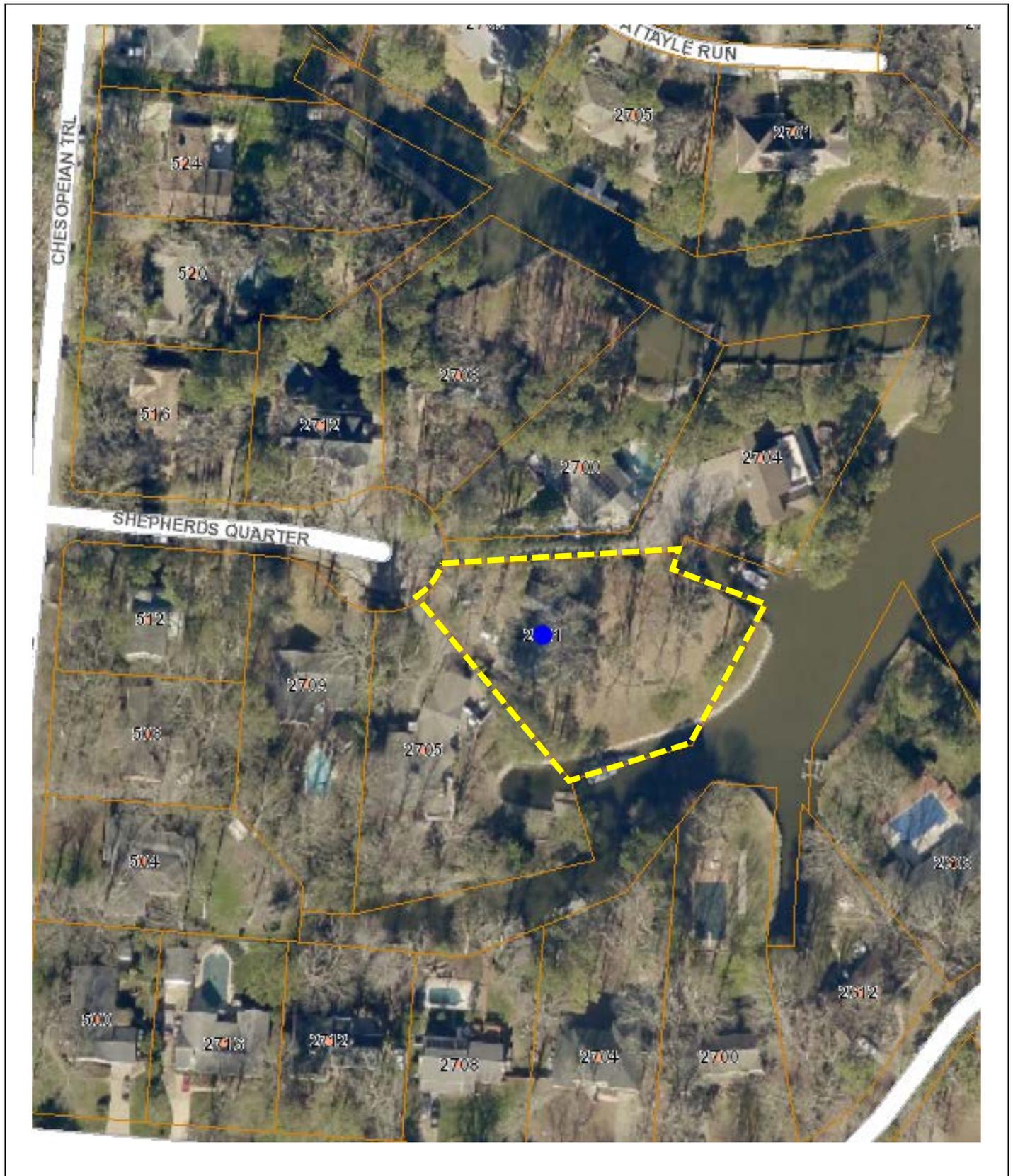
Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **9 canopy trees, 9 understory trees, 18 large shrubs, and 27 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.

3. Submitted concurrent with the as-built survey 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. ** 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 \$412.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

***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 Andrea E. Lunsford

DISCLOSURE STATEMENT FORM

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

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

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

SECTION 1 / APPLICANT DISCLOSURE

FOR CITY USE ONLY / All disclosures must be updated two (2) weeks prior to any Planning Commission and City Council meeting that pertains to the application(s).		
<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE: _____
<input type="checkbox"/>	NO CHANGES AS OF	DATE: _____
<input type="checkbox"/>	REVISIONS SUBMITTED	DATE: _____



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

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

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

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
- (A) List the Property Owner's name:-----
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-subsidary ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach list if necessary)*

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



CERTIFICATION:

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

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

	<i>Andrea E. Lunsford</i>	11/08/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Robert L. & Andrea E. Lunsford

Agenda Item 9

Page 132



Address of Noncompliance **3729 Lynnfield Drive**
Property Owner **Kathleen E. & Trudy M. Hoff**
Public Hearing **November 25, 2019**
City Council District **Lynnhaven**

Agenda Item

10

Noncompliance with the CBPA Ordinance

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

Restoration Hearing

Noncompliance found.

On October 28, 2019 the Chesapeake Bay Preservation Area (CBPA) Board made a finding of Noncompliance with the provisions of the CBPA Ordinance for the unauthorized improvements.

A civil charge was imposed, and a Restoration Hearing was ordered by the CBPA Board for the property owner – Kathleen E. & Trudy M. Hoff.

The civil charge has been paid.

Lot Description

Subdivision of Lynnfield – Lot 3, 3729 Lynnfield Drive.

Lot Recordation

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

GPIN

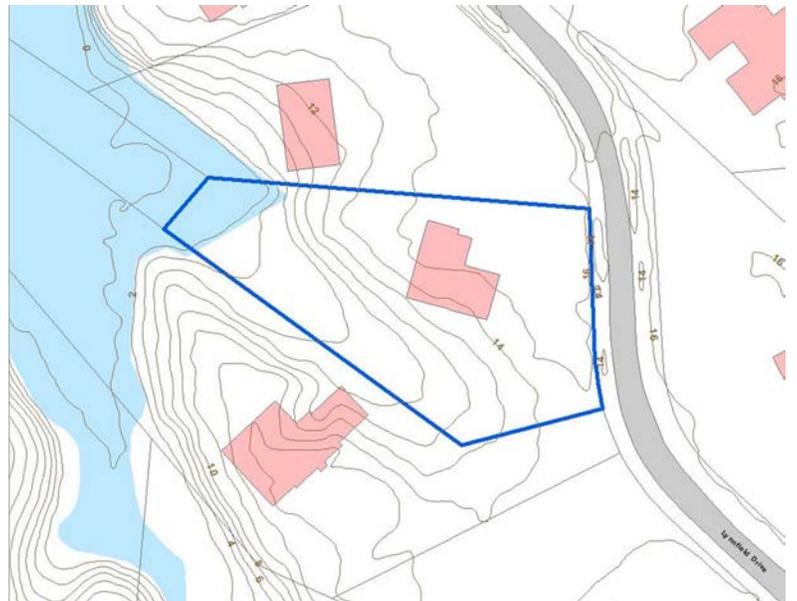
1489-40-2271

Applicant's Agent

Self-represented

Staff Planner

PJ Scully



Environmental Conditions

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees removed within the RPA: 0
- Evaluation of existing riparian buffer disposition: Staff evaluated the area of noncompliance during the site visit and did not observe any unauthorized removal of jurisdictionally regulated vegetation associated with the noncompliance.

Shoreline

Shoreline is hardened by a wood bulkhead. The high marsh and woody upland community adjacent to the existing bulkhead is in a transitional stage primarily consisting of a *Phragmites australis*, Common Reed grass monoculture.

Soil Type(s)

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

Flood Zone

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

CBPA Ordinance Variance History

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 below.

Chronology of Events

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.
October 28, 2019	Show Cause hearing was held and a noncompliance found. A motion was made at the October 28, 2019 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the

unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance.

A civil charge was imposed, and a Restoration Hearing for the November 25, 2019 public hearing was ordered by the CBPA Board for the property owner – Kathleen E. & Trudy M. Hoff.

Evaluation and Recommendation

The subject area of the unauthorized tiered wood deck, wood steps and associated land disturbance occurred within the 100-foot Resource Protection Area (RPA) buffer of the Chesapeake Bay watershed. Staff estimates that the area of land disturbance associated with the unauthorized improvements is minimal with all construction activity having occurred within the top of bank feature.

A Chesapeake Bay Preservation Area (CBPA) variance application and Mitigation Proposal was received addressing the after-the-fact improvements – tiered wood deck and steps. The Mitigation Proposal provided the following response to the unauthorized improvements.

- **Impact Summary**

“In the spring of 2019 in concurrence several permitted home renovations, 15 azalea shrubs were removed from the rear of the structure and an approximately 435 sqft wooden deck was constructed in the landward 50’ of the Resource Protection Area (RPA). This structure was built structurally to code; however, no permits were obtained for this structure and no coordination was made with the Environmental Planning Coordinator in the form of site plan approval or mitigation for this RPA encroachment. On September 10, 2019 a Notice to Comply letter was authored to the Hoff’s asking for compliance to city ordinance. On October 2, 2019 contact was made with Mr. Scully and a proposal of mitigation was made to the City on behalf of the Hoff’s. Let the following serve as a proposed mitigation plan outline for the aforementioned violation.”

- **Plantings**

“Mitigation plantings will be installed in the RPA on a 2:1 ratio totaling 30 stems. All stems will be native species. Stem size requirements will be as follows:

1 stem = One 2” caliper tree or two 1gal shrubs

All plantings will be installed and monitored for two consecutive growing seasons, showing no less than a 95% survivability. Monitoring reports will be submitted to the Environmental Planning Coordinator at the end of each growing season by October 31 of each consecutive year.”

- **Wetland Restoration**

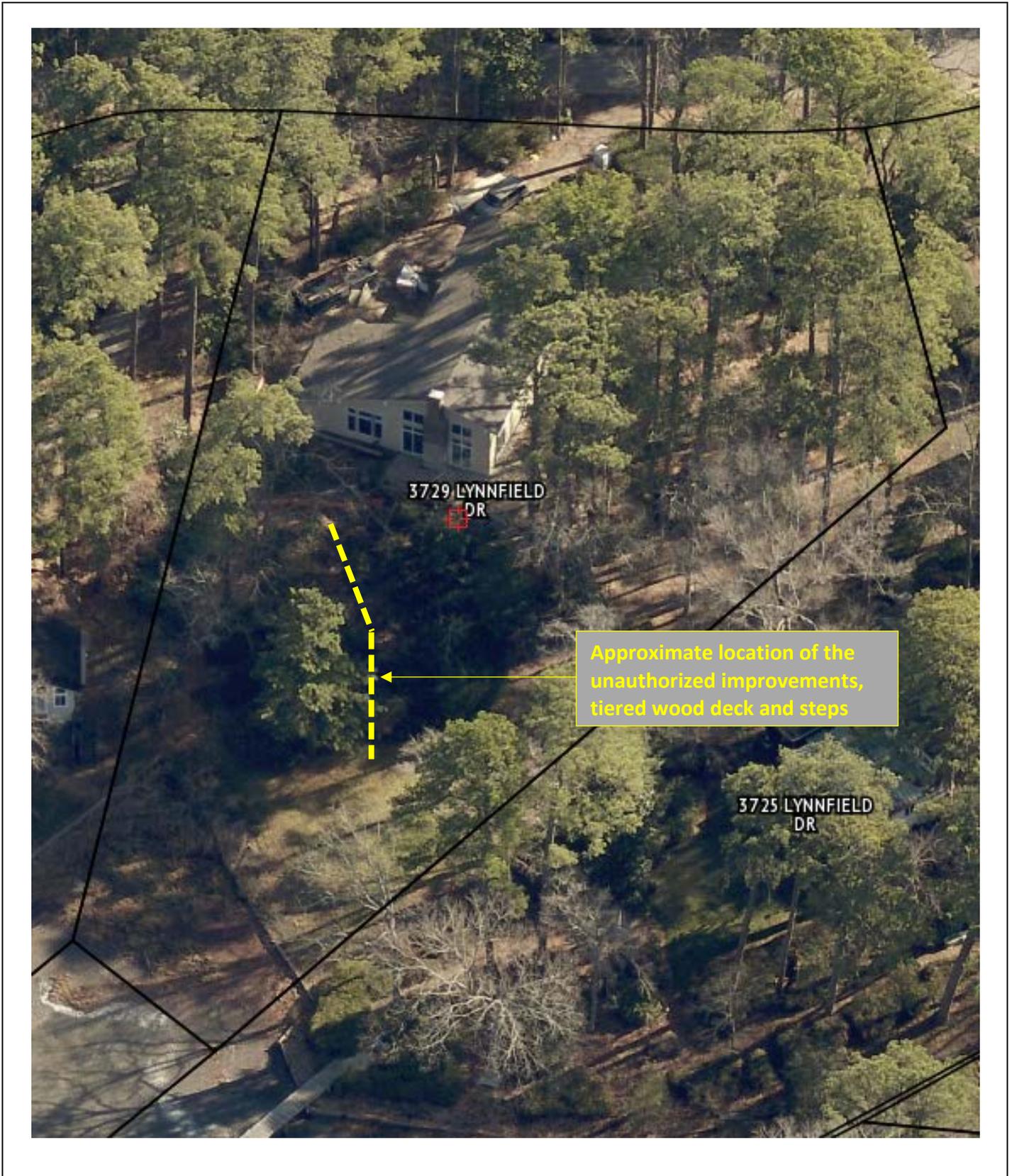
*The property owner will agree to restore +/-0.06ac of wetlands found along the shoreline of their property. Currently this area consists of a wetland structure that is dominated by common reed (*Phragmites australis*). This area will be sprayed using an aquatic herbicide and subsequent invasive vegetation removed. The wetland area will then be planted using native obligate wetland species on a 2’x 2’ spacing. The area will then be entered into a 2-year monitoring agreement with a success criteria of no less than 85% native, non-invasive cover using a meter square analysis methodology. Monitoring reports will be submitted to the Environmental Planning Coordinator at the end of each growing season by October 31 of each consecutive year.*

Should the Board approve the aforementioned agenda item 8 after-the-fact CBPA variance, Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives. However, should the after-the-fact application be denied, Staff recommends that the unauthorized improvements be removed, and the site stabilized with vegetative cover within 30 days from the date of the November 25, 2019 CBPA Board public hearing.

Site Aerial



Exhibit – Approximate Area of Unauthorized Improvements





Address of Noncompliance **2701 Shepherds Quarter**
Property Owner **Robert L. & Andrea E. Lunsford**
Public Hearing **November 25, 2019**
City Council District **Beach**

Agenda Item

11

Noncompliance with the CBPA Ordinance

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

Restoration Hearing

Noncompliance found.
On October 28, 2019 the Chesapeake Bay Preservation Area (CBPA) Board made a finding of Noncompliance with the provisions of the CBPA Ordinance for the unauthorized improvements.

A civil charge was imposed, and a Restoration Hearing was ordered by the CBPA Board for the property owner – Robert L. and Andrea E. Lunsford.

The civil charge has been paid.

Lot Description

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

Lot Recordation

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

GPIN

1497-57-6960

Applicant's Agent

Self-represented

Staff Planner

PJ Scully



Environmental Conditions

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees removed within the RPA: 0
- Evaluation of existing riparian buffer disposition: Staff evaluated the area of noncompliance during the site visit and did not observe any unauthorized removal of jurisdictionally regulated vegetation associated with the noncompliance.

Shoreline

Shoreline is hardened by a rip rap revetment.

Soil Type(s)

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

Flood Zone

Multiple Zones – Zone X, 0.2% annual chance, and Zone AE – Base Flood Elevation (BFE): 7

CBPA Variance History

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 below.

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.
October 28, 2019	Show Cause hearing was held and a noncompliance found. A motion was made at the October 28, 2019 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance.

A civil charge was imposed, and a Restoration Hearing for the November 25, 2019 public hearing was ordered by the CBPA Board for the property owner – Robert L. and Andrea E. Lunsford.

Evaluation and Recommendation

The subject area of the unauthorized wood deck expansion and asphalt drive occurred within the 100-foot Resource Protection Area (RPA) buffer and the City of Virginia Beach’s variable width buffer of the Chesapeake Bay watershed. Staff estimates that the area of land disturbance associated with the unauthorized improvements is less than 2,500 with most of the land disturbance for the unauthorized improvements defined by the associated construction footprints.

Should the Board approve the aforementioned agenda item 9 after-the-fact CBPA variance, Staff recommends that the conditions associated with that Staff report qualify as restoration initiatives. However, should the after-the-fact application be denied, Staff recommends that the unauthorized improvements be removed or restored to the original conditions prior to the unauthorized construction activity, and the site stabilized with vegetative cover within 90 days from the date of the November 25, 2019 CBPA Board public hearing.

AS NEEDED, PAGE LEFT BLANK