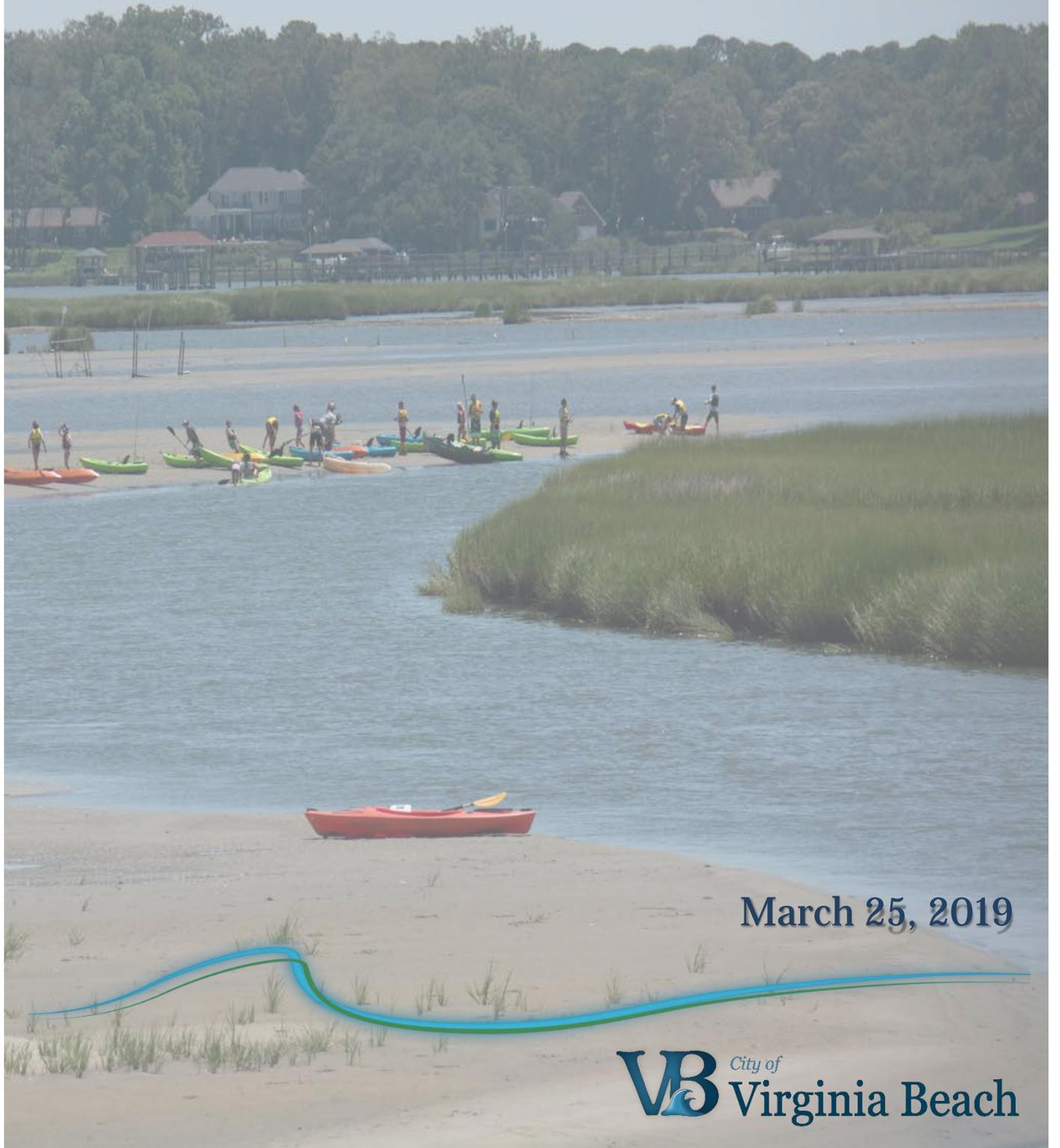


# Chesapeake Bay Preservation Area Board Agenda



March 25, 2019

**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, March 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 **March 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.**

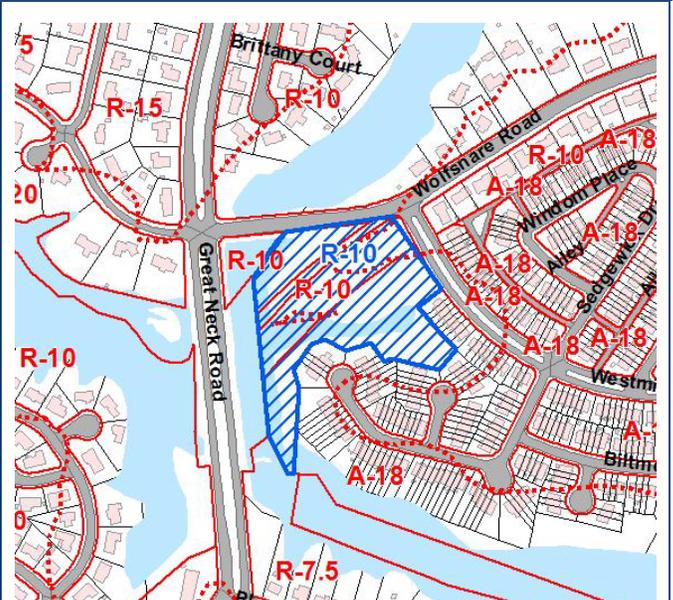
**Lynnhaven Area Properties, LLC.**  
[Applicant & Property Owner]

**Prop. of Allen E Perrel, Lot 4 & Closed portion of Wolfsnare Rd & Wolfsnare Parcel B, Wolfsnare Rd**  
GPIN: 2407-09-4435, 2407-09-5412, & 2407-09-6257  
COUNCIL DISTRICT – Beach

Applicant's Agent – Lisa M. Murphy

Staff Planner – PJ Scully

**Page 7**



**2.**

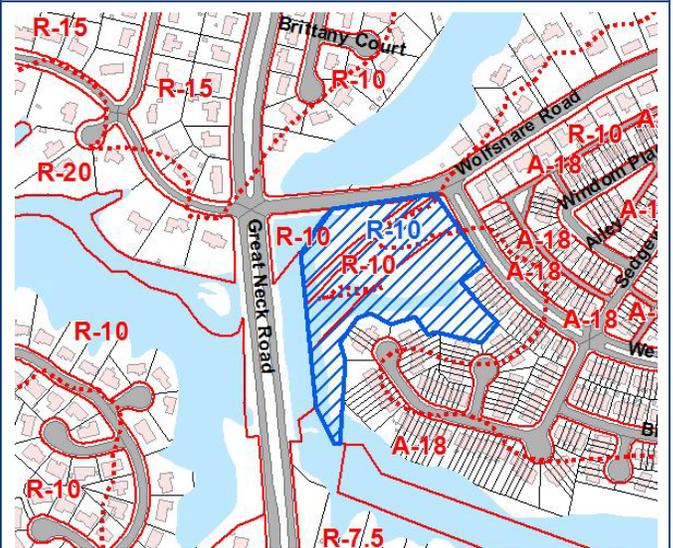
**Lynnhaven Area Properties, LLC.**  
[Applicant & Property Owner]

**Wolfsnare Parcel 2, Lot 7, Wolfsnare Rd. & Westminster Ln.**  
GPIN: 2407-09-6257  
COUNCIL DISTRICT – Beach

Applicant's Agent – Lisa M. Murphy

Staff Planner – PJ Scully

**Page 9**



**3.**

**Celebi Ozic**

[Applicant & Property Owner]

**2725 Canal Rd.**

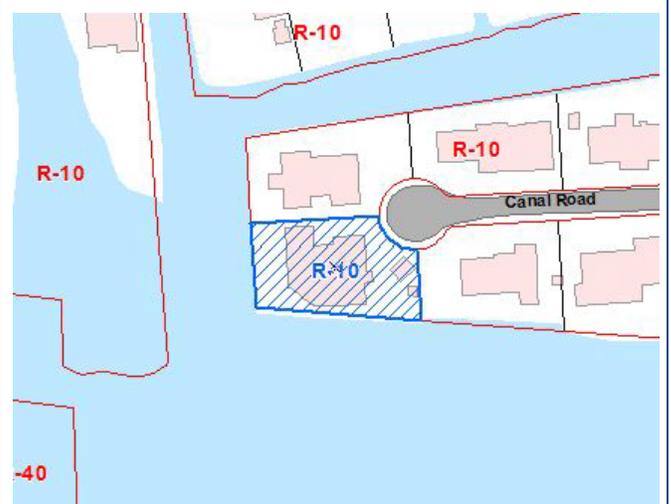
GPIN: 1499-57-3345

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

**Page 11**



**4.**

**David McClellan**

[Applicant & Property Owner]

**553 Longleaf Rd.**

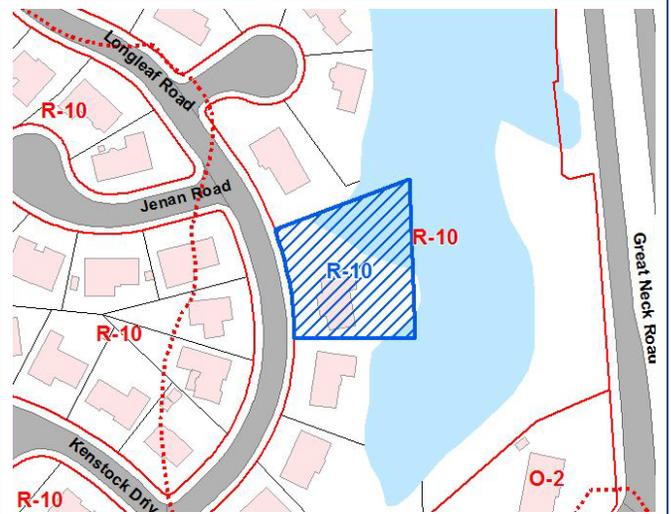
GPIN: 1497-98-8641

COUNCIL DISTRICT – Beach

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

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## NEW BUSINESS AGENDA ITEMS

**5.**

**Lance & Cheri Shores**

[Applicant & Property Owner]

**2745 Spigel Dr.**

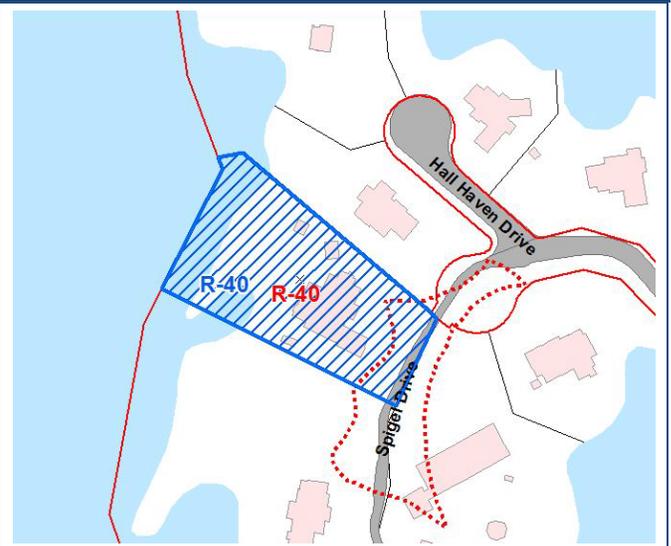
GPIN: 1498-42-6749

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

**Page 31**



6.

**Betsy DiJulio**

[Applicant & Property Owner]

**3620 Sea Horse Way**

GPIN: 1487-59-6749

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Yang Tian

Staff Planner – PJ Scully

**Page 45**



7.

**Charles & Barbara Cleveland**

[Applicant & Property Owner]

**2317 Windward Shore Drive**

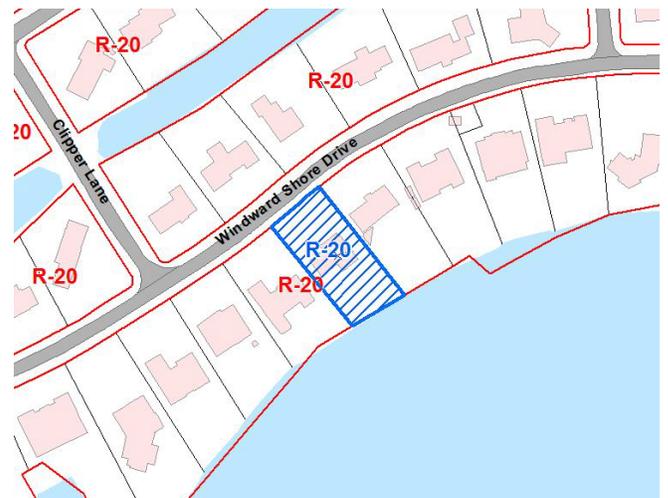
GPIN: 2409-08-0660

COUNCIL DISTRICT – Lynnhaven

Applicant's Agent – Billy Garrington

Staff Planner – PJ Scully

**Page 59**



8.

**Lindsay Shephard ET AL**

[Applicant & Property Owner]

**3417 S Crestline Drive**

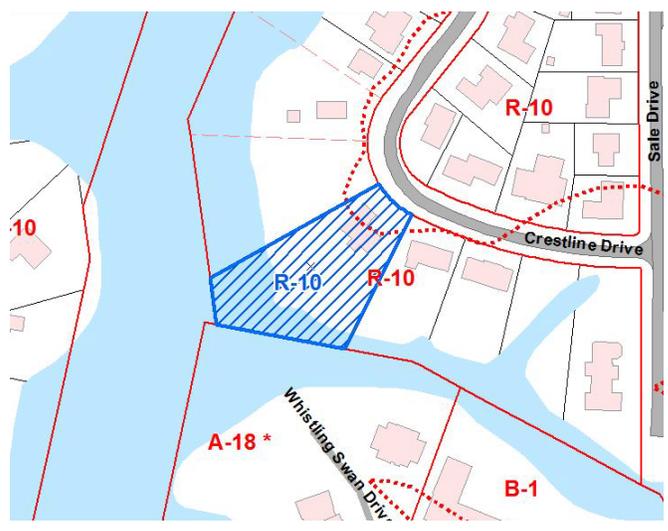
GPIN: 1456-28-1008

COUNCIL DISTRICT – Kempsville

Applicant's Agent – Self represented

Staff Planner – PJ Scully

**Page 73**







Applicant & Property Owner **Lynnhaven Area Properties, LLC**  
 Address **Prop. of Allen E. Perrel, Lot 4 & Closed portion of  
 Wolfsnare Rd & Wolfsnare Parcel B, Wolfsnare Rd**  
 Public Hearing **March 25, 2019**  
 City Council District **Beach**

Agenda Item

**1**

**The applicant is requesting to defer this application to the Monday, April 22, 2019 CBPA Board Public Hearing to allow additional time to address Staff's concerns. Staff supports the request to defer.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct 5 single family residences with associated accessory structures

**Variance Request History**

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

**Applicant's Agent**

Lisa M. Murphy

**Staff Planner**

PJ Scully

**Lot Recordation**

7/2/1975

Map Book 110, Page 48

**GPIN**

2407-09-4435, 2407-09-5412, and part of 2407-09-6257

**SITE AREA**

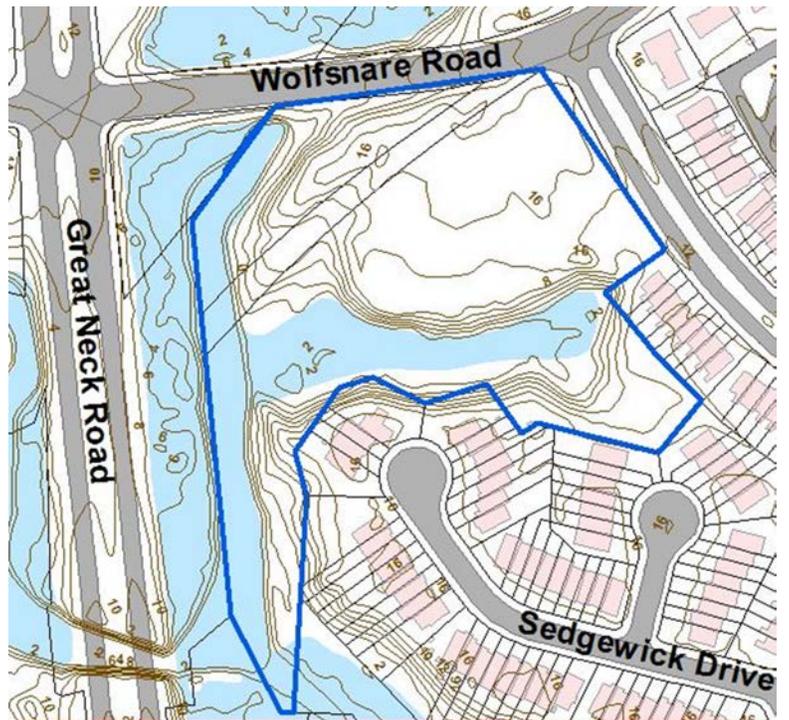
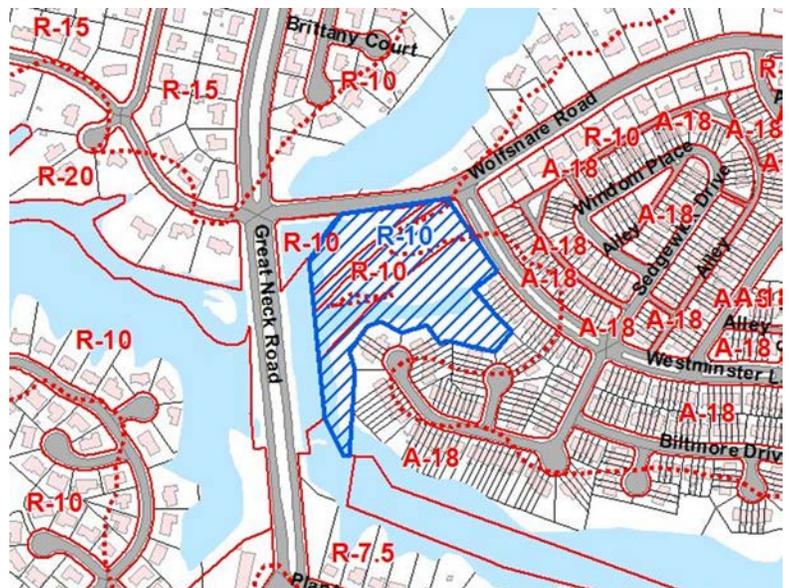
282,750 square feet or 6.491 acres  
 144,118 square feet or 3.08 acres in R-10 zoning district for this lot

**SITE AREA OUTSIDE OF WATER/WETLANDS**

92,576 square feet or 2.125 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,022 square feet or 5.42 percent of site



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Applicant & Property Owner **Lynnhaven Area Properties, LLC**  
 Address **Wolfsnare Parcel 2, Lot 7, Wolfsnare Road & Westminster Lane**  
 Public Hearing **March 25, 2019**  
 City Council District **Beach**

Agenda Item

**2**

The applicant is requesting to defer this application to the Monday, April 22, 2019 CBPA Board Public Hearing to allow additional time to address Staff's concerns. Staff supports the request to defer.

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct 11 two-story attached townhomes with associated access road and parking

**Variance Request History**

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

**Applicant's Agent**

Lisa M. Murphy

**Staff Planner**

PJ Scully

**Lot Recordation**

12/26/1984

Map Book 186, Page 47

**GPIN**

Part of 2407-09-6257

**SITE AREA**

224,438 square feet or 5.152 acres

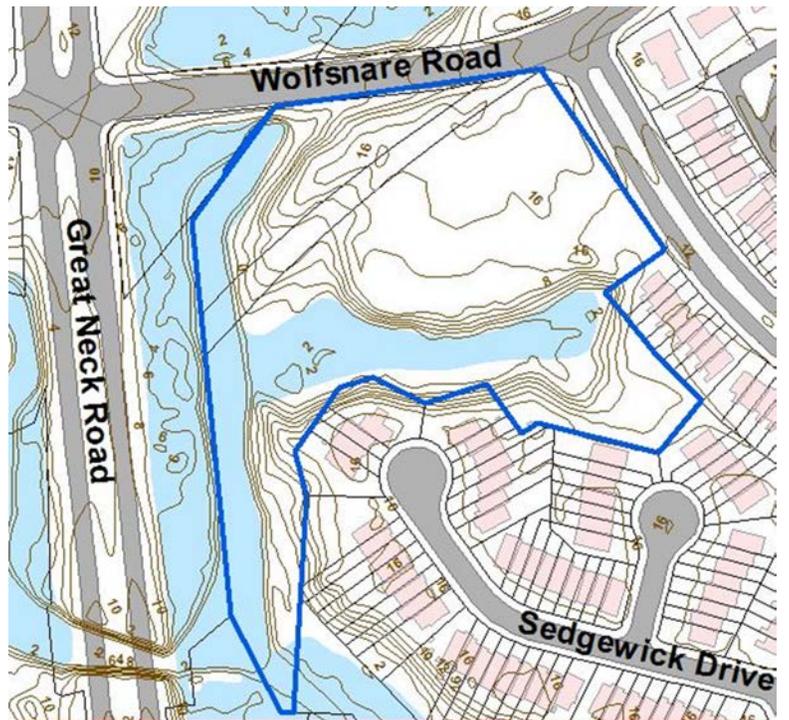
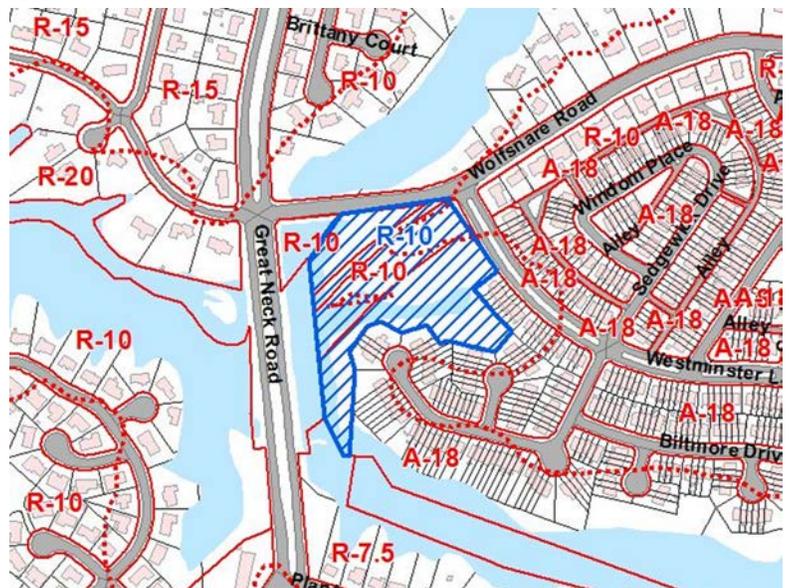
138,632 square feet or 3.183 acres in A-18 zoning district for this lot

**SITE AREA OUTSIDE OF WATER/WETLANDS**

67,775 square feet or 1.556 acres

**EXISTING IMPERVIOUS COVER OF SITE**

1,414 square feet or 2.09 percent of site



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**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a new bulkhead approximately 6 feet seaward of the existing bulkhead

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

1/27/1959

Map Book 46, Page 24

**GPIN**

1499-57-3345

**SITE AREA**

11,405 square feet or 0.262 acre

**SITE AREA OUTSIDE OF WATER/WETLANDS**

11,405 square feet or 0.262 acre

**EXISTING IMPERVIOUS COVER OF SITE**

5,147 square feet or 45.13 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

5,147 square feet or 45.13 percent of site

**Area of Redevelopment in RPA**

0 square feet

**Area of New Development in RPA**

0 square feet

**Creation of Uplands in RPA**

1,000 square feet

**Location of Proposed Impervious Cover**

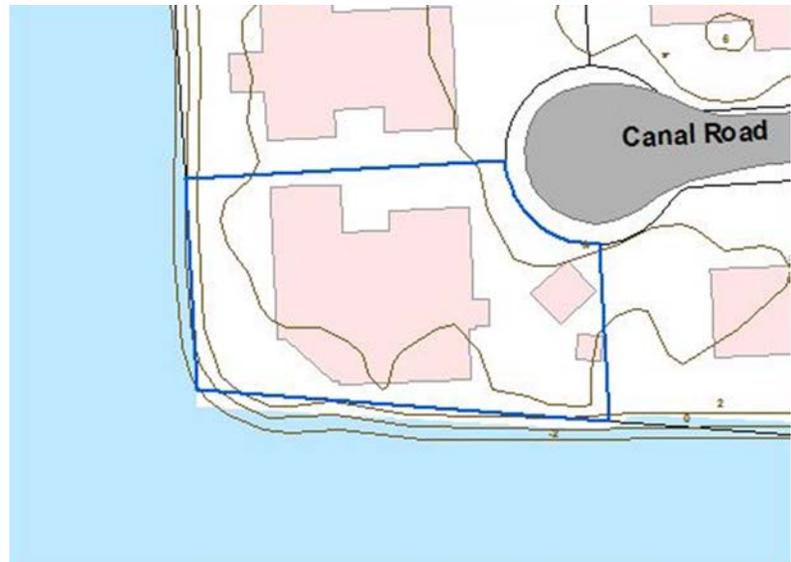
50 foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Deny as submitted



## Summary of Proposal

### Demolition Details

- None

### Construction Details

- New bulkhead 6.1 feet seaward of existing failed bulkhead

## CBPA Ordinance Variance History

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

**On April 28, 2008, a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to demolish the existing house and construct a new house, deck and driveway with the following conditions:**

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *Wire reinforced 36" erosion and sedimentation control measures (silt fences) shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *Permanent and / or temporary soil stabilization as determined by staff shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
4. *Construction limits shall lie a maximum of 10' seaward of improvements.*
5. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
6. *Stormwater from existing and proposed impervious cover shall be conveyed to stormwater management facilities.*
7. *The proposed pool equipment pad shall be eliminated and pool equipment installed over proposed decking.*
8. *The pool shall be refurbished prior to or concurrent with the residence.*
9. *Under deck treatment of sand and gravel shall be installed. The proposed trex decking shall be installed with gaps to allow infiltration of stormwater. The portion of trex decking proposed between the pool house and pool shall be eliminated.*
10. *The two proposed wood platforms adjacent to the existing bulkhead shall employ under deck treatment.*
11. *Buffer restoration shall be installed which results in 5% of the remaining pervious area devoted to turf and shall utilize bayscape landscaping principles. The required restoration shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a*

*minimum of twenty (20) trees shall be installed and shall be comprised of 50% deciduous and 50% evergreen species. The required trees shall be evenly distributed throughout the lot to the greatest extent practicable. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*

12. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.*
13. *The conditions and approval associated with this variance are based on the site plan dated 12-7-07 with a sealed date of 3-20-08, prepared by WPL.*
14. *It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.*
15. *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 April 28, 2008 Board granted variance has not been acted upon.

## Environmental Conditions

### Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

### Soil Type(s)

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

### Shoreline

Shoreline is hardened by a wood bulkhead that has failed. The applicant received Wetlands Board authorization to impact non-vegetated wetlands that have established behind the failed bulkhead on November 19, 2018.

### Riparian Buffer

Sparsely wooded lot

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

## Evaluation and Recommendation

In November 2018, the Wetlands Board approved the installation of a new bulkhead approximately 6.1 feet seaward of the existing failed wooden bulkhead and approved the filling of non-vegetated wetlands that had established behind the bulkhead. While the typical bulkhead replacement is located no farther seaward into the waterway than 2 feet, the unique site conditions and previously placed concrete required an alternative solution to address the severe erosion problem on this property. The applicant provided an engineer's evaluation to justify this amount of encroachment, which in turn will create as much as approximately 1,000 square feet of new uplands, which necessitates review by the CBPA Board.

Although Staff does not typically support such an extensive encroachment into an existing water channel, Staff does acknowledge that there is a severe detriment to water quality occurring with the on-going erosion of uplands due to the failed bulkhead. In the absence of demolishing the house in order to provide construction access for the new bulkhead from the land, and all other alternatives presented to Staff during the multiple review and authorization process, CBPA Staff is of the opinion that creating additional uplands affords a special privilege to the property owner 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. However, abating the ongoing shoreline erosion is essential in order for this lot, as seen in its current condition, to be in harmony with the intent of the CBPA Ordinance by protecting existing high quality state waters and to comply with the performance standards established by the CBPA Ordinance to provide a means to minimize erosion and sediment potential.

Based on discussion by both the Staff and the CBPA Board, since the January CBPA public hearing, the applicant's agent has attempted to contact the diver, referenced in the below Engineer's report, in hopes of providing the Board with first-hand information as to his findings regarding the amount and depth of debris adjacent to the existing bulkhead. Unfortunately, as of the date of this report those attempts have been unsuccessful.

Given the current condition and the lack of maintenance of the property, both the applicant's position along with Staff's responses are below for the Board's consideration relative to the findings of the CBPA Ordinance specific to this variance request.

- 1) The applicant's agent provides that granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because "*the property floods. Similar properties in the area have been filled.*" While Staff respects this point of view, flooding of the lot does not necessitate the need to encroach further seaward. One option would be to elevate the bulkhead to minimize potential flooding hazards. Staff's position is that the amount of encroachment proposed beyond the existing bulkhead results in the expansion of the rear yard to an unprecedented extent. Staff does recognize that the proposal will abate the significant erosion problem which is detrimental to water quality if not addressed, but in Staff's opinion this request is a special privilege that could lead to a multitude of similar requests. To address this concern, Staff recommends specific conditions below that will limit the amount and location of upland improvements if and when the property is redeveloped.
- 2) Staff offers that the encroachment into the RPA on this lot is based upon conditions and circumstances that have been created by the applicant and by the applicant's predecessor in title. Staff is of the opinion that the shoreline for this lot has been in a state of disrepair for an extended period of time and that the lack of action to correct the serious eroding shoreline, and the outlying condition of the concrete debris field, further exasperates the situation. It should be noted that other than the CBPA Board review, all other applicable federal and state review agencies have granted permission or authorized impacts to the adjacent wetlands and waterways to address the eroding shoreline. In the absence of an established riparian ecosystem on this site, Staff is of the opinion that if conditioned and ultimately implemented properly, halting the ongoing erosion that have an immediate impact on water quality in the vicinity of this site, and will outweigh the cons associated with the encroachment request, noting that this is a very unique situation that is specific to this lot and only to the stated circumstances.
- 3) The applicant's agent provides that the variance is the minimum necessary to afford relief because the applicant is "*proposing fill only, no new impervious area.*" Staff is of the opinion that the minimum necessary to afford relief is the replacement of the bulkhead in line with the existing bulkhead. Should the Board desire to deliberate the minimum necessary to afford relief in regards to the extraordinary

encroachment seaward beyond the existing bulkhead, Staff believes that this relief starts at the point where sheet piles for the proposed bulkhead can successfully be driven through the concrete debris field.

- 4) The applicant's agent provides that 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 *"no loss of buffer will occur. New bulkhead will halt an ongoing erosion problem."* Staff is of the opinion that the current condition of the shoreline is a detriment to water quality and if the condition of the bulkhead is not addressed, the erosion problem could be more injurious to the neighborhood.
- 5) The applicant's agent provides that *"no impervious areas have been added, only fill and a bulkhead"* as a means to manage towards a no net increase in nonpoint source pollution load. Staff acknowledges the applicant's point of view.

Given the above comments, Staff offers the following 14 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality should the Board desire to deliberate the 6 foot encroachment into the adjacent waterway associated with this variance request.

## Recommended Conditions

1. With regards to the redevelopment of the existing bulkhead, a pre-construction meeting shall be held with the CBPA Inspector and Waterfront Operations 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. 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.
5. When the upland improvements are redeveloped, 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.
6. When the upland improvements are redeveloped, construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
7. The maximum impervious cover of the lot shall not exceed 5,147 square feet nor shall encroach any further seaward than the limits of the existing improvements on the lot. Said limits of impervious cover shall not be seaward of the 50 foot landward buffer.
8. When the upland improvements are redeveloped, 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 for the upland improvements 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: **5,147 square feet x 200 percent = 10,299 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, 12 understory trees, 24 large shrubs, and 36 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. This variance and associated conditions **will supersede** the conditions of the Board variance granted April 28, 2008.
13. **\*\*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 \$236.04 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.**
14. The conditions and approval associated with this variance are based on the exhibit plan dated March 12, 2019, prepared by Gallup Surveyors & Engineers, LTD., signed March 12, 2019 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

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

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

Site Aerial



# Engineer's Report – Bulkhead Evaluation and Concrete Debris Field

Structural  
Engineering  
•  
Special Inspections  
  
www.smandf.com



Daniel W. Speight, P.E.

Matt J. Marshall, Jr., P.E.

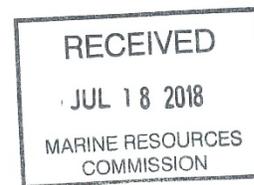
Jonathan Walesczyk, P.E.

J. Stephen Cowan, P.E.

July 16, 2018

City of Virginia Beach  
Planning & Community Development  
Wetlands/Waterfront Division  
2405 Courthouse Drive, Room 191  
Virginia Beach, VA 23456

Re: Bulkhead at 2725 Canal Road, Virginia Beach, VA  
SM&F Job No.: 17.080 #18-0390



**ADDITIONAL INFO  
REVISION**

To Whom it May Concern:

We have written this letter regarding the bulkhead at the referenced project. The present condition of the bulkhead is dire and has collapsed at several locations along its length. The collapsed bulkhead has placed the existing house in a precarious situation and the foundations are presently being adversely effected.

The owner of the property hired a bulkhead contractor to replace the existing wood bulkhead with a new wood bulkhead. The bulkhead contractor began to install the piles and quickly discovered the presence of very large concrete boulders and debris on the waterside of the existing bulkhead. The bulkhead contractor abruptly abandoned the project, leaving the owner in a very bad situation. He left the site with materials the owner had already paid for and without warning. The owner has an on-going legal case pending against the bulkhead contractor.

The owner contacted the writer shortly thereafter to serve as an expert witness in his legal case against the bulkhead contractor; and design a new bulkhead that one could actually install. We probed the waterside of the bulkhead and informed the owner of the existence of significant concrete boulders and debris. We recommended the owner hire a diving company to determine the extent of the concrete debris (depth and how far it extends outward from the existing bulkhead). The owner hired a diving company, as we requested, and they found the existence of significant concrete boulders and debris. The diving company found the debris to extend 6-8 feet from the face of the existing bulkhead.

The present condition of the house can be described as precarious at best. The failed bulkhead can no longer contain the soil within the property and the house foundations have been undermined at several locations. The house is potentially one storm event away, from falling into Wolfsnare Creek, a major recreational boating waterway in the city. The house is presently leased and occupied by tenants. The owner does not want to demolish the house and has been looking to raise the house under the FEMA program.

2125 McComas Way Suite 103, Virginia Beach, VA 23456 • 757.427.1020  
7814 Carousel Lane Suite 200, Richmond, VA 23294 • 804.464.4111

RESTRUCTURING THE NORM

# Engineer's Report – Bulkhead Evaluation and Concrete Debris Field



Bulkhead at 2725 Canal Drive  
July 16, 2018  
Page 2 of 2

The new bulkhead cannot be placed inside of the existing bulkhead; because there are two to three existing bulkheads located between the house and the failed bulkhead. Placing the new bulkhead inward of the multiple existing bulkheads would place the new bulkhead too close to the existing house, and without a doubt seriously undermine the foundations of the house. In fact, it is highly likely the house would experience significant foundation issues and portions of the house would end up in Wolfsnare Creek.

The property is located at a critical point along one of Virginia Beach's major water thoroughfares and any decision made regarding the bulkhead effects a significant number of homeowners and watercraft. The potential to adversely effect or damage properties collectively worth tens of millions of dollars is very high. The owner has experienced one of the most extreme hardships the writer has seen in 32 years of being in the industry. He has tried to do the right thing at every step, including everything the professionals have asked of him. The owner did not place the concrete boulders and debris in front of the existing bulkhead; however, he is not interested in passing the buck, as has been done in the past. He is very willing to deal with it. We have the opportunity to get this property stabilized for many decades to come and protect others along Wolfsnare Creek from damage.

If you have any questions, please contact me.

Sincerely,

**SPEIGHT, MARSHALL & FRANCIS, P. C.**

Daniel W. Speight, P.E.

dws/wls

F:\Jobs\2017\17080 Investigation of Bulkhead at 2725 Canal Drive\06 Nondesign Letters & Reports\180716\_2725 Canal Drive Letter-City of VB Planning Dept. Letter.doc



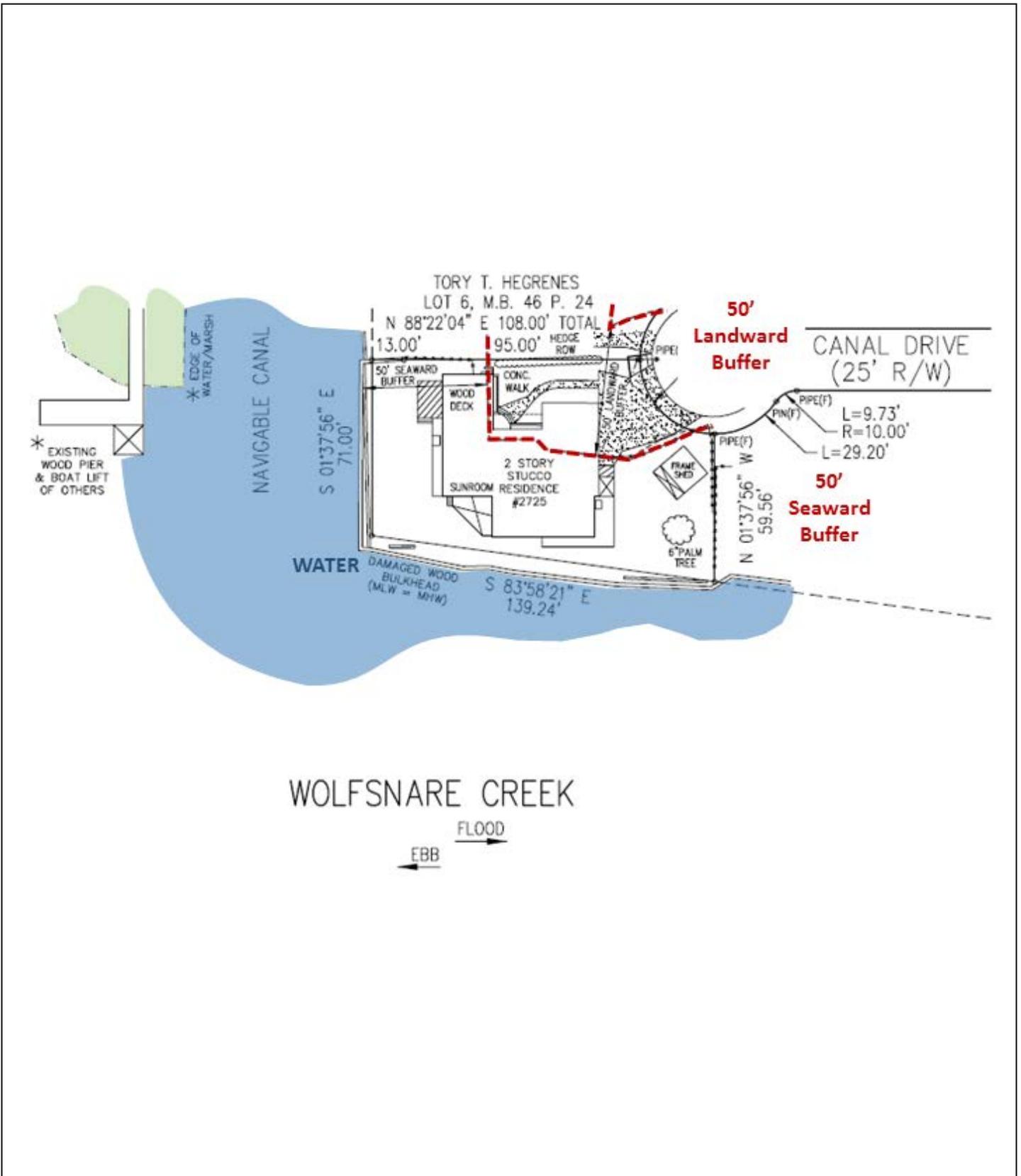
**ADDITIONAL INFO  
REVISION**

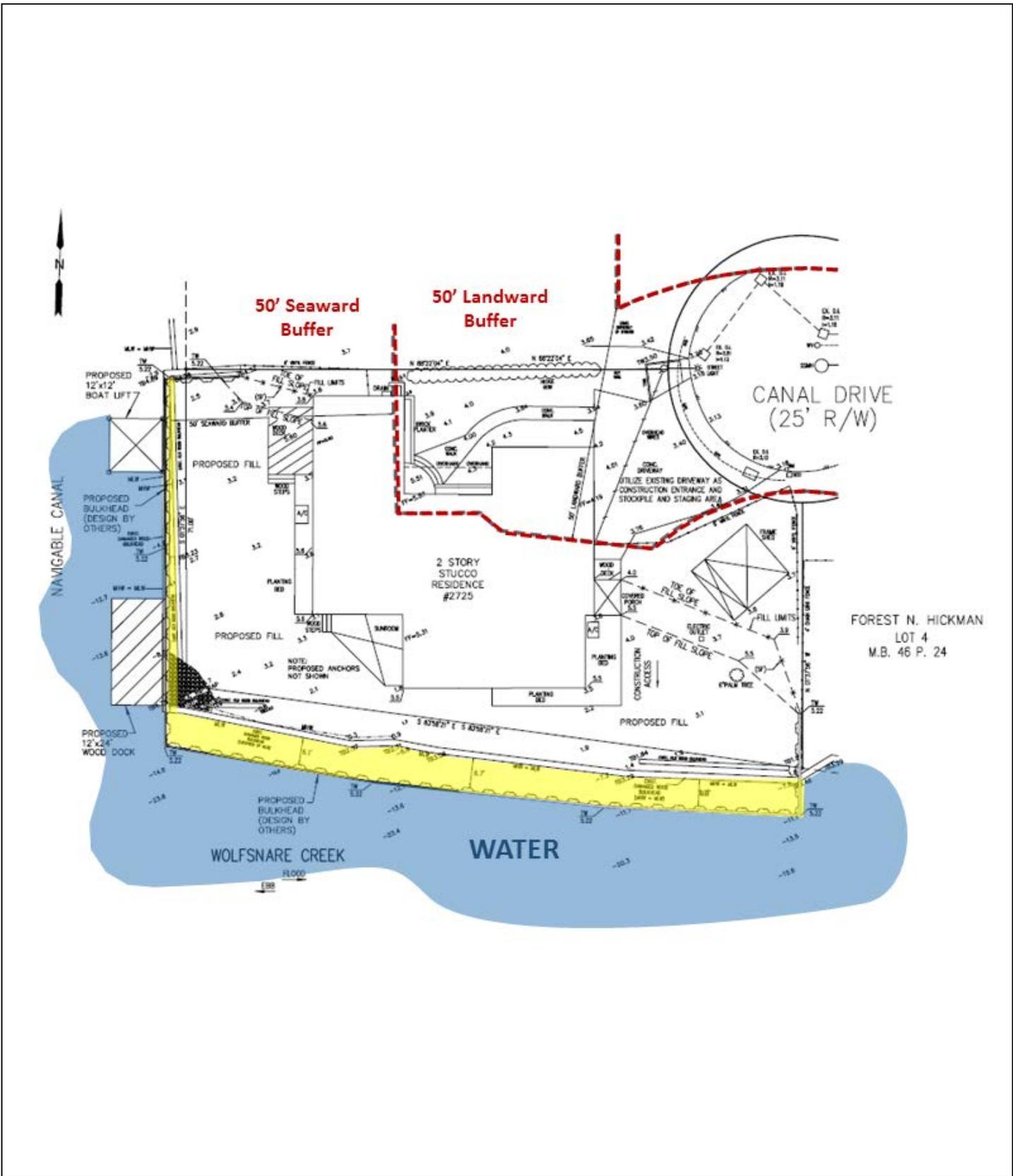
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RESTRUCTURING THE NORM

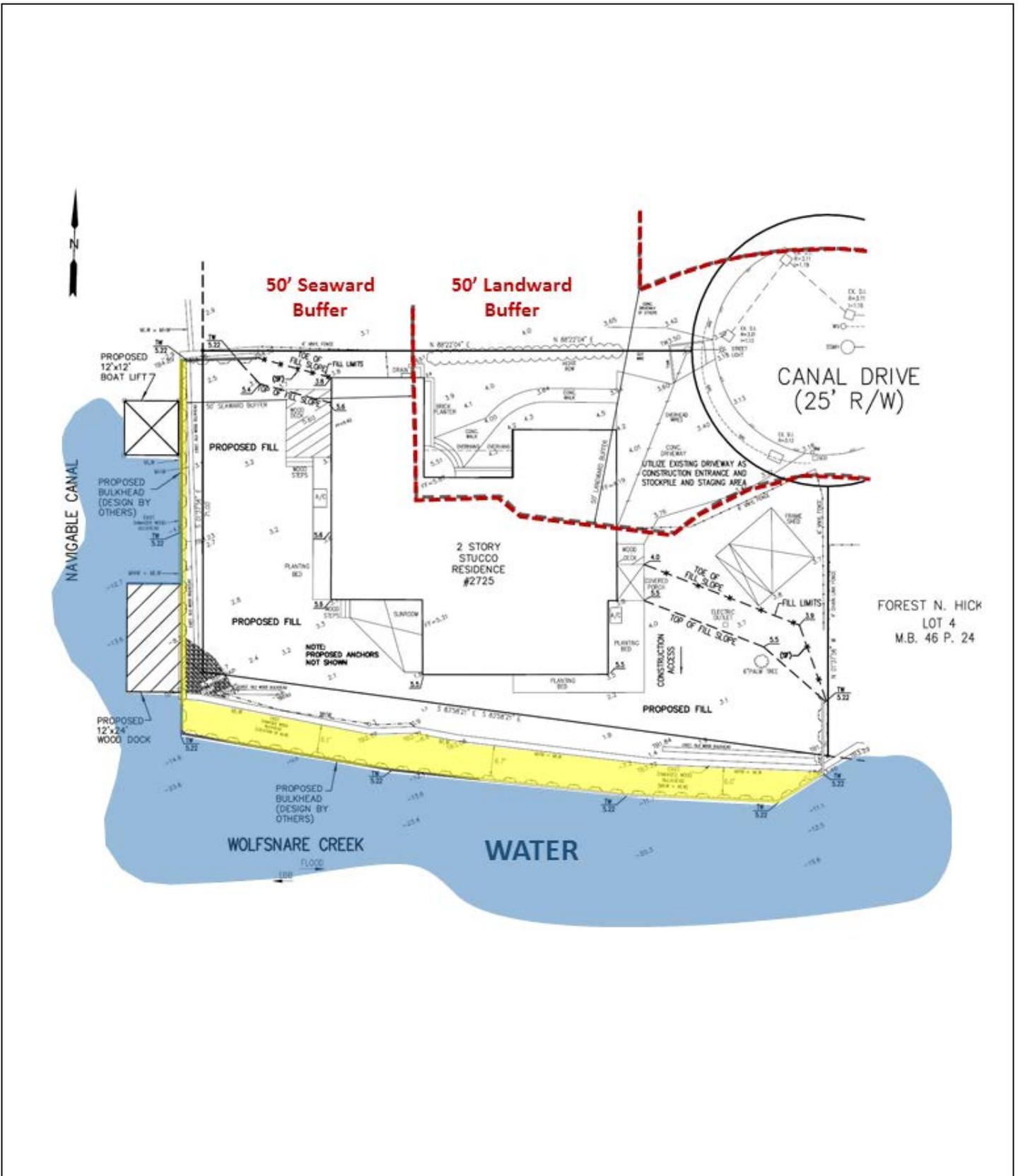


**CBPA Exhibit – Existing Conditions**





Revised CBPA Exhibit – Proposed Improvements





**APPLICANT'S NAME** CELEBI OZIC

**DISCLOSURE STATEMENT FORM**

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<b>Acquisition of Property by City</b>	<b>Disposition of City Property</b>	<b>Modification of Conditions or Proffers</b>
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
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The disclosures contained in this form are necessary to inform public officials who may vote on the application as to whether they have a conflict of interest under Virginia law.

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<b>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).</b>		
<input checked="" 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: Celebi Ozic  
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes<sup>1</sup> and <sup>2</sup>

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## 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.
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If an LLC, list the member's names:



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---

### SECTION 3. SERVICES DISCLOSURE

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



### APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	STEW RIPPARD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	KELLY J. OLT
<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	RAVE DAVE COFF.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Gallup Surveyors / Billy Garmington
<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)	Penny Mac
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	BILL BUNDSIP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

### SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



**CERTIFICATION:**

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

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

<i>Cebeb Ozic</i>	CELEBI OZIC	3/8/18
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Celebi Ozic

Agenda Item 3

Page 28

**The application is being withdrawn. Staff supports the withdrawal.**

**Variance Request**

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

**Variance Request History**

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

**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**

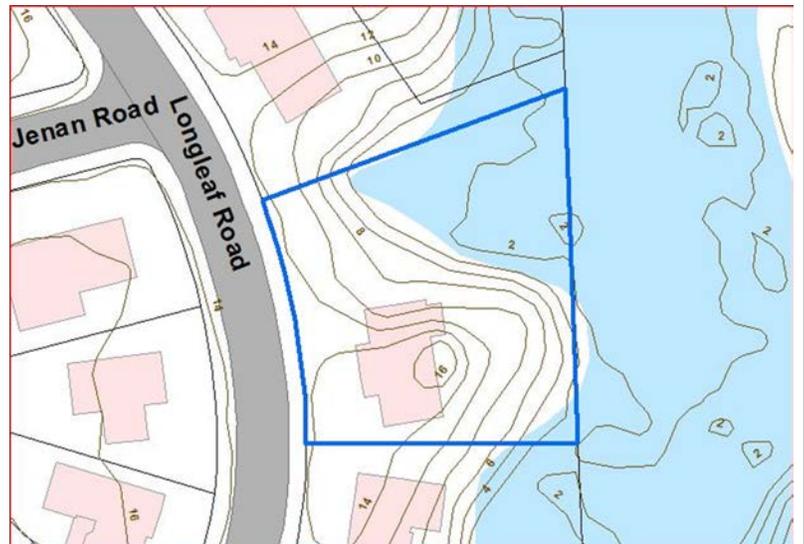
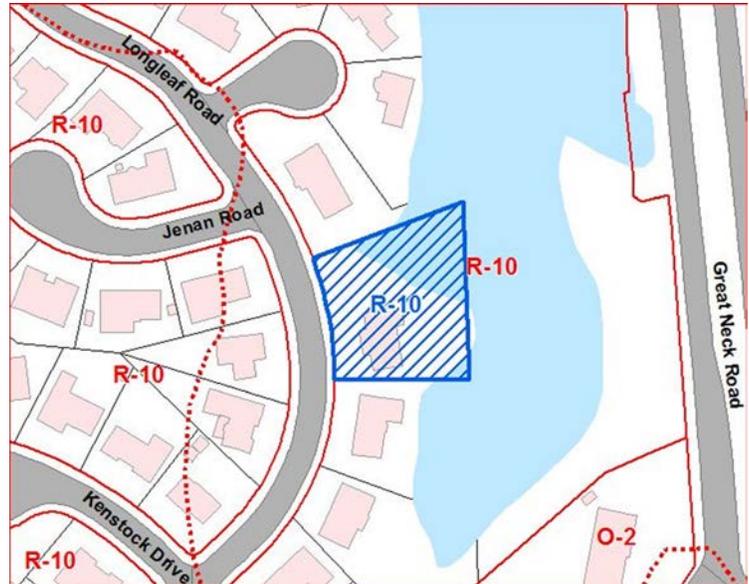
27,041 square feet or 0.621 acres

**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



AS NEEDED, PAGE LEFT BLANK

**Variance Request**

Remove existing pool and patio and construct a pool, patio and retaining wall and an addition to primary structure.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

4/14/1988

Deed Book 42724, Page 370-371

**GPIN**

1498-42-6749

**SITE AREA**

55,390 square feet or 1.272 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

41,170 square feet or 0.945 acres

**EXISTING IMPERVIOUS COVER OF SITE**

12,961 square feet or 31.5 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

14,620 square feet or 35.5 percent of site

**Area of Redevelopment in RPA**

3,999.3 square feet

**Area of New Development in RPA**

1,876.6 square feet

**Location of Proposed Impervious Cover**

50 foot Seaward Buffer

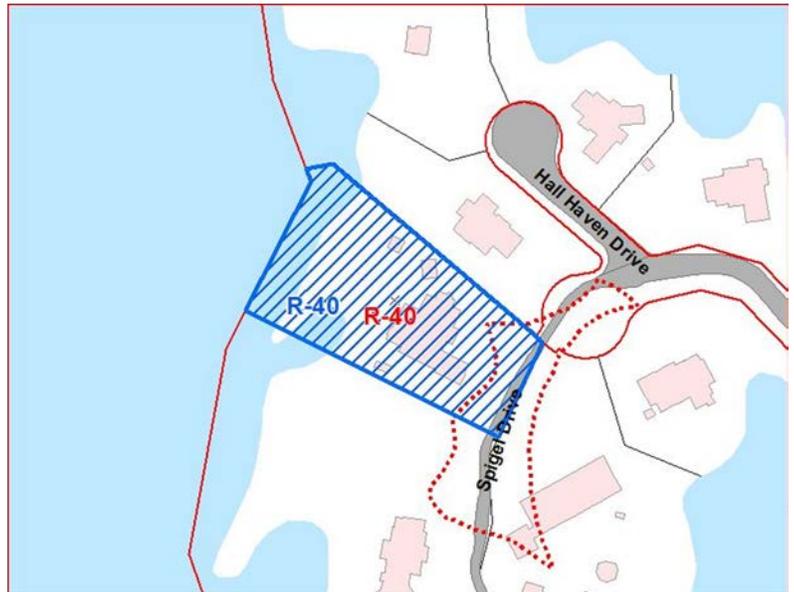
50 foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Swimming pool with associated concrete surround and walkway
- Paver patio with associated walkway to wood pier
- Pond / water feature

### Construction Details

- Swimming pool with associated terrace / patio area
- Redevelopment of existing patio and steps
- Building renovation
- Pathway to wood pier

## 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): 9

### 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. The applicant is in the process of filing a Joint Permit Application (JPA) for a rip rap toe and marsh sill.

### Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of existing understory 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, of which two are understory trees. The existing Oak tree is showing signs of decline and die back within the lower reach of the canopy.

## Evaluation and Recommendation

The applicants recently purchased the lot and desire to redevelop the rear yard in part to accommodate the limited mobility of their aging parents.

Prior to the applicants' purchase of the property, Staff met with them on site, along with their agent and engineer in June of 2018. At that meeting, the following items were discussed:

- The applicants' desire to redevelop the rear yard in part to accommodate the mobility of a parent. The applicant wishes to address the existing transitions in grade from the swimming pool surround to the adjacent walkways. Staff concurred with the applicants that there is an approximate 1 foot change in elevation at multiple areas around the swimming pool.
- The potential of expanding the existing retaining wall further seaward to provide additional space for access around the rear of the residence. Staff expressed concern with expanding the retaining wall further seaward given the change in elevation and location in the seaward buffer. In addition, Staff is of the opinion that this area is the most sensitive portion of the RPA feature.
- The hardening the shoreline and elevating the grade within the western portion of the lot. Staff indicated that the variance request would not be supported if fill was proposed in this area of the lot. At that time, the applicants' engineer stated that the lot was suitable for a living shoreline and that option would be explored.

Since the site meeting, an application and associated CBPA exhibit was submitted on February 5, 2019 for Staff's review and evaluation. A revised CBPA exhibit was submitted on March 6, 2019 with the following revisions to the CBPA exhibit.

- The proposed swimming pool was reduced in length by approximately 8 feet. This reduction occurred at the seaward most portion of the proposed improvement.
- The materials of the proposed patio areas modified from concrete to concrete pavers.

Given the applicants' effort to limit disturbances to the lot with the submitted application, as redevelopment constitutes approximately 4,000 square feet of existing impervious cover, and limiting most of the proposed impervious cover landward of the existing retaining wall, Staff recommends approval of this application. The applicant's agent and Staff offer the following comments relative to the findings of the CBPA Ordinance, specific to this variance request, for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"this subdivision was recorded many years prior to the adoption of the Bay act and as a result every waterfront home is significantly impacted by the ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff 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 because *"the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 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 this request is the minimum to afford relief due to the amount of redevelopment, that the new development will be located landward of the existing retaining wall, that the existing retaining wall will not be disturbed, and that the existing environmental features within the western portion of the lot will be preserved.
- 4) The applicant's agent offers that *"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 grass swales and permeable pavers, buffer restoration in areas currently devoted to turf and even off-site treatment via*

*the Lynnhaven Oyster Heritage Program all to benefit water quality*” in an effort to ensure that this variance request will be in harmony with the purpose and intent of the CBPA Ordinance, not injurious to the neighborhood, nor be of substantial detriment to water quality, or otherwise detrimental to the public welfare. Staff offers that the redevelopment of portions of the impervious cover will promote infiltration of stormwater, thereby furthering the intent.

- 5) The applicant’s agent offers “*strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters*” as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that the applicants’ preservation of the western portion of the lot, the conditioned buffer restoration should the variance be granted coupled with the proposed living shoreline being pursued provides merit towards the variance request not being in increase in nonpoint source pollution load.

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 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.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
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: **1,876 square feet x 200 percent = 3,752 square feet**. As a component of the required restoration, areas of denuded marsh and created marsh – 1,588 square feet shall be sprigged and the suitable areas sprigged may be counted towards the vegetative restoration requirements.

For the riparian buffer restoration that is provided, consisting of upland woody plant materials, said areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory tree, 10 large shrubs, and 15 small shrubs**.

Upland riparian buffer 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 \$429.91 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 31, 2019, prepared by Gallup Surveyors and Engineers, signed March 7, 2019 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

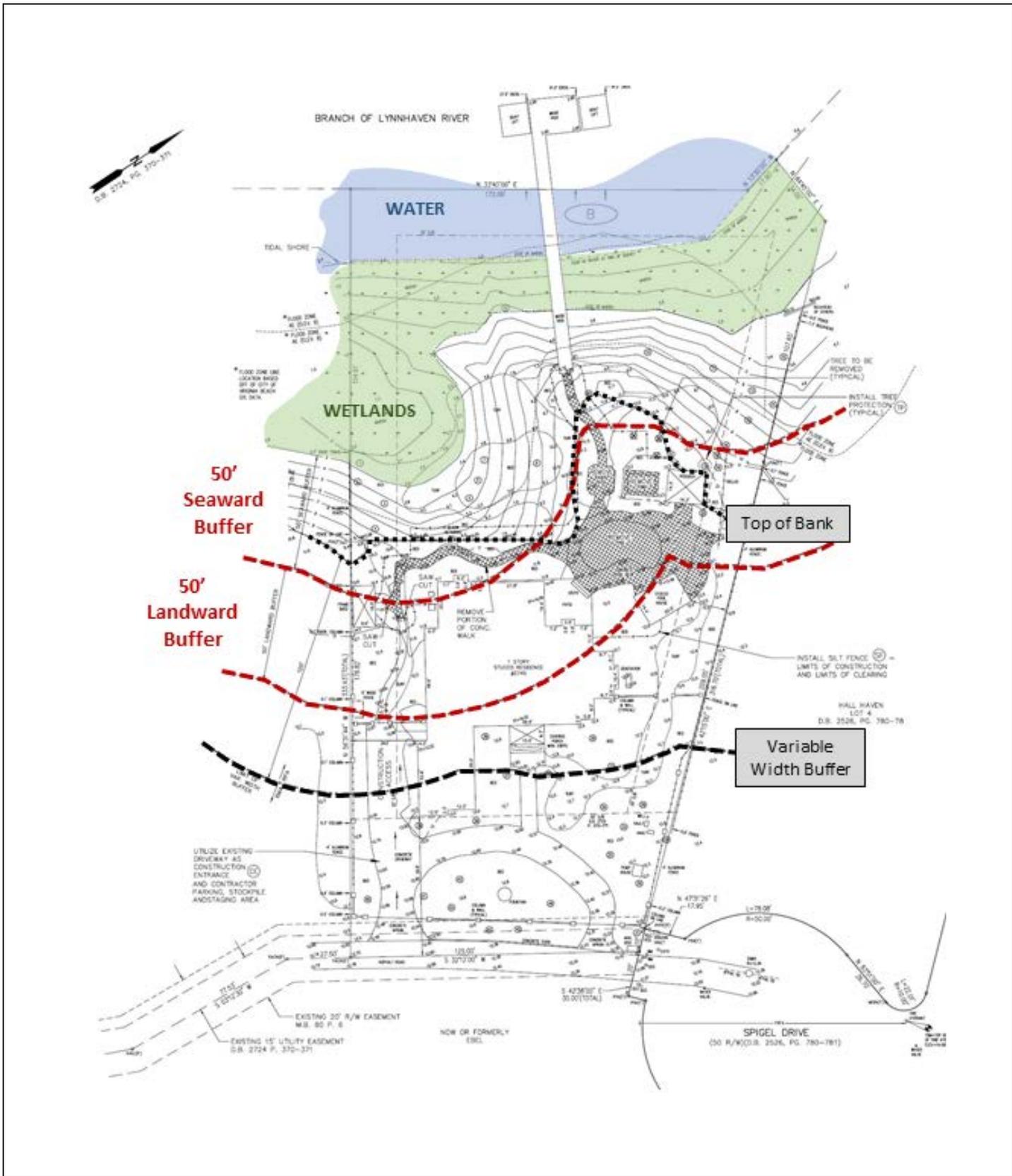
**\*\* NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

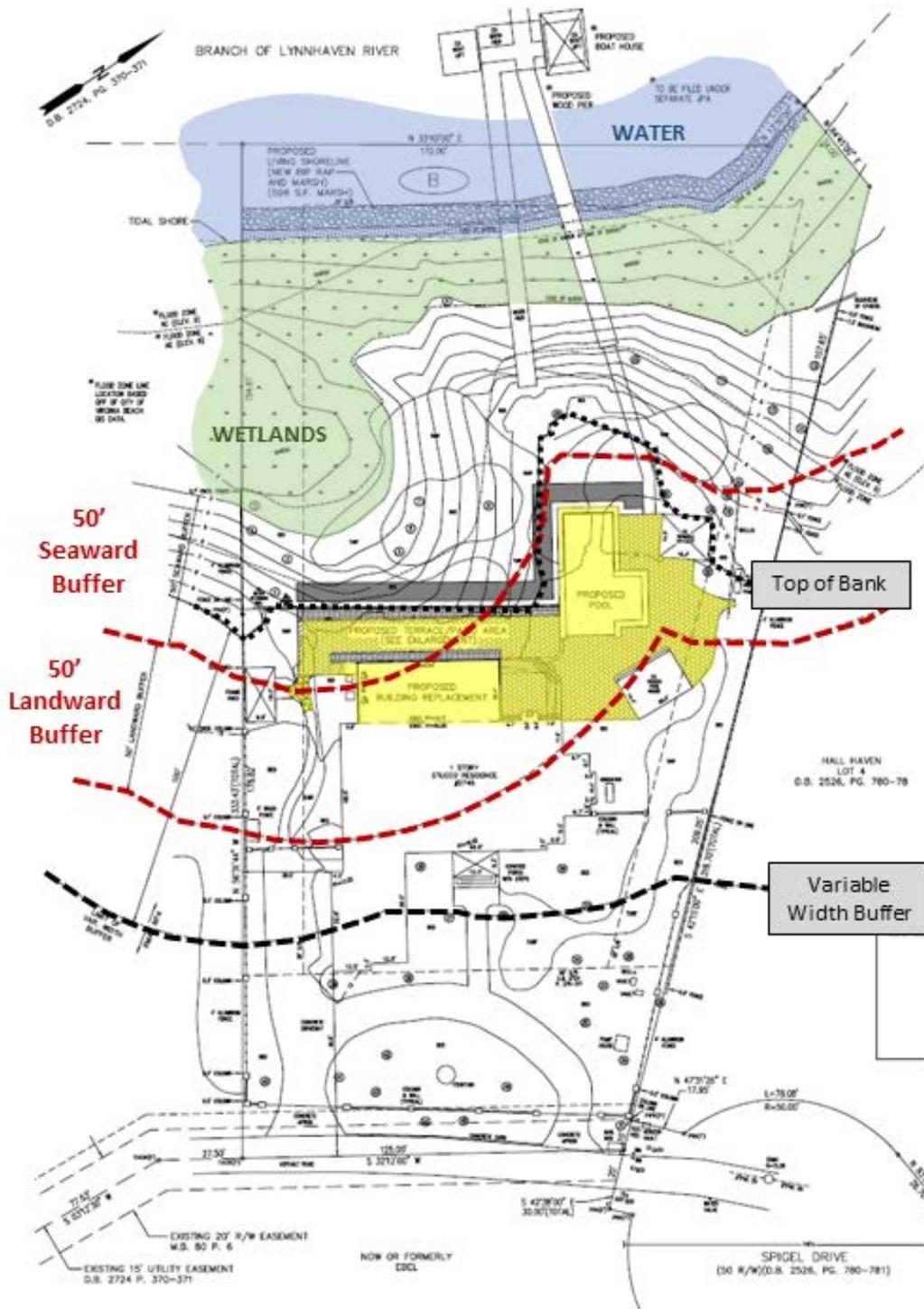
Site Aerial



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements



**Disclosure Statement**



**APPLICANT'S NAME** Lance & Cheri Shores

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Page 1 of 7

<input type="checkbox"/>	APPLICANT NOTIFIED OF HEARING	DATE:	
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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: Lance & Cheri Shores  
If an LLC, list all member's names:

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See next page for information pertaining to footnotes <sup>1</sup> and <sup>2</sup>

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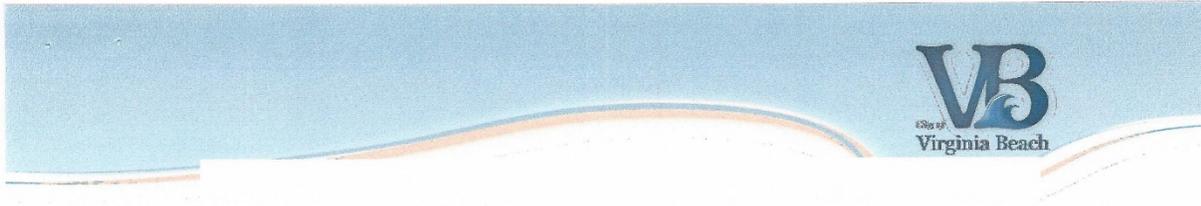
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## APPLICANT

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

Billy Garrison

### 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"/>	

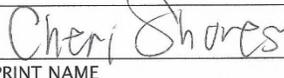
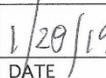
If yes, what is the name of the official or employee and what is the nature of the interest?



**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.

		
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

**Variance Request**

Demolish existing front entry steps and pathway. Construct garage canopy, front porch, landscape walls, and small plunge pool adjacent to wood deck.

**Applicant's Agent**

Yang Tian

**Staff Planner**

PJ Scully

**Lot Recordation**

8/6/1964

Map Book 62, Page 15

**GPIN**

1487-59-6746

**SITE AREA**

67,426.4 square feet or 1.55 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

39,152 square feet or 0.899 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,814 square feet or 14.8 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

6,984 square feet or 17.8 percent of site

**Area of Redevelopment in RPA**

336 square feet

**Area of New Development in RPA**

1,170 square feet

**Location of Proposed Impervious Cover**

50 foot Landward Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Front entry steps and pathway

### Construction Details

- Covered garage canopy
- Front porch
- Walkway with landscape walls
- Plunge pool with associated wood deck

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

Rappahannock Series (deep and poorly drained soils)

Rumford Series (highly erodible soils)

### Shoreline

Shoreline is in a natural state.

### Riparian Buffer

Heavily Wooded Lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Number of existing understory trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction. Given the natural condition of the lot with a mature forest floor and established riparian buffer, Staff supports the request to remove 1 canopy tree and 3 understory trees adjacent to the proposed improvements.

## Evaluation and Recommendation

With the overall impervious cover for this variance request being less than 20 percent, minimal land disturbance proposed within the RPA, and the existing riparian buffer with mature forest floor being retained seaward of the proposed improvements and below the top of bank feature, Staff supports the application as submitted.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property, *"as the area encroached upon for the redevelopment of the property is consistent with other properties within this neighborhood who are subject to the provisions of this Ordinance and are similarly situated within 50 feet landward buffer where development has occurred within the Resource Protection Area (RPA)."* Staff concurs.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, *"but rather is necessitated by the fact that this parcel 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."* Staff concurs.
- 3) *"The proposed location of the small plunge pool, the limited dimensional size of the associated pool patio area, and proposed front entry and deck situated directly adjacent to the existing residence, that the variance is the minimum necessary to afford relief."* Staff concurs.
- 4) *"The variance is in harmony with the purpose and intent of the Ordinance and not injurious to the neighborhood, as the encroachment into the RPA is consistent with the location of improvements on other properties in the vicinity, and not of substantial detriment to water quality due to the access to and limits of expansion within the RPA, nor will the project be detrimental to the public welfare."* Staff concurs and is of the opinion that the applicant's agent as designed the proposed improvements in a manner that is in harmony with the lot's natural features without causing substantial impacts to, or encroachment into the RPA buffer.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"the use of both a stone underdeck treatment and the installation of buffer restoration are proposed as a means to manage towards a no net increase in nonpoint source pollution load."* Staff concurs and offers in addition to the statement above, that the existing riparian buffer with mature forest floor being retained seaward of the proposed improvements and below the top of bank feature further mitigates towards a no net increase in nonpoint source pollution load.

Given the above comments, Staff recommends the following 16 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality. Staff is of the opinion that the 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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. 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 **6 understory trees, 12 large shrubs, and 18 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.

13. Under deck treatment of sand and gravel shall be installed.

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 \$268.12 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.
15. Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
16. The conditions and approval associated with this variance are based on the exhibit plan dated March 8, 2019, prepared by GARC, signed by Yang Tian, Professional Architect. 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.

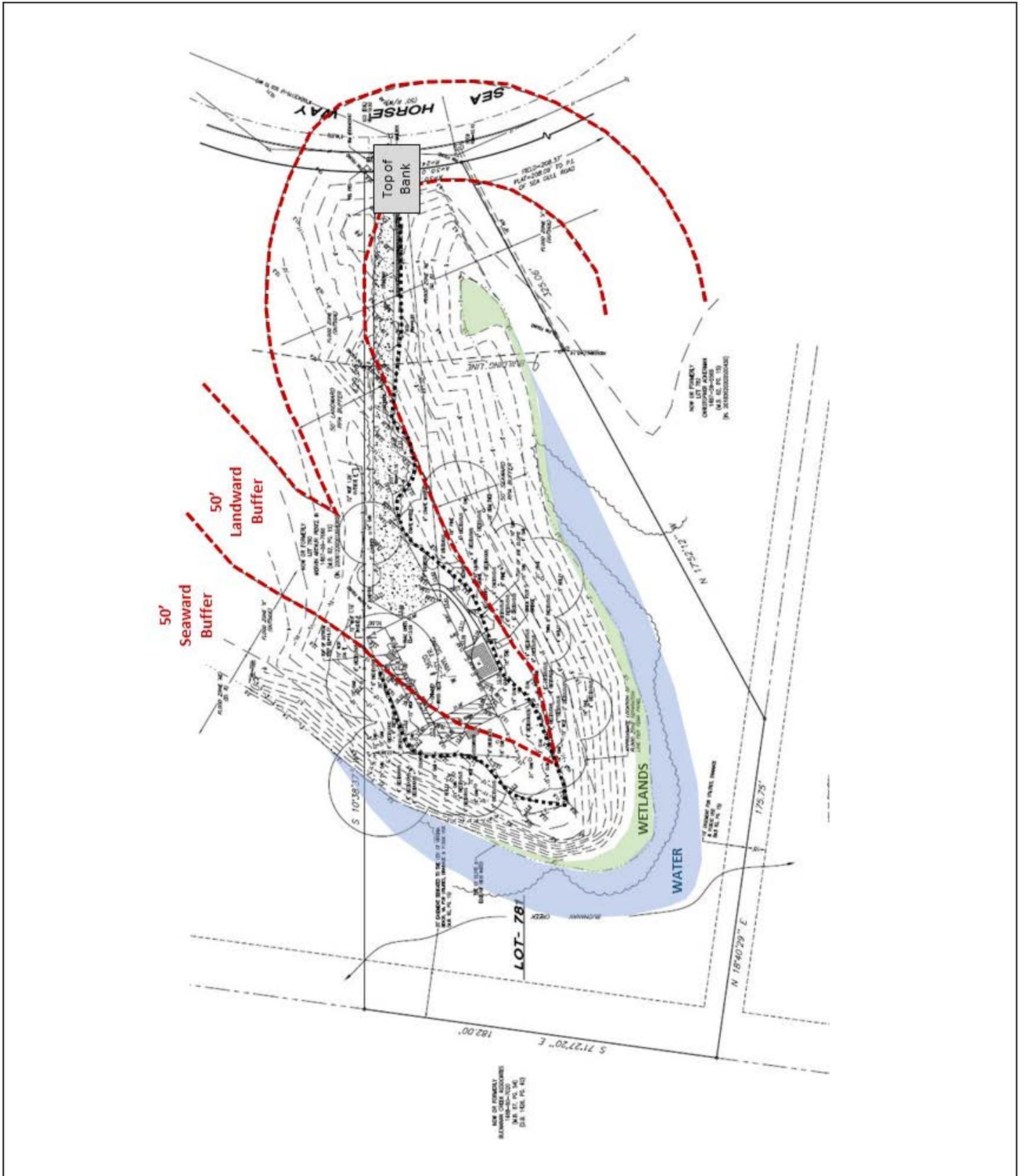
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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.

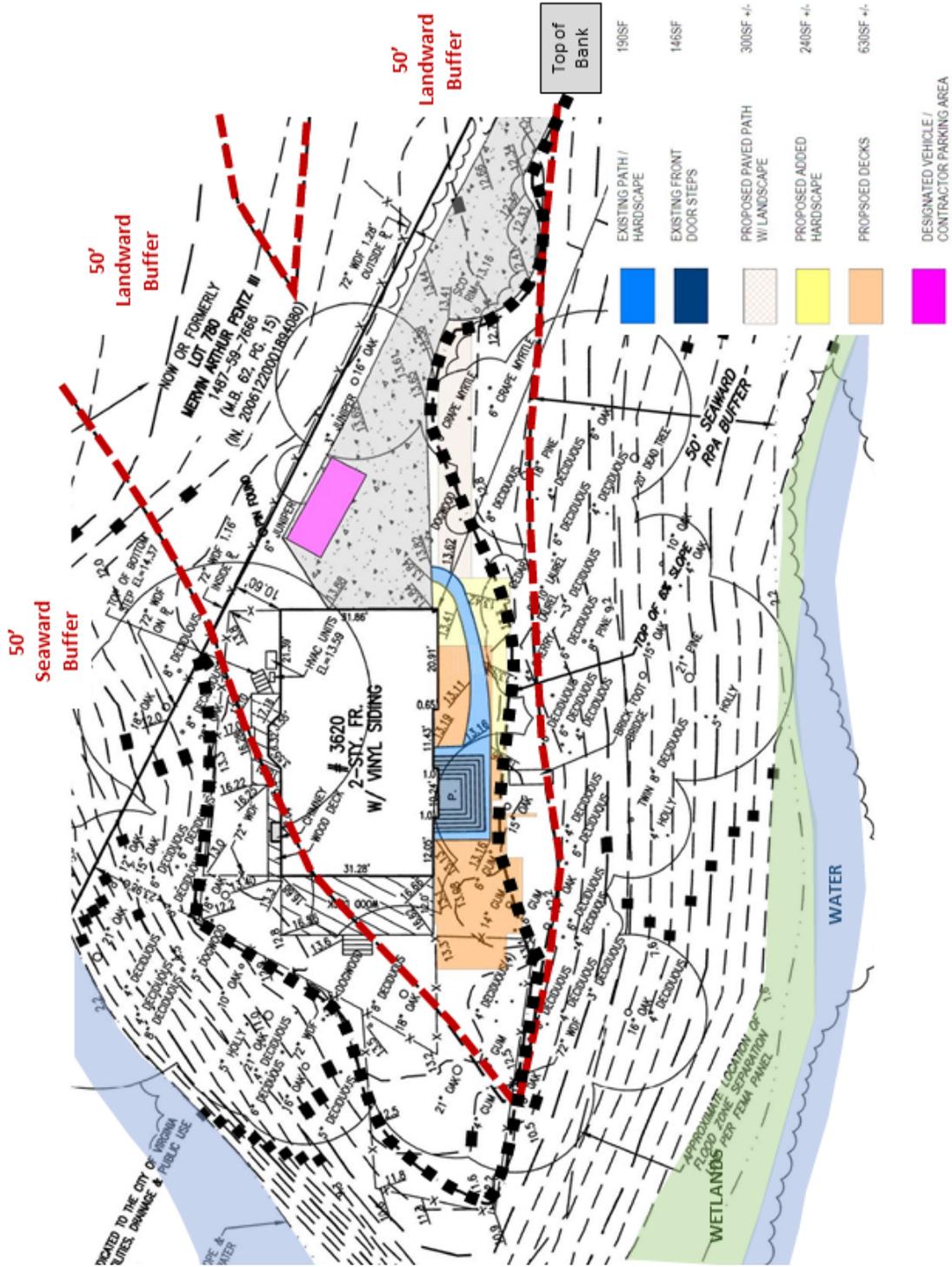
# Site Aerial



**CBPA Exhibit – Existing Conditions**



# CBPA Exhibit – Proposed Improvements







**APPLICANT'S NAME** Betsy DiJulio

**DISCLOSURE STATEMENT FORM**

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

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

**SECTION 1 / APPLICANT DISCLOSURE**

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

<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: Betsy (Elizabeth) DiJulio  
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes <sup>1</sup> and <sup>2</sup>

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## 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: Betsy DiJulio  
If an LLC, list the member's names:



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

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

<sup>1</sup> "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.

<sup>2</sup> "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.

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### SECTION 3. SERVICES DISCLOSURE

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



## APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	GARC
<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 type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

### SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



**CERTIFICATION:**

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

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

		
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 **Charles & Barbara Cleveland**  
 Address **2317 Windward Shore Drive**  
 Public Hearing **March 25, 2019**  
 City Council District **Lynnhaven**

Agenda Item

**7**

**Variance Request**

Demolish existing residence, construct new residence with swimming pool.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

9/3/1958

Map Book 45, Page 37-37A

**GPIN**

2409-08-0660

**SITE AREA**

20,680 square feet or 0.475 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

20,680 square feet or 0.475 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,334 square feet or 35.5 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,758 square feet or 37.5 percent of site

**Area of Redevelopment in RPA**

4,812 square feet

**Area of New Development in RPA**

2,526 square feet

**Location of Proposed Impervious Cover**

50 foot Landward Buffer

100 foot Variable Width Buffer

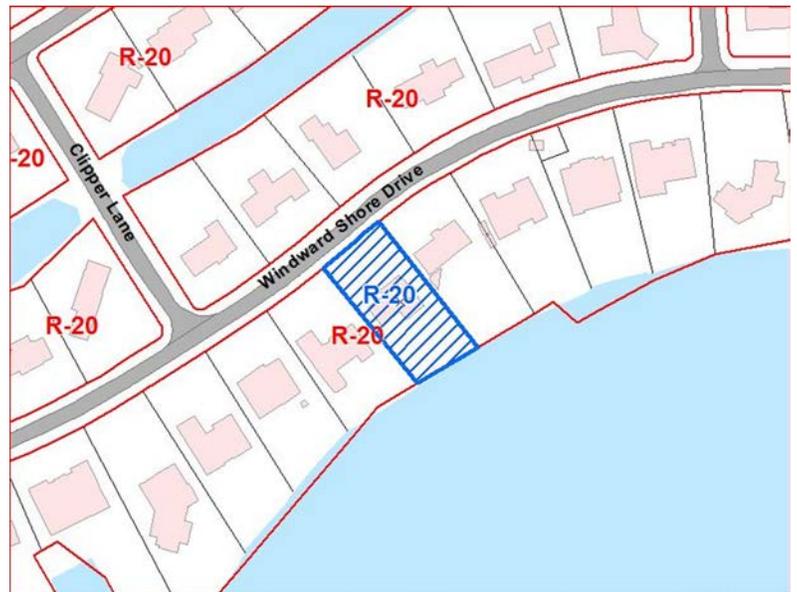
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Complete demolition – all upland improvements to be removed

### Construction Details

- Single family residence
- Permeable paver driveway
- Swimming pool with associated patio areas and retaining wall

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

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

### Soil Type(s)

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

### Shoreline

Shoreline is hardened by a wooden bulkhead.

### Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: The tree being requested for removal is within the delineated limits of construction, and within the Resource Management Area (RMA).

## Evaluation and Recommendation

The variance request offers a retreat of impervious cover from within the 50 foot seaward buffer. The redevelopment that is proposed within the 50 foot landward buffer results in an increase of approximately 250 square feet of new impervious cover. The remaining increase in impervious cover occurs within the Variable Width Buffer and the Resource Management Area (RMA) of which, approximately 1,682 square feet is allocated to the use of permeable pavers. Given the amount of redevelopment proposed with this variance request, Staff is of the opinion that the submitted application limits land disturbance to a minimum area necessary to provide for the proposed improvements and promotes infiltration of stormwater which is consistent with the use of structural or nonstructural urban best management practices [Sec. 106 (A)(3)] – permeable pavers and bioretention planting beds.

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 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 and commends the applicants for the reduction and retreat of impervious cover from the 50 foot seaward buffer and for locating the new dwelling at the front yard setback.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 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 retreat of impervious cover from within the 50 foot seaward buffer, the slight increase of approximately 250 square feet of impervious cover in the 50 foot landward buffer, and locating the new impervious cover within the Variable Width Buffer and the Resource Management Area (of which, approximately 1,682 square feet is allocated to the use of permeable pavers, offers merit towards meeting the minimum necessary to afford relief test.
- 4) The applicant’s agent offers that *“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 grass swales and permeable pavers, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality”* in an effort to ensure that this variance request will be in harmony with the purpose and intent of the CBPA Ordinance, not injurious to the neighborhood, nor be of substantial detriment to water quality, or otherwise detrimental to the public welfare. Staff offers that the redevelopment of portions of the impervious cover will promote infiltration of stormwater, thereby furthering the intent.
- 5) The applicant’s agent offers *“strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff offers that the applicants’ focus on redeveloping those portions of RPA where impervious cover exists to the greatest extent practicable coupled with the integration of non-structural stormwater best management practices and buffer restoration will provide a means to manage towards a no net increase in nonpoint source pollution load.

The following 15 reasonable and appropriate conditions are recommended by Staff 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 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.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
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: **2,526 square feet x 200 percent = 5,052 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 18 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 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. 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 \$578.87 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 23, 2019, prepared by Gallup Surveyors and Engineers, signed January 23, 2019 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

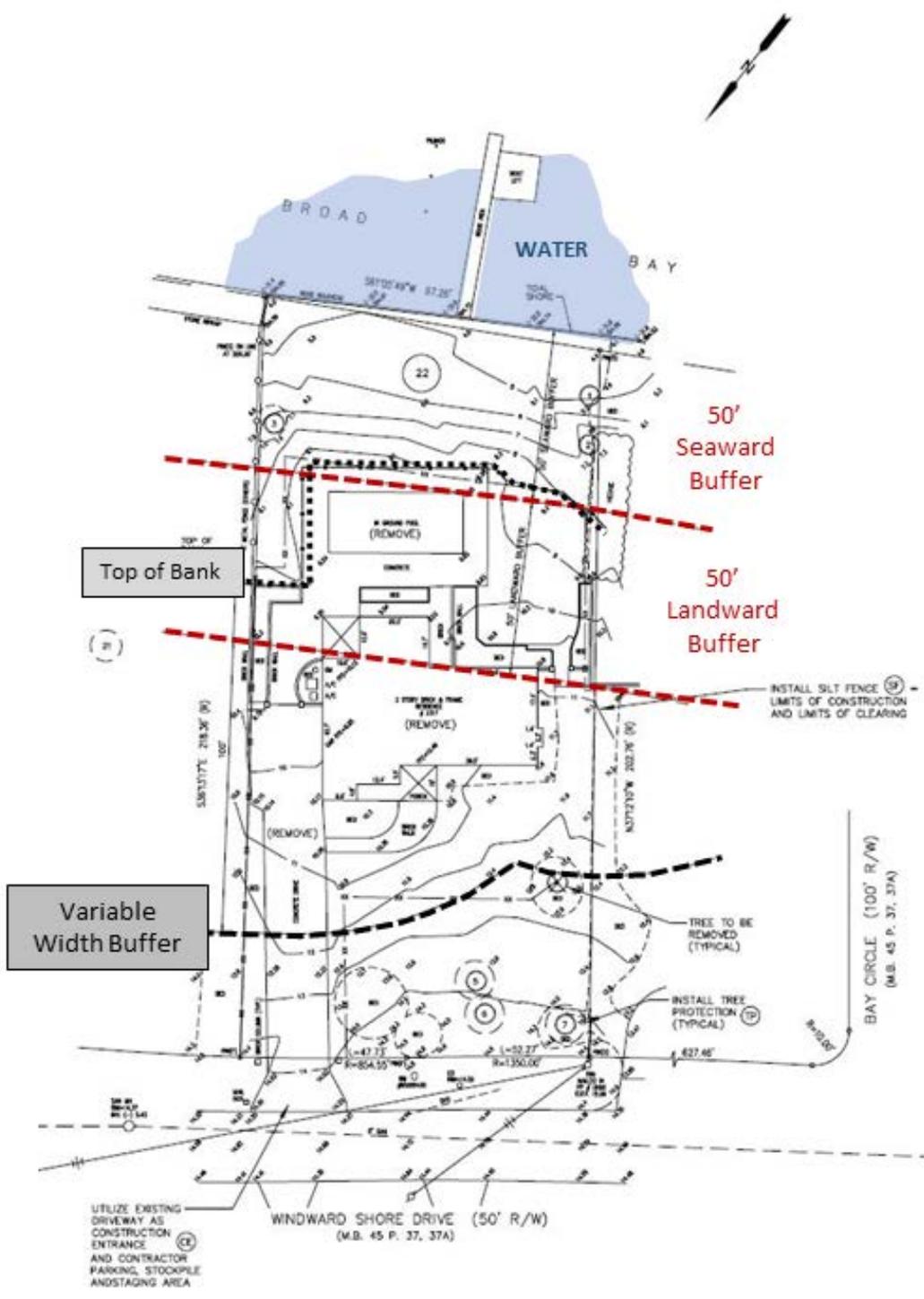
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



**CBPA Exhibit – Existing Conditions**







**APPLICANT'S NAME** CHARLES R CLEVELAND

**DISCLOSURE STATEMENT FORM**

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

**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: CHARLES R CLEVELAND  
If an LLC, list all member's names:

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

- (B) List the businesses that have a parent-subsiary <sup>1</sup> or affiliated business entity <sup>2</sup> relationship with the Applicant: *(Attach list if necessary)*  
NONE

See next page for information pertaining to footnotes <sup>1</sup> and <sup>2</sup>

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## SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
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NONE

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

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### SECTION 3. SERVICES DISCLOSURE

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



## APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Architect / Landscape Architect / Land Planner	REDFEARN COASTAL DESIGNS
<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	SEASIDE BUILDINGS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	CALLOP ENGINEERING / PRESIDENTIAL BANK DBA ACCESS CAPITAL MORTGAGE
<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)	Billy Garrison
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

### SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



**CERTIFICATION:**

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

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

APPLICANT'S SIGNATURE	PRINT NAME	DATE
<i>Charles R. Cleveland</i>	CHARLES R. CLEVELAND	1/23/19

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Lindsay Shephard, et al.**  
 Address **3417 S. Crestline Drive**  
 Public Hearing **March 25, 2019**  
 City Council District **Kempsville**

Agenda Item

**8**

**Variance Request**

Construct covered outdoor kitchen, screened porch, shed addition, garage addition with associated driveway expansion and walkways.

**Applicant’s Agent**

Self-represented

**Staff Planner**

PJ Scully

**Lot Recordation**

12/17/1954  
 Map Book 37, Page 41

**GPIN**

1456-28-1008

**SITE AREA**

40,898 square feet or 0.938 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

19,774 square feet or 0.453 acres

**EXISTING IMPERVIOUS COVER OF SITE**

4,157 square feet or 21 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

4,954 square feet or 25 percent of site

**Area of Redevelopment in RPA**

540 square feet

**Area of New Development in RPA**

376 square feet

**Location of Proposed Impervious Cover**

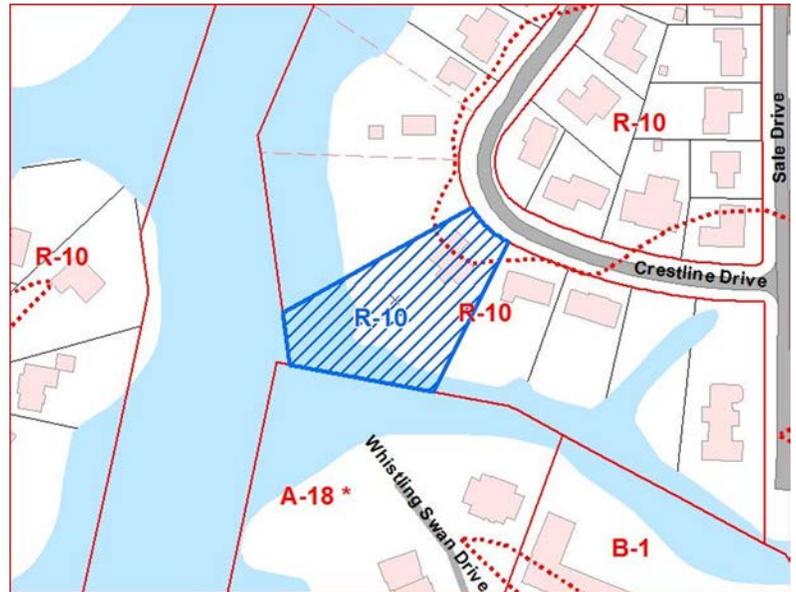
- 50 foot Seaward Buffer
- 50 foot Landward Buffer
- Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Concrete sidewalks – front and rear of the residence
- Duck blind
- Brick patio – redeveloped in same footprint

### Construction Details

- Concrete sidewalk to front door
- Concrete driveway widening
- Garage addition with associated concrete utility pad
- Screened porch
- Covered outdoor kitchen
- Shed addition

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Flood Zone

Multiple Zones – 0.2% chance of flooding & Zone AE, Base Flood Elevation (BFE): 8

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

### Shoreline

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

### Riparian Buffer

Heavily to moderately wooded lot

- Number of 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 within the Resource Management Area (RMA).

## Evaluation and Recommendation

The majority of the proposed improvements are within the 50 foot landward buffer and the Resource Management Area (RMA), with exception of the 48 square foot shed addition proposed within the 50 foot seaward buffer. However, with the removal of the existing duck blind, the expansion to the existing shed represents an overall reduction of impervious cover within the 50 foot seaward buffer by approximately 24 square feet. With an overall proposed impervious cover of

25 percent for the lot, the minimal amount of land disturbance proposed within the RPA, and the existing riparian buffer within the 100 RPA buffer being retained, Staff supports the application as submitted.

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

- 1) *"Granting the requested variance to the homeowner/applicant will not provide any special privileges, conveniences, or considerations that have not been given other owners whose property was plotted in the 1950s and developed in the 1960s, and which now comes under the provisions established by the 1988 Chesapeake Bay Preservation Act. The requested additions/improvements are sized to maintain an appropriate balance between the land use and the house footprint. Also, homes within the neighborhood have similar structures."* Staff concurs.
- 2) *"The homeowner/applicant or predecessor in title has not created or imposed any conditions or circumstances that necessitate this variance request. The request for encroachment into the RPA on this lot is necessary because the property was plotted in the 1950s and developed in the 1960s and now comes under the jurisdiction of the Virginia Beach Chesapeake Bay Preservation Area Board."* Staff concurs.
- 3) *"The requested variance within the Seaward buffer is the minimum necessary to afford relief, and the proposed improvement with the removal of the duck blind will reduce impervious square footage. The requested variance within the landward buffer is the minimum necessary to afford relief given that the proposed improvement will be within an area currently devoted to turf. In addition, the existing impervious surface, created prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA ordinance, will be repurposed adjacent to new impervious surface, rather than be relocated or expanded."* Staff concurs.
- 4) *"The applicant/homeowner believes this variance request is in harmony with the purpose and intent of the CBPA ordinance and the responsibilities placed upon the Virginia Beach CBPA Board to ensure appropriate protection of the Chesapeake Bay watershed. The improvements are not injurious to the neighborhood or of substantial detriment to the waterway or the water quality, or the public's welfare. The homeowner/applicant, through attendance at seminars sponsored by the Lynnhaven River Project and Tidewater Community College courses in Landscape Design, is cognizant of the environmental impact of improving and preserving water quality in the Chesapeake Bay watershed, as well as the importance of maintaining a shoreline property that reflects appropriate practices in keeping with the intent of the 1988 CBPA. The requested variance has been carefully thought through and is in keeping with the architecture of the homes, as well as the age of the neighborhood."* Staff concurs.
- 5) *"The homeowner/applicant recognizes and appreciates the need to continue to employ appropriate environmental practices in the RPA to ensure a no net increase in nonpoint source pollution load from this variance request." In addition to the current practices already in place and described on page 2, "Please provide reasoning for encroaching into the Resource Protection Area (RPA) and the means taken to avoid or minimize impacts of development for water quality protection," as well as any mitigation resulting from the approval of this variance request, the homeowner/applicant will do the following:*
  - *Add additional functioning 80 gallon rain barrels to help control runoff and harvest rain water*
  - *Further remove non-native shrubs and vines and replace with native shrubs and woody vines as identified in the Virginia Department of Forestry publication, "Common Native Shrubs and Woody Vines of Virginia"*
  - *Increase evergreen and deciduous shrubs to filter water run-off*
  - *Expand partnership with the ERP (Elizabeth River Project) to include the addition of native shoreline grasses and vegetation to restore area following removal of duck blind, strengthen shoreline, and reduce erosion*

*impact of powered watercraft on King Creek.”* Staff concurs that these efforts will help ensure that there will be no net increase in nonpoint source pollution from this site.

Given the above comments, Staff recommends the following 8 reasonable and appropriate conditions towards preventing the variance from causing or contributing to the 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. 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.
4. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
5. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
6. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **376 square feet x 200 percent = 752 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 to the greatest extent practicable.

The required restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. 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.

7. 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.
8. 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 and Community Development, Zoning Division for review and approval prior to the issuance of a building permit.

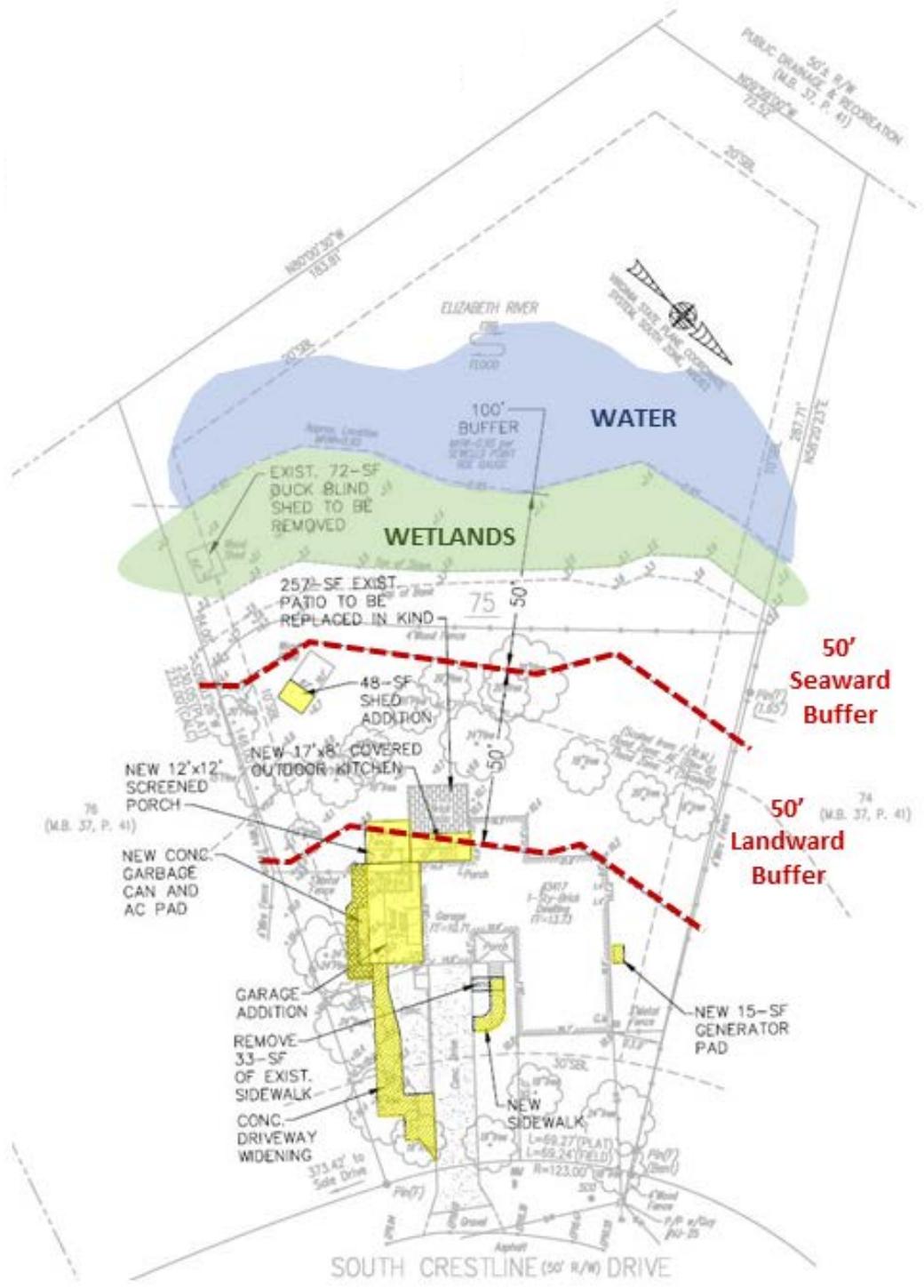
The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.

\*\*\*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** Lindsay Shephard

**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:

<b>Acquisition of Property by City</b>	<b>Disposition of City Property</b>	<b>Modification of Conditions or Proffers</b>
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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(A) List the Applicant's name: LINDSAY L SHEHEARD  
If an LLC, list all member's names:

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

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

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## APPLICANT

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<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	HAYDEN FRYE & ASSOCIATES 333 Kellam Rd # 200 23462
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
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	LINDSAY L SHEPHEARD	02.05.2019
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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