

Chesapeake Bay Preservation Area Board Agenda

December 18, 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 **Wednesday, December 18, 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 **December 18, 2019**

9:00 AM INFORMAL STAFF BRIEFING OF PUBLIC HEARING AGENDA ITEMS. STAFF'S BRIEFING IS HELD IN THE CITY MANAGER'S CONFERENCE ROOM.

2020 Chesapeake Bay Preservation Area Board Informal Staff Briefings

Beginning January 2020, the Informal Staff Briefing for the Chesapeake Bay Preservation Area Board public hearing will be held at the City of Virginia Beach, STiR Office, Large Conference Room 110 b, 2408 Courthouse Drive.

10:00 AM FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS. FORMAL REVIEW IS HELD IN THE CITY COUNCIL CHAMBER.

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

ADMISTRATIVE AGENDA ITEMS

1. Election of 2020 Chesapeake Bay Preservation Area Board Officers

Chairman, Vice Chairman and Secretary

Staff Report – page 7

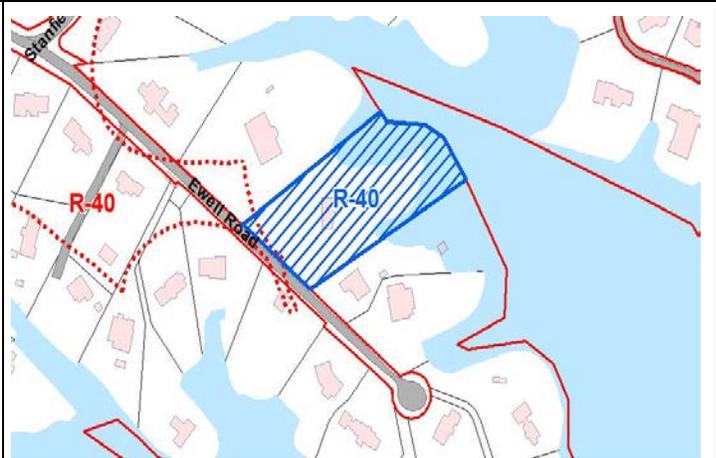
OLD BUSINESS AGENDA ITEMS

2. NLSM Conservation, LLC
[Applicant & Property Owner]

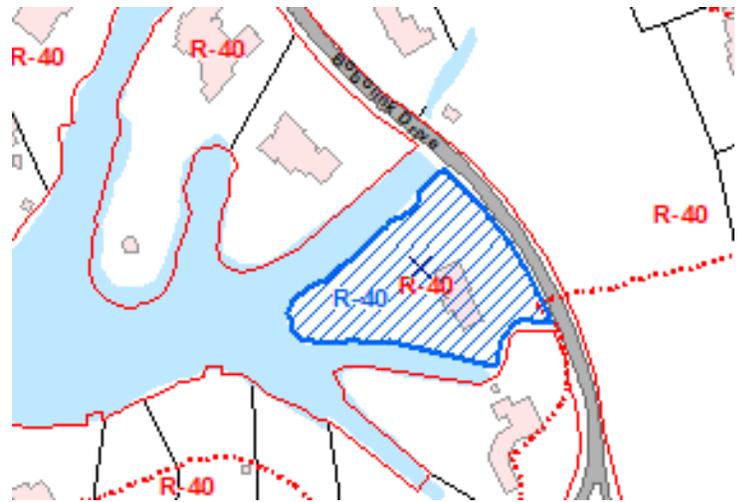
4152 Ewell Road
GPIN 1479-90-3329
Council District – Lynnhaven
Accela Record 2019-CBPA-00045

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

Staff Planner – PJ Scully
Staff Report – page 9

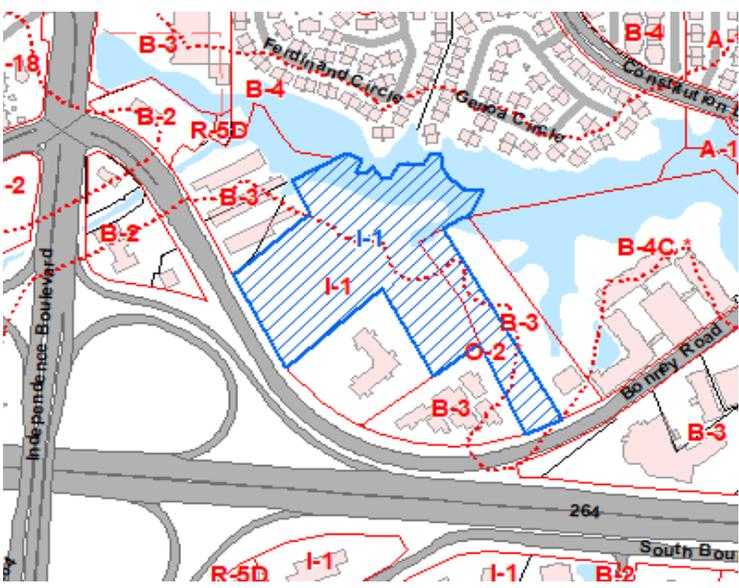


3. Krambias Properties, LLC
 [Applicant & Property Owner]
921 Bobolink Drive
 GPIN 2418-22-7567
 Council District – Lynnhaven
 Accela Record 2019-CBPA-00035
Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop the single-family residence and construct associated accessory structures.
Staff Planner – PJ Scully
Staff Report – page 29

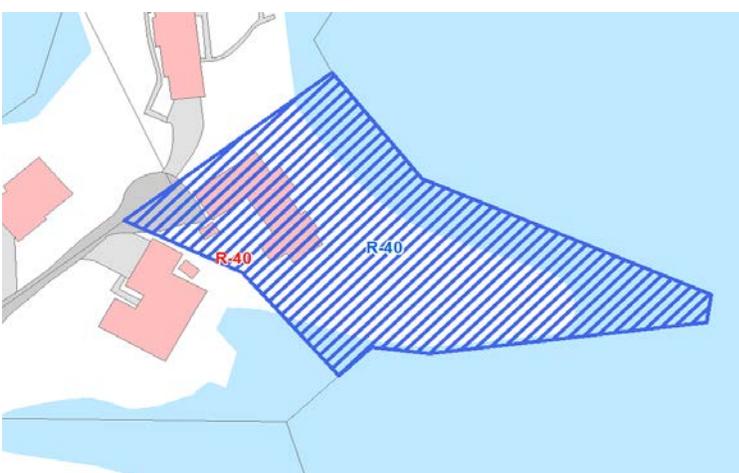


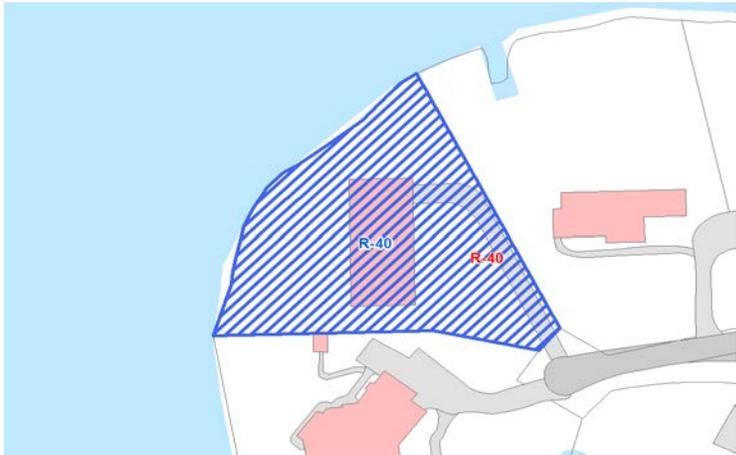
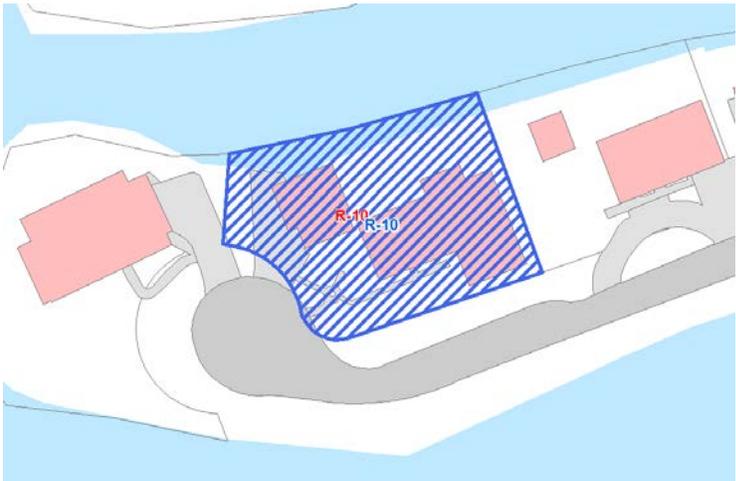
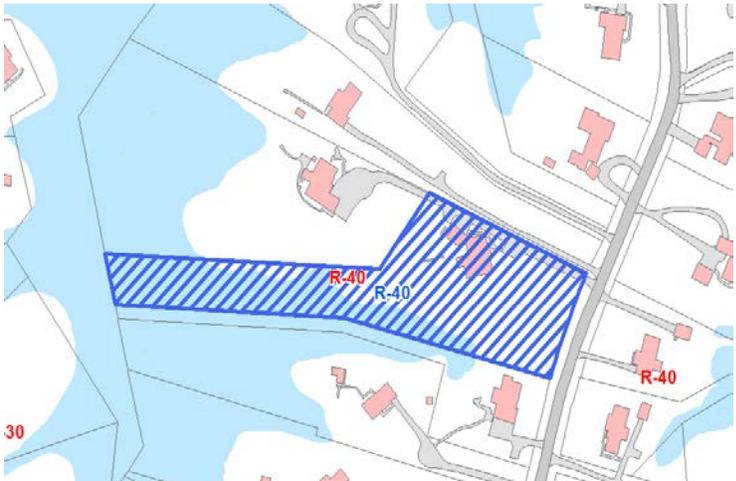
NEW BUSINESS AGENDA ITEMS

4. Olympia Development Co.
 [Applicant]
City of Virginia Beach
 [Property Owner]
Bonney Road
 GPIN 1477-52-4516
 Council District – Lynnhaven
 Accela Record 2019-CBPA-00048
Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the development of three office buildings and associated infrastructure.
Staff Planner – PJ Scully
Staff Report – page 31



5. Erik & Wei Chen
 [Applicant & Property Owner]
1501 Quail Point Road
 GPIN 2418-04-0096
 Council District – Lynnhaven
 Accela Record 2019-CBPA-00055
Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the development of a new home, pool, and driveway
Staff Planner – PJ Scully
Staff Report – page 33



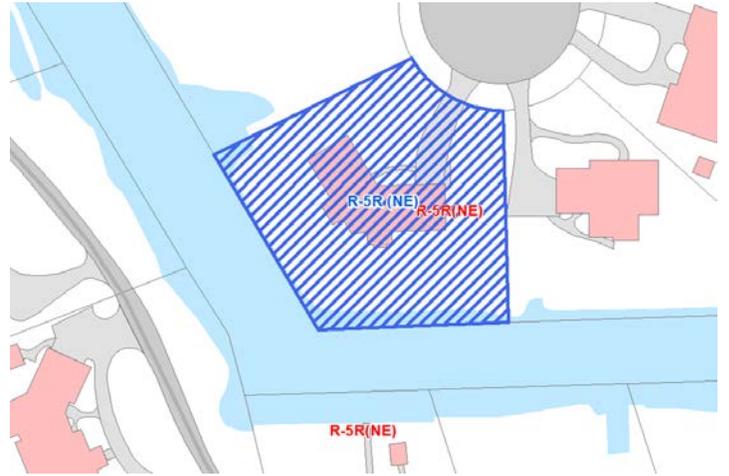
<p>6. Thomas H. Atherton, III [Applicant] Penguin, LLC [Property Owner]</p> <p>1320 Penguin Circle GPIN 2418-21-5369 Council District – Lynnhaven Accela Record 2019-CBPA-00056</p> <p>Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the construction of new building additions, patio, and driveway</p> <p>Staff Planner – PJ Scully Staff Report – page 35</p>	
<p>7. Regina C. Wrench [Applicant & Property Owner]</p> <p>2980 Buccaneer Road GPIN 1499-17-5904 Council District – Lynnhaven Accela Record 2019-CBPA-00057</p> <p>Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the construction of a pool</p> <p>Staff Planner – PJ Scully Staff Report – page 51</p>	
<p>8. David M. Kilby [Applicant & Property Owner]</p> <p>3065 Bray Road GPIN 1498-20-9716 Council District – Lynnhaven Accela Record 2019-CBPA-00058</p> <p>Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the development of a circular driveway and wood deck</p> <p>Staff Planner – PJ Scully Staff Report – page 65</p>	

9. Kimberly Miller
[Applicant & Property Owner]

512 58th Street
GPIN 2419-60-3154
Council District – Lynnhaven
Accela Record 2019-CBPA-00062

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer for the expansion of the existing driveway

Staff Planner – PJ Scully
Staff Report – page 81





2019 Chesapeake Bay Preservation Area Board Members

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

2020 Chesapeake Bay Preservation Area Board Election of Officers

Chairman
Vice Chairman
Secretary

2020 Chesapeake Bay Preservation Area Board Members

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

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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.

The variance request was deferred at the November 25, 2019 Public Hearing to the December 18, 2019 Public Hearing.

On 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

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

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. Due to travel, the applicant was unable to attend the November public hearing and the variance request was deferred to the December 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 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."* Staff concurs and notes that the footprint of the dwelling and amount of impervious surface is in line with other residential lots in the vicinity.
- 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."* Staff concurs. 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"* avoids disturbance closer to the water and allows seaward buffer to aid in managing 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.

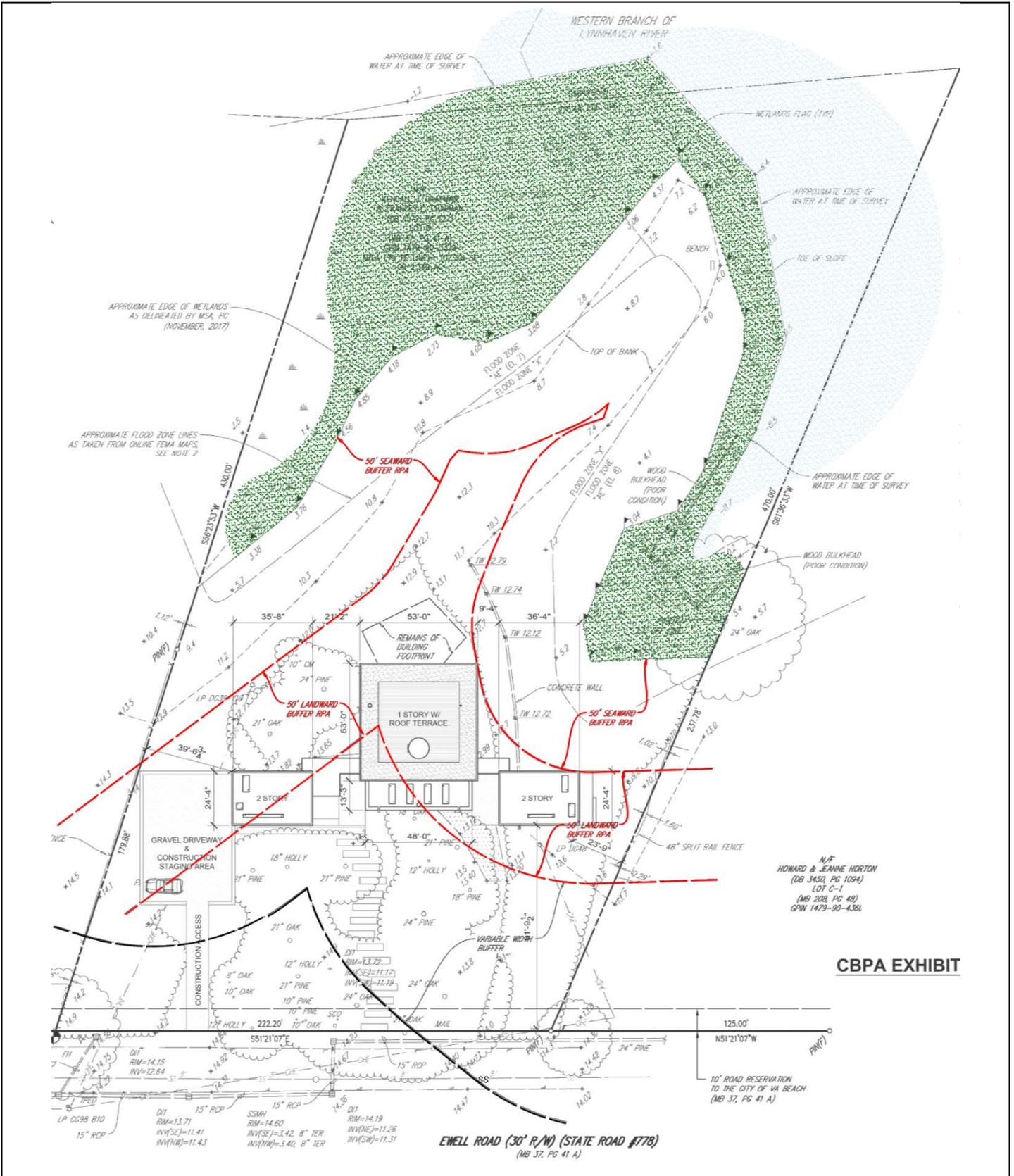
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent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



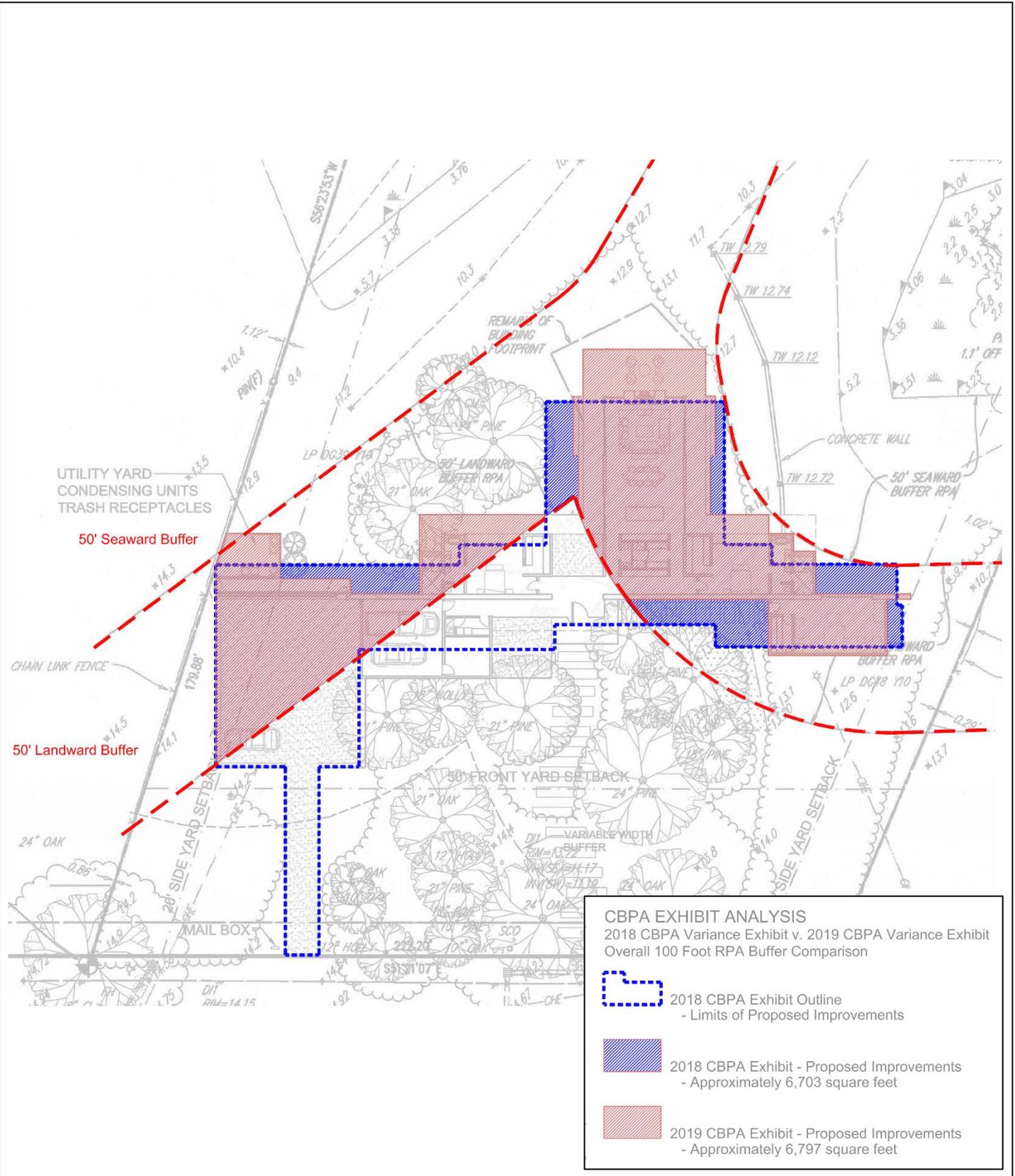


CBPA EXHIBIT

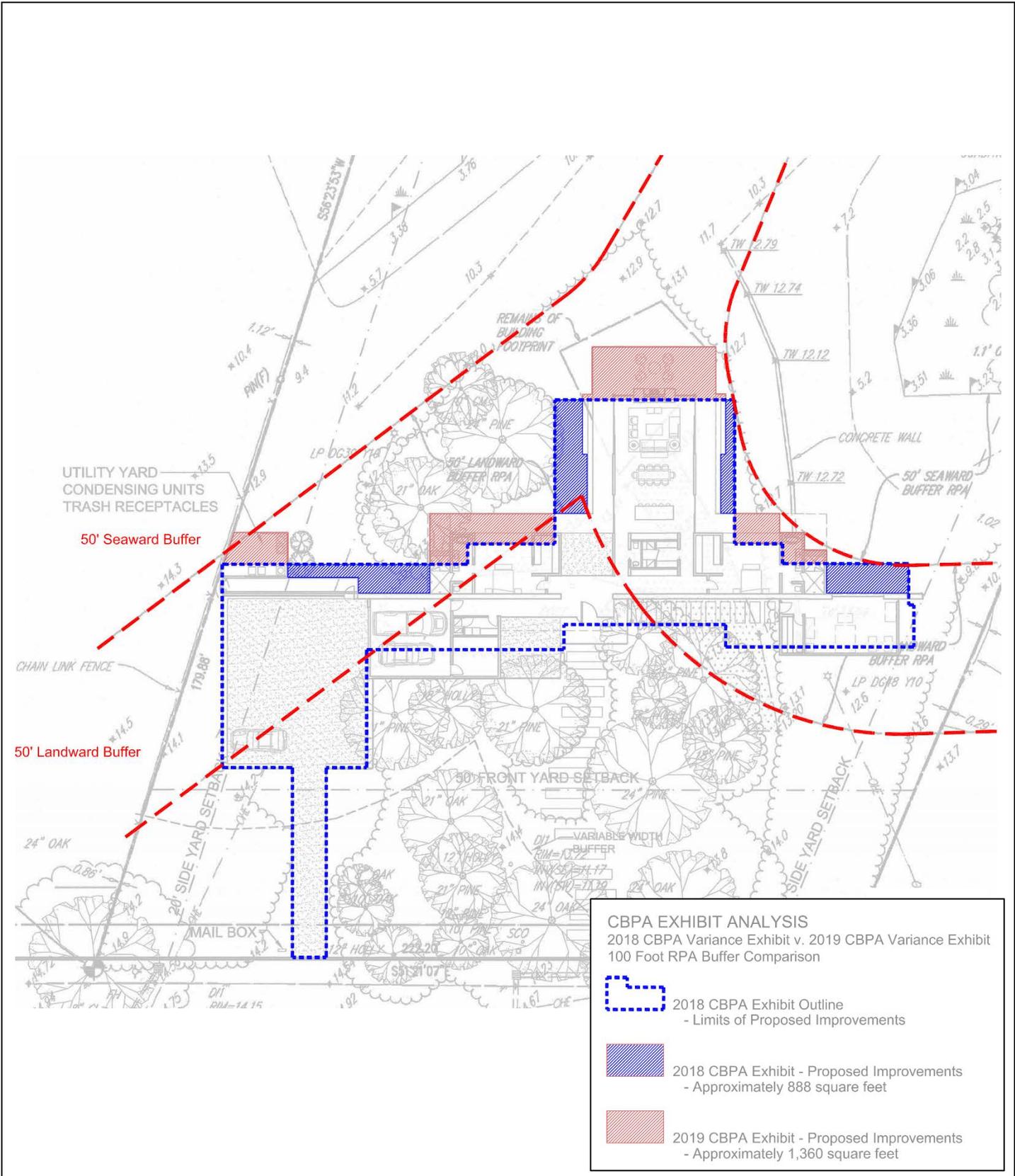
CBPA Exhibit – Architectural Rendering



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.

SECTION 1 / APPLICANT DISCLOSURE

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

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



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

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

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

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

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

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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



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

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

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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



CERTIFICATION:

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

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

	Brian Ferguson	3 Sep 19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

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The applicant is requesting a deferral of this application to the Monday, January 27, 2020 CBPA Board Public Hearing to allow additional time to address Staff's concerns. Staff supports the request to defer.

Variance Request

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

Applicant's Agent

Eddie Bourdon

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 193

Recorded 7/30/1926

GPIN

2418-22-7567

SITE AREA

62,550 square feet or 1.436 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

51,417 square feet or 1.180 acres

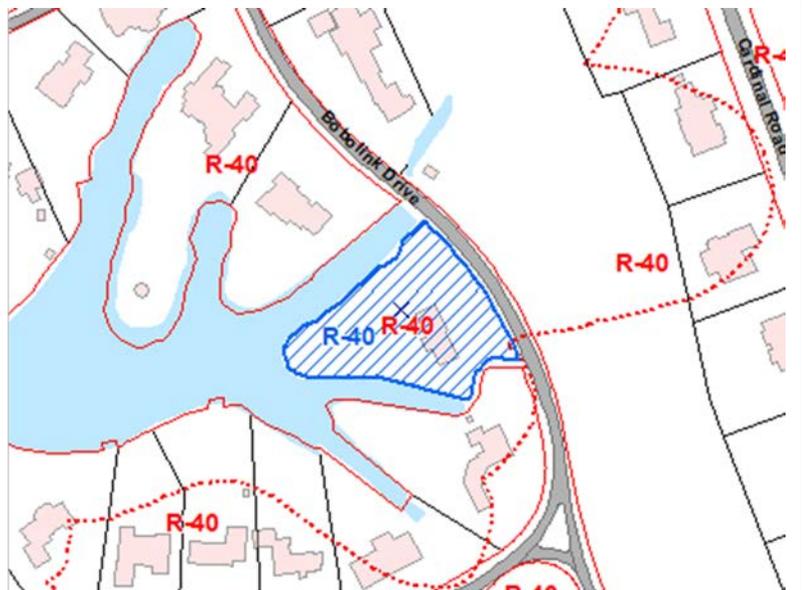
EXISTING IMPERVIOUS COVER OF SITE

7,158 square feet or 13.9 percent of site

Variance Request History

This variance request was deferred at the following CBPA Public Hearings

- August 26, 2019 Public Hearing.
- September 23, 2019 Public Hearing.
- November 25, 2019 Public Hearing.



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Property Owner **City of Virginia Beach**
 Applicant **Olympia Development**
 Address **Bonney Road**
 Public Hearing **December 18, 2019**
 City Council District **Lynnhaven**

Agenda Item

4

The applicant is requesting a deferral of this application to the Monday, January 27, 2020 CBPA Board Public Hearing to allow additional time to address Staff’s concerns. Staff supports the request to defer.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct 3 office buildings and associated infrastructure

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 298, Page 9
 Recorded 8/13/2001

GPIN

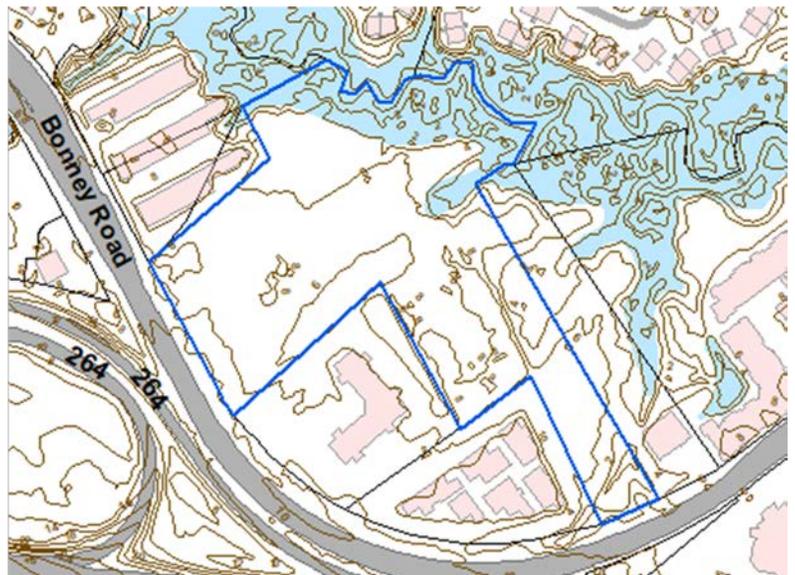
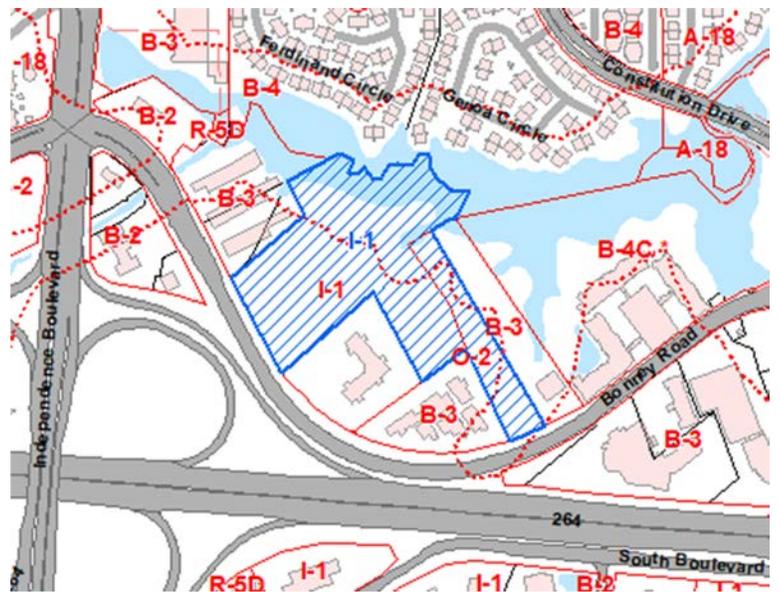
1477-52-4516

SITE AREA

512,699 square feet or 11.8 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

435,992 square feet or 10.0 acres



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Applicant & Property Owner **Erik & Wei Chen**
 Address **1501 Quail Point Road**
 Public Hearing **December 18, 2019**
 City Council District **Lynnhaven**

Agenda Item

5

The applicant is requesting a deferral of this application to the Monday, January 27, 2020 CBPA Board Public Hearing to allow additional time to address Staff’s concerns. Staff supports the request to defer.

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer with the construction of a new single-family residence and accessory structures.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 47, Page 58

Recorded 8/26/1959

Instr. No. 200209123031729

Recorded 9/12/2002

GPIN

2418-04-0096

SITE AREA

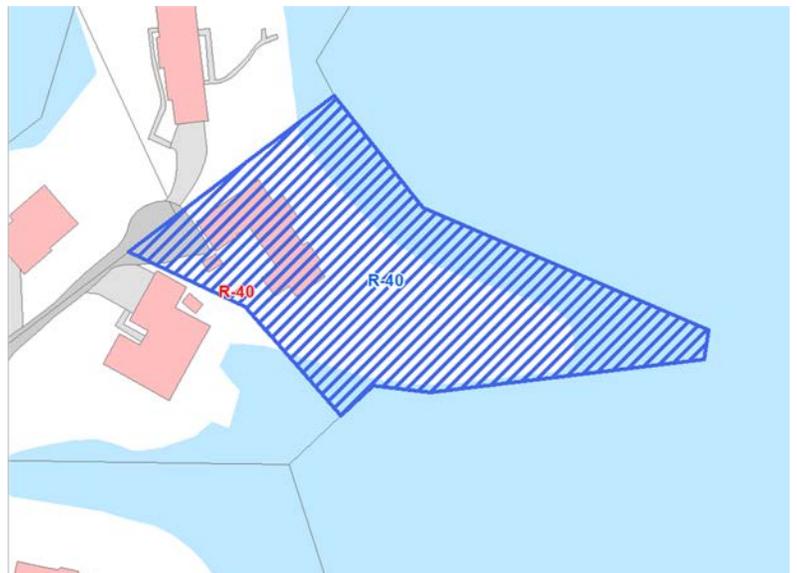
61,085 square feet or 1.402 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

38,334 square feet or 0.880 acres

EXISTING IMPERVIOUS COVER OF SITE

5,976 square feet or 15.58 percent of site



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Variance Request

Encroachment into the Resource Protection Area (RPA) buffer for the construction of new building additions, patio, and driveway

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 192
 Recorded 06/24/1926

GPIN

2418-21-5369

SITE AREA

25,059 square feet or 0.575 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

24,337 square feet or 0.599 acres

EXISTING IMPERVIOUS COVER OF SITE

6,416 square feet or 26.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,258 square feet or 33.9 percent of site

Area of Redevelopment in RPA

1,544 square feet

Area of Impervious Cover in RPA

3,380 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

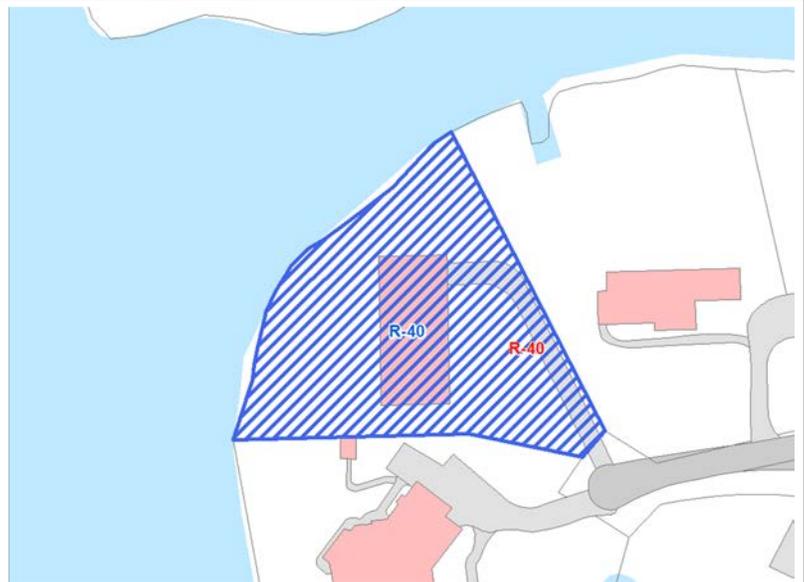
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Remove gravel driveway, concrete parking area and brick walkway

Construction Details

- 1-story building addition and 2-story garage addition
- Brick paver driveway and gravel driveway with brick paver border
- Mulch path with stepping stones
- Generator and HVAC pads
- Covered lanai, covered porch and concrete patio

CBPA Ordinance Variance History

A CBPA variance application was submitted for the demolition of the existing house and construction of a new home and pool. The application was withdrawn at the June 27, 2016 CBPA Board Hearing.

Environmental Conditions

Flood Zone

Multiple Zones – 0.2 percent annual chance of flooding and AE, Base Flood Elevation (BFE): 7

Soil Type(s)

Yeopim Series (deep and moderately well-drained)

Shoreline

The shoreline is hardened by rip rap.

Riparian Buffer

Heavily wooded lot

- Number of existing canopy trees requested for removal within the RPA: 8
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, shown as approximately 10 feet outboard the proposed improvements.

Evaluation and Recommendation

The variance request proposes to redevelop the majority of this property, which was platted in 1926, prior to the adoption of the CBPA Ordinance. The proposed improvements utilize the existing footprint of the primary structure with minimal expansions proposed along the rear of structure, portions of which are over existing impervious cover. The variance request does encroach further into the RPA with proposed accessory structures – concrete patio, covered lanai, and expansion of the existing driveway; however, these improvements are situated in an area that in Staff's opinion is the least sensitive portion of the property. Overall, of the 3,384 square feet of new impervious cover proposed, approximately 1,144 square feet or approximately 33 percent is within the 50-foot landward buffer.

Given the applicant's awareness and respect towards redeveloping this property with the intent to preserve and restore environmental conditions, Staff supports this request and offers the following comments relative to the findings of the CBPA Ordinance specific to this variance request for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991, numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff offers that the redevelopment of the lot with minimal encroachments within the 50-foot landward buffer does not convey a special privilege to the applicant given the extent of redevelopment on adjacent lots within the neighborhood.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser because *"the buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 % of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff is of the opinion that the amount of redevelopment that is proposed with the variance request, coupled with the minimal encroachments into the upper reaches of the 50-foot landward buffers, provide merit towards the variance request 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 purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality."* Staff concurs.
- 5) *"Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. If properly implemented and maintained, Staff concurs that the restoration of the riparian buffer offers a management practice that aids in a no net increase in nonpoint source pollution.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,380 square feet x 200 percent = 6,670 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **8 canopy trees, 8 understory trees, 32 large shrubs, and 48 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.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. 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) 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 \$774.58 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 October 25, 2019, prepared by Gallup Surveyors & Engineers, signed October 25, 2019 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

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

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

Site Aerial





APPLICANT'S NAME Thomas H. Atherton

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: Thomas Atherton
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

Lynn Schoenbaum



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

Lynn Schoenbaum, Member

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

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

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

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	Yockey & Assoc.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	Barry Frankensfeld, IA
<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	Atherton Construction & Development, LLC Beacon Custom Homes
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Gallup Surveyors & Engineers / Billy Garrigto
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Towne Bank
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	Suzanne Marie Roscher Berkshire Hathaway

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.**

	Thomas H Atherton	10/29/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE



OWNER

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input 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"/>	

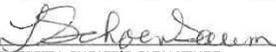
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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

	Lynn Schoenbaum	10/24/19
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE

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K



Applicant & Property Owner **Regina C. Wrench**
 Address **2980 Buccaneer Road**
 Public Hearing **December 18, 2019**
 City Council District **Lynnhaven**

Agenda Item

7

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer for the construction of a swimming pool and associated surround.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 44, Page 53

Recorded 04/23/1958

GPIN

1499-17-5904

SITE AREA

12,137 square feet or 0.279 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

12,137 square feet or 0.279 acres

EXISTING IMPERVIOUS COVER OF SITE

6,940 square feet or 57.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,261 square feet or 59.8 percent of site

Area of Redevelopment in RPA

263.5 square feet

Area of New Impervious Cover in RPA

321.5 square feet

Location of Proposed Impervious Cover

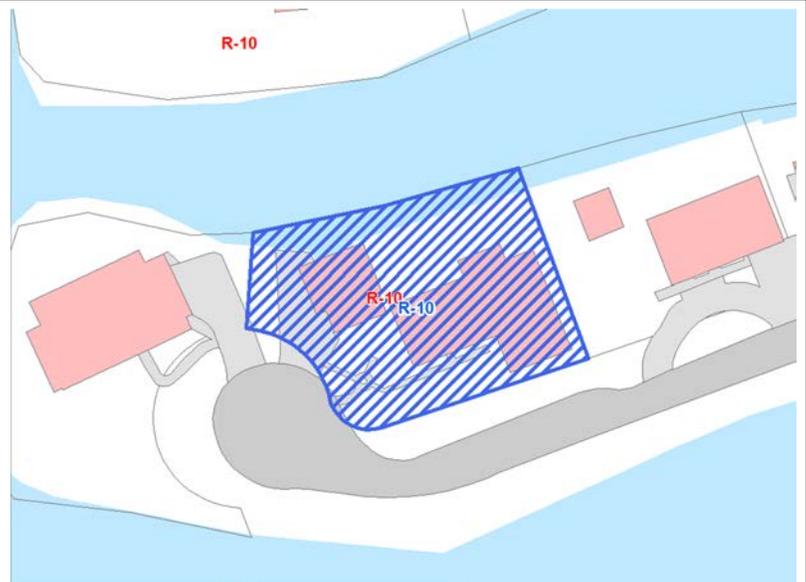
50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Remove pavers, portion of existing deck, gravel and mulch bed

Construction Details

- Pool and associated concrete deck

CBPA Ordinance Variance History

A CBPA variance application was presented to the Board at the May 23, 2019 public hearing. Since that time, the application was deferred and then withdrawn by the applicant's agent at the August 26, 2019 public hearing.

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is hardened with a wood bulkhead

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

This entire reach of Buccaneer Road is a narrow manmade peninsula with dimension widths varying from 150 feet to 200 feet. Therefore, the rear yards of these lots are entirely within the 50-foot seaward buffer. Several of the lots within this area also have overlapping 50-foot landward buffers due to the narrow peninsula. Given the environmental constraints created by the peninsula and the encroachments granted by prior Chesapeake Bay Preservation Area (CBPA) Boards throughout this neighborhood, Staff performed an analysis of the CBPA variances granted in the vicinity to this variance request for comparison. As previously reported, over the past 14 years 11 known CBPA Ordinance variances have been granted in the vicinity. Of those 11 variances, the average existing impervious cover was 37.43 percent, with an average post-development impervious cover of 40.03 percent. Post-development impervious covers ranged from 33.6 percent to 49.6 percent. The CBPA Board did deny a request with a post-development impervious cover proposed at 46 percent. Given the amount of existing impervious cover associated with this variance request, Staff recommends that the variance for the redevelopment of this parcel result in a no net increase in impervious cover. As such, recommended condition 4 is provided below for the Board's consideration.

To further offer merit to the variance request, the applicant's agent has provided the following comments relative to the findings of the CBPA Ordinance specific to this variance request and believes that the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991, numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff offers that the recommended conditions provided in this Staff report reflect conditions imposed on previous variance requests and the existing condition of waterfront parcels in the vicinity, specifically addressing a no net increase in impervious cover and restoration of the buffer with vegetation that is nonexistent on the lot.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser because *"the buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff offers for the Board's deliberation that this parcel was platted in 1955, prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. Also, the residential structure was constructed in 1958, therefore, placing this property entirely within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 % of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* Staff offers that a no net increase in impervious cover, as conditioned below, offers merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality."* In an effort to ensure that this variance request will be in harmony with the purpose and intent of the CBPA Ordinance, not injurious to the neighborhood, nor be of substantial detriment to water quality, or otherwise detrimental to the public welfare, Staff offers that the removal of portions of the impervious cover, as conditioned within this Staff report, will promote infiltration of stormwater, thereby furthering the intent.
- 5) *"Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers, in addition to the above statement, that there is mutual agreement that the site's flat topography and high infiltration rates of the existing soil profile help reduce the potential for nonpoint source pollution from reaching adjacent waterways. Staff is of the opinion that this lot and several in this area are impacted more by abnormal tidal events that breach the existing bulkhead and infiltrate the existing stormwater drainage system than any impacts from the resulting percentage of impervious cover.

Given the above comments, Staff recommends the following 9 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. 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. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
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. 800 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: **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.

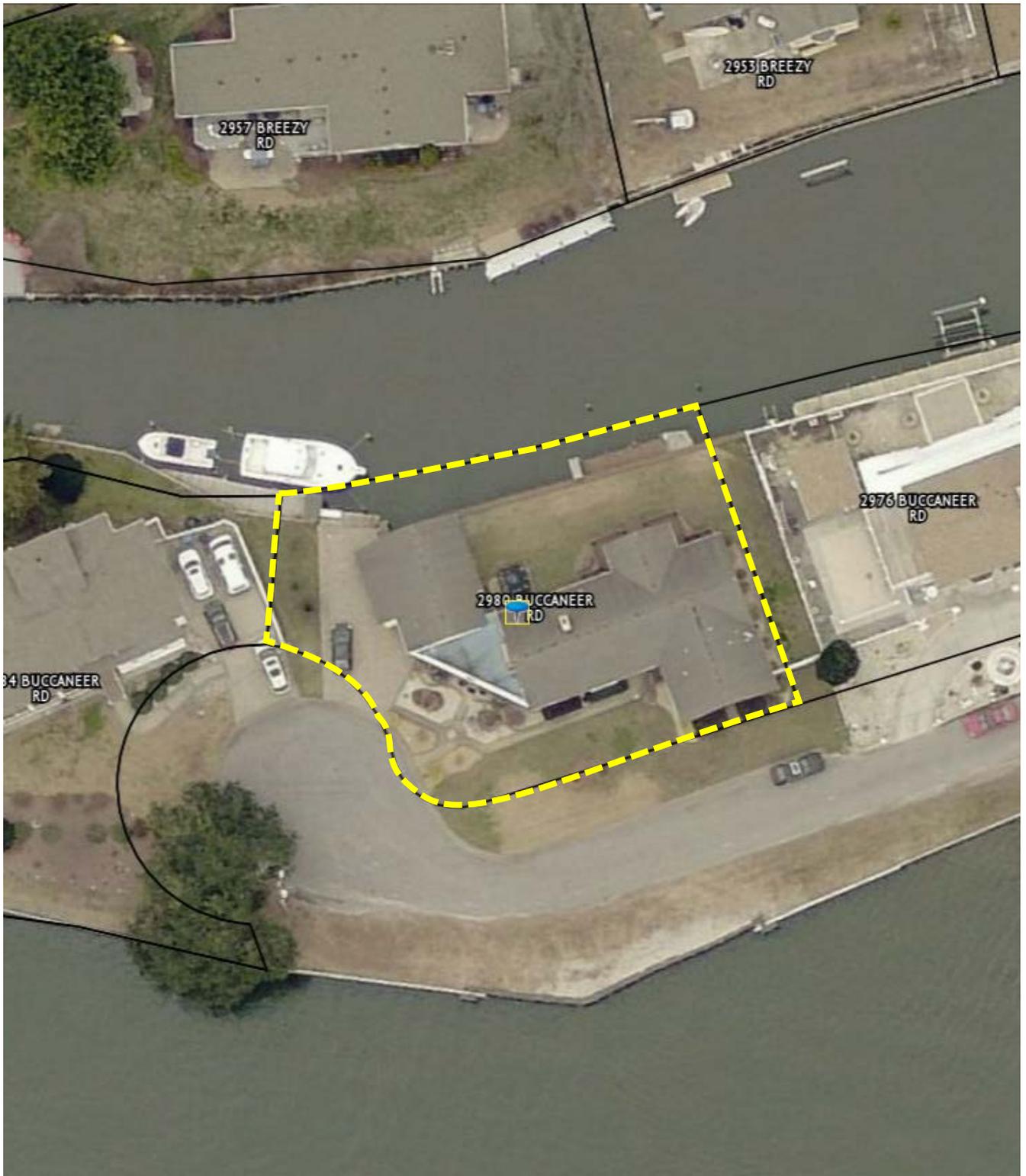
4. The overall impervious cover of the lot shall not exceed 6,940 square feet.
5. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
6. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.

7. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
8. No perimeter fill is authorized outboard or seaward of the proposed improvements.
9. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

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

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

Site Aerial





APPLICANT'S NAME Regina C Wrench-Owner

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: Regina C. Wrench - owner
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



OWNER

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	CPA Jones Gro
<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	YHAC Custom Cars
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Boone Surveyors / Bill Pettig Gallup Surveyors
<input 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)	
<input type="checkbox"/>	<input type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input 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?

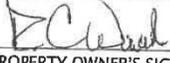
If yes, what is the name of the official or employee and what is the nature of the interest?



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.

		
PROPERTY OWNER'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

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer for the development of a circular driveway and wood deck

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 303, Page 86

Recorded 03/08/2002

GPIN

1498-20-9716

SITE AREA

118,742 square feet or 2.726 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

72,919 square feet or 0.9 acres

EXISTING IMPERVIOUS COVER OF SITE

11,392.8 square feet or 15.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

14,695.8 square feet or 20.1 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

3,303 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

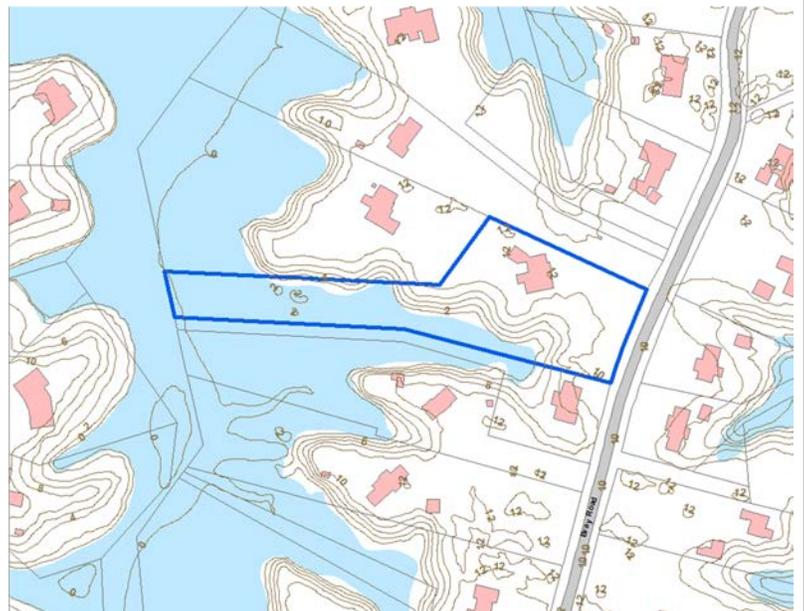
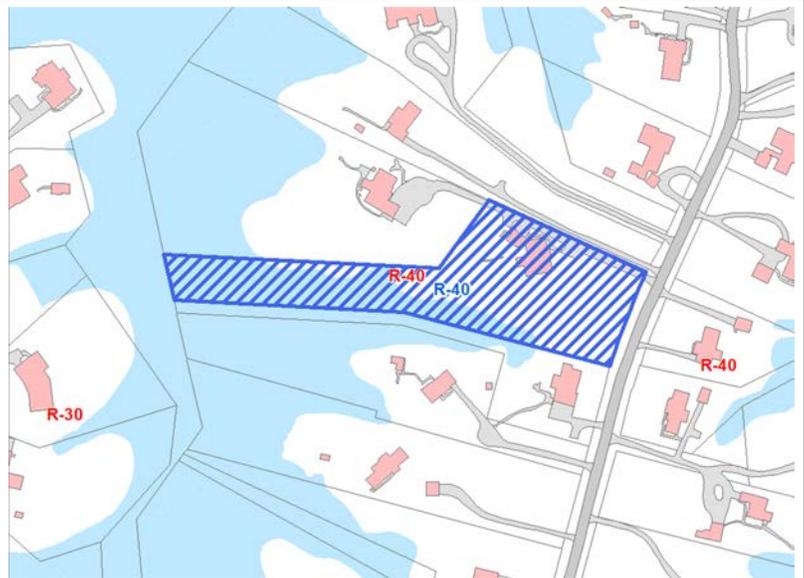
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Concrete driveway with parking pad
- Wood deck

CBPA Ordinance Variance History

August 27, 2001 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of the lot with the following conditions:

1. *Dual erosion and sedimentation control measures shall be installed prior to any land disturbance and shall be maintained until such time as vegetative cover is established.*
2. *A temporary chain link fence shall be installed adjacent to construction limits. This chain link fence is in addition to required E & S Control measures. In addition, said temporary chain link fence shall be installed along the entire driveway.*
3. *All area outside construction limits shall remain in a natural state, including the forest floor (leaf litter) left intact. Said conditions shall be noted on the site plan. Construction limits shall lie a maximum of 20' outboard of all impervious cover.*
4. *The driveways shall be constructed of gravel, or comparable pervious material, with the exception of the turn around and parking pads as shown on the plan submitted with the application.*
5. *Tree compensation shall be at a 1:1 ratio.*
6. *All stormwater from impervious cover shall be conveyed to a structural stormwater management facility.*
7. *If and when the shoreline is hardened, a rip-rap revetment shall be installed, in lieu of a vertical retaining structure. Said condition shall be noted on the site plan.*
8. *Payment into the Virginia Oyster Heritage Foundation is required. Payment shall be based on the amount of impervious cover "shown" within the buffer. The formula for computation purposes is square footage divided by 27, which equals cubic yards, multiplied by 15 (# of bushels to one cubic yard) x \$1.65 (the cost of installation). The following computation assumes a shell plant of 12 inches.*
9. *Any future accessory structures; pools, decks, sheds, etc., shall lie within the subject construction limits.*
10. *The pedestrian accessway to navigable waters, for the eastern lot, shall be shown on the revised site plan. Said accessway will lie along the area of highly erodible soils. As such, said accessway shall be of pervious material and shall be located so as to minimize the removal of any trees. It may be necessary to construct said accessway, or some portions thereof, as an open-pile structure. The applicant shall convene an on-site meeting with Planning Department staff prior to the installation of this improvement. This condition shall be so noted on the site plan.*
11. *A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.*

12. *Prior to clearing for site line vistas or general woodlot management, a consultation shall be convened on site with the Planning Department Staff. Please call Rick Scarper or Linda Bersch at 427-4621 to schedule this meeting.*

The August 27, 2001 Board granted variance has been acted upon and the associated improvements constructed.

January 28, 2008 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a 20 foot by 40-foot pool with associated concrete decking and a 6 foot by 20 foot pool equipment pad with the following conditions:

1. *If the variance is approved, the following conditions will be **in addition to the conditions imposed with the 2001 variance**. Both sets of conditions shall be shown on the revised site plan.*
2. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
3. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
4. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
7. *Pool decking shall be a maximum of 4'X4'X4'X8' (diving board end).*
8. ***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 \$355.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 387 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
9. *Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact.*
10. *Buffer restoration totaling 1,549 sq. ft. shall be installed which is equal to 100% of the proposed impervious cover and shall utilize bayscape landscaping principles. The required restoration **shall be in areas currently devoted to turf** and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of 4 trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be shown on the revised site plan and shall indicate location, number, and species of vegetation to be installed. Said restoration shall be installed prior to the final building inspection. Said condition shall be so noted on the site plan.*
11. *The conditions and approval associated with this variance are based on the site plan dated November 15, 2007 with a revision date of January 2, 2008, prepared by Bonifant Land Surveys.*

12. A revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit.

The January 28, 2008 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Rappahannock Series (deep and poorly drained soils)

Shoreline

Shoreline is in a natural state with a vegetated marsh contiguous along the toe of the existing bank feature.

Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 24
- Number of existing canopy trees requested for removal within the RMA: 7
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: n/a
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the 100-foot variable width buffer of the RPA regulated by the City of Virginia Beach. The size of trees requested for removal range from 6 inches DBH to 18 inches DBH.

Evaluation and Recommendation

The performance standards set forth within the Chesapeake Bay Preservation Area Ordinance are intended to prevent a net increase in nonpoint source pollution from new development and redevelopment on previously developed land. These standards require land development to minimize impervious cover to promote infiltration of stormwater into the ground through the incorporation of structural or nonstructural urban best management practices [Sec. 106 (A)(3)]. Due to the existing site conditions and established riparian buffer ecosystem on the lot, Staff has conditioned that the proposed circular driveway be constructed of a permeable pavement system to be in harmony with the purpose and intent of the CBPA Ordinance performance standards. With the variance request to further encroach into the RPA, the majority of land disturbance, approximately 3,010 square feet of the 3,303 square feet of new impervious cover proposed, occurs within the variable width buffer of the RPA. As a result, no existing vegetation will be removed within the 100-foot RPA buffer. Staff is of the opinion that the scope of the improvements, established riparian buffer and minimal land disturbance anticipated with the construction of the proposed improvements are the minimum necessary to afford relief, will not be detrimental to water quality, nor will result in an increase in nonpoint source pollution load into the adjacent tidal waters.

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 *“several other properties have been approved for similar improvements in the past years.”* Staff offers that the majority of proposed improvements occur within the variable width buffer of the RPA and would be subject to an Administrative Variance had the accessory structure and wood deck not been proposed within the 100-foot RPA buffer. Given the proposed improvements within the 100-foot RPA buffer, Staff is of the opinion that the request does not confer any special privileges to the applicant with the overall impervious cover of the lot being approximately 20 percent and the 100-foot RPA buffer primarily in a natural state with a mature canopy cover and forest floor present.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser, because *“the property has been under the Bay Act regulations since it was adopted and avoidance is not possible since it was adopted and will forever be in the RPA feature.”* Although the lot was platted after the adoption of the CBPA Ordinance, Staff is of the opinion the applicant has maintained a functional RPA buffer despite the existing encroachments and has complied with the performance standards of the CBPA Ordinance, specifically limiting land disturbance to the area necessary to provide for the proposed use and preserving the existing vegetation to the maximum extent practicable.
- 3) The variance is the minimum necessary to afford relief because *“we have located the new driveway as far from the feature as possible only encroaching in the variable width buffer which is the least sensitive portion of the buffer. The driveway will have its own BMP to treat runoff after installation.”* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“water quality will not be impacted by this variance. The property is rather big with an unusual amount of area in a natural state which is the best buffer for treatment. We are as far from the feature as possible and the new driveway will alleviate a serious parking problem on the site. The owners are not able to entertain friends without blocking the access to the property behind them and delivery trucks routinely cause problems and this will solve the issue.”* Staff agrees and reiterates comments from item 2 above as well as provides recommended condition 3 below as a means to manage water quality on the lot.
- 5) *“On-site BMPs will be installed, off site mitigation will also take place with the LOHF. There are vast amounts of natural buffer that will not be impacted with this request which will ensure no net increase in runoff”* as a means to manage towards a no net increase in nonpoint source pollution load. In-lieu of on-site BMPs further disturbing the critical root zones of the existing trees, Staff recommends that a permeable pavement system for the proposed driveway be used in order to minimize impervious cover and to promote infiltration of stormwater into the ground.

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

Recommended Conditions

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

- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 3) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$756.93 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.

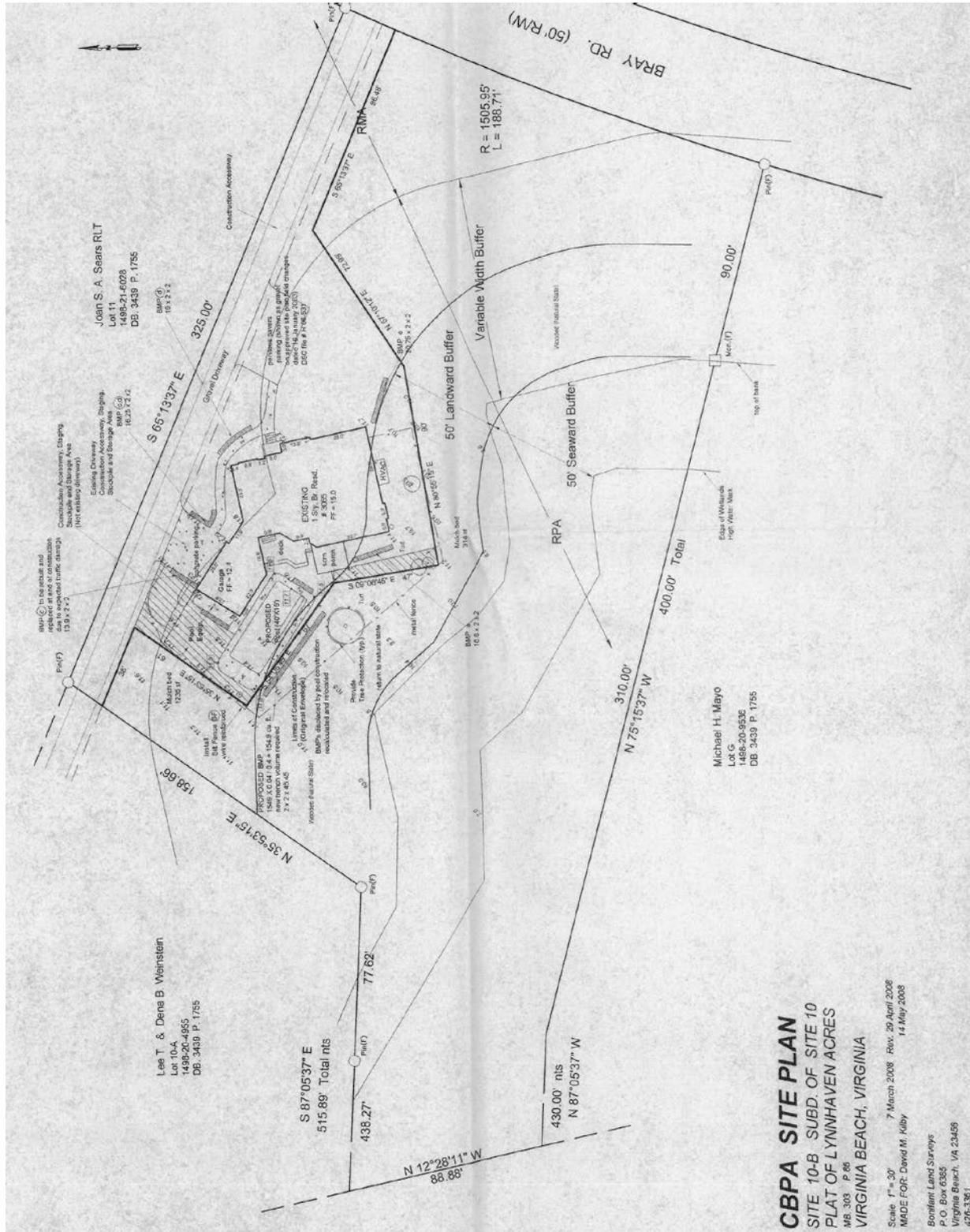
- 15) This variance and associated conditions **are in addition to** the conditions of the Board variances granted August 27, 2001 and January 28, 2008.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated October 30, 2019, prepared by Chesapeake Bay Site Solutions, signed November 11, 2019 by Gregory O. Milstead. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

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

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

Site Aerial



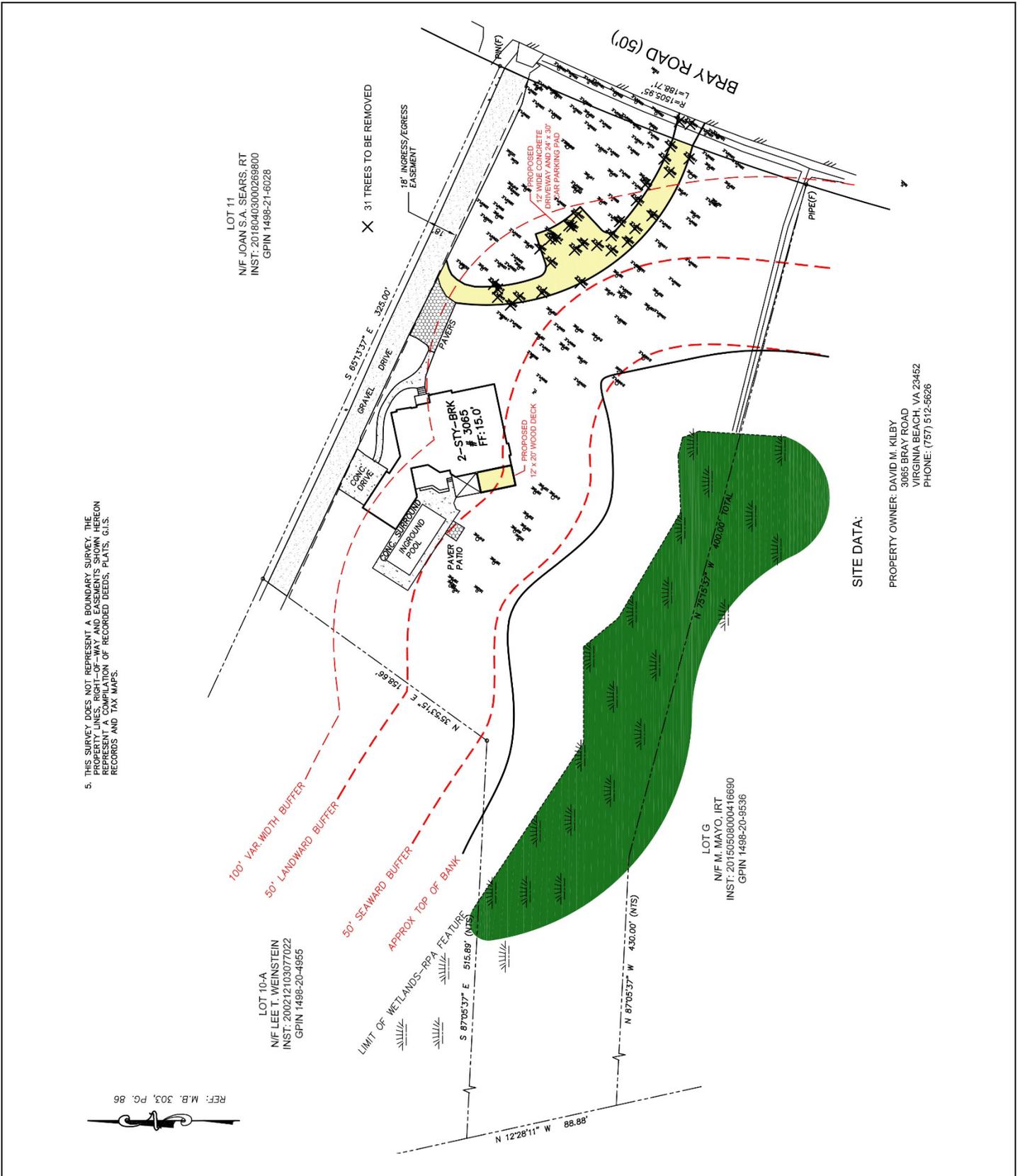


CBPA SITE PLAN
 SITE 10-B SUBD. OF SITE 10
 PLAT OF LYNNAHAVEN ACRES
 VIRGINIA BEACH, VIRGINIA

Scale: 1" = 30'
 MADE FOR: David M. Kilby
 7 March 2008 Rev: 20 April 2008
 14 May 2008

Bonifant Land Surveys
 P.O. Box 6335
 Virginia Beach, VA 23469
 426-3361

CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME David M. Kilby

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: David M. Kilby
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<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)	Sun Trust
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Billy Garrington, GPC
<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"/>	

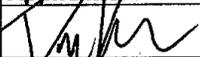
If yes, what is the name of the official or employee and what is the nature of the interest?



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.

	David M. Kilby	11/5/19
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



The application is being withdrawn. Staff supports the request.

Variance Request
 Encroachment into the Resource Protection Area (RPA) buffer to expand the existing driveway.

Applicant’s Agent
 Self-represented

Staff Planner
 PJ Scully

Lot Recordation
 Map Book 77, Page 29
 Recorded 10/15/1968

GPIN
 2419-60-3154

SMALL PROJECT IN THE RPA

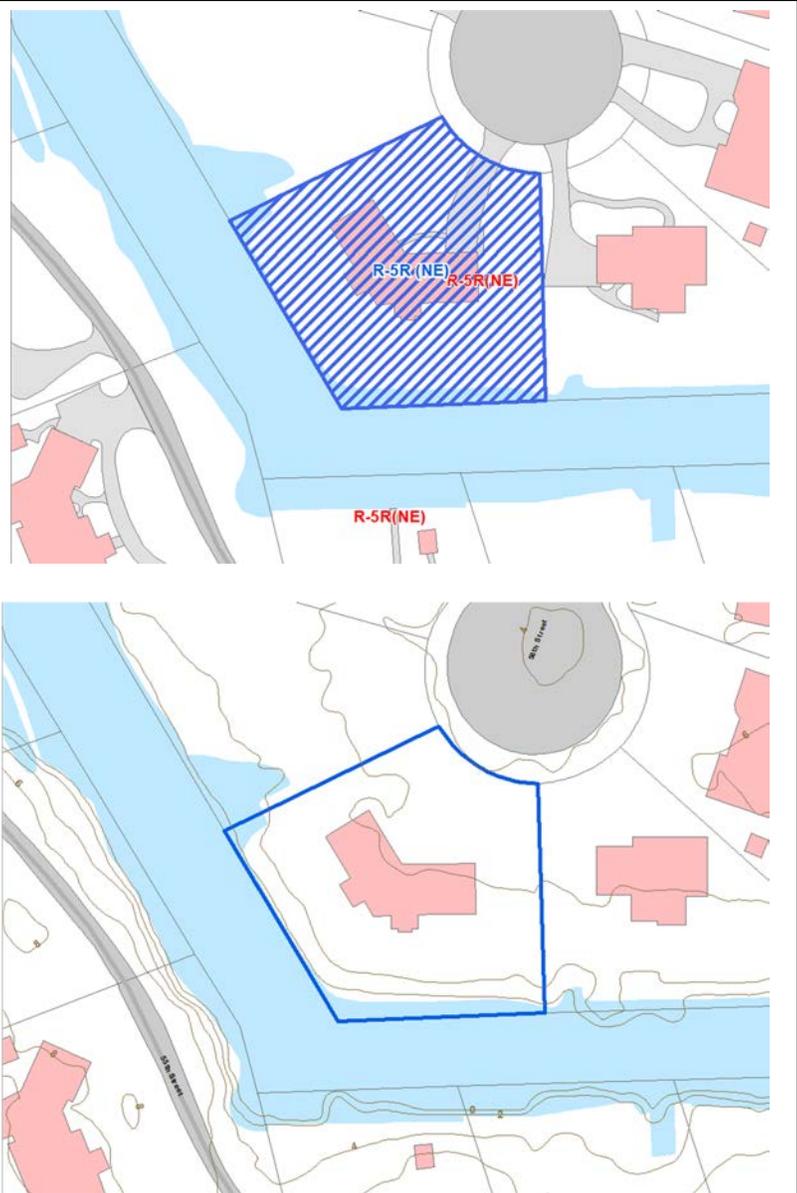
PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA
 0 square feet

Area of New Development in RPA
 500 square feet

Location of Proposed Impervious Cover
 50-foot Landward Buffer
 Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE
 Less than 2,500 square feet



AS NEEDED, PAGE LEFT BLANK