

Chesapeake Bay Preservation Area Board Agenda

February 25, 2019

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VB City of
Virginia Beach

CHESAPEAKE BAY PRESERVATION AREA BOARD

NOTICE OF PUBLIC HEARING

The City of Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold a Public Hearing on **Monday, February 25, 2019, at 10:00 a.m.** in the City Council Chamber, Virginia Beach Municipal Center, Virginia Beach, Virginia.

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

The Staff reviews all of the items on this agenda and offer recommendation for consideration by the Board, in the event they should approve the application. However, it should not be assumed that those conditions constitute all of the conditions that will ultimately be attached to the project. Staff agencies may impose further conditions and requirements applicable to city ordinances.

Those members of the public interested in attending the public hearing should be advised that, for reasons the Board deems appropriate, certain items on the agenda may be heard out of order and that it should not be assumed that the order listed below will be exactly followed during the public hearing.

THE FOLLOWING DESCRIBES THE ORDER OF BUSINESS FOR THE PUBLIC HEARING

(IF YOU DO NOT UNDERSTAND, ASK A STAFF MEMBER SITTING AT THE DESK AT THE FRONT OF THE CHAMBER OR THE STAFF MEMBER AT THE DESK OUTSIDE THE CHAMBER).

- 1. DEFERRALS:** The first order of business is the consideration of requests to defer an item. The Board will ask those in attendance at the hearing if there are any requests to defer an item that is on the agenda. PLEASE NOTE THE REQUESTS THAT ARE MADE, AS ONE OF THE ITEMS BEING DEFERRED MAY BE THE ITEM THAT YOU HAVE AN INTEREST IN.

If an item is deferred, a deferral date will be determined at the public hearing. Typically deferrals range from thirty (30) to sixty (60) days or may be deferred indefinitely. The Board will vote on all of the items deferred individually. It is important, therefore, if you have an objection to an item being deferred to note your objection as the Board goes through the items being considered for deferral.

- 2. CONSENT AGENDA:** The second order of business is consideration of the "consent agenda." The consent agenda contains those items:
 - a. that the Board believes are unopposed and
 - b. which have a favorable Staff recommendation.

If an item is placed on the Consent Agenda, that item will be heard with other items on the agenda that appear to be unopposed and have a favorable staff recommendation. The Board will vote on all of the items at one time. Once the Board has approved the item as part of the Consent Agenda, the variance request is granted and will not be discussed any further. It is important, therefore, if you

have an objection to an item being placed on the Consent Agenda to note your objection as the Board goes through the items being considered for the Consent Agenda.

Process for the Consent Agenda:

- The Board will announce the item number and item title being considered for inclusion on the Consent Agenda.
- The Board will ask if there is anyone in the audience representing the item, and if so, ask them to go up to the podium and state their name for the record.
- The Board will ask the representative of the item if they are aware of the conditions and if they agree to the conditions.
- The Board will then ask if there is anyone in the audience in opposition to the item. If you are opposed to the item, stand or raise your hand to let the Board know.
- If the item is opposed, it will be removed from the consent agenda and heard in its normal place on the agenda.
- After the Board has gone through all of the items that it believes should be on the Consent Agenda, it will vote at one time for all of the items, announcing the number of each item being voted on. Pay attention to the list of items being voted on.

3. REGULAR AGENDA: The Board will then proceed with the remaining items on the agenda, according to the following process:

- a. The applicant or applicant's representative will have 10 minutes to present its case.
- b. Next, those who wish to speak in support to the application will have 3 minutes to present their case.
- c. If there is a spokesperson for the opposition, he or she will have 10 minutes to present their case.
- d. All other speakers not represented by the spokesperson in opposition will have 3 minutes.
- e. The applicant or applicant's representative will then have 3 minutes for rebuttal of any comments from the opposition.
- f. There is then discussion among the Board members. No further public comment will be heard at that point. The Board may, however, allow additional comments from the opposition if a member of the Board sponsors the opposition. Normally, you will be sponsored only if it appears that new information is available and the time will be limited to 3 minutes.
- g. The Board does not allow slide or computer generated projections other than those prepared by the Department of Planning and Community Development Staff.

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

Those members of the public interested in speaking in support or in opposition to an agenda item shall be limited to 3 minutes in which to address the Board. At the discretion of the Board Chairman, this time may be increased to 5 minutes. Speakers will be electronically timed.

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



CHESAPEAKE BAY PRESERVATION AREA BOARD AGENDA

Public Hearing Date **February 25, 2019**

9:00 AM

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

10:00 AM

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

OLD BUSINESS AGENDA ITEMS

1.

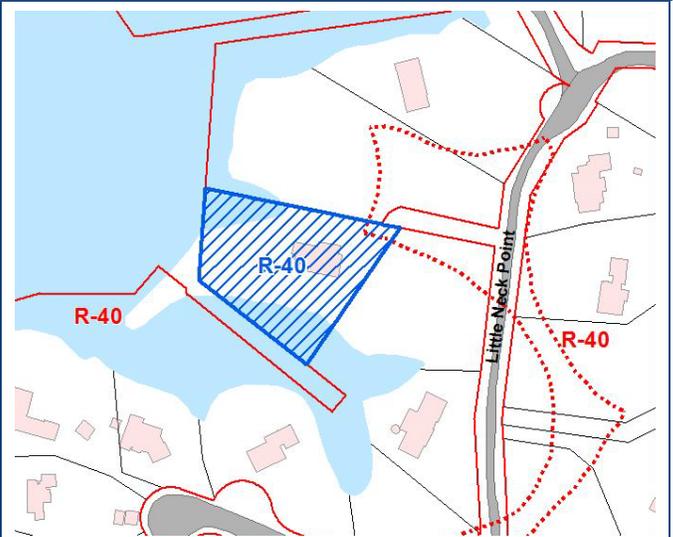
Douglas Burr & Eileen Ju
[Applicant & Property Owner]

3825 Little Neck Point
GPIN: 1489-52-0509
COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Eddie Bourdon

Staff Planner – PJ Scully

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NEW BUSINESS AGENDA ITEMS

2.

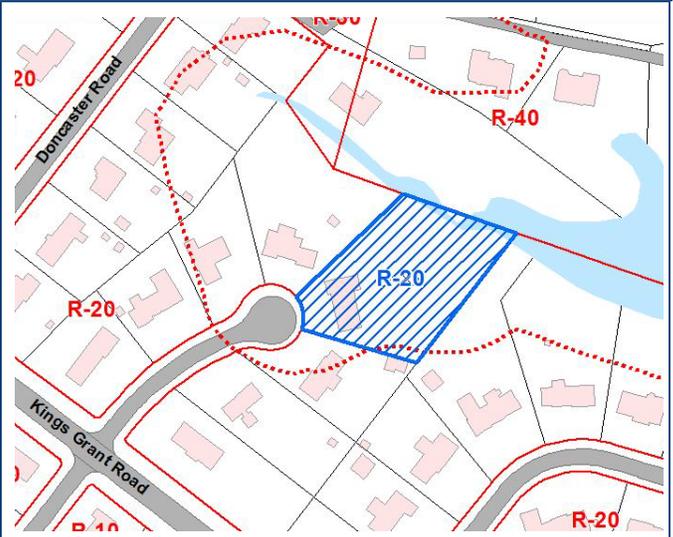
Philip & Amber Schworm
[Applicant & Property Owner]

3301 Old Kirkwood Drive
GPIN: 1488-90-8934
COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

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3.

Young Living Trust

[Applicant & Property Owner]

1328 E. Bay Shore Drive

GPIN: 2418-49-8901

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

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4.

James & Kelly Sheeran

[Applicant & Property Owner]

909 Bingham Street

GPIN: 2408-81-9587

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

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5.

Linkhorn Investments Co., LLC

[Applicant & Property Owner]

1525 McCullough Lane

GPIN: 2419-91-4398

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Jason Barney

Staff Planner – PJ Scully

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NEW BUSINESS AGENDA ITEMS (CONTINUED)

6.

David McClellan

[Applicant & Property Owner]

553 Longleaf Road

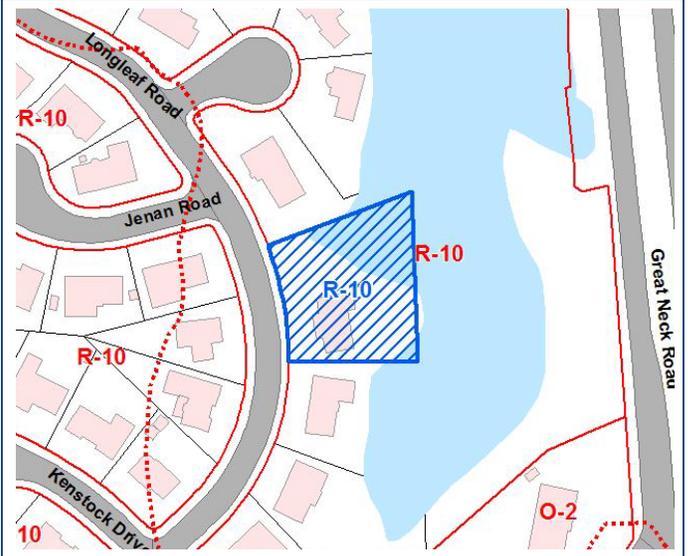
GPIN: 1497-98-8641

COUNCIL DISTRICT – Beach

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

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Applicant and Property Owner **Douglas Burr & Eileen Ju**
Address **3825 Little Neck Point**
Public Hearing **February 25, 2019**
City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop and expand the primary structure and to construct a swimming pool with associated patios.

Applicant's Agent

Eddie Bourdon

Staff Planner

PJ Scully

Lot Recordation

12/20/1952

Map Book 34, Page 7

GPIN

1489-52-0509

SITE AREA

56,591 square feet or 1.299 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

38,843 square feet or 0.892 acre

EXISTING IMPERVIOUS COVER OF SITE

7,480.6 square feet or 19.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,554 square feet or 27.2 percent of site

Area of Redevelopment in RPA

6,460.5 square feet

Area of New Development in RPA

4,093.5 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

50 foot Landward Buffer

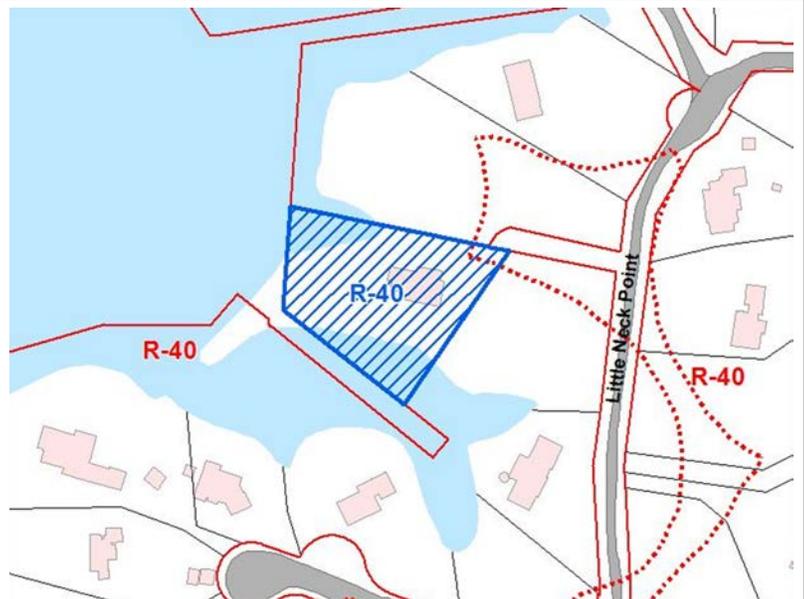
100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- 1-story single family residence
- Brick walk
- Wood deck

Construction Details

- Single family 2-story residence with associated covered paver porch, covered paver patio and paver walkways
- Concrete driveway
- Swimming pool, hot tub and play ledge with paver pool patio

CBPA Ordinance Variance History

This variance request was deferred at the January 28, 2019 Chesapeake Bay Preservation Area (CBPA) Board Public Hearing.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X, AE Base Flood Elevations (BFE): 8 and Zone VE – BFE: 10

Soil Type(s)

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

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

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, and located within the Resource Management Area (RMA). There are no trees proposed to be removed within the RPA with this variance request.

Evaluation and Recommendation

This variance request was deferred at the January 28, 2019 CBPA Public Hearing. The revised variance request provides a 160 square foot reduction in overall impervious cover within the 100 foot RPA and delineates proposed areas of turf. A majority of the new impervious cover will be located within the 50 foot landward buffer for walkways around the residence and within the variable width buffer of the RPA for the expansion of the existing driveway. The layout of the

proposed improvements is conscience to the sensitive portions of the lot and limits land disturbance associated with the proposed improvements to the flat and stable areas of the lot, landward of the top of bank feature. In addition, the variance request proposes to redevelop the majority of this property, which was originally platted in 1952, taking advantage of approximately 63 percent of the existing impervious cover.

The applicant's cognizance of redeveloping this property in a manner consistent with the performance standards of the CBPA Ordinance is reflected by the intent to preserve and restore environmental conditions, combined with the extent of site analysis performed by the applicant's design professionals. Staff supports this request and provides a brief analysis below of the comments provided by the applicant's agent 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 concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"the minimum necessary is a vary arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 percent 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 applicant's attempt to avoid the most sensitive areas of land, to design a project with regard to the existing geometry of the upland area, to leave as much area as possible in a natural state, including the entire 50 foot seaward buffer, while building a house that will encroach into the front and side yard setbacks that will be in keeping with the size and location of other dwellings in the neighborhood all provides merit to being the minimal necessary.
- 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 sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way an revegetating any 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 concurs.

Given the above comments, Staff recommends the following 18 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The Center for Conservation Biology, Mapping Portal most recent data indicates a bald eagle nest within the vicinity of 3825 Little Neck Point. All construction activities shall be coordinated with Virginia Department of Game and Inland Fisheries. Once coordinated, approval letters shall be provided to the Development Services Center (DSC) prior to the release of an approved site plan to ensure compliance with state and federal laws.
2. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
3. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
4. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
5. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
6. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
7. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
9. 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.
10. 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.
11. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
12. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

13. A maximum of 2,800 square feet of turf is permitted for this property and shall be limited to the areas of turf as delineated on the CBPA exhibit. All remaining pervious area shall be areas of buffer restoration. 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: **11 understory trees, 22 large shrubs, and 33 small shrubs.**

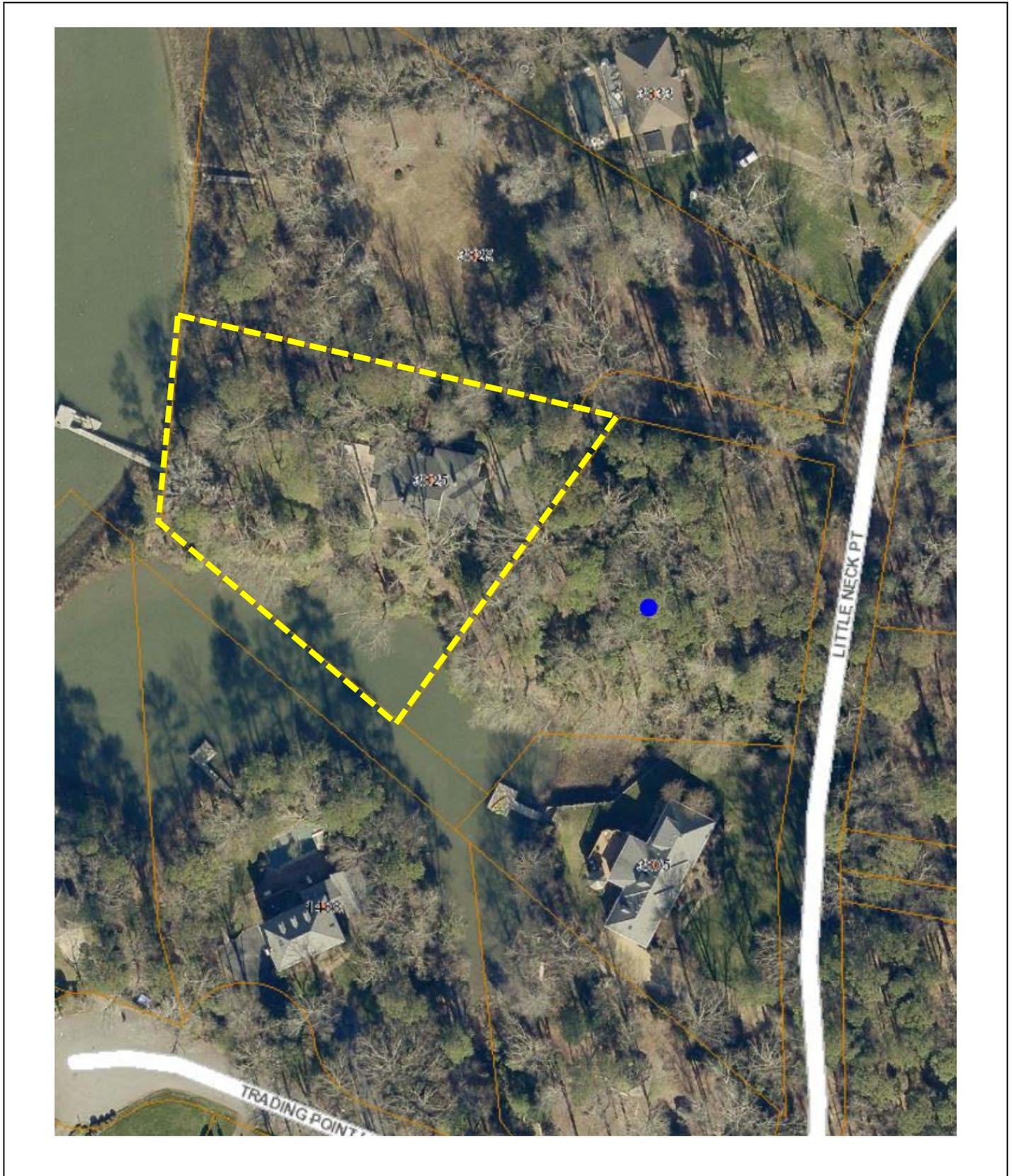
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material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

14. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
15. ****As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$937.97 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
16. 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. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
18. The conditions and approval associated with this variance are based on the exhibit plan dated November 8, 2018, prepared by Gallup Surveyors & Engineers, signed January 30, 2019 by Bruce Gallup. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

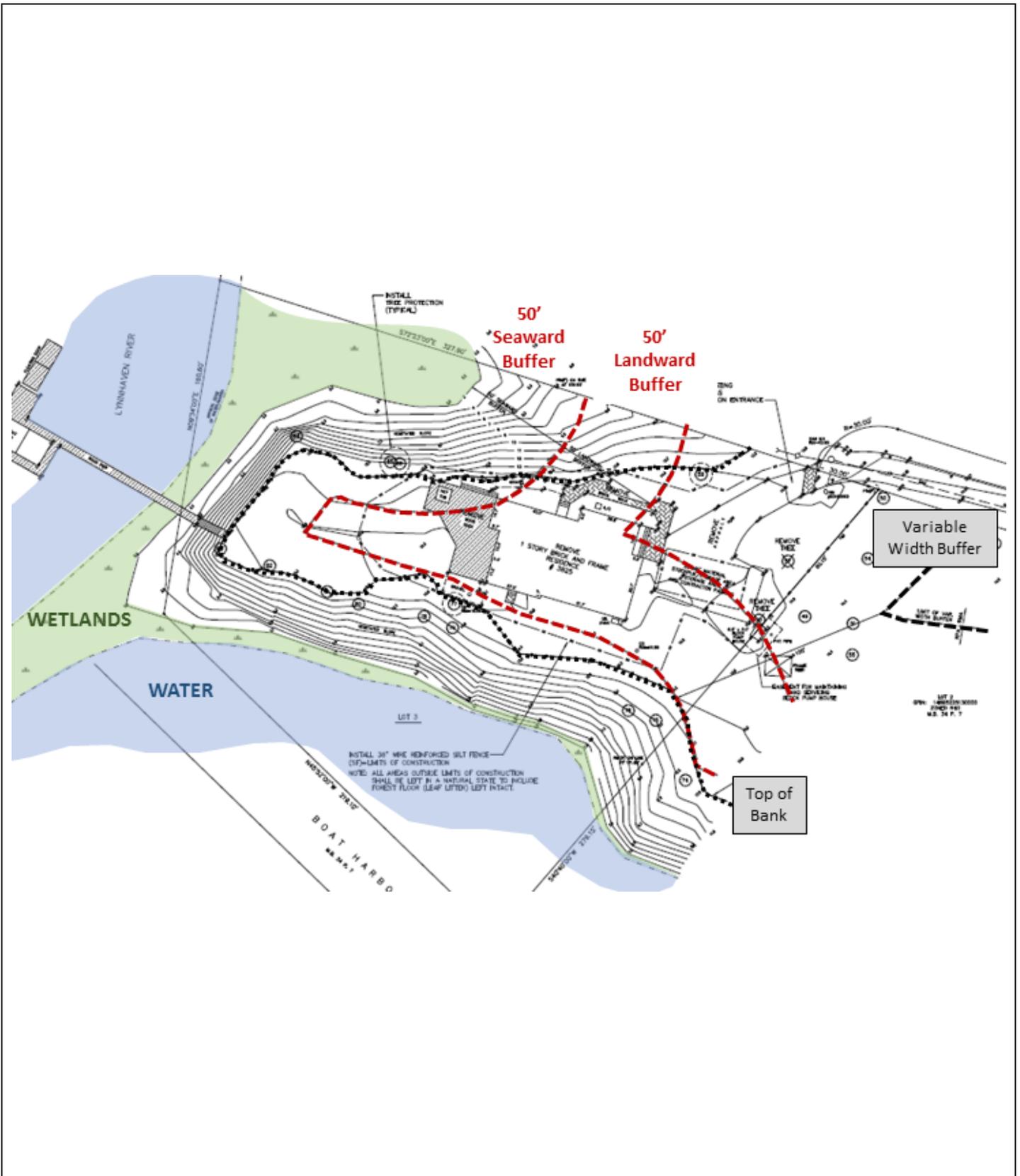
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

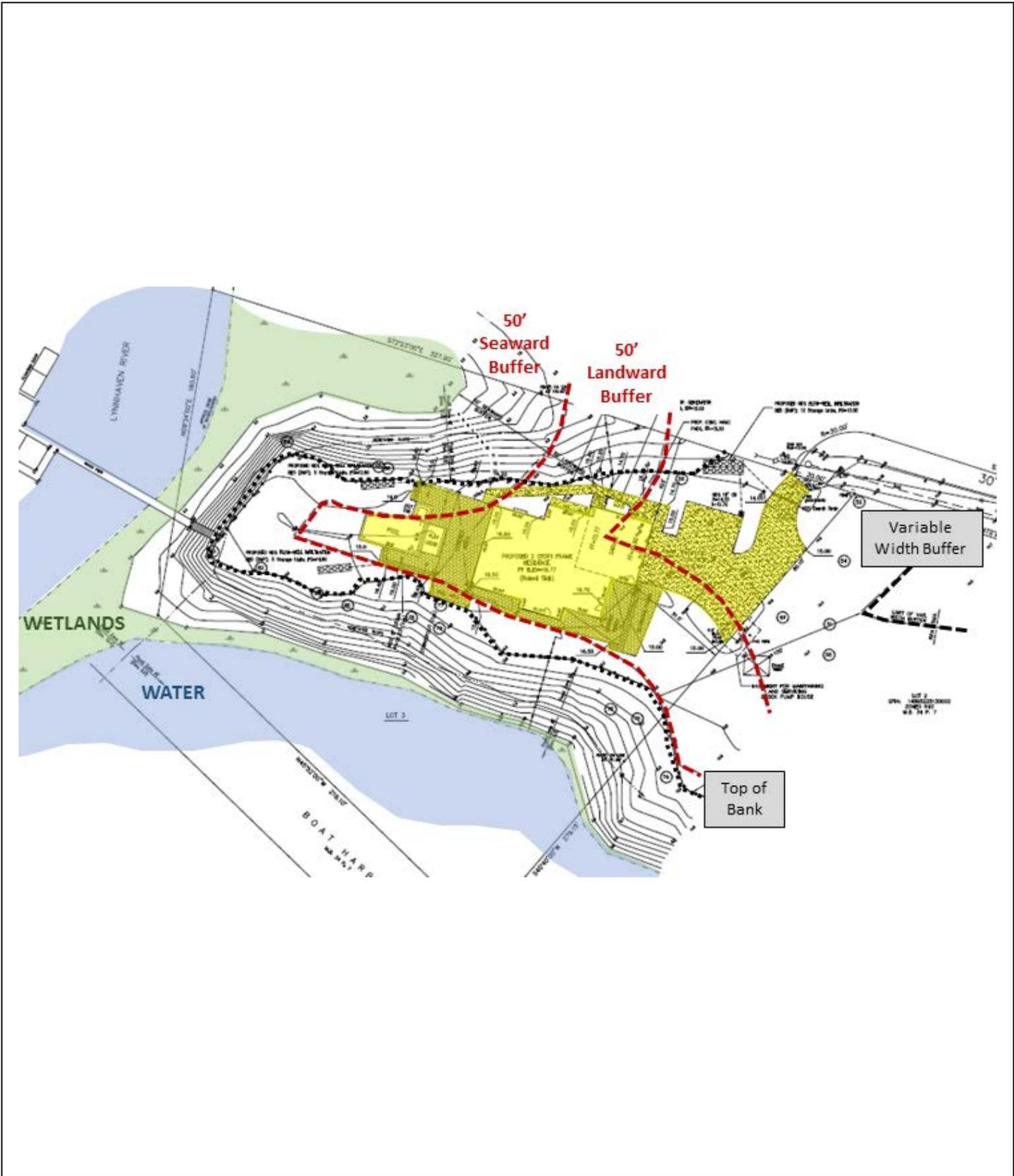
*****NOTE:** The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of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

Site Aerial

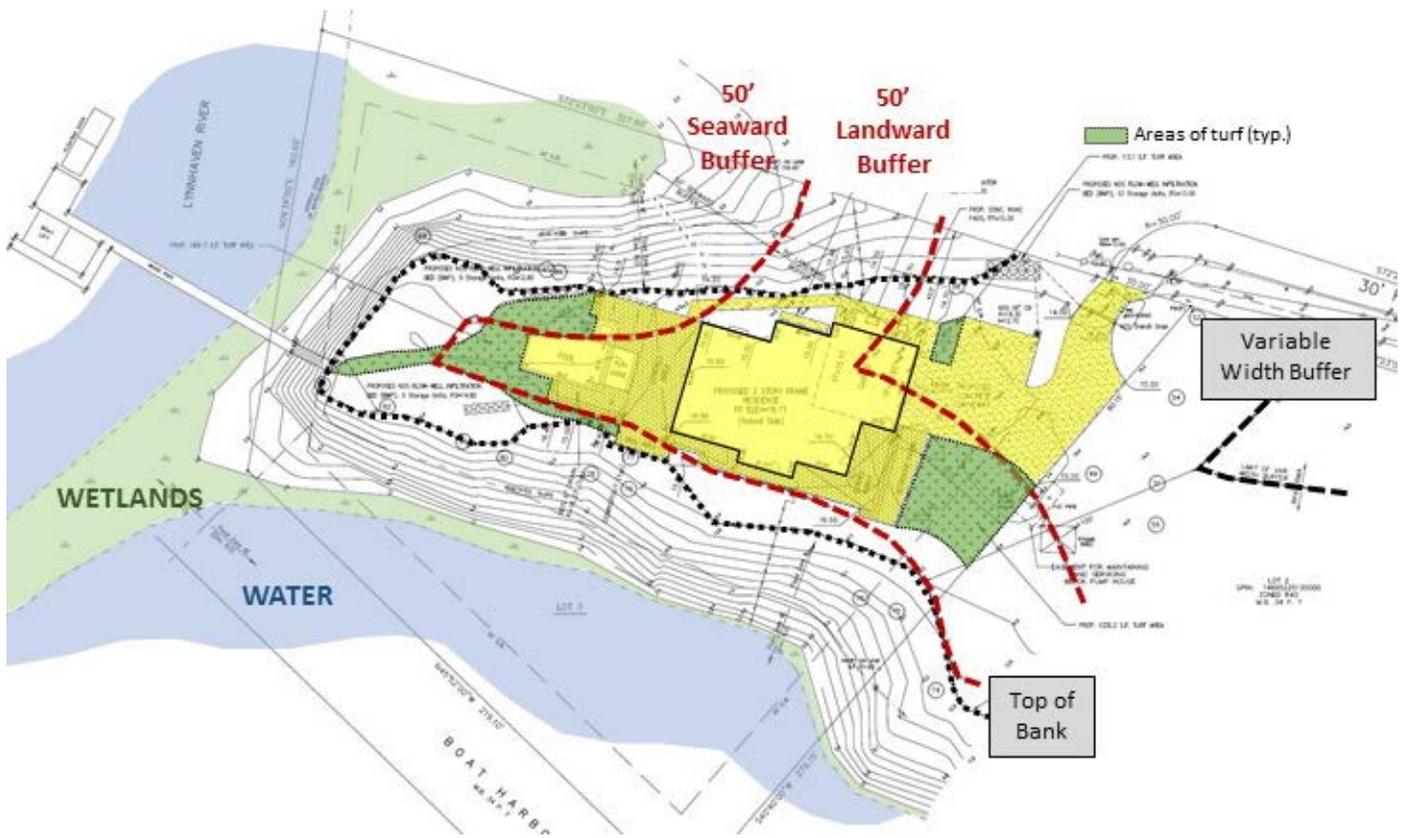


CBPA Exhibit – Existing Conditions





CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Douglas Burr & Eileen Ju

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: DOUG BURR & EILEEN JU
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: DOUG BURR & EILEEN JU
If an LLC, list the member's names:



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

| YES | NO | SERVICE | PROVIDER (use additional sheets if needed) |
|-------------------------------------|-------------------------------------|--|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Accounting and/or preparer of your tax return | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Architect / Landscape Architect / Land Planner | Gerrie West, Doug Aurand |
| <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 | Bruce Gallup PE, Steve Boone LS |
| <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) | Bancorp South |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legal Services | Eddie Bourdon |
| <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"/> | |

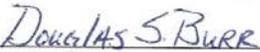
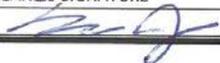
If yes, what is the name of the official or employee and what is the nature of the interest?



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.

| | | |
|---|--|---------|
|  |  | 12/3/18 |
| APPLICANT'S SIGNATURE | PRINT NAME | DATE |
|  | EILEEN JU | 12/3/18 |

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



Applicant & Property Owner **Philip & Amber Schworm**
 Address **3301 Old Kirkwood Drive**
 Public Hearing **February 25, 2019**
 City Council District **Lynnhaven**

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a detached workshop, carport and driveway

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

9/20/1961

Map Book 54, Page 23

GPIN

1488-90-8934

SITE AREA

47,915 square feet or 1.100 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

40,663 square feet or 0.933 acres

EXISTING IMPERVIOUS COVER OF SITE

4,680 square feet or 11.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

6,993 square feet or 17.2 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

2,313 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

50 foot Landward Buffer

100 foot Variable Width Buffer

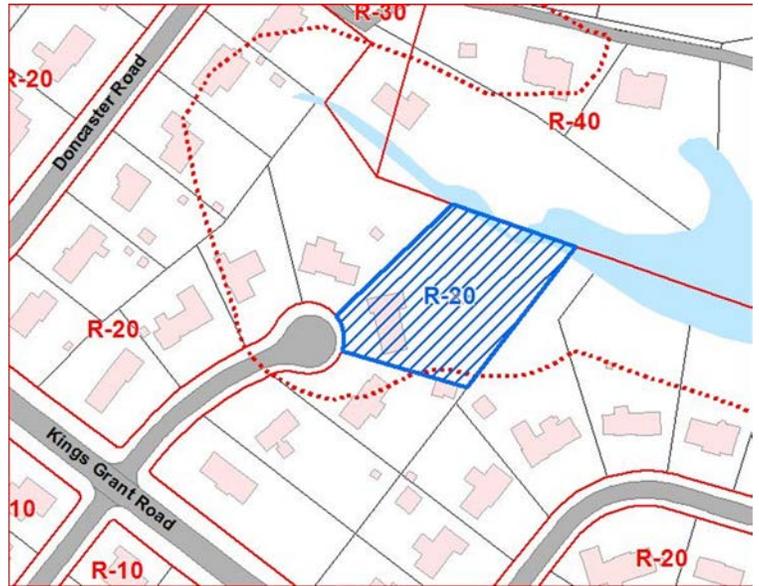
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Gravel driveway along the side of residence

Construction Details

- Detached workshop and carport
- Gravel driveway with concrete parking pad

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils) above the top of bank

Udorthents Series (well-drained and moderately well-drained soils) below the top of bank

Shoreline

Shoreline is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Tree being requested for removal is within the delineated limits of construction.

Evaluation and Recommendation

Staff met with the applicant and applicant's agent regarding the redevelopment of the driveway and the construction of a detached structure on this lot. The initial desire of the applicant was to situate and access the proposed improvements off of the southeast side of the lot. Although this portion of the lot is delineated as a Resource Management Area, the impacts to the lot would have increased the number of mature canopy trees removed, increased the amount of land disturbance associated with the proposed improvements, and increased the amount of overall impervious cover. Based on these circumstances, the applicant has revised the location of the improvements and the construction access resulting in just one tree to be removed, a reduction in land disturbance and a decrease in the amount of impervious surfaces proposed.

Staff is of the opinion that the approach towards development within the Resource Protection Area (RPA) provides merit with respect to the performance standards of the CBPA Ordinance given that,

- Land disturbance is limited to the area necessary to provide for the proposed use, inclusive of clearing and grading with the proposed improvement being situated in an area of the lot with an approximate slope of 2 to 3.5 percent.
- Existing vegetation is being preserved to the greatest extent practicable consistent with the use. As stated above, although a portion of the lot is delineated as a Resource Management Area, impacts to the number of mature canopy trees needing to be removed for access to the southeastern portion of this lot increases if disturbance occurs in this area of the property.
- As situated, land development minimizes the amount of impervious cover. Staff is of the opinion that situating the proposed improvements off of the existing driveway despite the fact that the RPA is present, the overall amount of impervious cover is minimized which is consistent with the performance standards within the CBPA Ordinance. In addition, the proposed improvements, while in the RPA, will be located on areas of the site that are of relatively flat and stabilize topography.

Based on the comments above, in Staff's view, both new development and redevelopment are the minimum necessary to afford relief.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed improvements are in keeping with the development on other parcels within the neighborhood and adjacent parcels."* Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief as *"the house was built prior to the City's adoption of the OCBPA Ordinance and at current zoning standards, therefore the only area for expansion or development is in the rear of the property."* Staff concurs and is of the opinion that the applicant's request is conscience to both the performance standards of the CBPA Ordinance and the minimum necessary to afford relief given the size of the parcel, date the parcel was recorded, and location of the RPA buffer.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. In addition, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the bay."* Staff is of the opinion that the proposed improvements will not negatively impact the components of the RPA, be injurious to the neighborhood, nor a substantial detriment to water quality because the current condition of the riparian buffer is primarily devoted to turf. With the recommended amount of buffer restoration conditioned below, should the variance request be granted, coupled with the restoration methods of the buffer planting and stormwater management should enhance the ecological and biological function of the RPA.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *"buffer restoration and bioretention stormwater management practices will be installed to capture and treat runoff prior to discharging into the adjacent waterways."* Staff concurs.

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 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. 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.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA:
2,313 square feet x 200 percent = 4,626 square feet.

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 12 large shrubs and 24 small shrubs.**

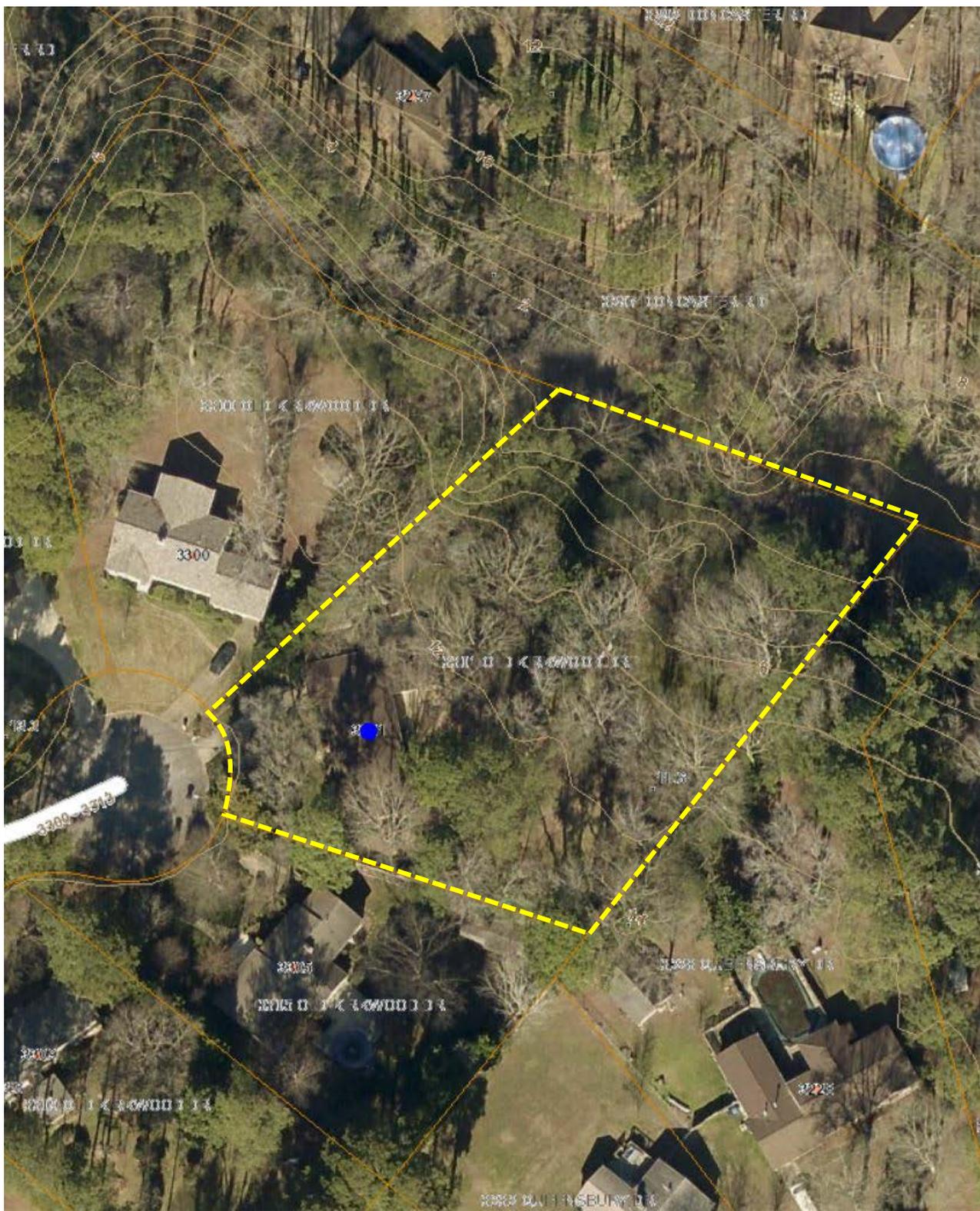
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material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

12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. The proposed impervious cover shall encroach into the 50 foot seaward buffer.
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 \$530.06 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
15. The conditions and approval associated with this variance are based on the exhibit plan dated January 11, 2019, prepared by Fox Land Surveying, signed January 13, 2019 by Travis Fox. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

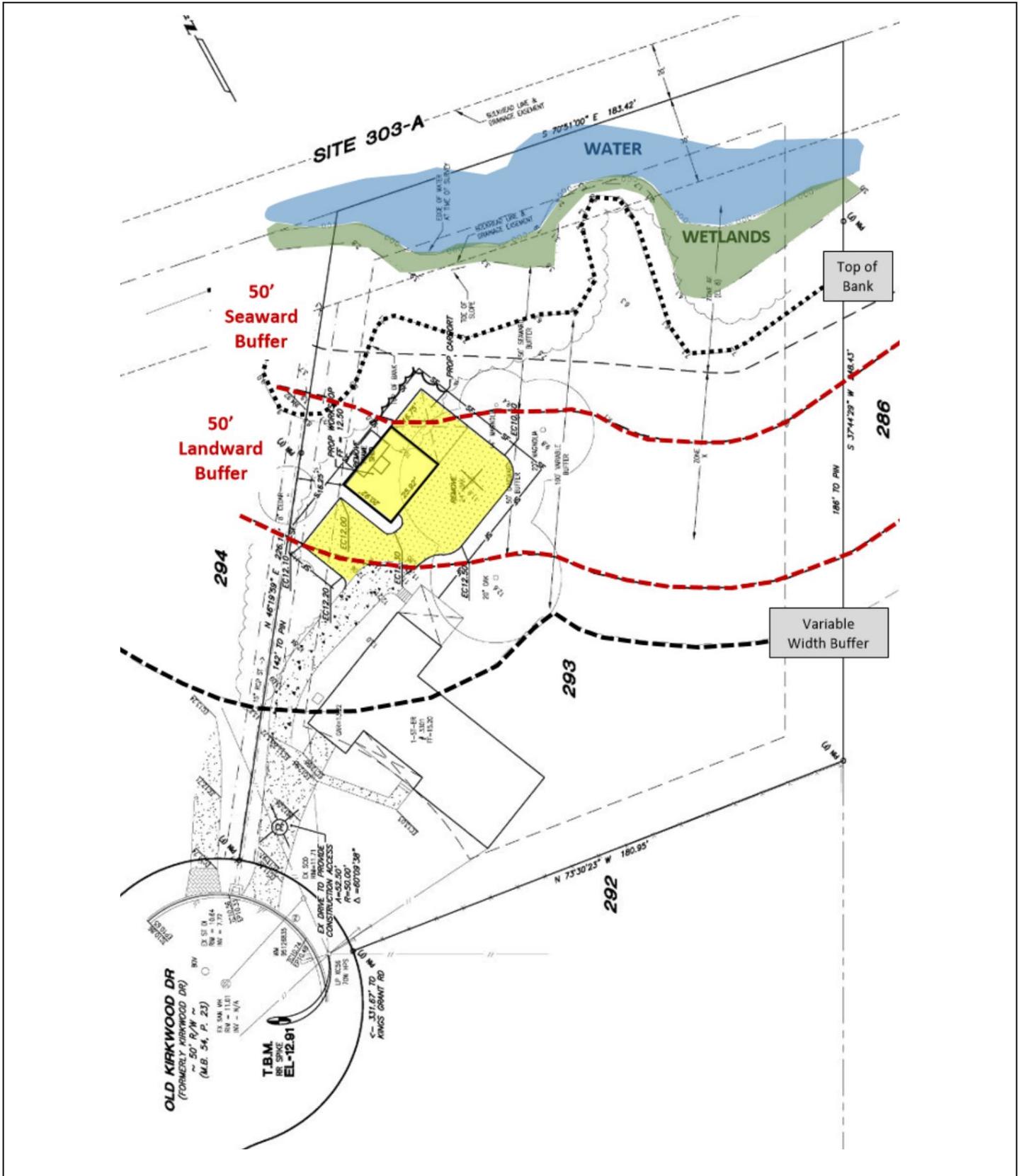
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Philip Schworm

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: Philip Schworm
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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

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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

| YES | NO | SERVICE | PROVIDER (use additional sheets if needed) |
|-------------------------------------|-------------------------------------|--|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Accounting and/or preparer of your tax return | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Architect / Landscape Architect / Land Planner | Steve McNaughton |
| <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 | NONE |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Engineers / Surveyors/ Agents | TRAVIS FOX, LS. |
| <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) | Nancy Fed. C.U. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legal Services | Billy Greenington 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.

| | | |
|---|----------------|------|
|  | Philip Schworm | |
| APPLICANT'S SIGNATURE | PRINT NAME | DATE |

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

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct an addition to the detached garage, and a swimming pool with patio area and associated retaining wall

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

3/13/1953

Map Book 34, Page 38

12/8/1998

Map Book 273, Page 6

GPIN

2418-49-8901

SITE AREA

49,079 square feet or 1.127 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

36,279 square feet or 0.833 acres

EXISTING IMPERVIOUS COVER OF SITE

8,252 square feet or 22.7 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

9,325 square feet or 25.7 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

1,073 square feet

Location of Proposed Impervious Cover

50 foot Seaward Buffer

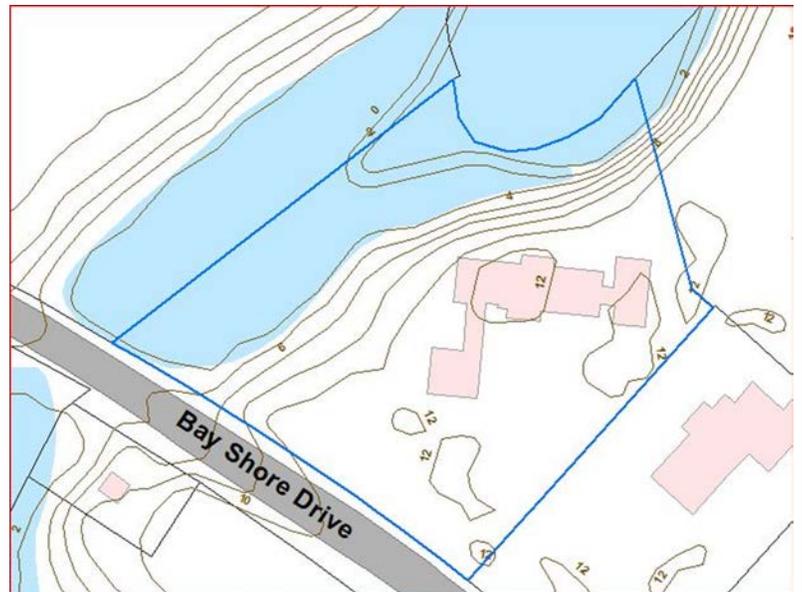
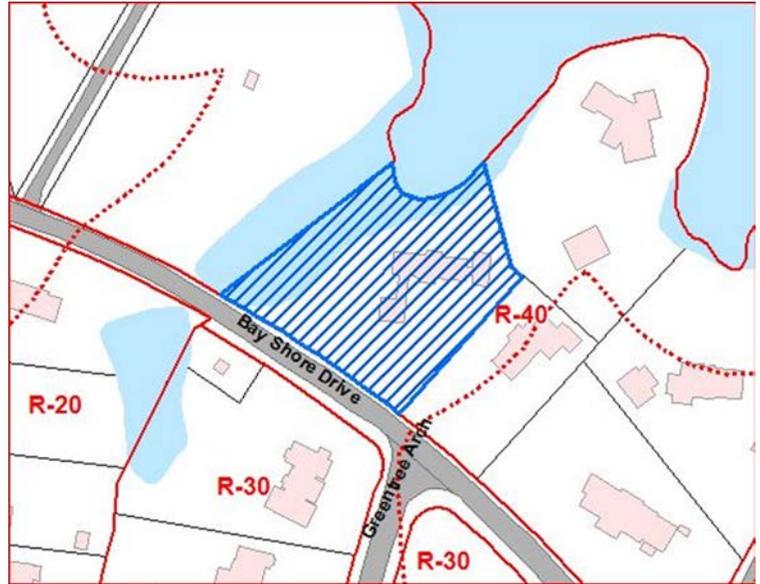
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Swimming pool with associated pool surround
- Covered great room/cabana with associated concrete patio
- Stacked retaining wall with associated backfill
- Stepping stone path

CBPA Ordinance Variance History

May 24, 1993 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a retaining wall/bulkhead to minimize erosion occurring on the property with the following conditions:

1. *Tree mitigation shall be on a 3 to 1 basis as outlined in the Chesapeake Bay Preservation Area Ordinance.*
2. *No heavy equipment shall be used to complete the proposed project. All work is to be performed manually.*
3. *The area to be filled must be sodded immediately upon completion of backfill.*

The May 24, 1993 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Portions of the shoreline are hardened by both a rip rap revetment and wood bulkhead. The tidal cove area of the lot is in a natural state.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction. Moderate management of non-native, invasive groundcovers, specifically *Hedera spp.*, Ivy should be performed along the western tidal bank of this lot to promote the vegetative health of the shoreline.

Evaluation and Recommendation

The characteristics of the area where the improvements are proposed include a moderately sloped bank with western exposure to sunlight. A mature riparian buffer with canopy trees is located on the southern portion of the property. Construction access for the project will occur above the top of bank where an existing gravel driveway will serve as a hard surface for staging of materials. Staff is of the opinion that the most sensitive portion of this area is seaward of the existing fence, beyond where any of the land disturbance will occur. The slope seaward of the existing fence is significant and is delineated as within the Rumford Soil Series, which has a high rate of erodibility when disturbed, by the soil survey.

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) *"The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels;"* therefore, 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. Staff concurs.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief as *"the owners have designed the proposed improvements to minimize the impacts to the Chesapeake Bay and have been limited to the landward buffer except for a minor encroachment for a pathway."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the Bay, however if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the Bay."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *"buffer restoration and bioretention stormwater management will be placed between the improvements and the Bay to capture and treat run-off prior to discharge into the Bay."* Staff concurs.

Given the underlying soil conditions, Staff supports this application's use of a retaining wall within the area of the lot that is currently devoted to turf. This recommendation for approval is contingent upon vegetating the disturbed areas and remaining areas of turf that are seaward of the proposed retaining wall with buffer restoration to minimum erosion potential and to both maximize sedimentation control and stormwater infiltration benefits. As such, Staff supports the application as submitted with the following 17 reasonable and appropriate conditions and is of the opinion that said improvements will not contribute to the degradation of water quality or prove detrimental to Resource Protection Area features.

Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,073 square feet x 200 percent = 2,146 square feet.** Of the 2,146 square feet of buffer restoration, approximately 900 square feet of buffer restoration shall be installed seaward of the proposed retaining wall.

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

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

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 \$245.89 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. This variance and associated conditions **are in addition to** the conditions of the Board variance granted May 24, 1993.
17. The conditions and approval associated with this variance are based on the exhibit plan dated December 21, 2018, prepared by WPL, signed January 4, 2019 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

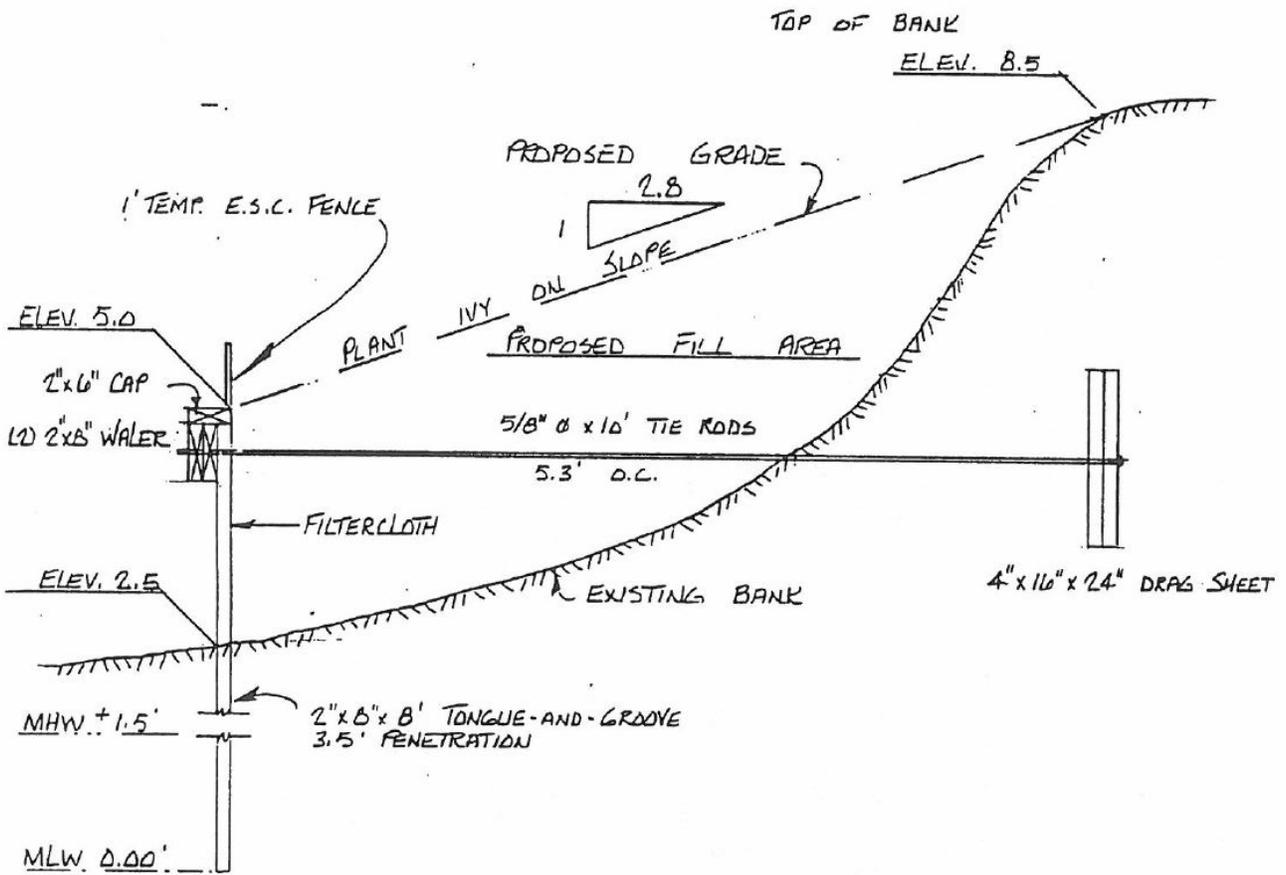
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



May 24, 1993 Board Variance Exhibit – Retaining Wall Detail





APPLICANT'S NAME Young Living Trust

DISCLOSURE STATEMENT FORM

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

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



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

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

(A) List the Applicant's name: Young Living Trust Joanne & James Young, Trustees
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)*

N/A

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

(A) List the Property Owner's name: Young Living Trust Joanne & James Young, Trustees
If an LLC, list the member's names:



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

N/A

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

N/A

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

| YES | NO | SERVICE | PROVIDER (use additional sheets if needed) |
|-------------------------------------|-------------------------------------|--|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Accounting and/or preparer of your tax return | John McDowell Dixon, Hughes, Goodman |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Architect / Landscape Architect / Land Planner | WPL |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers) | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Construction Contractors | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Engineers / Surveyors/ Agents | WPL |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property) | Sheree Pledger, Wells Fargo |
| <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?

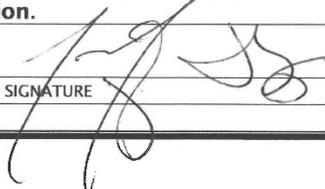
N/A



CERTIFICATION:

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

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

| | | |
|---|-------------------------|--------|
|  | James Young James Young | 1/5/19 |
| APPLICANT'S SIGNATURE | PRINT NAME | DATE |

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



Applicant & Property Owner **James & Kelly Sheeran**
 Address **909 Bingham Street**
 Public Hearing **February 25, 2019**
 City Council District **Lynnhaven**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool with patio area and associated walkways

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

8/7/1964

Map Book 62, Page 13

GPIN

2408-81-9587

SITE AREA

16,133 square feet or 0.37 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

16,133 square feet or 0.37 acres

EXISTING IMPERVIOUS COVER OF SITE

4,036 square feet or 25 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,847 square feet or 30 percent of site

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

938 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

- Wood deck

Construction Details

- Swimming pool with patio area
- Wood stairs and landing to existing wood deck
- Gravel walkway with timber steps

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is in a natural state with a heavily vegetated upland bank.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The tree requested for removal is within close proximity to the limits of construction. Staff is of the opinion, given the topography of the lot, that the proposed improvements will impact the majority of the tree's critical root zone and supports the request to remove the tree.

Evaluation and Recommendation

Staff met the applicant's agent in the field and reviewed the existing environmental features present with regard to the challenges of redeveloping this lot due to the topographic conditions. Staff is of the opinion that the applicant has provided a viable variance request given the following.

- The location of the proposed improvements attempt to limit land disturbance to ensure that the top of bank feature and the topography of the rear yard, which are the most sensitive portions of the buffer specific to this lot, are preserved to the greatest extent practicable.

- Transitioning over existing grade elevations with an open pile structure and minimizing the impact of the proposed improvements below the top of bank feature, as mentioned above, reduce the potential for erosion to occur and sediment reaching the waterway.

As situated, Staff is of the opinion that the proposed improvements are the minimal necessary to afford relief given the existing environmental features present on the lot, subject to the recommended conditions below, and offers merit towards the variance request from cause or contributing to the degradation of water quality.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.”* Staff offers that variance requests along this reach of the RPA feature have been minimal and is of the opinion that the proposed improvements are not necessarily in keeping with the development of the neighborhood but rather, are cognitive to the environmental features of the lot.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief with *“the house originally built in the 1960’s and near the current zoning standards, therefore the only area for expansion is in the rear of the property in addition to the proposed improvements being limited to the landward buffer except for a minor encroachment for the stairway.”* Staff concurs and offers that the applicant’s use of the side yard and selection of construction materials to minimize impacts on the existing topography provides additional merit towards this variance being the minimal necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, and currently does not offer any stormwater mitigation for the bay.”* Staff offers that the drainage patterns of the lots within this neighborhood direct stormwater from the front yards to the street. Given the topography of the rear yard and the fact that the stormwater from the front yard of this lot is untreated, Staff is of the opinion that stormwater management facilities should be installed in the front yard and has provided a recommend condition below to address this opportunity.
- 5) *“Planting buffer restoration and bioretention stormwater management will be placed between improvements and the bay to capture and treat run-off prior to discharging in the Bay”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

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

Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. 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.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management with portions of the required best management practices being located within the front yard.
11. Exclusive of the fenced in portions of the rear yard, the remaining area within the 100 foot RPA shall be converted to a natural state and augmented with **5 understory trees, 10 large shrubs, and 15 small shrubs.**

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

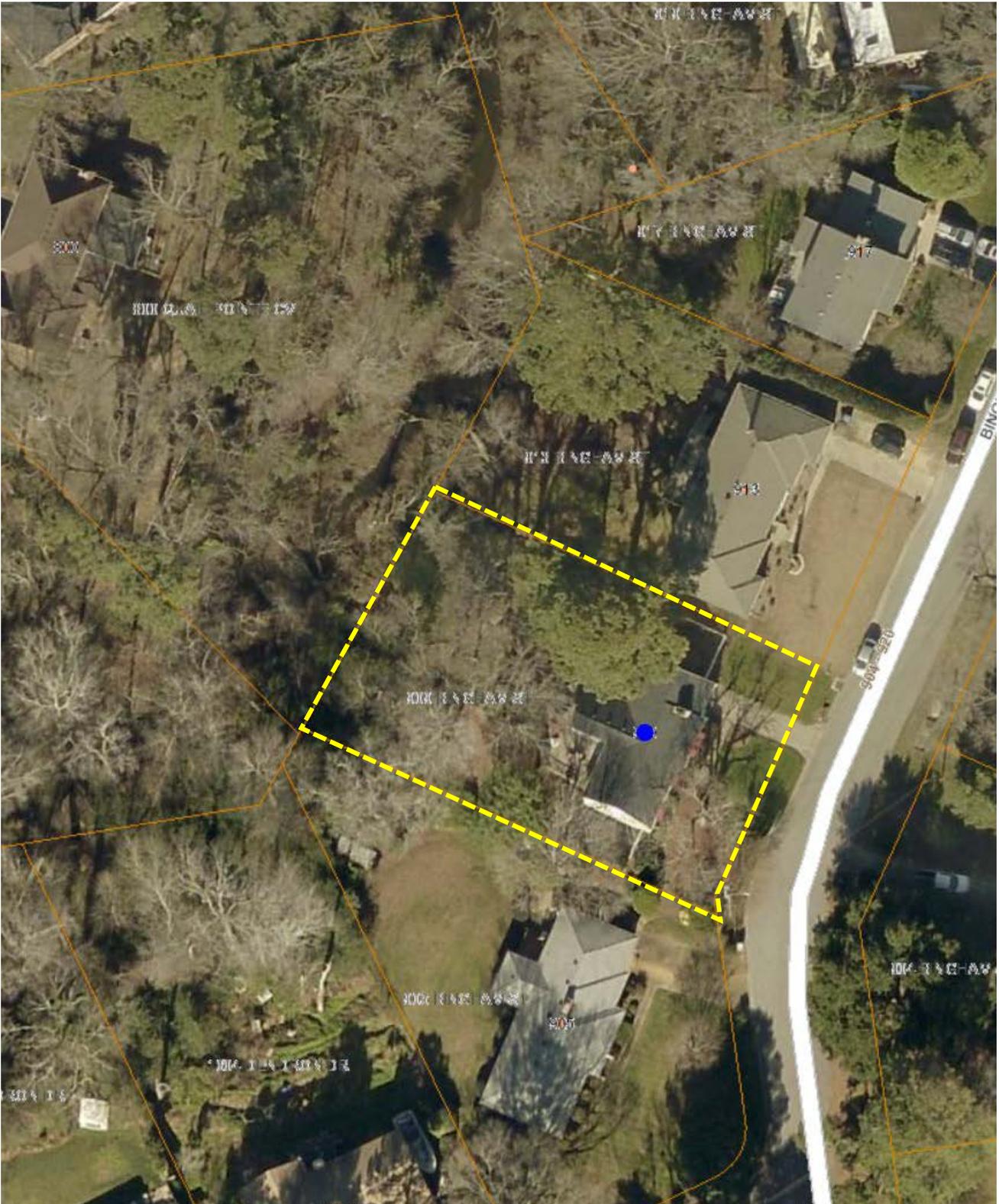
planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

12. Under deck treatment of sand and gravel shall be installed.
13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
15. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$214.95 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.
16. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
17. The conditions and approval associated with this variance are based on the exhibit plan dated August 22, 2018, prepared by WPL, signed November 5, 2018 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

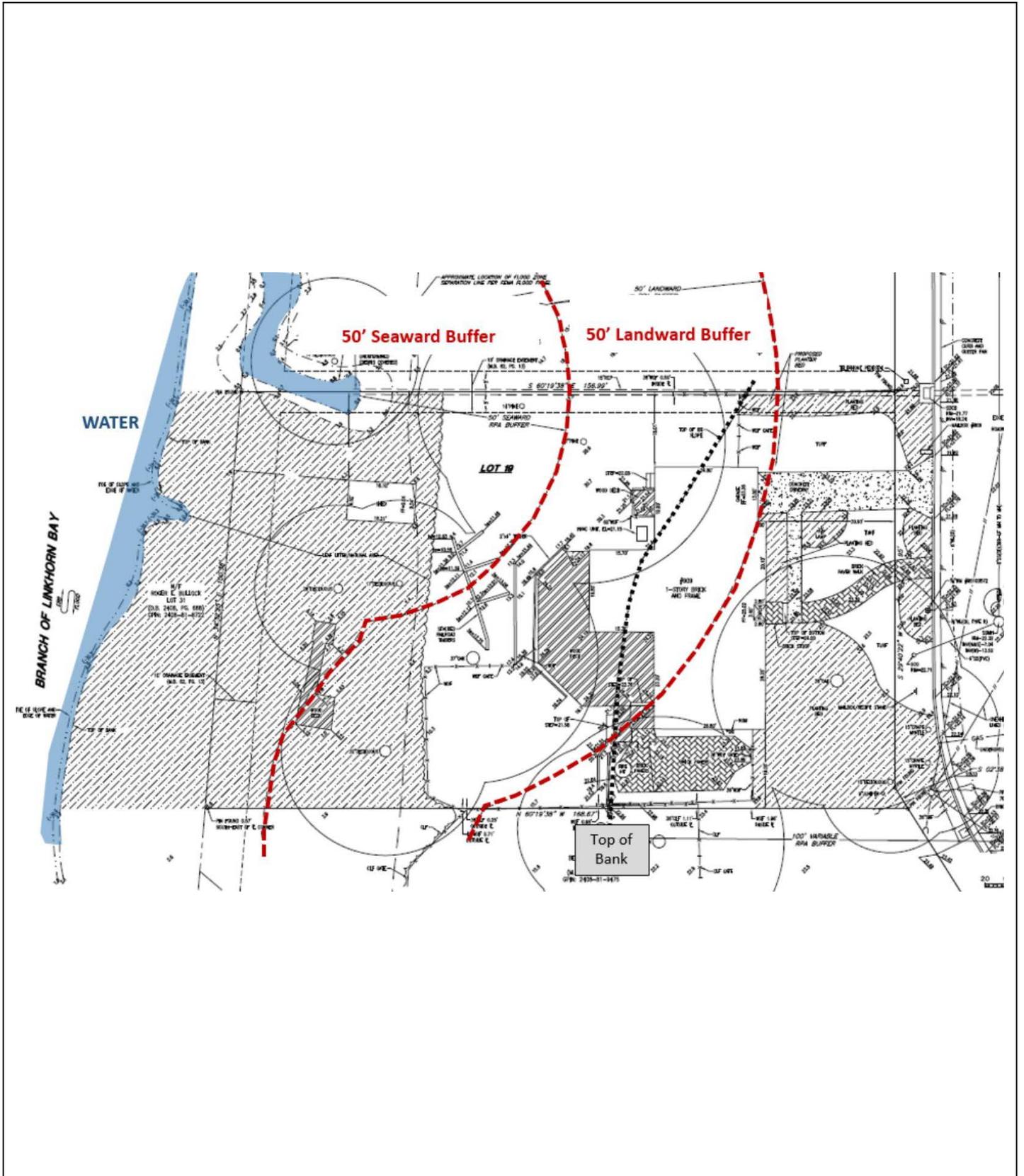
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

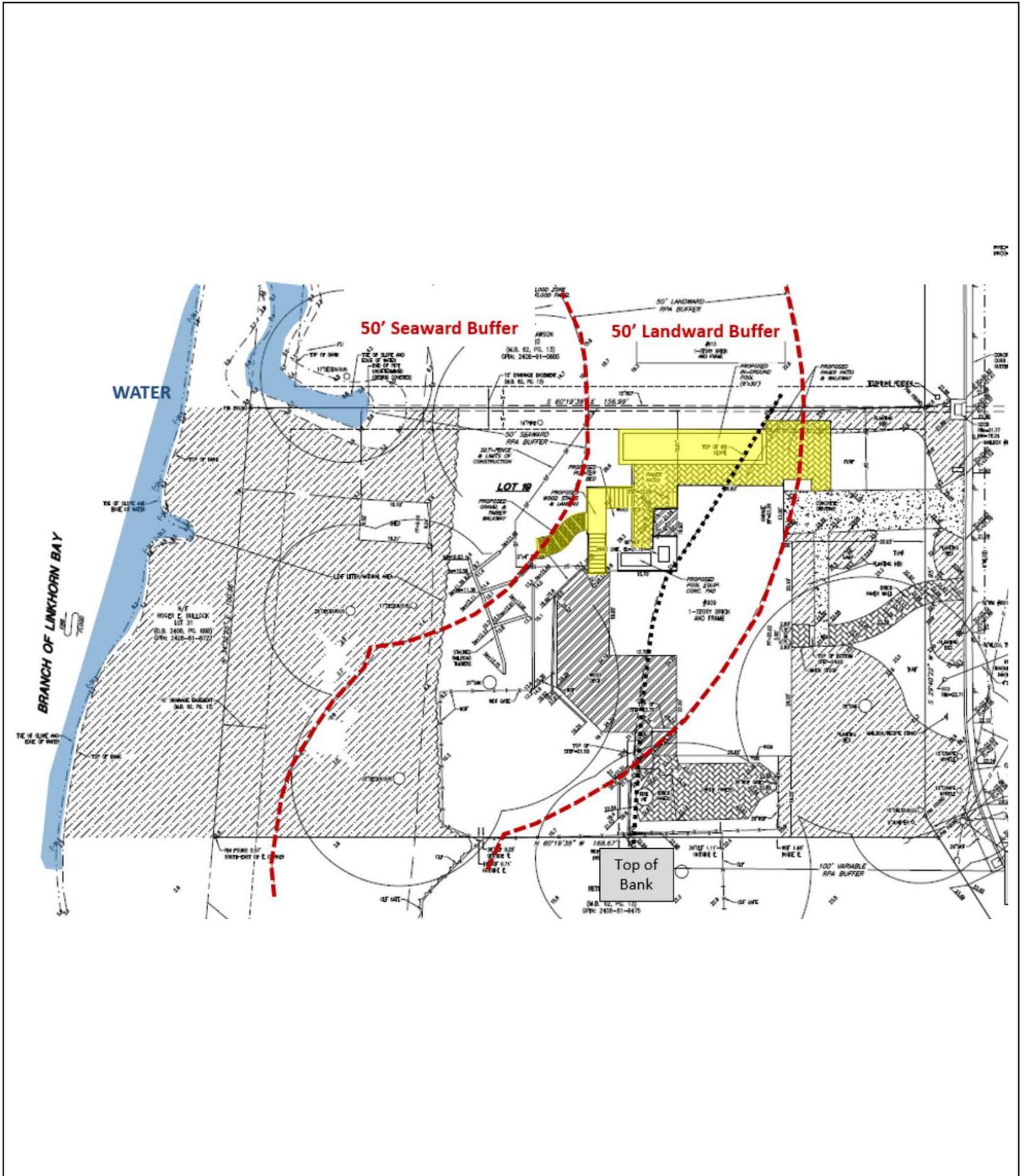
Site Aerial



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Kelly & James Sheeran

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: Kelly & James Sheeran
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)*

N/A

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

(A) List the Property Owner's name: Kelly & James Sheeran
If an LLC, list the member's names:

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

N/A

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

N/A

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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

N/A



CERTIFICATION:

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

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

| | | |
|-----------------------|-----------------------------------|-------------------|
| | Kelly D. Sheeran James R. Sheeran | Sheeran 1-4-19 |
| APPLICANT'S SIGNATURE | PRINT NAME | DATE |

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Modification to the December 22, 2005 CBPA variance to remove Condition 5 regarding the rehardening requirements of the existing shoreline

Applicant's Agent

Jason Barney

Staff Planner

PJ Scully

Lot Recordation

Map Book 7, Page 81

Dead Book 2796, Page 1312, 1/3/1989

GPIN

2409-91-4398

SITE AREA

45,300 square feet or 1.04 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

43,800 square feet or 1.005 acres

EXISTING IMPERVIOUS COVER OF SITE

14,073 square feet or 32.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

0 square feet

Area of Redevelopment in RPA

0 square feet

Area of New Development in RPA

285.92 linear feet

Location of Proposed Impervious Cover

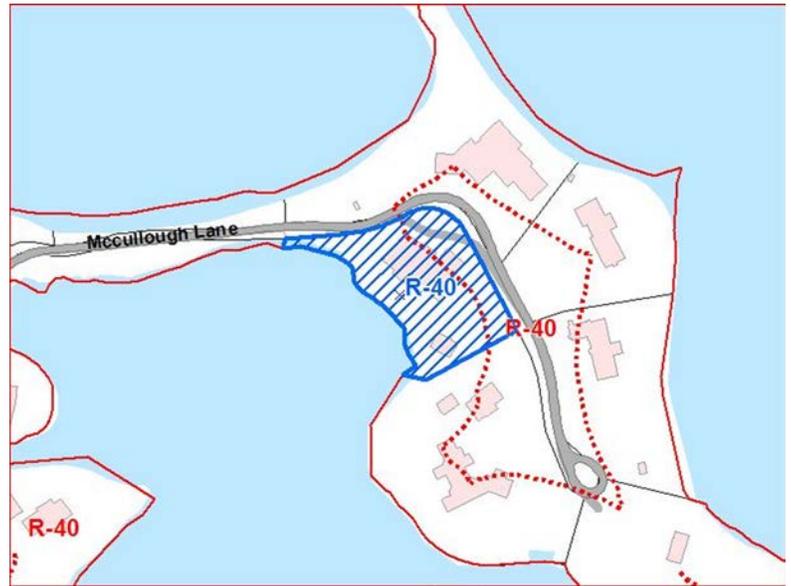
50 foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Timber bulkhead, approximately 6 inches channelward of failing bulkhead

Applicant requests to remove Condition 5 from the December 22, 2005 Chesapeake Bay Preservation Area (CBPA) Board variance that requires if the shoreline is ever hardened or rehardened that rip rap be used.

"If and when the shoreline is hardened / rehardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment."

CBPA Ordinance Variance History

December 22, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for to construct a building addition and roof over an existing tile porch with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Dual 36" erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Construction limits shall lie a maximum of 10' seaward of improvements.*
4. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
5. *If and when the hardened shoreline is replaced, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands. Said condition shall be so noted on the site plan.*
6. *Buffer restoration totaling 1,845 sq. ft. shall be installed which is equal to approximately 300% of the square footage associated with the improvements and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf adjacent to the water and shall have a mulch layer of organic material 4" – 6" in depth. In addition to the aforementioned buffer restoration area, a minimum of 30 trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species as offered by the applicant. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the final building inspection. Said condition shall be so noted on the site plan.*
7. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
8. *The conditions and approval associated with this variance are based on the site plan dated November 21, 2005, prepared by The Spectra Group, Inc.*

9. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$140.94 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 154 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
10. *During detailed site plan review the applicant shall provide justification regarding the number of trees to be removed.*
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.*

The August 28, 1995 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

Shoreline is hardened by a wood bulkhead.

The Center for Coastal Resources Management, City of Virginia Beach Comprehensive Map Viewer provided the following shoreline analysis for the subject property.

- Remove structure; replace with integrated vegetation buffer, grade bank if necessary. Depending on the salinity and tidal conditions, consider living shoreline enhancements such as oysters or marsh for the area along the eastern portion of the shoreline specific to this lot.
- Consider need for both the structure and groins. Repair/replace groins, add beach nourishment for the northern most portion of this lot adjacent to McCullough Lane.

Riparian Buffer

Moderately to sparsely wooded lot

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

Evaluation and Recommendation

This variance request has been precipitated by a Stop Work Order issued November 20, 2018 for unauthorized bulkhead repairs without a permit issued by the Department of Planning and Community Development. The basis of the request, is to delete Condition 5 of the 2005 CBPA variance which requires when the shoreline is replaced, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure. Based on Staff’s analysis of the existing condition of the

shoreline with the toe of a rip rap revetment lying at or landward of mean high water would involve excavation of approximately 5 to 8 feet landward from the existing bulkhead, requiring over 2,500 square feet of land disturbance.

To further support the applicant's request, who is the same applicant associated with the 2005 CBPA Board variance, the applicant's agent has provided 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 as *"the property is situated along the waterfront of Linkhorn Bay and many properties along the waterfront here have bulkheads along the shoreline."* While Staff respects this point of view provided by the applicant's agent, several shorelines of adjacent properties are hardened with rip rap revetments and, as provided by the Center for Coastal Resource Management, the preferred shoreline best management practice for this property is to remove existing structures and replace with integrated vegetation buffer, grading the bank as necessary. Depending on the salinity and tidal conditions, the recommendation included consideration to living shoreline enhancements such as oysters or marsh for the area along the eastern portion of the shoreline specific to this lot.
- 2) The applicant's agent provides that the variance request on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant but *"due to the applicant being unaware of the condition of the 2005 CBPA variance requiring that a rip rap revetment be used to replace the bulkhead, and that the applicant is this condition to be replaced with other measures that are more effective for reducing non-point source run-off from the site."* Understandably, the applicant stated that there were unaware of Condition 5, given that the variance was granted 13 years ago. Despite this, the unauthorized work should not have commenced without the necessary approvals and permits.
- 3) The variance is the minimum necessary to afford relief *"with the applicant no requesting any additional impervious cover, and with 90 percent of the bulkhead already replaced removal would not be feasible and would cause more disturbance."* The Water Quality Impact Assessment (WQIA) describes the desire to install bioretention planting beds in-lieu of the rip rap revetment as a more effective means at reducing pollutant run-off from the site. Staff is of the opinion that the proposed bulkhead being approximately 6 inches in front of the existing bulkhead offers merit towards the variance request being the minimal necessary to afford relief, as two feet seaward is the typical installation practice.
- 4) The applicant's agent believes that *"replacing Condition 5 with a condition requiring additional bioretention beds will be more effective in reducing pollutant run-off from the site"* provides merit towards the variance being in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare. Should the Board entertain granting this variance request, Staff has provided recommended conditions below as a means towards this variance request not being of substantial detriment to water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the applicant has provided that *"the proposal will reduce nonpoint source pollution from the site with no new impervious cover being proposed, and adding additional bioretention beds to capture additional nonpoint source run-off from the existing impervious areas."* Given that the construction accessway used by the marine contractor during the unpermitted construction activities has compromised the bioretention beds that were required and that were depicted on the 2008 approved site plan, Staff recommends conditions below to bring the lot into compliance with the 2005 CBPA variance.

Given the existing conditions of the lot, the environmental analysis of the shoreline, and the comments above, Staff is of the opinion that the redevelopment of the shoreline specific to this lot should have been conducted in harmony with the Center of Coastal Resources Management's recommendations. However, in the absence of grading the existing bank, Staff has provided the following 9 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality. The conditions require the installation of stormwater management practices within a revegetated buffer.

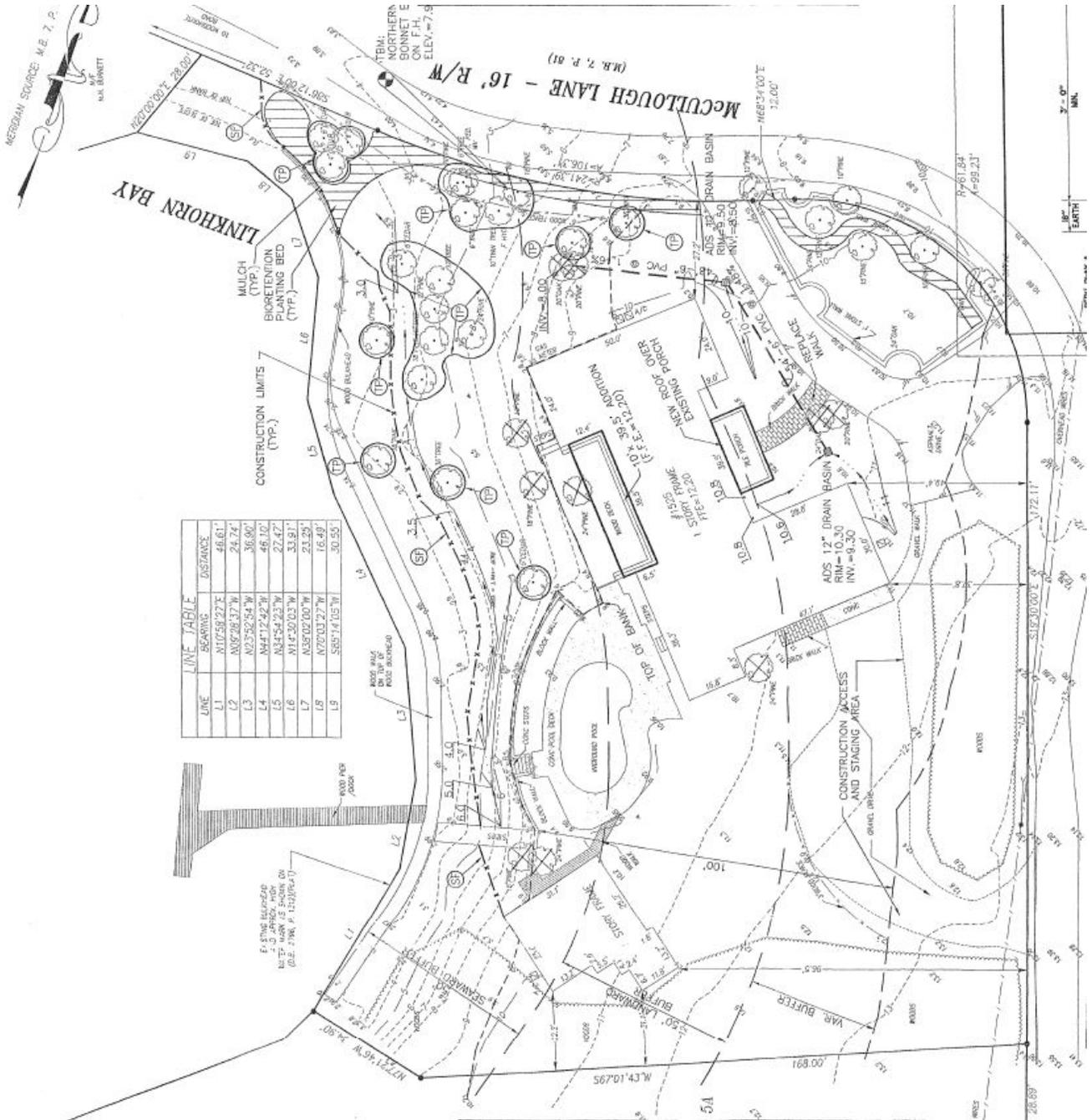
Recommended Conditions

1. The variance and associated conditions **are in addition to** the conditions of the Chesapeake Bay Preservation Area (CBPA) variance Board variance granted December 22, 2005 with condition 5 being stricken from the December 22, 2005 CBPA variance.
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. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.
4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
5. 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.
6. The conditions of the existing December 22, 2005 CBPA variance, specifically the required buffer restoration and stormwater management facilities shall be documented on a revised Landscape/Buffer Restoration plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present. The required stormwater management facilities shall be reinstalled outboard of the existing canopy trees driplines.
7. A 10 foot wide buffer restoration planting bed shall be installed parallel to the proposed bulkhead. Said area of restoration is in addition to the December 22, 2005 CBPA variance buffer restoration requirements and shall achieve the full complement of vegetation consisting of shrubs and groundcovers to the greatest extent practicable.
8. A Landscape/Buffer Restoration Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Said plan shall detail the specific location, number, and species of vegetation to be installed and all stormwater management facilities that were documented on the approved April 23, 2008 DSC Site Plan in addition to the buffer restoration requirements associated with this variance.
9. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Development Services Center for review and approval prior to the issuance of a building permit. The Development Services Center and/or Permits and Inspections may require additional information that may affect the release of a building permit

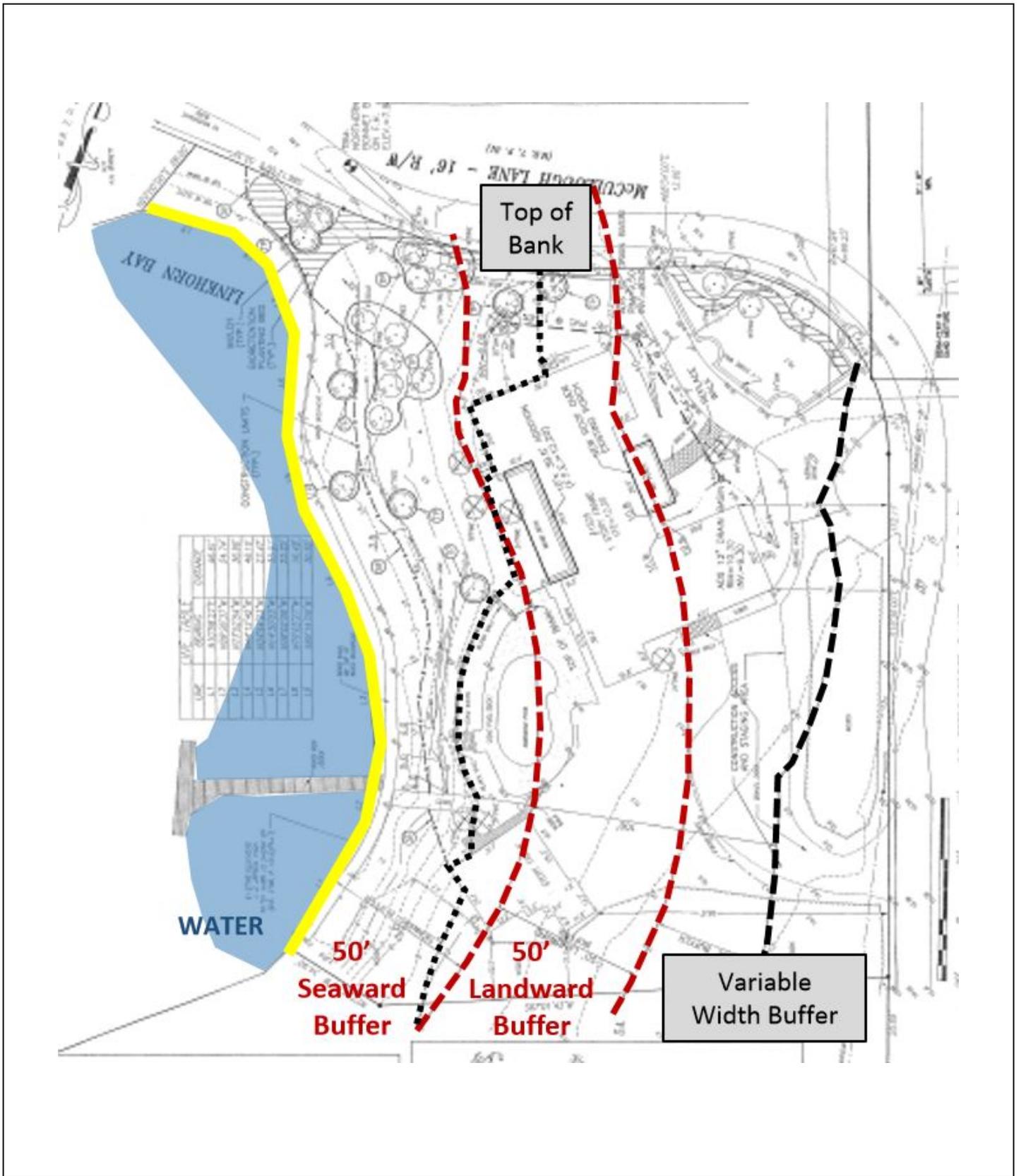
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

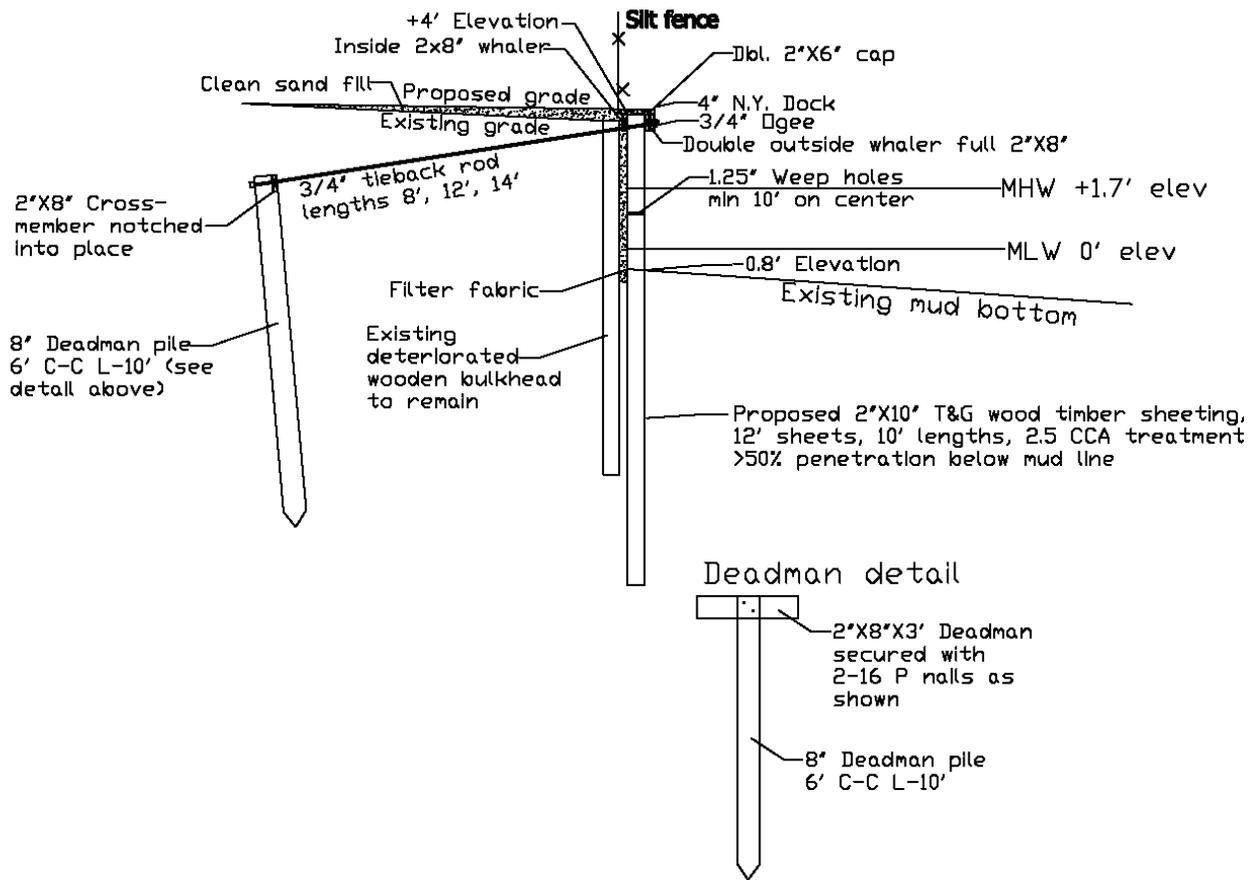




CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Cross Section of Proposed Bulkhead





APPLICANT'S NAME Linkhorn Investments Co., LLC

DISCLOSURE STATEMENT FORM

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| | | |
|--|--|--|
| Acquisition of Property by City | Disposition of City Property | Modification of Conditions or Proffers |
| Alternative Compliance, Special Exception for | Economic Development Investment Program (EDIP) | Nonconforming Use Changes |
| Board of Zoning Appeals | Encroachment Request | Rezoning |
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| 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: Linkhorn Investments Co., LLC
If an LLC, list all member's names:
Mr. David Gatling, Manager

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: Linkhorn Investments Co., LLC
If an LLC, list the member's names: Mr. David Gatling, Manager

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

| YES | NO | SERVICE | PROVIDER (use additional sheets if needed) |
|-------------------------------------|-------------------------------------|--|--|
| <input 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 | Broad Bay Contracting, Inc. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Engineers / Surveyors/ Agents | Barney Environmental, Inc. |
| <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 checked="" type="checkbox"/> | <input type="checkbox"/> | |

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

Jason Barney with Barney Environmental, Inc. is the Agent for this application. Mr. Barney serves on the Virginia Beach Wetlands Board, the Virginia Beach Green Ribbon Committee, and the Virginia Beach Envision 2040 Committee.



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 |
|----------------------------|-------------------|---------|
| <i>David W. Gatzling</i> | DAVID W. GATZLING | 1/23/19 |

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

Linkhorn Investments Co., LLC

Agenda Item 5

Page 76



Applicant & Property Owner **David McClellan**
 Address **553 Longleaf Road**
 Public Hearing **February 25, 2019**
 City Council District **Beach**

Agenda Item

6

Variance Request

Reconsideration of the December 20, 2017 CBPA variance to construct a retaining wall further seaward of the approved site improvements

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

11/13/1976

Map Book 117, Page 11

GPIN

1497-98-8641

SITE AREA

27,041 square feet or 0.621 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,740 square feet or 0.453 acres

EXISTING IMPERVIOUS COVER OF SITE

4,373 square feet or 22.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,781 square feet or 24.2 percent of site

Area of Redevelopment in RPA

110 square feet

Area of New Development in RPA

356 square feet

Location of Proposed Impervious Cover

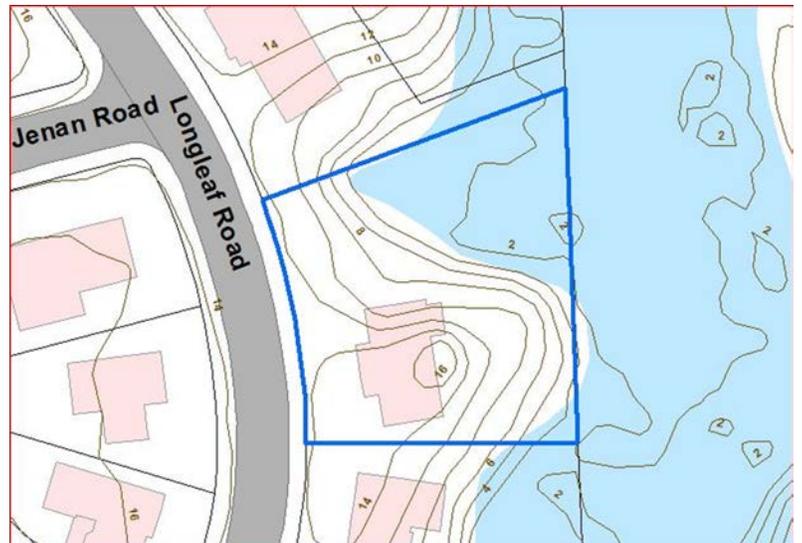
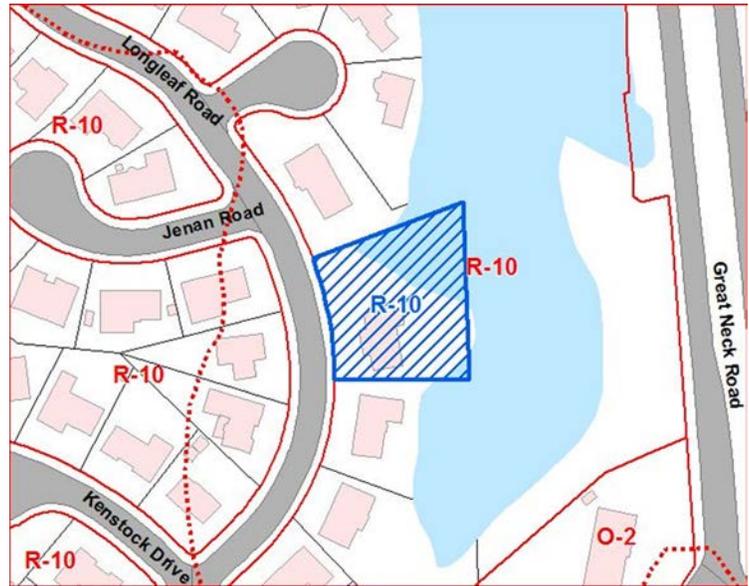
50 foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Deny as submitted



Summary of Proposal

Construction Details

- Block retaining wall with associated backfill material

Applicant requests a reconsideration to the December 20, 2017 Chesapeake Bay Preservation Area (CBPA) Board variance to encroach further seaward of the approved site improvements to construct a block retaining wall.

CBPA Ordinance Variance History

December 20, 2017 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a swimming pool with associated pool patio, wood deck and three retaining walls within the rear yard:

Board's Findings:

- 1) *Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property, as the area encroached upon for the redevelopment of the property is consistent to other properties within this neighborhood who are subject to the provisions of this ordinance and are similarly situated with relatively shallow rear yards where development has occurred within the Resource Protection Area (RPA).*
- 2) *The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and of the City's CBPA Ordinance, therefore placing portions of this property within the RPA.*
- 3) *The variance is the minimum necessary to afford relief as Staff has worked with the applicant's agent to situate the majority of the proposed improvements within the 50 foot landward buffer so that the most sensitive portions of the riparian buffer and functioning ecosystem are preserved to the greatest extent practicable.*
- 4) *The Board is of the opinion that the variance is in harmony with the purpose and intent of the CBPA ordinance and will not be injurious to the neighborhood and not of substantial detriment to water quality due to – the introduction of buffer plantings along the seaward portion of the proposed improvements to abate the existing erosion occurring from stormwater run-off, conditioning the limits of construction specific to existing site features, and utilizing existing topography towards siting proposed improvements.*
- 5) *The Board is of the opinion that the use of nonstructural (bioretention) stormwater BMPs and preservation of existing vegetation will provide a means to manage towards a no net increase in nonpoint source pollution loads.*

CPBA Variance 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
7. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
8. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **403 square feet x 200 percent = 806 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 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.

11. *Under deck treatment of sand and gravel shall be installed.*
12. *No perimeter fill is authorized outboard or seaward of the proposed improvements.*
13. *Eliminate the proposed concrete hot tub pad.*
14. *Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.*
15. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$91.66 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 100 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.*
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 November 1, 2017 prepared by WPL, signed November 3, 2017 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*
18. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*

The applicant is in the process of constructing the proposed improvements associated with the December 20, 2017 Board variance.

Environmental Conditions

Flood Zone

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

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed to limb up low hanging branches shading existing tidal marsh.

Riparian Buffer

Moderately to sparsely wooded lot

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

Evaluation and Recommendation

The rear portion of the lot is a west facing slope that is heavily shaded by mature canopy tree cover. During the site visit for the December 2017 variance request, minor signs of erosion were present along the northern and southern portions of the lot. Given the existing topography of the rear yard, presence of erosion and the underlying soil conditions, Staff supported the 2017 CBPA variance that proposed the use of a terraced retaining wall system. This approval was contingent upon vegetating the disturbed areas, specifically seaward of the retaining wall located at the rear of the residence with buffer restoration to maximize erosion and sedimentation control benefits and stormwater infiltration. In Staff's view, relocation of the approved retaining wall further seaward is an unnecessary encroachment into the most sensitive portion of the lot. Staff does not support the request for the following reasons.

- The request further encroaches into the critical root zone of an existing 22 inch diameter Oak tree and a 26 inch Oak tree. Staff is concerned with the impact excavation will have on the existing root structures for the retaining wall's footer, and the amount of fill material that will be placed over the root system altering the aerobic conditions of the existing soil profile.
- The request further displaces approximately 800 square feet of mature forest floor for the creation of a yard in an area below the top of bank feature.

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 consideration during deliberation of this variance request.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated *"because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff offers that the majority of the shoreline along this reach of the Lynnhaven River appears to be in a natural state with minimal manipulation of existing topography.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief *"with the proposed improvements being limited to allow for a useable rear yard."* Staff is of the opinion that the 2017 CBPA variance was the minimum necessary to afford relief and limits of land disturbance associated with that variance should be respected.
- 4) The variance is in harmony with the purpose and intent of the CBPA Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare *"because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation to the river, however, if approved the proposed redevelopment will be required to have treatment provided between the improvements and the river."* While Staff respects the applicant's position with regards to further encroachment into the RPA, Staff is of the opinion that, at this time, it is unknown what impacts the further encroachment will have on the health and longevity of the adjacent mature canopy trees. Deterioration and decline of canopy trees due to construction impacts often occur 5 years or more after land disturbance has been stabilized within the critical root zones of trees. In addition, approval of this revision will be in conflict with the Board's 2017 finding that the most sensitive portions of the riparian buffer and functioning ecosystem are preserved to the greatest extent practicable.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the planting of buffer restoration and installation of stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharge into the canal.”* Should the Board grant this variance, Staff has provided a recommended condition that buffer restoration and stormwater management to be placed landward of the proposed retaining wall as a means to reduce additional impacts on the adjacent forested areas and mature canopy trees.

Should the Board desire to grant this variance request, Staff recommends the following 9 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

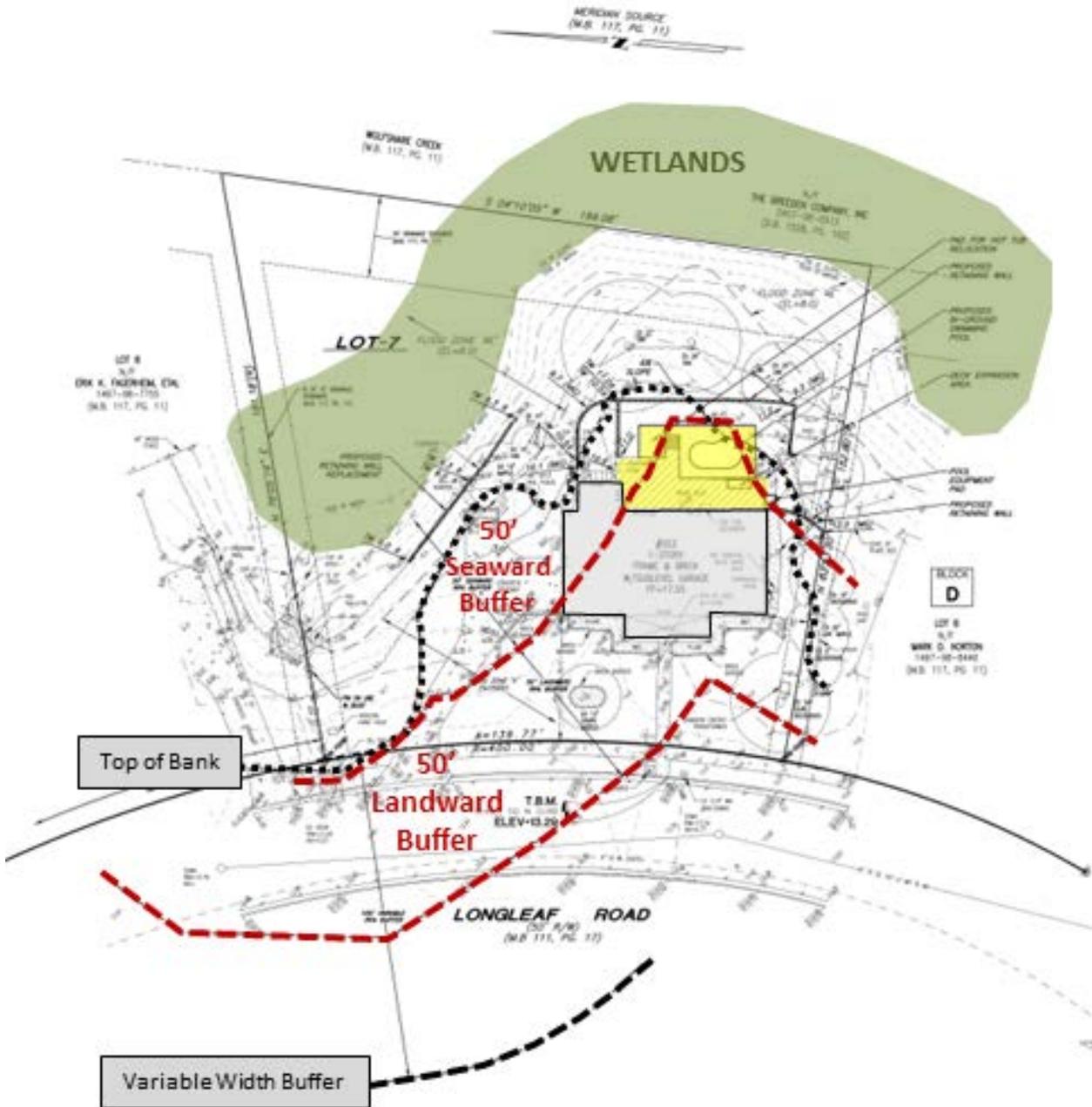
Recommended Conditions

1. The variance and associated conditions **are in addition to** the conditions of the Board variance granted December 20, 2017.
2. 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.
3. 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.
4. A field change 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.
5. Submitted concurrent with the field change site plan shall be a separate revised 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.
6. No perimeter fill is authorized outboard or seaward of the proposed improvements.
7. A 10 foot wide buffer restoration planting bed shall be installed parallel to the landward side of the proposed retaining. Said area of restoration is in addition to the December 20, 2017 CBPA variance buffer restoration requirements and shall achieve the full complement of vegetation consisting of shrubs and groundcovers to the greatest extent practicable.
8. No stormwater management facilities shall be located seaward of the proposed retaining wall.
9. The conditions and approval associated with this variance are based on the exhibit plan dated November 1, 2017, prepared by WPL, signed January 25, 2019 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

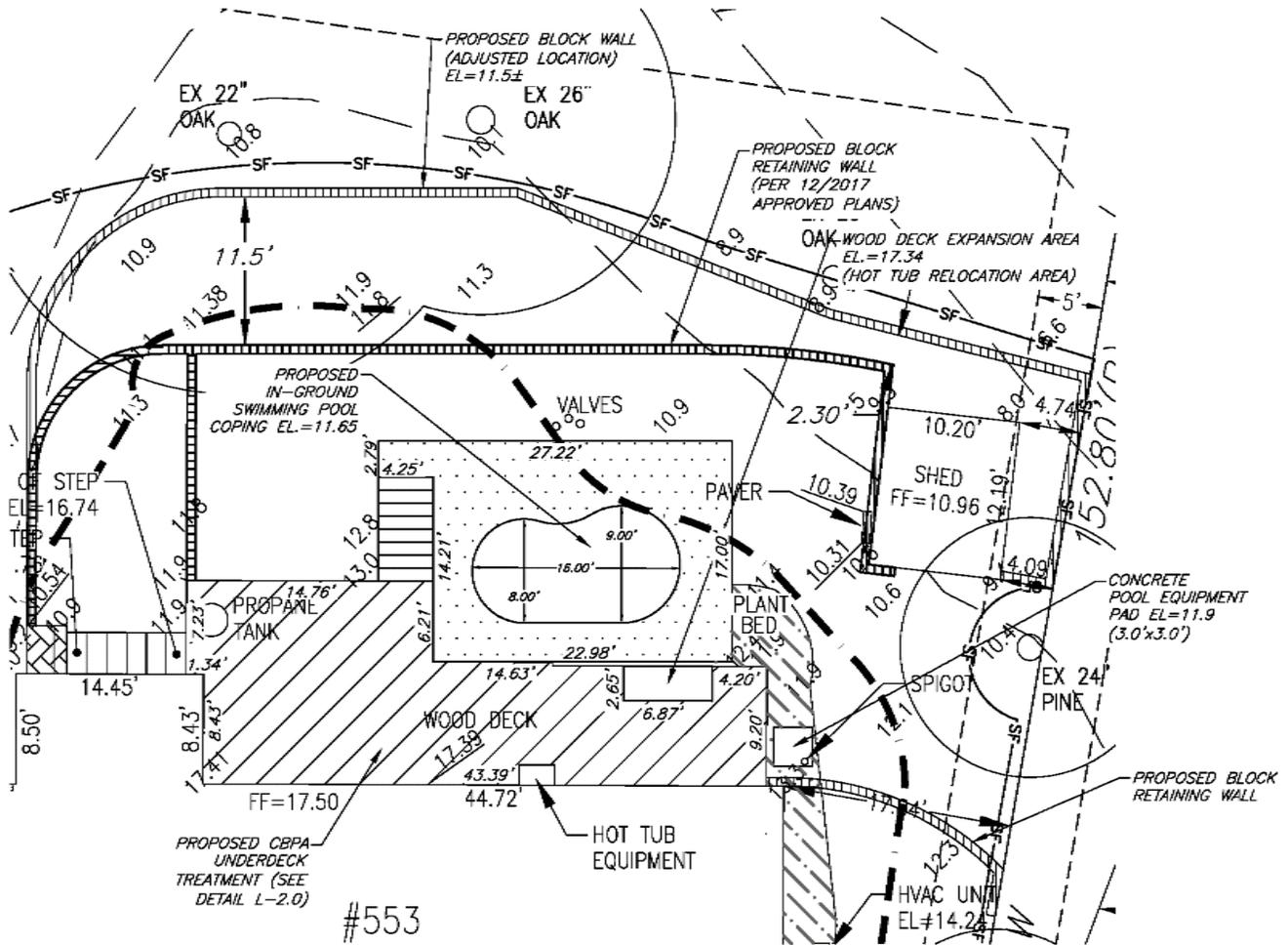
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Site Aerial





CBPA Exhibit – Retaining Wall Relocation Exhibit





APPLICANT'S NAME David C. McClellan

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|---|--|--|
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| Chesapeake Bay Preservation Area Board | Floodplain Variance | Street Closure |
| Conditional Use Permit | Franchise Agreement | Subdivision Variance |
| | Lease of City Property | Wetlands Board |
| | License Agreement | |

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Page 1 of 7

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



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

(A) List the Applicant's name: David C. McClellan
If an LLC, list all member's names:

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

N/A

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

N/A

See next page for information pertaining to footnotes ¹ and ²

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

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

(A) List the Property Owner's name: David C. McClellan
If an LLC, list the member's names:

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N/A

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

N/A

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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

N/A



CERTIFICATION:

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

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

| | | |
|---|--------------------|-----------|
|  | David C. McClellan | 11/1/2017 |
| 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