The City of Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold a Public Hearing on Thursday, May 23, 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.
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.

NEW BUSINESS AGENDA ITEMS

1.
Mehdi Salemi & Sara Abolahrari
[Applicant & Property Owner]

1536 W. Little Neck Road
GPIN: 1489-50-0669
COUNCIL DISTRICT – Lynnhaven

Applicant’s Agent – Billy Garrington
Staff Planner – PJ Scully
Page 7

2.
Regina C. Wrench
[Applicant & Property Owner]

2980 Buccaneer Road
GPIN: 1499-17-5904
COUNCIL DISTRICT – Lynnhaven

Applicant’s Agent – Billy Garrington
Staff Planner – PJ Scully
Page 9
3.
James & Maureen Cowan
[Applicant & Property Owner]

2401 Spindrift Road
GPIN: 1499-99-4570
COUNCIL DISTRICT – Lynnhaven
Applicant’s Agent – Ashton F. Otey
Staff Planner – PJ Scully
Page 11

4.
James & Katherine Byrne
[Applicant & Property Owner]

637 Cedar Lane
GPIN: 1477-89-5799
COUNCIL DISTRICT – Lynnhaven
Applicant’s Agent – Clark Olsen
Staff Planner – PJ Scully
Page 25

5.
Frederick P. Perkins ETUX
[Applicant & Property Owner]

1048 Ducking Point Trail
GPIN: 1488-03-3777
COUNCIL DISTRICT – Bayside
Applicant’s Agent – Self-represented
Staff Planner – PJ Scully
Page 39
## SHOW CAUSE AGENDA ITEMS

### 6.
**Demarkus Parker & Jobenia Odum**  
(Applicant & Property Owner)

**936 Le Cove Drive**  
GPIN: 1456-19-1636  
COUNCIL DISTRICT – Kempsville

Applicant’s Agent – Self-represented

Staff Planner – PJ Scully  
Page 51

### 7.
**Peter A. Koumoutseas**  
(Applicant & Property Owner)

**2201 Wood Ibis Way**  
GPIN: 1489-09-7474  
COUNCIL DISTRICT – Bayside

Applicant’s Agent – Self-represented

Staff Planner – PJ Scully  
Page 59
The applicant is requesting a 30 day deferral of this application to the Monday, June 24, 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 a swimming pool and associated pool surround.

**Applicant’s Agent**
Billy Garrington

**Staff Planner**
PJ Scully

**Lot Recordation**
6/14/1994
Map Book 236, Page 10

**GPIN**
1498-50-0669

**SITE AREA**
47,044.8 square feet or 1.08 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**
-

**EXISTING IMPERVIOUS COVER OF SITE**
-
The applicant is requesting a 90 day deferral of this application to the Monday, August 26, 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 a swimming pool and associated pool surround.

Applicant’s Agent
Billy Garrington

Staff Planner
PJ Scully

Lot Recordation
4/23/1958
Map Book 44, Page 53

GPIN
1499-17-5904

SITE AREA
9,920.8 square feet or 0.23 acres

SITE AREA OUTSIDE OF WATER/WETLANDS
9,920.8 square feet or 0.23 acres

EXISTING IMPERVIOUS COVER OF SITE
3,548 square feet or 35.7 percent of site
Variance Request
Encroachment into the Resource Protection Area (RPA) buffer to construct two building additions, covered porch, swimming pool, and expansion to driveway

Applicant’s Agent
Ashton F. Otey

Staff Planner
PJ Scully

Lot Recordation
10/6/1959
Map Book 48, Page 15

GPIN
1499-99-4570

SITE AREA
20,506 square feet or 0.471 acres

SITE AREA OUTSIDE OF WATER/WETLANDS
20,322 square feet or 0.467 acres

EXISTING IMPERVIOUS COVER OF SITE
4,224 square feet or 20.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE
6,063 square feet or 29.8 percent of site

Area of Redevelopment in RPA
1,397 square feet

Area of New Development in RPA
2,145 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
- Concrete driveway and associated walk
- Concrete patio and brick steps

Construction Details
- Concrete driveway and associated walk
- Garage addition
- Residential addition of the rear of the structure
- Covered porch
- Swimming pool with associated concrete surround

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

Environmental Conditions

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

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

Shoreline
Shoreline is hardened by a vinyl bulkhead along a man-made canal

Riparian Buffer
Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 7
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 1. Staff is of the opinion that the 18” Oak located at the rear of the residence within the eastern portion of the lot is declining due to past pruning practices performed on large limbs of the tree.
- Evaluation of existing canopy tree removal request: Staff does not support the request to removal the following trees as shown on the CBPA Exhibit.
  - 3 of the 4 trees located adjacent to the existing shed with exception to the 16 inch Gum which is exhibiting signs of disease and decline. Staff is of the opinion that the remaining 3 trees appear to be in good condition and management of the existing ivy and vines be performed to promote future health.
  - 2 trees – the 16” Gum and 18” Gum located within the 50 foot seaward buffer appear to be in good condition and management of the existing ivy and vines be performed to promote future health.
  Staff has provided a recommended condition, specifically condition 7 below, to retain the 5 trees should the Board consider granting the variance request.
Staff had preliminary conversations with the applicant’s agent prior to a formal submittal of the CBPA variance application. At that time, a detached garage was proposed along the western portion of the property in addition to a proposed dwelling addition, covered porch and swimming pool. The post-development impervious cover was estimated at 6,848 square feet or 33.6 percent of the site area outside of water and wetland. Given the percentage of post-development impervious cover, Staff did not offer support for the proposed improvements. Since that time, the following modifications have been made to the proposed improvements of the variance application.

- The size and location of the proposed building addition off the rear of the residence has remained the same.
- The size and location of the proposed covered porch has remained the same.
- The location of the proposed swimming pool has remained the same with refinements made to the concrete pool surround to provide a 4 foot by 4 foot by 4 foot by 6 foot surround.
- The proposed detached garage has been eliminated and an expansion of the existing garage proposed. This modification to the variance request offers an approximate 204 square foot reduction in impervious cover exclusive of the associated driveway expansion to provide access.

Staff is of the opinion that the proposed improvements within the 100 foot RPA buffer are located in the least sensitive portion of the RPA, even though the proposed swimming pool encroaches below the top of bank feature. The current condition of the upper reach to the 100 foot RPA buffer is relatively flat with the majority of mature canopy tree cover being located within the 50 foot seaward buffer. Although revisions have been provided to the proposed improvements since preliminary conversations with Staff, Staff expresses concern regarding the overall impervious cover of the site for this R20 lot. As such, Staff performed an analysis of the CBPA variances granted on Spindrift Road in order to compare this request’s overall proposed impervious cover to prior CBPA variances in the vicinity. Since 2005, 9 known CBPA Board variances have been granted on Spindrift Road. Of those 9 variances, the average post-development impervious cover is 31.18 percent with a range from 21.1 percent to 37.8 percent. Although the overall impervious cover of this variance application is below the average for variances granted on Spindrift Road, Staff is of the opinion that the use of a pervious pavement system with the expansion of and redevelopment to the existing driveway put the variance request in harmony with the purpose and intent of the CBPA Ordinance and provides merit toward the variance request not being a detriment to water quality nor a substantial increase to nonpoint source pollution load.

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 design of the proposed improvements will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated “as the property is under developed for the neighborhood and needs updated.” Staff respects this statement regarding redeveloping a lot that predates the adoption of the CBPA Ordinance and offers that the proposed improvements provide for an overall impervious cover below the average post-development impervious cover of 31.18 percent for other lots redeveloped on Spindrift Road.

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 we believe we are asking for a small addition compared to others on the same street.” Staff is of the opinion that the proposed improvements
are similar in size to other improvements that have been constructed on adjacent lots within the neighborhood.

4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare “with the applicant proposing to groom the property to have a lot of plants which add to the protection and preservation of the adjacent waterway.” Staff is of the opinion that the proposed improvements will not drastically impact the RPA, be injurious to the neighborhood, or be a substantial detriment to water quality as condition below. As the recommended buffer restoration, stormwater management and pervious pavement system provided in the recommended conditions below, should the variance request be granted, will enhance the ecological and biological function of the riparian buffer ecosystem.

5) To manage towards a no net increase in nonpoint source pollution load “water runoff will be controlled with gutters and mulched beds.” If properly implemented and maintained, Staff is of the opinion that the restoration of the riparian buffer within the 50 foot seaward buffer and pervious pavement system, as provided in the recommended conditions below, offers merit towards a no net increase in nonpoint source pollution from this variance request.

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

**Recommended Conditions**

1. 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.

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. The 5 trees described on the CBPA Exhibit as the 10 inch Pine, 16 inch Pine, and 14 inch Cedar adjacent to the existing shed and the 16 inch Gum and 18 inch Gum located in the central portion of the rear yard delineated for removal shall be preserved.
8. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

9. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

10. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.

11. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.

12. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

13. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 
   \[2,145 \text{ square feet} \times 200 \text{ percent} = 4,290 \text{ square feet}\]

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

14. The proposed driveway shall be constructed of a permeable pavement system.

15. **The pool shall be constructed prior to or concurrent with all other proposed improvements.**

16. 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.

17. **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 $491.56 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.**
18. The conditions and approval associated with this variance are based on the exhibit plan dated November 13, 2018, prepared by Fox Land Surveying, signed April 8, 2019 by Travis M. Fox. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

** 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.
Disclosure Statement

APPLICANT'S NAME: James & Maureen Cowan

DISCLOSURE STATEMENT FORM

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

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

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(s) that pertains to the application(s).

- ☐ APPLICANT NOTIFIED OF HEARING
  - DATE:
- ☐ NO CHANGES AS OF
  - DATE:
- ☐ REVISIONS SUBMITTED
  - DATE:

Page 1 of 7
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: **James & Maureen Cowan**
   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 or affiliated business entity relationship with the Applicant: *(Attach list if necessary)*

See next page for information pertaining to footnotes and 2

SECTION 2 / PROPERTY OWNER DISCLOSURE

_Complete Section 2 only if property owner is different from Applicant._

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

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

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

   ______________________________

Page 2 of 7
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-subsidiary\(^1\) or affiliated business entity\(^2\) relationship with the Property Owner: (Attach list if necessary)

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

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

**SECTION 3. SERVICES DISCLOSURE**

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

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>Service</th>
<th>Provider (use additional sheets if needed)</th>
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<tbody>
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<td>Accounting and/or preparer of your tax return</td>
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<td>Architect / Landscape Architect / Land Planner</td>
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<td>Contract Purchaser (If other than the Applicant) - Identify purchaser and purchaser's service providers</td>
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<td>Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)</td>
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<td>Construction Contractors</td>
<td>J.F. Schoch Building Corp.</td>
</tr>
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<td>Engineers / Surveyors / Agents</td>
<td>Fox Land Surveying LLC.</td>
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<td>Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)</td>
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<td>Legal Services</td>
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<td>Real Estate Brokers / Agents / Realtors for current and anticipated future sales of the subject property</td>
<td></td>
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</table>

### Section 4. Known Interest by Public Official or Employee

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>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?</th>
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<tr>
<td></td>
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<td>If yes, what is the name of the official or employee and what is the nature of the interest?</td>
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</table>

Page 4 of 7
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.

[Signature]
PRINT NAME
DATE 4/4/19
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.

[Signature]

[PRINT NAME] [DATE]
Variance Request
Encroachment into the Resource Protection Area (RPA) buffer to construct screen porch, in-ground swimming pool and associated pool surround.

Applicant’s Agent
Clark Olsen

Staff Planner
PJ Scully

Lot Recordation
2/9/1968
Map Book 49, Page 11

GPIN
1477-89-5799

SITE AREA
42,334.5 square feet or 0.971 acres

SITE AREA OUTSIDE OF WATER/WETLANDS
36,128 square feet or 0.829 acres

EXISTING IMPERVIOUS COVER OF SITE
9,142 square feet or 25.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE
9,899 square feet or 27.3 percent of site

Area of Redevelopment in RPA
726 square feet

Area of New Development in RPA
782 square feet

Location of Proposed Impervious Cover
50 foot Landward Buffer
100 foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE
Less than 2,500 square feet

Staff Recommendation
Approval as conditioned
## Summary of Proposal

**Demolition Details**
- Concrete patio

**Construction Details**
- Inground swimming pool with concrete surround
- Concrete patio area
- Screen porch

## 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)**
Bojac Series (deep, nearly level, well-drained soils)
Rumford Series (highly erodible soils) located below the top of bank

**Shoreline**
Shoreline is in a natural state.

**Riparian Buffer**
Moderately to sparsely wooded lot
- Number of existing canopy trees requested for removal within the RPA: 0

## Evaluation and Recommendation

The variance request to construct an inground swimming pool with concrete surround encroaches into the upper reach of the 50 foot landward buffer and variable width buffer of the Resource Protection Area (RPA). Prior to submitting the variance request, Staff met with the applicant and applicant’s contractor at the property to discuss the CBPA Board variance process, evaluate an approximate edge of wetlands to the delineated toe of slope, and field review the desired extent of the proposed improvements. During that meeting, the following items were discussed.
- Limiting land disturbance to less than 2,500 square feet.
- The limits of construction being a maximum of 10 feet outboard of the proposed improvements and landward of the top of bank feature.
- Utilizing the existing concrete patio area as redevelopment to the greatest extent practicable when designing the proposed inground swimming pool.
- Providing the minimum width necessary for access around the proposed inground swimming pool along the seaward portion of the proposed improvement.
As a result of the site meeting, the proposed inground swimming pool has been situated directly within the footprint of the existing concrete patio to avoid encroaching below the top of bank feature, and the applicant’s agent has designed the proposed improvements to balance the amount of new impervious cover (782 square feet) with the amount of redeveloped impervious cover (726 square feet) to the greatest extent practicable. In addition, to minimize the amount of proposed impervious cover, the width of the concrete pool surround along the seaward portion of the proposed improvements is specified at 3 feet in width inclusive of the pool coping.

To further support this variance request, the applicant’s agent has provided the following comments relative to the findings of the CBPA Ordinance for the Board’s deliberation.

1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because “the redevelopment and development of impervious areas are at the upper edge of the 100 foot RPA and next to the house – this is the least intensive.” Staff concurs and offers that the proposed improvements do not impact any existing riparian buffer vegetation and provides redevelopment of existing impervious cover to the greatest extent practicable.

2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.

3) The variance is the minimum necessary to afford relief because, “the proposed project has been designed to fit within the qualifications of a small project to the greatest extent practicable.” Staff concurs and offers that the dimensions of the proposed swimming pool are consistent with others within the neighborhood and the specified pool surround limits encroachment within the RPA above the top of bank feature.

4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because, “development and redevelopment are allowed within the RPA and this proposal takes place at the outer limits of the 50 foot landward buffer.” Staff offers that the existing residential structure was built in 1972 and prior to the adoption of the CBPA Ordinance. With existing impervious cover in place, the underlying soil profile favorable for infiltration, and approximately 80 linear feet of existing vegetation being maintained from the seaward most portion of the proposed improvements to the toe of slope, Staff is of the opinion that the proposed improvement will not be a substantial detriment to water quality if approved.

5) To manage towards a no net increase in nonpoint source pollution load, “mulch and planting beds will be installed where they are best for the site.” Staff is of the opinion that the proposed buffer restoration should be focused in the rear yard and above the top of bank feature transitioning to areas along the side property lines where existing topography slopes away from the existing residential structure.

For the Board’s deliberation, Staff recommends the following 15 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.
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.

3. The construction access way and contractor parking area shall utilize the existing driveway. The area within the limits of construction and existing concrete patio shall be utilized for staging and stockpiling areas.

4. Wire reinforced 36 inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.

5. Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.

6. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

7. Permanent and/or temporary soil stabilization measures shall be applied to all disturbed/denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

8. The bioretention planting bed/stormwater management facility – 3 feet wide by 12 feet long by 24 inches deep, associated with the prior redevelopment approval shall be reinstalled.

9. A Single Family Dwelling RPA Small Projects site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. The DSC may require additional information that may affect the release 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: 782 square feet x 200 percent = 1,564 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: **4 canopy trees, 4 understory trees, 8 large shrubs, and 12 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.

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 $179.20 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 prepared by the applicant and presented to the Board. 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.
APPLICANT’S NAME  James & Katherine Byrne

DISCLOSURE STATEMENT FORM

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

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

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).

☐ APPLICANT NOTIFIED OF HEARING  DATE:
☐ NO CHANGES AS OF  DATE:
☐ REVISIONS SUBMITTED  DATE:

Page 1 of 7
☐ Check here if the **APPLICANT IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.

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

(A) List the Applicant’s name:

If an LLC, list all member’s names:

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

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

See next page for information pertaining to footnotes ¹ and ²

---

**SECTION 2 / PROPERTY OWNER DISCLOSURE**

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

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

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

(A) List the Property Owner’s name:

If an LLC, list the member’s names:
If a Corporation, list the names of all officers, directors, members, trustees, etc. below: (Attach list if necessary)

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

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

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

SECTION 3. SERVICES DISCLOSURE

Are any of the following services being provided in connection with the subject of the application or any business operating or to be operated on the Property. If the answer to any item is YES, please identify the firm or individual providing the service: IF THE OWNER AND APPLICANT ARE DIFFERENT, EACH MUST COMPLETE THE SECTION SEPERATELY
## SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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<tr>
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<td>✔️Accounting and/or preparer of your tax return</td>
<td>Andrea MacDonald</td>
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<td>✔️Architect / Landscape Architect / Land Planner</td>
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<td>✔️Contract Purchaser (If other than the Applicant) - identify purchaser and purchaser's service providers</td>
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<td>✔️Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)</td>
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Does an official or employee of the City of Virginia Beach have an interest in the subject land or any proposed development contingent on the subject public action?

If yes, what is the name of the official or employee and what is the nature of the interest?
CERTIFICATION:
I certify that all of the information contained in this Disclosure Statement Form is complete, true, and accurate.

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

[Signature]

PROPERTY OWNER’S SIGNATURE \ PRINT NAME \ DATE
Katherine L. Byrne \ Katherine Byrne \ 4.9.19

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

James & Katherine Byrne
Agenda Item 4
Page 38
Variance Request
Encroachment into the Resource Protection Area (RPA) buffer to construct a wood deck.

Applicant’s Agent
Self-represented

Staff Planner
PJ Scully

Lot Recordation
11/22/1978
Map Book 133, Page 43

GPIN
1488-03-3777

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA
0 square feet

Area of New Development in RPA
480 square feet

Location of Proposed Impervious Cover
50 foot Landward Buffer

AMOUNT OF LAND DISTURBANCE
Less than 2,500 square feet

Staff Recommendation
Approved as conditioned
Construction Details

- Wood deck

CBPA Ordinance Variance History

June 1, 1992 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a two-story single-family residence, with a screened porch, deck area, and pool.

1. Any clearing on the slope shall strictly adhere to the Chesapeake Bay Preservation Area Committee Policy No. 15, titled “Guidelines for Clearing in RPA’s”, adopted on June 11, 1991. Copies of the guidelines are available in the City Planning and Landscape Services Department.

2. All new vegetation provided to compensate for tree loss shall be identified on the Landscape Plan. All trees to be removed shall also be identified on the Landscape Plan.

3. A landscape buffer consisting of a combination of trees and shrubs must be established with the Chesapeake Bay Preservation Area Committee Policy No. 14, titled “Buffer Area Establishment and Mitigation Guidelines” adopted June 27, 1991. Copies of the guidelines are available in the City Planning and Landscape Services Department.

4. All stormwater management measures provided for this project shall be subject to approval by the City Engineer’s Office.

5. No structure shall be allowed within 15 feet of the top of bank. The applicant must also minimize impervious cover on the site.

6. A site plan must be submitted to the Development Services Center for plan of development review and approval and appropriate bonds posted prior to the issuance of a building permit.

The July 1, 1992 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone
AE – Base Flood Elevation (BFE): 9

Soil Type(s)
Tetotum Series (deep, moderately well-drained soils)
Rumford Series (highly erodible soils) located below the top of bank

Shoreline
Shoreline is hardened by a bulkhead.
**Riparian Buffer**
Sparsely wooded.

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

---

### Evaluation and Recommendation

Staff is of the opinion that the scope of the variance request and minimal land disturbance anticipated by the construction of the proposed improvements provide for the minimum necessary to afford relief, would not be detrimental to water quality, nor an increase in nonpoint source pollution load into the adjacent tidal waters. Moreover, during the site visit the applicant explained to Staff the rainwater harvesting system implemented on the lot to captured runoff from existing impervious cover and utilize as a source supply of water for landscape water features with an underground cistern to promote groundwater infiltration.

Should the Board desire to consider granting this variance request, Staff offers the following recommended conditions relative to the findings of the CBPA Ordinance specific to this variance request.

---

### 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. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.

4. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

5. Buffer restoration shall be installed equal to 400 square feet for the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: 1 canopy trees, 2 understory trees, and 3 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 5 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.
6. Under deck treatment of sand and gravel shall be installed.

7. This variance and associated conditions are in addition to the improvements associated with the Board variance granted January 24, 1996.

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, 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.
PROPOSED WOOD DECK
8' WIDE
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<td>Wetlands Board</td>
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(A) List the Applicant's name: ____________________________
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes \(^1\) and \(^2\)

---

**SECTION 2 / PROPERTY OWNER DISCLOSURE**

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

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

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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 SEPARATELY

Page 3 of 7
### Applicant

<table>
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<tr>
<th>YES</th>
<th>NO</th>
<th>SERVICE</th>
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<tr>
<td>X</td>
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<td>Accounting and/or preparer of your tax return</td>
<td>David Brotnae P.C.</td>
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<td>Architect / Landscape Architect / Land Planner</td>
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<td>Engineers / Surveyors / Agents</td>
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<td>Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property</td>
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### Section 4. Known Interest by Public Official or Employee

<table>
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<tr>
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<tr>
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<td>X</td>
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</tbody>
</table>

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.

Brenda Philips     Fred Perkins  5/3/19
APPLICANT’S SIGNATURE          PRINT NAME          DATE

*Last 2 pages of the Disclosure Statement not provided – Applicant and Owner are the same.
Frederick P. Perkins ETUX
Agenda Item 5
Page 50
Address of Noncompliance  936 Le Cove Drive  
Property Owner  Demarkus Parker & Jobenia Odum  
Public Hearing  May 23, 2019  
City Council District  Kempsville

Property Owner’s Agent  
Self-represented

Staff Planner  
PJ Scully

Lot Recodnation  
10/23/2006  
Ins No. 20061023001606690

Lot Description  
Subdivision of part of D.M. Bowman property to be known as Le Cove Point, Lot 2, 936 Le Cove Drive

GPIN  
1456-19-1636

Current Property Owner  
Demarkus Parker & Jobenia Odum

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements  
- Concrete paver patio area located seaward of the existing swimming pool deviates from the approved site plan and the conditions of the September 27, 2004 CBPA Variance, specifically condition 7.

Location of Unauthorized Improvements  
100 foot Variable Width Buffer

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

AMOUNT OF LAND DISTURBANCE  
Less than 2,500 square feet
September 27, 2004 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for a 5 lot subdivision with the following conditions.

1. A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.

2. Dual 36” erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Additionally, a heavy duty construction fence, acceptable to Civil Inspections, shall be installed along the aforementioned E & S controls and shall be maintained during all phases of construction.

3. Construction limits shall lie a maximum of 10’ seaward of improvements for Lots 1, 2, 3, and 5. Constructions limits for Lot 4 shall lie 10’ seaward of the improvements to be demolished. No construction limits shall encroach within the first 100’ buffer for Lots 1, 2, and 3.

4. The construction access way shall be noted on the site plan, as well as the stockpile staging area.

5. All stormwater from proposed impervious cover, inclusive of the extension of Le Cove Drive, shall be conveyed to structural stormwater management facilities.

6. If and when the shoreline is re-hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber, vinyl or steel bulkhead). Said condition shall be so noted on the site plan.

7. Pool decking shall be a maximum of 4’X4’X4’X8’ (diving board end). Pool decking shall not lie further seaward than that which is depicted on the site plan sealed October 15, 2004 prepared by Robert S. Kellam.

8. Pools shall be constructed prior to or concurrent with the residence.

9. If applicable, under deck treatment of sand and gravel shall be installed.

10. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be based upon 25% of impervious cover within the Resource Protection Area. The formula for payment is as follows: 25% of square footage of impervious cover within the buffer divided by 27 (cubic yards) times 15 (estimated bushels of oyster shell within a cubic yard) times $1.65 (cost of shell and cost to plant).

11. All area seaward of the authorized 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 plans.

12. Tree compensation shall be at a 3:1 ratio and shall be comprised of a minimum of 50% evergreen and 50% deciduous species. Note on each site plan the number to be removed and installed.

13. The conditions and approval associated with this variance are based on the site plan sealed October 15, 2004 by Kellam & Gerwitz, P.E.

14. A certified arborist shall provide written verification as to the disposition of the residual forested buffer, those portions of the buffer to be restored, clearing for site lines and vistas, the need for forest floor amendments,
and the removal of vegetation along shorelines to augment the growth of tidal vegetated wetlands and erosion abatement. Said arborist shall provide assistance before, during and after the project to ensure forested buffer resources are protected and restored. Said arborist shall provide his/her findings to the DSC concurrent with the submission of construction plans.

15. If the proposed community pier is not approved, the applicant shall return to the Chesapeake Bay Preservation Area Board to address the impacts of additional piers and the parcel configuration.

16. If the proposed community pier is approved, the lot lines shall be adjusted to preclude riparian rights on Lots 1, 2, & 3.

17. 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.

### History of Noncompliance

To Staff’s knowledge, Demarkus Parker & Jobenia Odum have no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

### Chronology of Noncompliant Event

- **October 6, 2015**  
  Site plan approved by the Development Services Center (DSC) for the construction of a single-family residence and swimming pool for Lot 2, 936 Le Cove Drive.

- **September 13, 2017**  
  Post plan revision approved by the DSC for the relocation of the proposed best management practices, BMP shown on the October 6, 2015 approved site plan.

- **April 9, 2019**  
  Staff visited the property located at 936 Le Cove Drive to investigate construction activity in the rear yard reported by a building inspector. At that time, it was observed that a matter of noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance may have occurred, specifically the on-going and unauthorized construction of a concrete paver patio.

- **April 9, 2019**  
  Staff sent an email to the property owner regarding the construction activity at 936 Le Cove Drive. The email stated that a determination had been made that the constructed patio area located seaward of the existing swimming pool deviates from the approved site plan and the conditions of the September 27, 2004 CBPA Variance, specifically condition 7.

  > 7. Pool decking shall be a maximum of 4’X4’X4’X8’ (diving board end). Pool decking shall not lie further seaward than that which is depicted on the site plan sealed October 15, 2004 prepared by Robert S. Kellam.

  Staff stated in the email that “the correspondence shall serve as written notice that you have thirty (30) days from the date of this email to remove the unauthorized improvements and restore all unauthorized areas of land disturbance to existing grade elevations. Failure to comply will result in a Show Cause hearing at the May 23, 2019 CBPA Board Public Hearing.”

- **April 10, 2019**  
  A Stop Work Order was issued for the property for the on-going and unauthorized construction of a concrete paver patio without Chesapeake Bay Preservation Area Board approval.
April 19, 2019  Staff met with the property owners at the Department of Planning and Community Development to discuss the unauthorized improvements at 936 Le Cove Drive, the 2007 CBPA variance conditions, and the process going forward given the property owners desire to retaining the paver patio area.

April 25, 2019  Staff stated in an email to the property owner that “a comparison of the paver patio to the September 27, 2004 CBPA variance exhibit represents a further encroachment seaward and does not comply with the conditions of the 2004 CBPA variance. As such, Staff cannot approve the improvements as constructed and a subsequent variance to the Chesapeake Bay Preservation Area (CBPA) Ordinance will be required, if you desire to retain the unauthorized improvements. Given that the improvements were installed without obtaining a subsequent CBPA variance, you will receive a letter from the Department of Planning and Community Development to attend a Show Cause hearing at the Thursday, May 23, 2019 CBPA Board Public Hearing.”

April 30, 2019  Staff met in the field with the property owner regarding the unauthorized improvements and the necessity to proceed through the Show Cause process given the conditions of the September 27, 2004 CBPA variance.

May 8, 2019  Staff sent written notice to the property owners to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, May 23, 2019 for a show cause hearing.

Evaluation and Recommendation

Relative Degree of Deviation
The subject activity of noncompliance, construction of concrete paver patio was performed without approval from the Chesapeake Bay Preservation Area Board. Land disturbance associated with the unauthorized improvements is less than 2,500 square feet.

Environmental Impact
The subject area of noncompliance lies within the 100 foot variable width portion of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) buffer adjacent to a tidal marsh.

No canopy trees were removed associated with the subject activity of noncompliance, limits of construction do not appear to have disturbed a substantial area of existing forest floor, and no signs of erosion or sediment migration into the adjacent tidal marsh were present when Staff visited the site.

Stormwater runoff from the unauthorized concrete paver patio area appears to be directed to the adjacent best management practices, bioretention BMPs associated with the September 13, 2017 post plan revision approved by the DSC for the relocation of the proposed best management practices, BMP shown on the October 6, 2015 approved site plan. Civil Inspections has not conducted a final inspection of the BMPs.

No backfill material has been placed seaward of the unauthorized concrete paver patio area. No other naturalized areas in the rear yard have been modified.

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

Demarkus Parker & Jobenia Odum
Agenda Item 6
Page 54
Address of Noncompliance: 2201 Wood Ibis Way
Property Owner: Peter A. Koumoutseas
Public Hearing: May 23, 2019
City Council District: Bayside

Property Owner’s Agent
Self-represented

Staff Planner
PJ Scully

Lot Recordation
12/26/1984
Map Book 186, Page 48

Lot Description
Aeries on the Bay, Phase Two, Part B and Resubdivision of Lots 36-43, Block B, Phase Two of Part A – Lot 25, 2201 Wood Ibis Way

GPIN
1489-09-7474

Current Property Owner
Peter A. Koumoutseas

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements
- Placement of fill material on the lot without approval

Location of Unauthorized Improvements
- 50 foot Landward Buffer
- 100 foot Variable Width Buffer

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

AMOUNT OF LAND DISTURBANCE
Less than 2,500 square feet
CBPA Ordinance Variance History

No known prior Chesapeake Bay Preservation Area Board variance history

History of Noncompliance

To Staff’s knowledge, Peter A. Koumoutseas has no known history of noncompliance with the Chesapeake Bay Preservation Area Board beyond the aforementioned description of noncompliance.

Chronology of Noncompliant Event

April 3, 2019  Staff received a citizen inquiry regarding land disturbance activity occurring at 2201 Wood Ibis Way and the placement of topsoil adjacent to the woodland area of the lot.

April 4, 2019  Civil Inspections visited the property to investigate the land disturbance activity reported at 2201 Wood Ibis Way.

April 5, 2019  Staff met with the property owner in the field to discuss the land disturbing activity that had occurred. At that time, the property owners desire to improve the property was discussed and Staff explained the process and approval required to make improvements to property required by the City.

April 19, 2019 Staff received a second citizen inquiry regarding the stockpiling of fill material at the property adjacent to the woodland area of the lot.

April 23, 2019 A Stop Work Order was issued for the property for the on-going and unauthorized land disturbance.

April 24, 2019 Civil Inspections visited the property to verify that the Stop Work Order is in place.

April 25, 2019 Staff met in the field with the property owner regarding the stockpiling of additional fill material at the property and discussed corrective actions needing to occur in order to bring the property into compliance. Staff asked the property owner to provide the name(s) on the contractor responsible for delivering the fill material.

May 1, 2019  Staff sent an email to the property owner and contractor associated with the land disturbing activity at 2201 Wood Ibis Way. The email stated that a determination had been made that “an issue of non-compliance to the provisions of the CBPA Ordinance had occurred. Specifically, unauthorized land disturbance and placement of fill material within the RPA buffer. This activity occurred without appropriate review and approval. Accordingly, this correspondence shall serve as written notice that you have until May 13, 2019 to remove the unauthorized fill material and restore all areas of land disturbance to existing grade elevations. Failure to comply will result in a Show Cause hearing at the May 23, 2019 CBPA Board Public Hearing.”

May 2, 2019  Staff received an email from the property owner concerned over timeline given by Staff to remove the unauthorized fill material from the property. Staff responded to the property
owners email requesting the property owner to provide a specific date to when the unauthorized fill material will be removed from the property.

May 2, 2019  Staff received an email from the contractor requesting to have a conversation with Staff pertaining to the communication that occurred between he and the property owner regarding the stockpiling of fill material at 2201 Wood Ibis Way.

May 8, 2019  Staff sent written notice to the property owners to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Thursday, May 23, 2019 for a show cause hearing.

May 10, 2019  Staff received an email from the property owner that he is progressing with the removal of the unauthorized fill material from the property and is asking for an extension of time from the May 13th, 2019 deadline to have the material removed from the property.

May 14, 2019  Civil Inspections visited the property and confirms that a portion of the unauthorized fill material has been removed.

May 14, 2019  Staff sent an email to the property owner regarding the extension of time request that stated “With progress being made to remove the dirt from the property and dispose of in a lawful manor, I will ask the Board at the public hearing to defer the Show Cause 30 day to allow additional time to comply. I cannot speak for the Board but will ask for the deferral. Given the request, the Board will likely have questions for your regarding the progress and additional time being requested.”

**Evaluation and Recommendation**

**Relative Degree of Deviation**
The subject activity of noncompliance, stockpiling of fill material to be distributed within the lot was performed without Staff review, approval and permitting. Land disturbance associated with the stockpiling of fill material is less than 2,500 square feet.

**Environmental Impact**
The subject area of noncompliance lies within the 50 foot landward and 100 foot variable width buffers of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) adjacent to a contiguous nontidal wetland of a tidal waterway.

The subject activity of noncompliance does not appear to have disturbed a substantial area of existing forest floor and no signs of sediment migration into the adjacent nontidal wetlands were present when Staff visited the site.

**Recommendation**
It is the opinion of the Department of Planning and Community Development that the degree of deviation or noncompliance has been high and the environmental impact has been low.
Approximate location of the unauthorized improvements, placement of fill material