

# Chesapeake Bay Preservation Area Board Agenda

August 26, 2019



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# CHESAPEAKE BAY PRESERVATION AREA BOARD

## NOTICE OF PUBLIC HEARING

The City of Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board will hold a Public Hearing on **Monday, August 26, 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 **August 26, 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

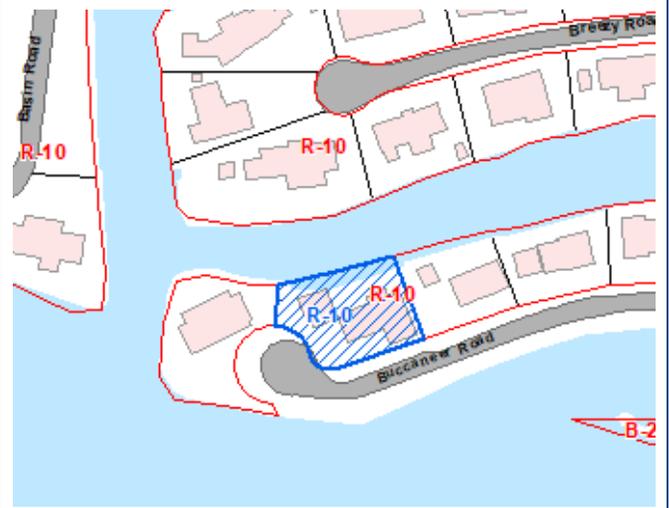
- FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS. FORMAL REVIEW HELD IN THE CITY COUNCIL CHAMBER.

## OLD BUSINESS AGENDA ITEMS

- 1. Regina C. Wrench**  
[Applicant & Property Owner]
- 2980 Buccaneer Road**  
GPIN: 1499-17-5904  
Council District – Lynnhaven  
Accela Record 2019-CBPA-00018

**Variance Request** – Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool and associated pool surround.

**Staff Planner** – PJ Scully  
**Staff Report** – page 7

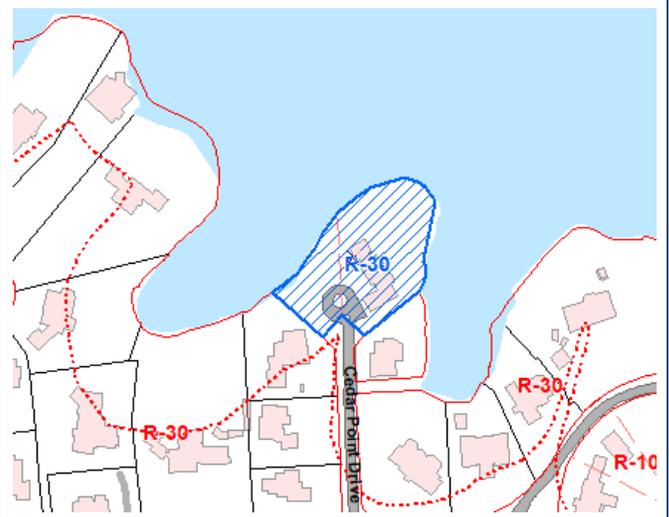


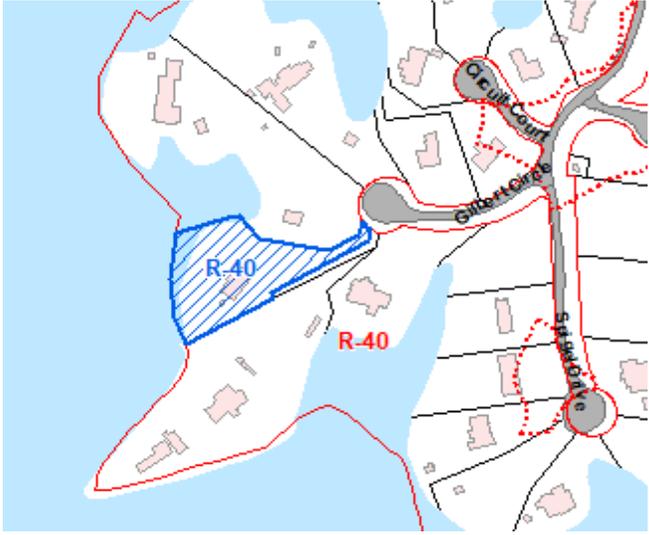
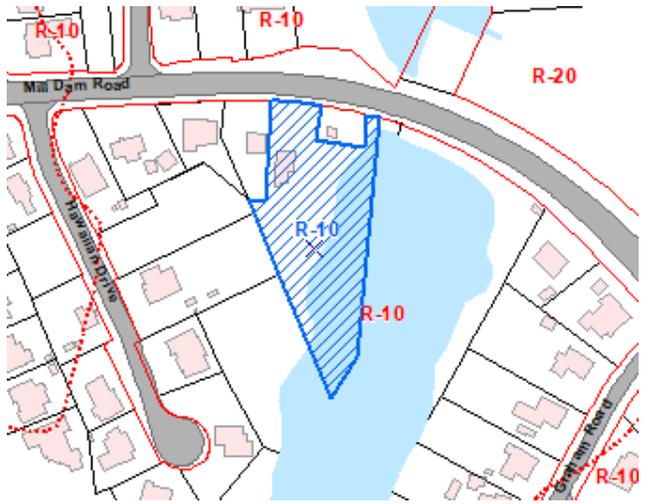
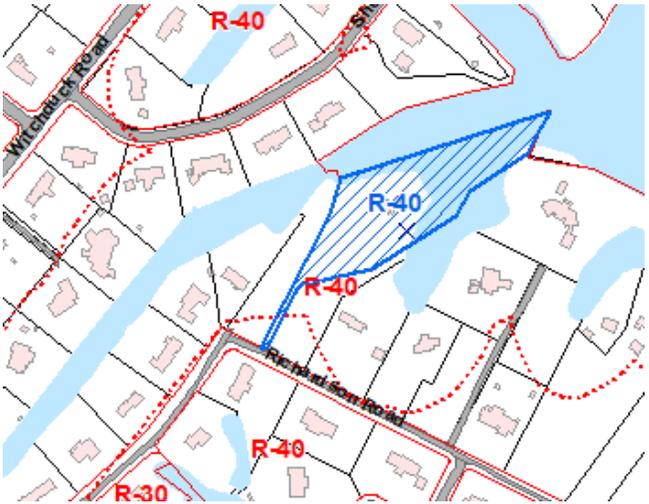
## NEW BUSINESS AGENDA ITEMS

- 2. Clark & Ann Crenshaw**  
[Applicant & Property Owner]
- 1216 Cedar Point Drive**  
GPIN: 2418-68-3284  
Council District – Lynnhaven  
Accela Record 2019-CBPA-00032

**Variance Request** – Modification of the July 28, 2003 Chesapeake Bay Preservation Area (CBPA) variance to delete condition 6.

**Staff Planner** – PJ Scully  
**Staff Report** – page 9



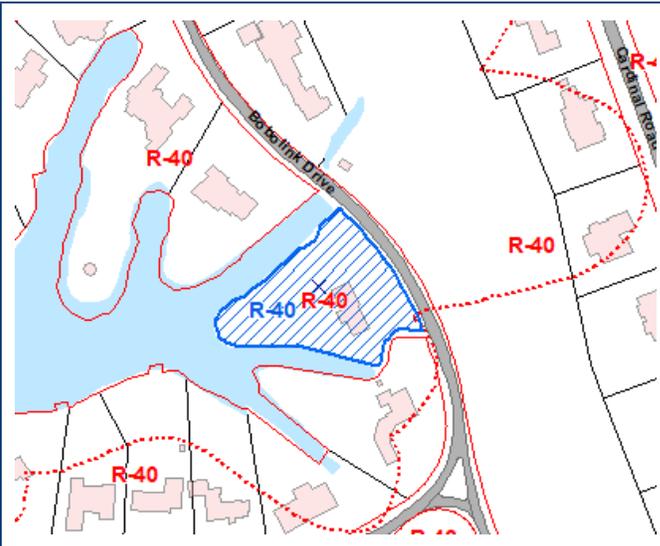
<p><b>3. James &amp; Nancy Worcester</b> [Applicant &amp; Property Owner]</p> <p><b>802 Gilbert Circle</b> GPIN: 1498-51-0273 Council District – Lynnhaven Accela Record 2019-CBPA-00038</p> <p><b>Variance Request</b> – Encroachment into the Resource Protection Area (RPA) buffer to construct an addition to the existing residence with associated accessory structure.</p> <p><b>Staff Planner</b> – PJ Scully <b>Staff Report</b> – page 23</p>	 <p>A map showing the property at 802 Gilbert Circle. The property is outlined in red and labeled 'R-40'. A blue hatched area represents the Resource Protection Area (RPA) buffer. The map includes labels for 'Gilbert Circle' and 'Sandy Pointe'. A red dashed line indicates the RPA boundary.</p>
<p><b>4. Glenn &amp; Julia Cherry</b> [Applicant &amp; Property Owner]</p> <p><b>1409 Mill Dam Road</b> GPIN: 2408-38-7956 Council District – Lynnhaven Accela Record 2019-CBPA-00037</p> <p><b>Variance Request</b> – Encroachment into the Resource Protection Area (RPA) buffer to construct a new single-family residence with associated accessory structures.</p> <p><b>Staff Planner</b> – PJ Scully <b>Staff Report</b> – page 37</p>	 <p>A map showing the property at 1409 Mill Dam Road. The property is outlined in red and labeled 'R-10'. A blue hatched area represents the Resource Protection Area (RPA) buffer. The map includes labels for 'Mill Dam Road', 'Harrison Drive', and 'Long Bay Road'. A red dashed line indicates the RPA boundary.</p>
<p><b>5. Bella Nest, LLC</b> [Applicant &amp; Property Owner]</p> <p><b>4006 Richardson Road</b> GPIN: 1488-06-9968 Council District – Bayside Accela Record 2019-CBPA-00036</p> <p><b>Variance Request</b> – Encroachment into the Resource Protection Area (RPA) buffer to construct a new single-family residence with associated accessory structures</p> <p><b>Staff Planner</b> – PJ Scully <b>Staff Report</b> – page 51</p>	 <p>A map showing the property at 4006 Richardson Road. The property is outlined in red and labeled 'R-40'. A blue hatched area represents the Resource Protection Area (RPA) buffer. The map includes labels for 'Richardson Road', 'Wichurch Road', and 'Sandy Pointe'. A red dashed line indicates the RPA boundary.</p>

6. **Krambias Properties LLC**  
[Applicant & Property Owner]

**921 Bobolink Drive**  
GPIN: 2418-22-7567  
Council District – Lynnhaven  
Accela Record 2019-CBPA-00035

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

**Staff Planner** – PJ Scully  
**Staff Report** – page 69



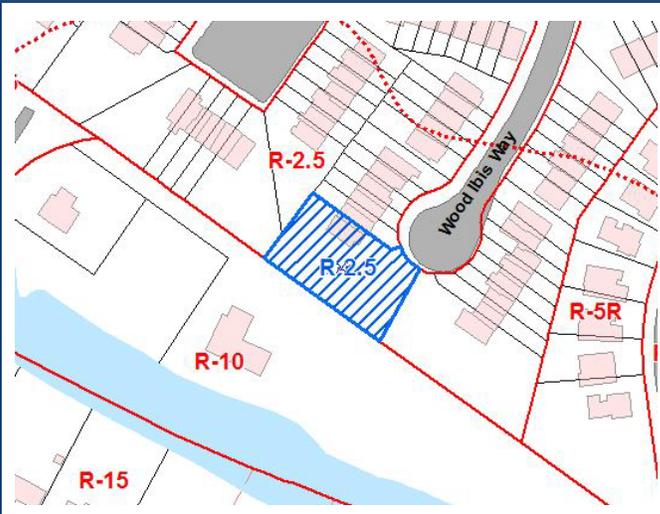
## RESTORATION HEARING AGENDA ITEM

7. **Peter A. Koumoutseas**  
[Applicant & Property Owner]

**2201 Wood Ibis Way**  
GPIN: 1489-09-7474  
Council District – Bayside  
Accela Record 2019-CBPV-00002

**Noncompliance** – Encroachment into the Resource Protection Area (RPA) buffer with the placement of unauthorized fill material.

**Staff Planner** – PJ Scully  
**Staff Report** – page 71



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**The variance application is being withdrawn. Staff supports the applicant's request.**

**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct a swimming pool and associated pool surround.

**CBPA Variance Request History**

Deferred – May 23, 2019

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 44, Page 53  
 Recorded 4/23/1958

**GPIN**

1499-17-5904

**SITE AREA**

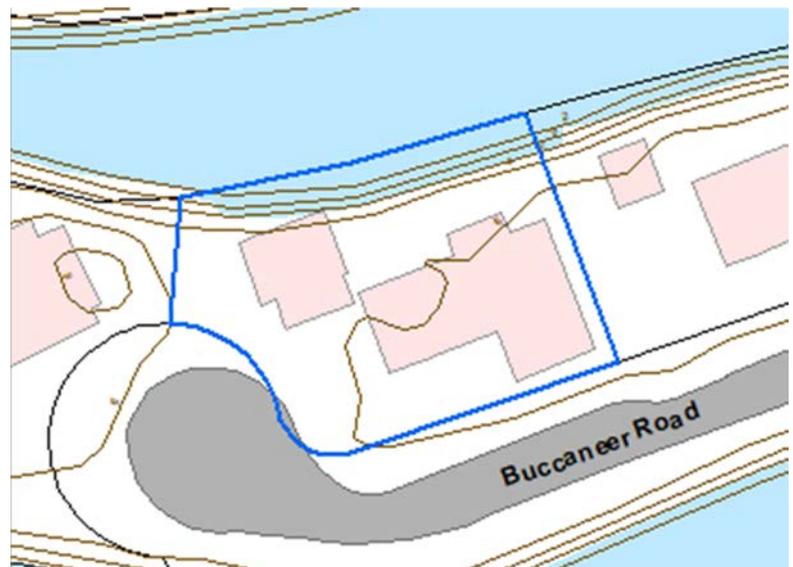
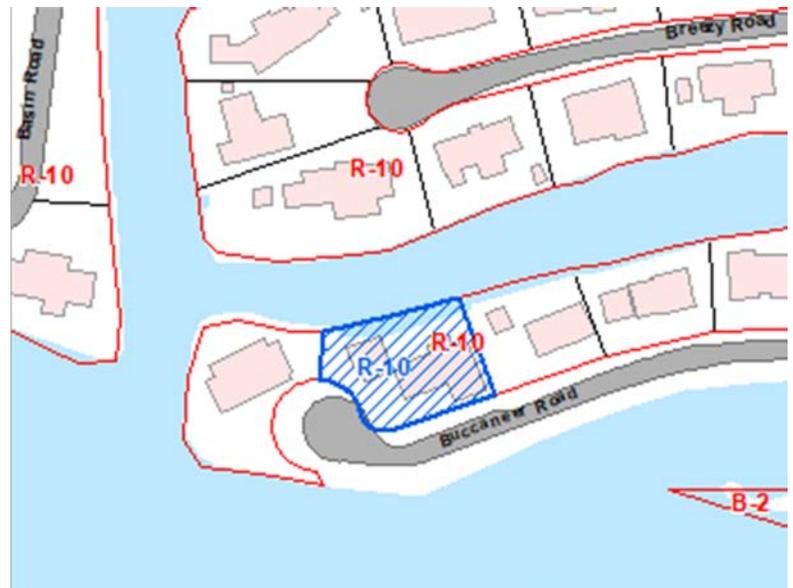
9,920.8 square feet or 0.23 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

9,920.8 square feet of 0.23 acres

**EXISTING IMPERVIOUS COVER OF SITE**

3,548 square feet or 35.7 percent of site



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Applicant & Property Owner **Clark & Ann Crenshaw**  
 Address **1216 Cedar Point Road**  
 Public Hearing **August 26, 2019**  
 City Council District **Lynnhaven**

Agenda Item

**2**

**Variance Request**

Modification of the July 28, 2003 Chesapeake Bay Preservation Area (CBPA) Board variance to delete condition 6.

**Applicant's Agent**

Robert Simon

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7, Page 166  
 Recorded 7/30/1926

**GPIN**

2418-68-3284

**SITE AREA**

42,561 square feet or 0.97 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

42,561 square feet or 0.97 acres

**EXISTING IMPERVIOUS COVER OF SITE**

9,256 square feet or 21.7 percent of site

**Location of Proposed Impervious Cover**

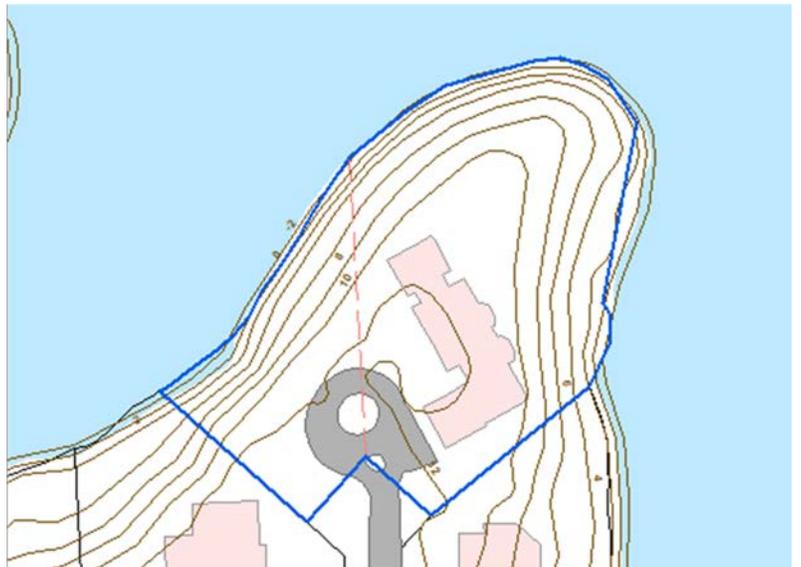
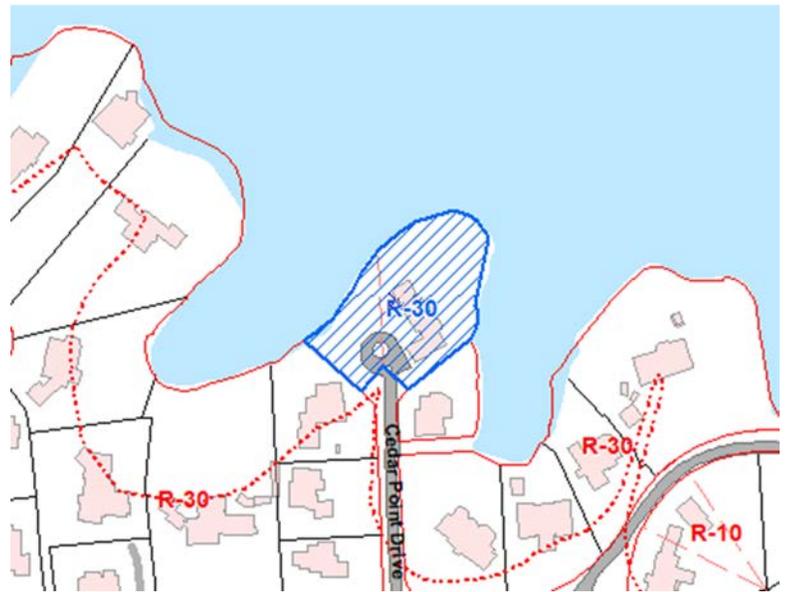
50 foot Seaward Buffer

**AMOUNT OF LAND DISTURBANCE**

Less than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Wood bulkhead

### Construction Details

- Rip rap revetment – 7 feet to 10 feet outboard of the existing bulkhead

## CBPA Ordinance Variance History

**July 28, 2003 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the redevelopment of the existing single-family residence with the following conditions:**

1. *A preconstruction 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 15' seaward of improvements.*
4. *The construction access way shall be noted on the site plan, as well as the stockpile staging area. A temporary retaining wall may be necessary for the gravel access road shown along the northwestern portion of the site.*
5. *All stormwater from existing and proposed impervious cover shall be conveyed to structural stormwater management facilities*
6. *If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan. The toe of said revetment shall lie no further seaward than 4' from the existing bulkhead.*
7. *No less than 12 additional trees shall be installed and so noted on the buffer restoration plan.*
8. *Buffer restoration shall be in substantial compliance with the plan prepared by Siska Aurand, dated 6/2/03 and shall utilize bayscape landscaping principles. The "new" restoration beds, adjacent to the bulkhead, shall be a minimum of 15 feet in width. All "new" restoration shall be installed at or above the 5-foot contour. Said restoration shall be installed prior to the final building inspection and shall be so noted on the site plan.*
9. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
10. *The property line, bisected by the residence, shall be vacated by recordation of a resubdivision plat. Said plat shall be recorded prior to the issuance of the certificate of occupancy.*

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

The July 28, 2003 CBPA Board granted variance has been acted upon and the associated upland improvements constructed.

## Environmental Conditions

### Riparian Buffer

Moderately to sparsely wooded lot

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

### Shoreline

Majority of the shoreline is hardened by a wood bulkhead. A portion of the eastern shoreline is in a natural state with vegetated wetlands present.

### Soil Type(s)

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

### Flood Zone

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

## Evaluation and Recommendation

Condition 6 of the July 2003 CBPA Board variance requires that *“if and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan. The toe of said revetment shall lie no further seaward than 4’ from the existing bulkhead.”* The applicant’s agent has submitted this variance request to have said condition reconsidered by the Board. The request is to allow the applicant to rip rap the existing shore without removing the existing bulkhead therefore extending the rip rap more than 4 feet seaward of the existing bulkhead. The methodology to redevelop the existing shoreline will be via barge mounted equipment to construct the rip rap revetment with minimal impacts to the existing upland vegetation. In addition to the minimal impacts this variance request has on existing upland conditions, the 2003 CBPA variance provided a reduction in overall impervious cover on the lot by 1,197 square feet.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“the rip rap only condition was imposed on all CBPA variances without regard to practicability or with regard to site characteristics or constraints. Other waterfront lots within the city without CBPA approvals may employ any legal erosion control measures including bulkheads.”* While Staff respects the agent’s statement regarding the practicability of redeveloping the existing shoreline, shoreline analysis conducted by the Center for Coastal Resource Management suggests the use of non-structural best management practices for this lot. This preferred shoreline best management practice is provided given the low energy environment along the existing shoreline.

- 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 property has an extensive buffer restoration area up to 30' landward of the existing bulkhead and strict enforcement of the condition would change much of the required buffer restoration to riprap which offers no reduction in nonpoint source pollution."* Staff offers that the methodology to construct the rip rap revetment from the waterway will not introduce extensive upland land disturbance associated with excavation and grading if the rip rap revetment were to be constructed as conditioned by the 2003 CBPA variance.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the existing buffer restoration is well vegetated and functioning and the proposed riprap is preferable to a vertical bulkhead and creates a non-vegetated wetland habitat."* Staff concurs.
- 5) *"There is no increase in impervious cover and therefore no increase in nonpoint source pollution."* Staff concurs.

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

## Recommended Conditions

1. This variance is in addition to the conditions of the CBPA Board variance granted July 28, 2003 and removes condition 6 of said 2003 CBPA variance that states *"If and when the shoreline is hardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (timber or steel bulkhead). Said condition shall be so noted on the site plan. The toe of said revetment shall lie no further seaward than 4' from the existing bulkhead."*

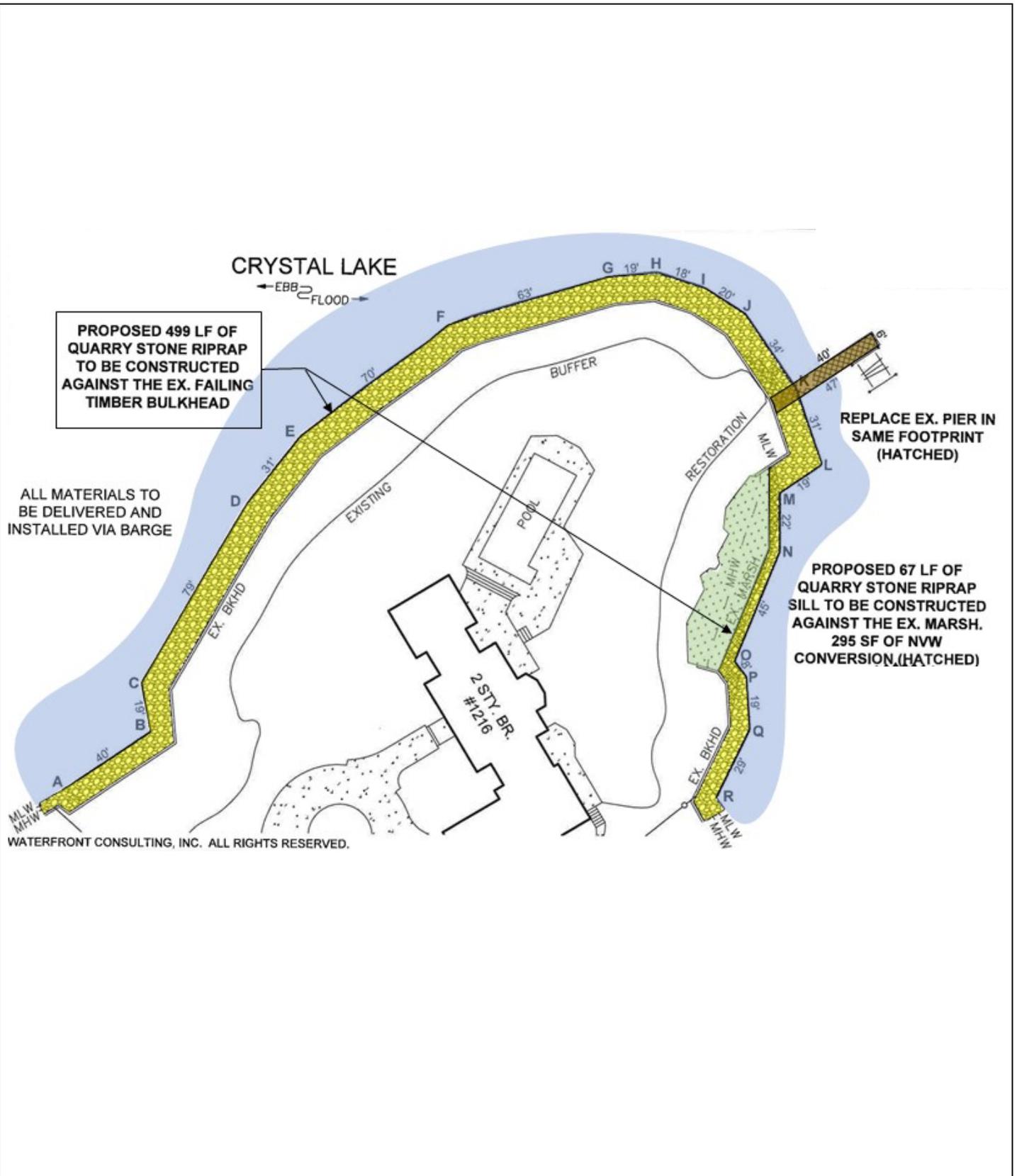
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial



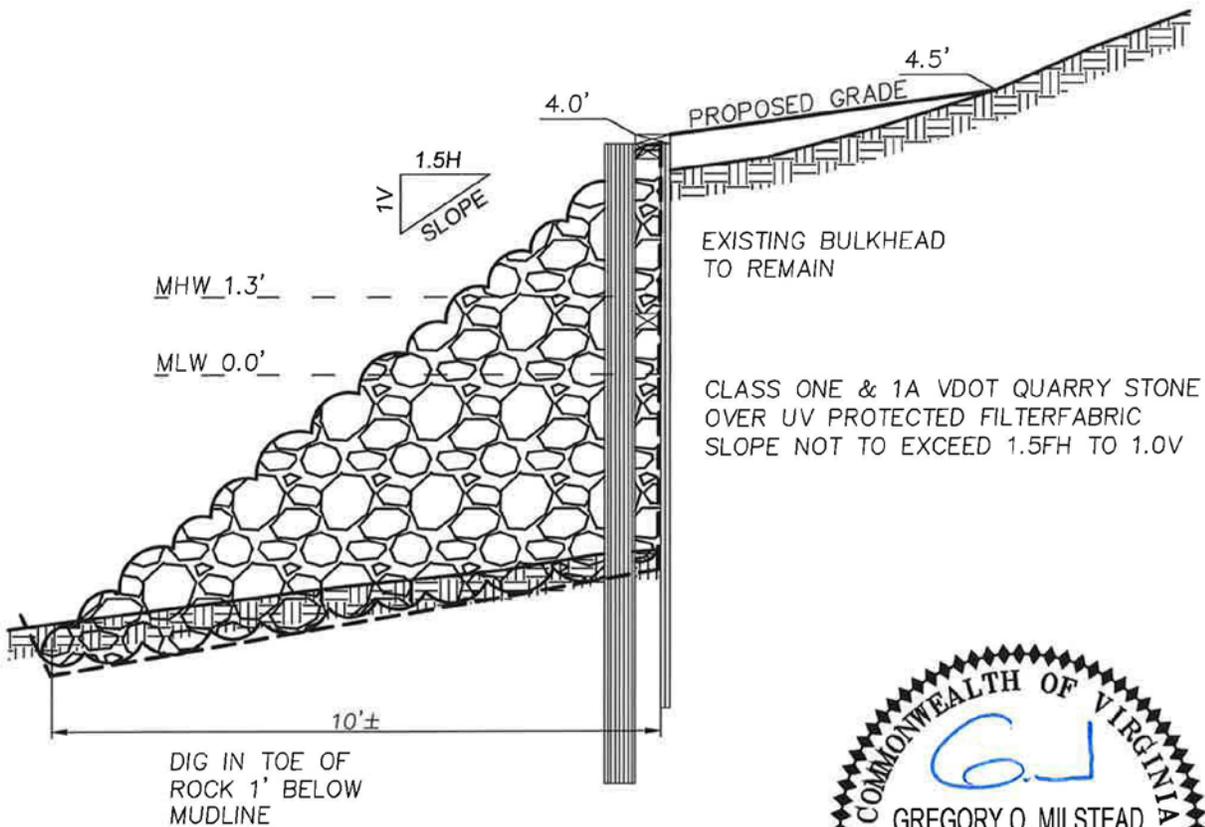


**CBPA Exhibit – Proposed Improvements**



# CROSS SECTION PROPOSED RIPRAP SECTION B-M

SC: 1" = 3'



EXISTING BULKHEAD  
TO REMAIN

CLASS ONE & 1A VDOT QUARRY STONE  
OVER UV PROTECTED FILTERFABRIC  
SLOPE NOT TO EXCEED 1.5FH TO 1.0V

MATERIALS SPECIFICATIONS:  
QUARRY STONE CLASS 1 AND VA NO. 1  
UV PROTECTED FILTER FABRIC

LEGEND  
EXISTING FEATURE  
PROPOSED FEATURE

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**APPLICANT'S NAME** Clarke H. & Ann K. Crenshaw

**DISCLOSURE STATEMENT FORM**

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

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

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

**SECTION 1 / APPLICANT DISCLOSURE**

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

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



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

(A) List the Applicant's name: Clarke H. & Ann K. Crenshaw  
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)*

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: \_\_\_\_\_  
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 checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Mitchell Wiggins, Richmond, VA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Project out for bid
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WCI
<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"/>	

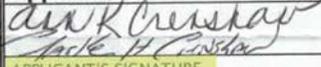
If yes, what is the name of the official or employee and what is the nature of the interest?



**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.

	Clarke H. & Ann K. Crenshaw	7-10-2011
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

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**Variance Request**

Encroachment into the Resource Protection Area (RPA) buffer to construct an addition to the existing residence with associated accessory structure.

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 110, Page 10  
 Recorded 6/17/1975

**GPIN**

1498-51-0273

**SITE AREA**

50,590 square feet or 1.16 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

40,468 square feet or 0.97 acres

**EXISTING IMPERVIOUS COVER OF SITE**

5,380 square feet or 13 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

7,677 square feet or 19 percent of site

**Area of Redevelopment in RPA**

1,815 square feet

**Area of New Development in RPA**

3,773 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

- Wood deck
- Brick paver patio

### Construction Details

- Wood deck with associated screen porch
- Building addition
- Expansion of existing gravel driveway with concrete

## CBPA Ordinance Variance History

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

## Environmental Conditions

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 4
- Number of existing understory trees requested for removal within the RPA: 3
- Evaluation of existing canopy tree removal request: The tree being requested for removal is within the delineated limits of construction.

### Shoreline

The shoreline is in a natural state with a concrete wall located landward of mean high tide.

### Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

### Flood Zone

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

## Evaluation and Recommendation

The focus of this variance request is for the redevelopment of the existing primary structure. The new impervious cover is within the 50 foot landward buffer and variable width buffer of the Resource Protection Area (RPA). The layout of the proposed improvements is conscience to the sensitive portions of the lot and limits land disturbance associated with the proposed improvements to a flat and stable area of the lot, landward of the top of bank feature. Staff is of the opinion that the applicant's consciousness towards redeveloping this lot is consistent with the CBPA Ordinance performance standards, reflected by the applicant's intent to maintain the functional and ecological value of the RPA by preserving existing environmental conditions within the 50 foot seaward buffer and enhancing the riparian buffer ecosystem with the installation of upland vegetation.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated *"as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that the location of the proposed improvements offers the least amount of land disturbance to existing environmental features.
- 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 *"with the lot having topographic relief starting at the front of the existing house and neighboring wetlands that have an impact on the CBPA buffer on the subject lot, these all appear to be natural conditions."* Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief *"with the house built in the 1950's in its current location on the lot, we feel the best area for expansion / redevelopment for the property as shown to help avoid additional impacts to the resource. The proposed improvements have been limited to the landward buffer."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare *because "the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels with the site currently not offering any stormwater mitigation for the bay."* 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. The current condition of the riparian buffer offers vegetative cover to promote infiltration of stormwater runoff and the buffer restoration provided in the recommended conditions below, should the variance request be granted, will enhance the ecological and biological function of the RPA.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"buffer restoration and bioretention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay."* If properly implemented and maintained, Staff is of the opinion that the restoration of the riparian buffer offers a management practice towards a no net increase in nonpoint source pollution from this variance request.

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

## Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to **3,773 square feet** within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance to the greatest extent practicable.

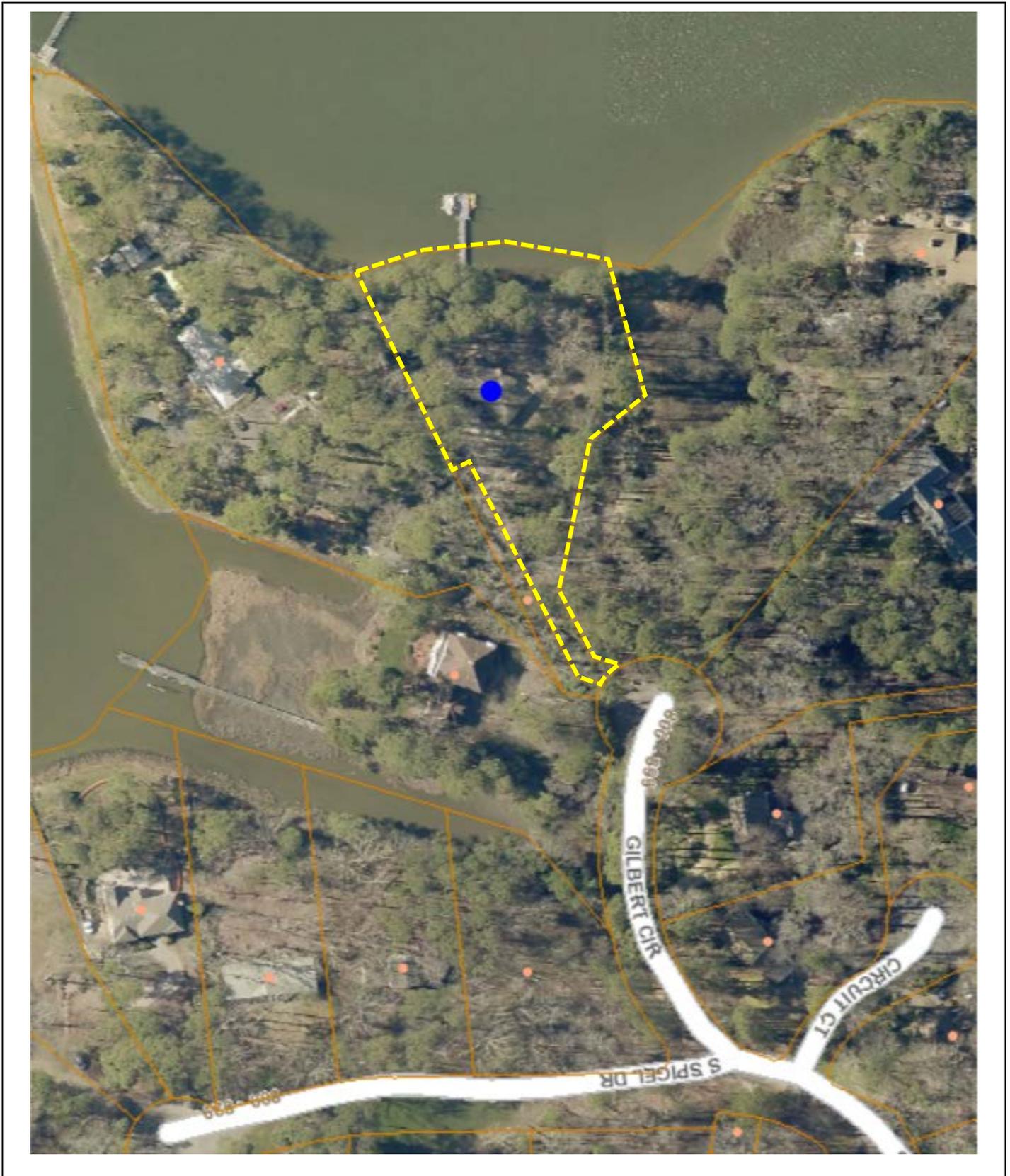
The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 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. Under deck treatment of sand and gravel shall be installed.
13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. \*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,556.36 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
15. The conditions and approval associated with this variance are based on the exhibit plan dated August 7, 2019, prepared by WPL and signed August 7, 2019 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

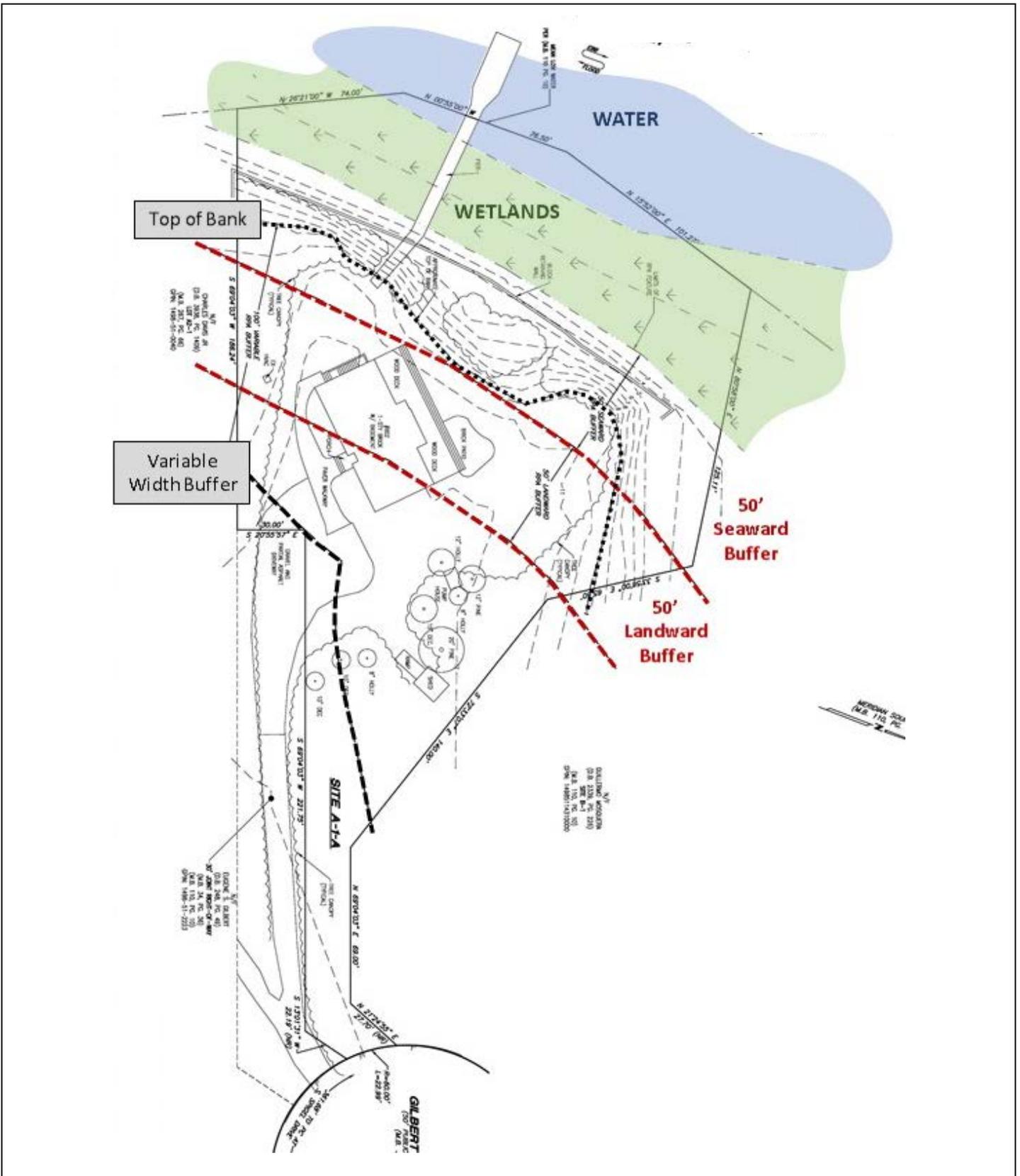
\*\* NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

\*\*\*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.

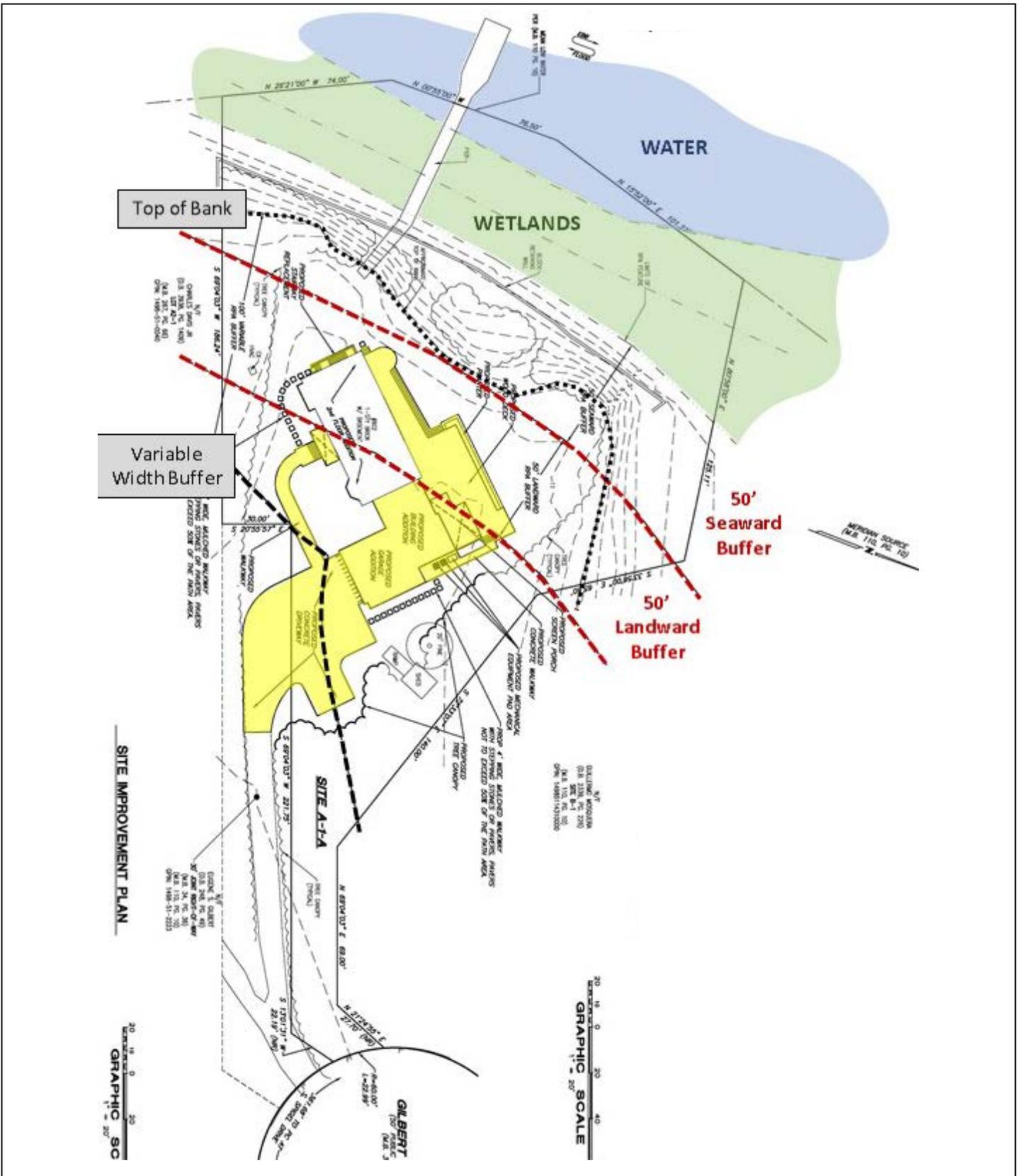
Site Aerial



# CBPA Exhibit – Existing Conditions



# CBPA Exhibit – Proposed Improvements





**APPLICANT'S NAME** James A & Nancy N Worcester

**DISCLOSURE STATEMENT FORM**

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

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

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

**SECTION 1 / APPLICANT DISCLOSURE**

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

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



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

(A) List the Applicant's name: James A & Nancy N Worcester  
If an LLC, list all member's names:

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

N/A

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

N/A

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: James A & Nancy N Worcester  
If an LLC, list the member's names:

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

N/A

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

N/A

<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 type="checkbox"/>	Architect / Landscape Architect / Land Planner	Wermers Design & Architecture
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WPL
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Atlantic Bay Mortgage
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	GPC, Inc. Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

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

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

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

N/A



**CERTIFICATION:**

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

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

	James A & Nancy N Worcester	
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

AS NEEDED, PAGE LEFT BLANK

**Variance Request**

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

**Applicant's Agent**

Eddie Bourdon

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 44, Page 2

Recorded 8/15/1957

Instr. No. 20051208001968500

Recorded 12/8/2005

**GPIN**

2408-38-7956

**SITE AREA**

61,135 square feet or 1.403 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

35,817 square feet or 0.822 acres

**EXISTING IMPERVIOUS COVER OF SITE**

3,331 square feet or 9.3 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

4,419 square feet or 12.3 percent of site

**Area of Redevelopment in RPA**

3,380 square feet

**Area of New Development in RPA**

925 square feet

**Location of Proposed Impervious Cover**

50 foot Landward Buffer

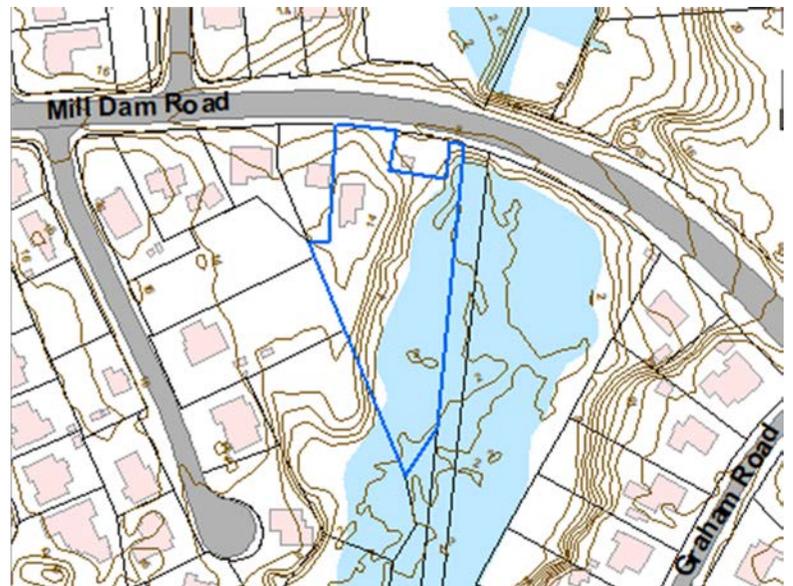
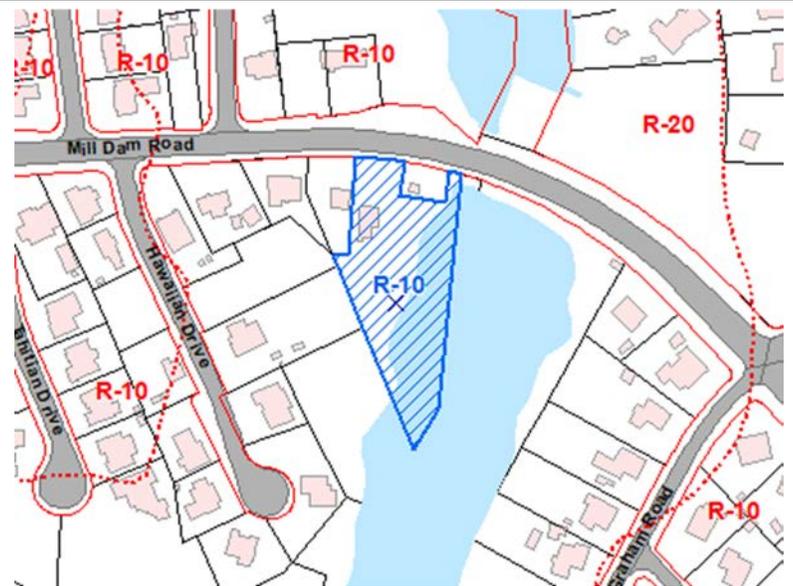
100 foot Variable Width Buffer

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Existing residence – complete demolition of all improvements

### Construction Details

- Single-family residence with associated patio area
- Concrete driveway

## CBPA Ordinance Variance History

**June 27, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the establishment of a 3-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. *Erosion and sedimentation control measures (silt fences) shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established.*
3. *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.*
4. *Permanent or temporary soil stabilization shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy.*
5. *Construction limits shall lie a maximum of 15' seaward of improvements.*
6. *The construction access way shall be noted on the site plan, as well as the stockpile staging area.*
7. *All stormwater from existing and proposed impervious cover shall be conveyed to structural stormwater management facilities.*
8. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$985.00 and is based on 25% of the proposed impervious cover for Lot B. Said payment shall provide for the equivalent of an approximate 1,075 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
9. *All areas outside the limits of construction for Lot A shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
10. *Buffer restoration totaling 3,963 sq. ft. for Lot A, 2,150 for Lot B, and 1,340 for Lot C shall be installed which is equal to 50% of the proposed impervious cover for each lot and shall utilize bayscape landscaping principles. The required restoration shall be in areas currently devoted to turf. For Lot A, the exterior top of bank feature in receipt of fill shall be regraded to a 3:1 sloped embankment. Said restoration shall be installed prior to the issuance of the certificate of occupancy or final building inspection if no certificate of occupancy is required for the project. Said condition shall be so noted on the site plan.*

11. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
12. *Tree installation shall be as follows: eight (8) trees for Lot A, ten (10) trees for Lot B, and twelve (12) trees for Lot C. Required trees shall be comprised of 50% evergreen and 50% deciduous species.*
13. *The proposed gravel driveway shall be constructed of #57 washed aggregate at a minimum depth of 6 inches.*
14. *The conditions and approval associated with this variance are based on the site plan dated April 20, 2005, prepared by Bruce Gallup.*
15. *A site plan for each individual lot shall be submitted to the Planning Department, Development Services Center for review and approval prior to the issuance of a building permit.*
16. *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 July 28, 2003 CBPA Board granted variance has been acted upon and the associated upland improvements constructed for Lot B and Lot C.

## Environmental Conditions

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased, or dying trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The trees being requested for removal are within the delineated limits of construction. Both trees are located landward of the 100-foot RPA and are multi-stem trees more consistent with the size of and understory tree.

### Shoreline

The shoreline is in a natural state.

### Soil Type(s)

Yeopim Series (deep and moderately well-drained soils)

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

### Flood Zone

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

Floodway is present on the lot and all proposed improvements are landward of the floodway delineation.

## Evaluation and Recommendation

The 2005 CBPA variance exhibit provided proposed improvements for Lot B and Lot C – of which, those adjacent lots have been developed. The existing structure and associated impervious cover for Lot A was shown, however; no proposed improvements or expansions for Lot A were requested with the 2005 CBPA variance.

The proposed improvements associated with this variance request redevelops Lot A with a new single-family residential structure, patio area, and concrete driveway. The applicant desires to shift the proposed single-family residence to the south 8 feet to gain additional separation from Mill Dam Road given the high volume of traffic and associated noise. With this desire, the proposed improvements will redevelop approximately 75 percent of the existing impervious cover on the lot with 416 square feet of the 925 square feet on new impervious cover located within the upper reach of the 50-foot landward buffer.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated *"as the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and offers that the location of the proposed improvements offers the least amount of impact to existing environmental features.
- 2) The encroachment into the RPA on this lot is based upon circumstances that have been created by the applicant *"with the subdivision of the existing lot, however the applicant's desire to construct a new dwelling for the property owners given the age and condition of the existing residential structure built in 1940."* Staff concurs.
- 3) The variance is the minimum necessary to afford relief *"with the owners design of the proposed improvements done so to minimize the impacts to the Chesapeake Bay and the inclusion of bioretention beds the site will provide for the treatment of stormwater."* Staff concurs.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with *"the proposed dwelling and improvements in keeping with the neighborhood."* Staff concurs and offers that the proposed improvements will redevelop approximately 75 percent of the existing impervious cover on the lot with 416 square feet of the 925 square feet on new impervious cover located within the upper reach of the 50-foot landward buffer.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load *"bioretention beds will be placed seaward of the improvements to store and treat the proposed impervious cover prior to being released into the adjacent waterway."* Given the condition of the adjacent riparian buffer and mature forest floor, Staff concurs.

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

## Recommended Conditions

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.

3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
8. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
9. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **925 square feet x 200 percent = 1,850 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 located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater

survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. \*\*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 \$211.97 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
14. The conditions and approval associated with this variance are based on the exhibit plan dated August 6, 2019, prepared by WPL and signed August 8, 2019 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
15. This variance and associated conditions **will supersede** the conditions of the Board variance granted June 27, 2005 specific to Lot A only.

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

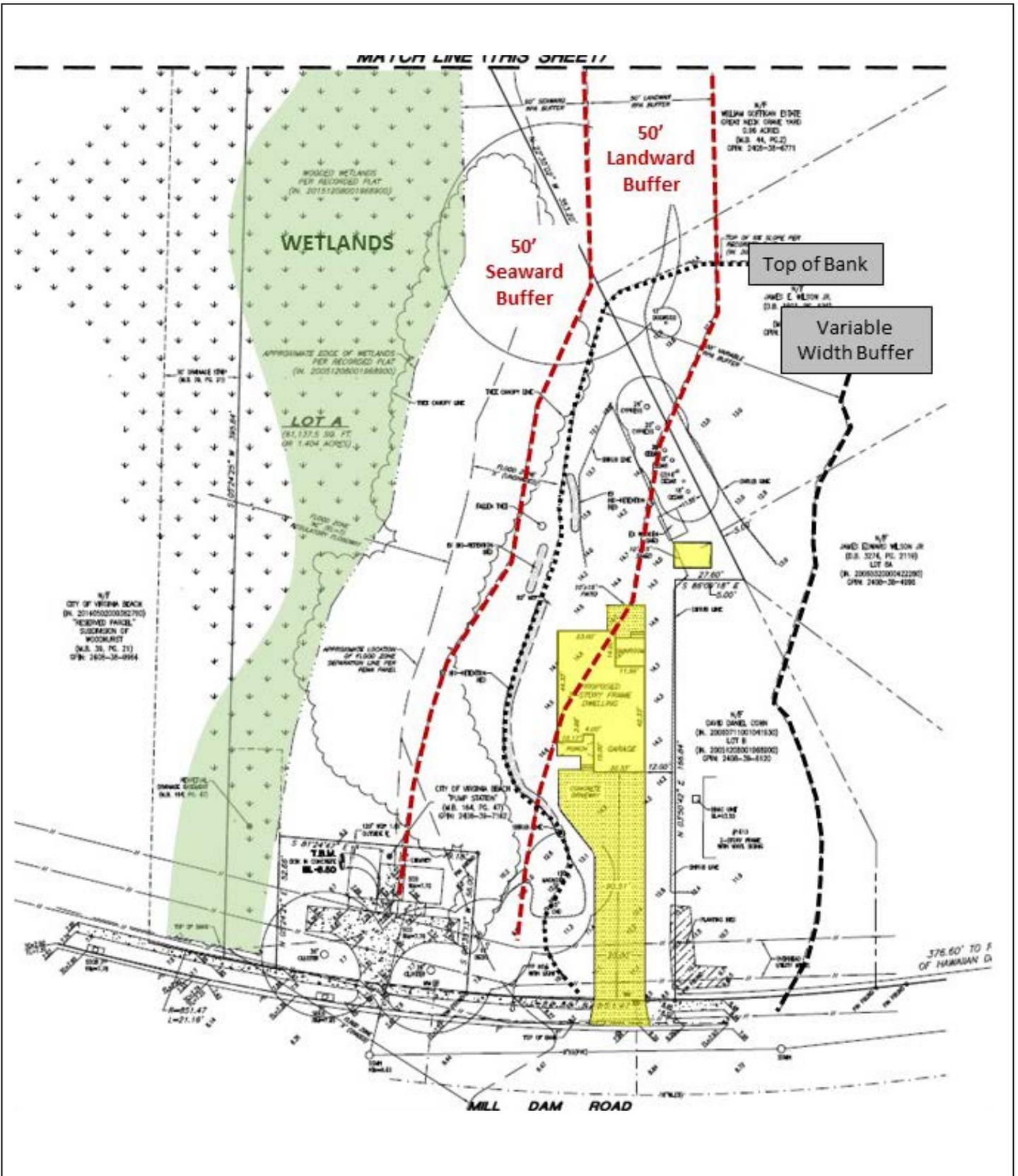
\*\*\*NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Proposed Improvements





**APPLICANT'S NAME** Jason B Cherry

**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: Jason B Cherry  
If an LLC, list all member's names:

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

N/A

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

N/A

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

---

## 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: Glenn M & Julia M Cherry  
If an LLC, list the member's names:



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

N/A

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

N/A

<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.

---

### 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	Progressive Designs - Linda Sullivan
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WPL
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	Eddie Bourdon, Esq
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

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

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

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



**CERTIFICATION:**

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

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

	Jason B Cherry	7/16/19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

**Variance Request**

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

**Applicant's Agent**

Billy Garrington

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 65, Page 11

Recorded 3/8/1965

Instr. No. 20080115000053590

Recorded 115/2008

**GPIN**

1488-06-9968

**SITE AREA**

137,632 square feet or 3.16 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

71,180 square feet or 1.63 acres

**EXISTING IMPERVIOUS COVER OF SITE**

10,094 square feet or 14.2 percent of site

**PROPOSED IMPERVIOUS COVER OF SITE**

17,532 square feet or 24.6 percent of site

**Area of Redevelopment in RPA**

6,846 square feet

**Area of New Development in RPA**

10,686 square feet

**Location of Proposed Impervious Cover**

50 foot Landward Buffer

100 foot Variable Width Buffer

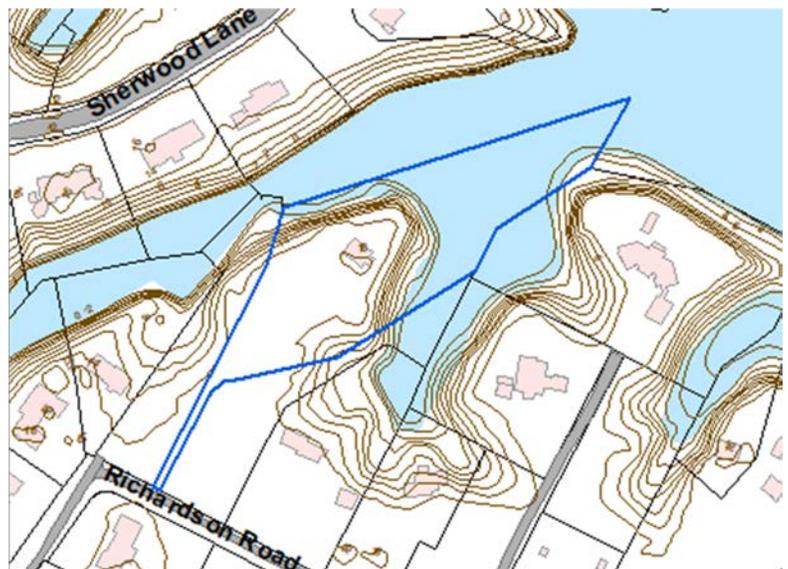
Resource Management Area (RMA)

**AMOUNT OF LAND DISTURBANCE**

Greater than 2,500 square feet

**Staff Recommendation**

Approval as conditioned



## Summary of Proposal

### Demolition Details

- Complete demolition of all improvements. The single-family structure has been removed from the lot due to safety concerns.

### Construction Details

- Single-family residence
- In-ground swimming pool with pool house and associated pool surround
- Concrete driveway with entry court

## CBPA Ordinance Variance History

**September 22, 1997 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the establishment of a 3-lot subdivision with the following conditions:**

1. *The improvement envelope for Lot C shall be equal in size to the amount of existing impervious area to be removed from the 50' seaward portion of the buffer.*
2. *The improvement envelope for Lot C shall be shown on the final subdivision plat by metes and bounds.*
3. *All area below the top of bank shall remain in a natural state.*
4. *The preliminary subdivision plat shall reflect the terms of this variance request.*

**June 27, 2005 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a new single-family residence and swimming pool with the following conditions:**

1. *A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.*
2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development.*
3. *Wire re-enforced 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. Said silt fence shall be installed 15 ft. from proposed improvements. Best management practices for erosion and sediment control shall be employed during restoration activities to protect adjacent wetlands and shorelines of water bodies.*
4. *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.*
5. *Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent*

*seeding, sodding or soil stabilization blankets and matting. The Building Code Official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.*

6. *Construction limits shall lie a maximum of 15' outboard of improvements.*
7. *The construction access way shall be noted on the site plan, as well as the stockpile / staging area.*
8. *If and when the shoreline is hardened a rip-rap revetment or living shoreline shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
9. *The pool shape, size, and location shall be as shown on the submitted plan.*
10. *The pool shall be constructed prior to or concurrent with the residence.*
11. *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.*
12. *Where 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.*
13. *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 (trees, landscaping and mulched organic surfaces) areas, planting beds, and turf zones.*
14. *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.*
15. *The conditions and approval associated with this variance are based on the site plan prepared by Hassell & Folkes; PC dated 7/17/13 and sealed 9/6/13 by Timothy Fallon.*
16. *\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,457.49 and is based on 25% of the proposed impervious cover within the RPA, inclusive of the variable width portion of the buffer. Said payment shall provide for the equivalent of an approximate 1,590 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*
17. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (6,362 sq. ft. x 200% = 12,724 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. 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" – 6" 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 50% deciduous and 50% 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.

18. Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (4,960 sq. ft. x 100% = 4,960 sq. ft.) and shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance. The required restoration shall be located within 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" – 6" 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 50% deciduous and 50% evergreen species and shall be evenly distributed within the RPA buffer. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit. In lieu of 100% restoration for redevelopment areas, a 10% reduction in pollutant removal load is acceptable via a structural BMP.

19. This variance will supersede the previous variance for this lot only.

The July 27, 2005 CBPA Board granted variance has not been acted upon.

## Environmental Conditions

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 52
- Number of dead, diseased, or dying trees requested for removal within the RPA: 21
- Evaluation of existing canopy tree removal request: During the site visit, Staff performed a visual analysis of the existing canopy cover of the lot. Several canopy trees, landward of the 50-foot seaward buffer and near the existing residential structure showed abnormal braching variations within identical species. In many instances, the existing canopy structure of individual trees drastically deviate from normal canopy shape due to old growth die back, storm damage, and flattening of limb structure due to disease and invasive vine species overgrowth. Staff is of the opinion that the majority of canopy trees within the 50-foot landward and variable width buffers of the RPA have reached the life expectancy of the individual species and are exhibit noticeable signs of limit healthy growth.

### Shoreline

The shoreline is in a natural state.

### 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

### Flood Zone

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

## Evaluation and Recommendation

The existing single-family residence for this lot was removed due to structural damage caused by a storm fallen tree approximately 2 years ago. The redevelopment of the lot increases the amount of impervious cover within the upper reach of the RPA buffer, with most of the proposed impervious cover located within the variable width buffer of the RPA. The existing impervious cover within the 100-foot RPA, prior to the removal of the existing single-family residence was 4,405 square feet. The proposed improvements within the 100-foot RPA increases by 1,409 square feet with an additional 1,556 square feet allocated to redevelopment of existing impervious cover. While the proposed improvements increase the amount of impervious cover for the lot, the layout of the improvements offer a retreat landward from the existing impervious cover within the 100-foot RPA buffer, refer to CBPA Exhibit Overlay Diagram – page 62.

Staff is of the opinion, given the comments provided above within the Environmental Conditions section and the original structure of the lot being built in 1939, that the canopy cover on the lot is aged and reflective of the existing conditions which are in decline. With the redevelopment of the lot, Staff offers that the previous CBPA variance identified many of the same trees being requested for removal and concurs with the request given the declining conditions of several large canopy trees within the upper reach of the 100-foot RPA. While the short-term improvements remove several old growth trees, Staff is of the opinion that the long-term benefit will provide better stormwater management in terms of runoff avoided and rainfall interception by introducing younger canopy trees at a rate greater to those being removed. Regarding the overall impervious cover of the lot, proposed at 24.6 percent of the site outside of water and wetlands, Staff conducted a review of adjacent CBPA variances within the neighborhood. Those CBPA variances ranged from 18 percent to 23 percent in overall impervious cover above water and wetland with similar improvements and lot size.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated with *"the proposed dwelling and associated improvements being in keeping with the neighborhood."* Staff concurs and offers that the review of other CBPA variances within the area range from 18 percent to 23 percent in overall impervious cover above water and wetland.
- 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 *"are based on the request to construct a new dwelling for the property."* Staff concurs and offers that the structure was built in 1939 and is of the opinion that the redevelopment of the lot offers the needed maintenance to replenish the existing riparian buffer with younger trees to enhance the ecological benefits of the RPA.
- 3) *"The owners have designed the proposed improvements to minimize the impacts to the Chesapeake Bay and with the inclusion of bio-retention beds to provide for the treatment of stormwater"* as a means to be the minimum necessary to afford relief. While Staff respects that applicant's perspective recommended conditions have been provided to further compliment the request to be the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare with *"the proposed dwelling and improvements being in keeping with the neighborhood and the site not currently having stormwater treatment."* Staff concurs and offers that the proposed redevelopment of the

lot offers benefits through stormwater management and buffer restoration to restore the declining riparian buffer.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“bioretention beds will be placed seaward of the improvements to store and treat the proposed impervious cover prior to being released into the adjacent waterway.”* Staff concurs.

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

## Recommended Conditions

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

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

11. Buffer restoration shall be installed equal to **10,686 square feet** 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: **32 canopy trees, 32 understory trees, 52 large shrubs, and 78 small shrubs**

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

12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

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

14. The proposed swimming pool surround shall be reduced to a maximum of 4 feet along the north, west, and east sides and a maximum of 8 feet along the south side of the proposed swimming pool.

15. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,448.87 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**

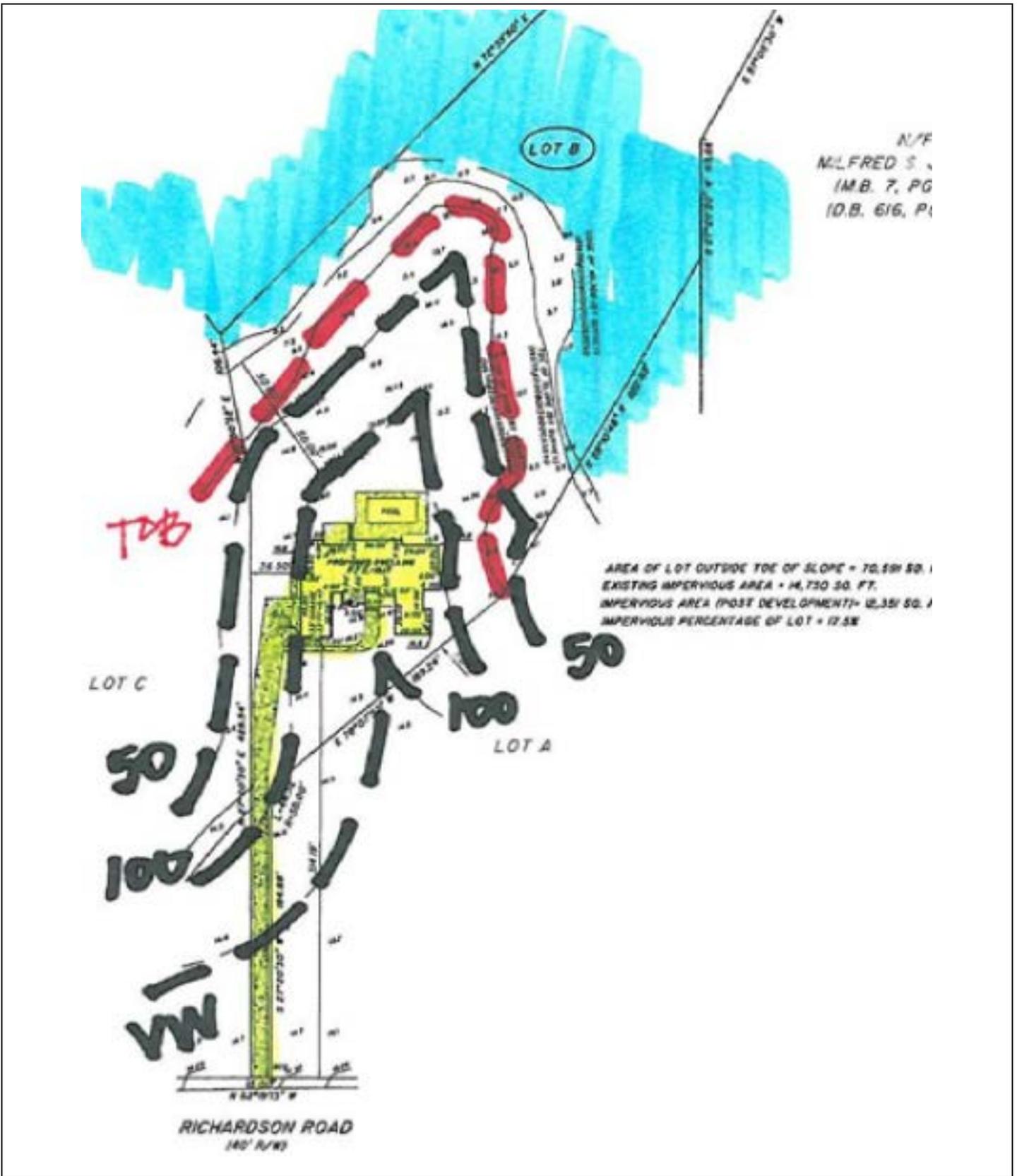
16. The conditions and approval associated with this variance are based on the exhibit plan dated April 13, 2019, prepared by WPL and signed August 7, 2019 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

17. This variance and associated conditions **will supersede** the conditions of the CBPA variance granted July 27, 2005.

**\*\* 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.

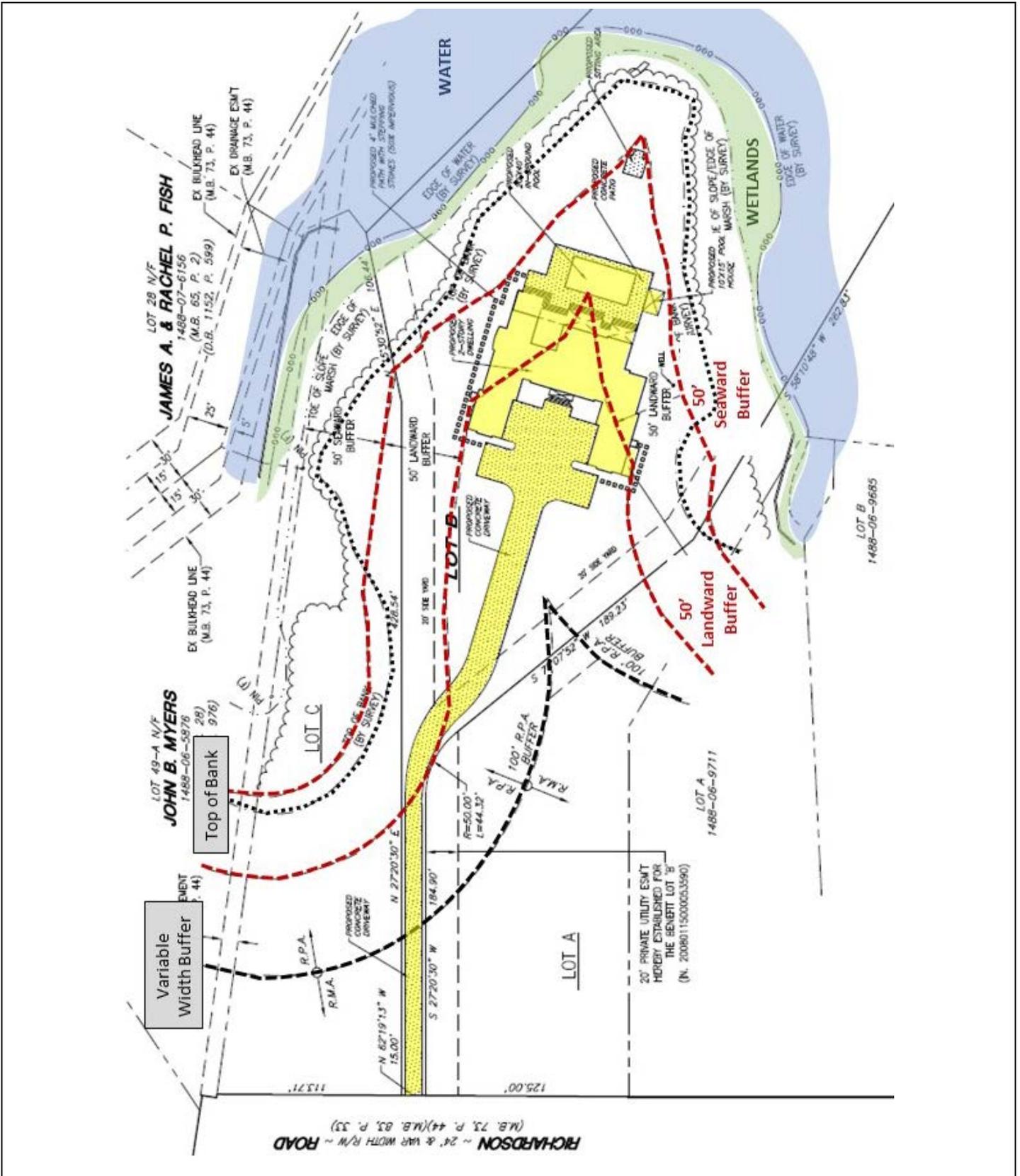
**\*\*\*NOTE:** The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation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



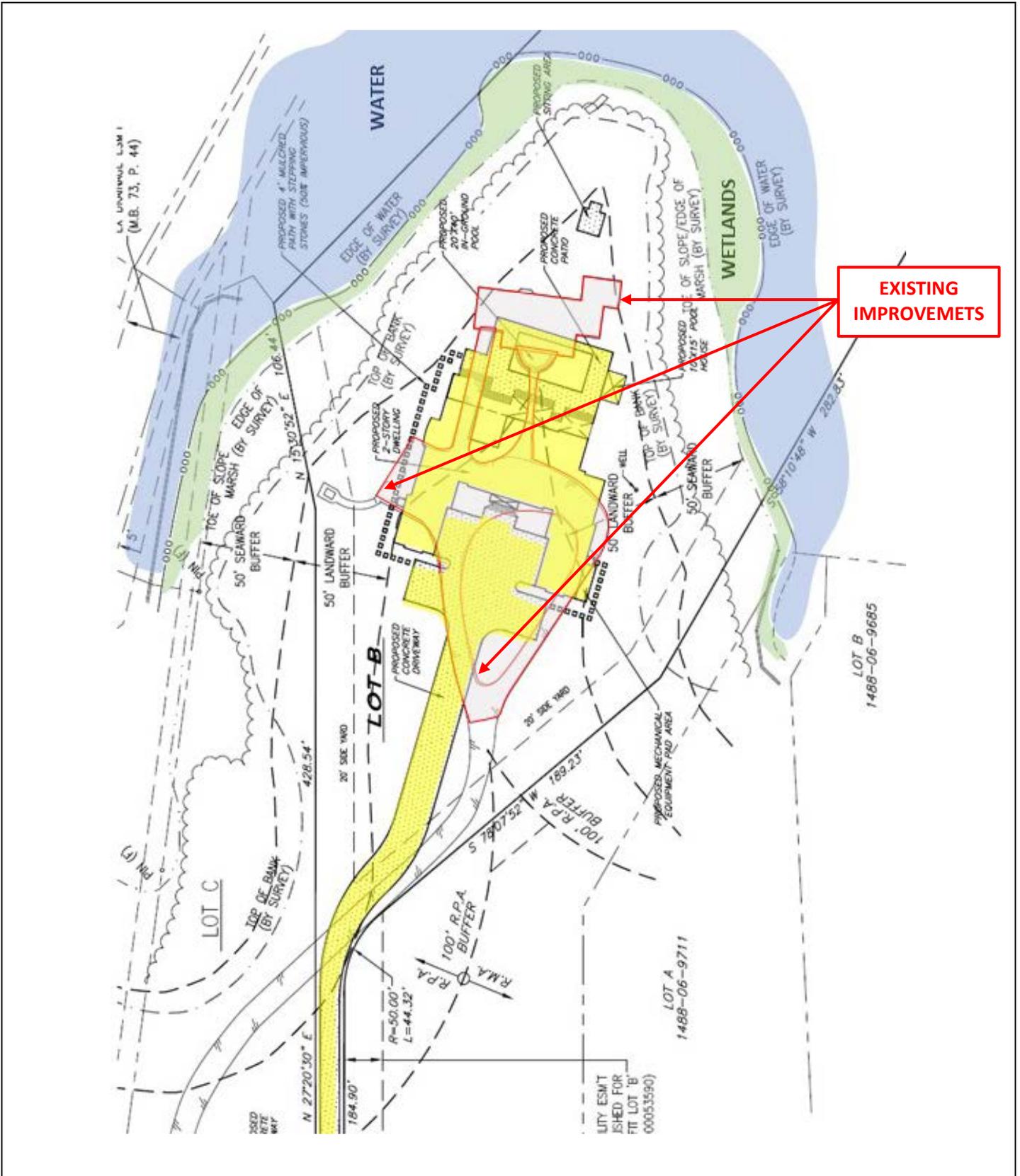




**CBPA Exhibit – Proposed Improvements**



# CBPA Exhibit – Overlay Analysis





**APPLICANT'S NAME** BELLA NEST, LLC

**DISCLOSURE STATEMENT FORM**

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

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

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

**SECTION 1 / APPLICANT DISCLOSURE**

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

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: BELLA NEST, LLC  
If an LLC, list all member's names:  
Allen R Jones, Jr, Manager

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

N/A

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

N/A

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: BELLA NEST, LLC  
If an LLC, list the member's names: Allen R Jones, Jr, Manager



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

N/A

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

N/A

<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 type="checkbox"/>	Architect / Landscape Architect / Land Planner	Retnauer Baynes Associates
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WPL
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	Sonabank
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	GPC, Inc. Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

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

YES	NO	<b>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?</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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

N/A



**CERTIFICATION:**

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

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

	Allen R Jones, Jr, Manager	7-29-19
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

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The applicant is requesting a 30-day deferral of this application to the Monday, September 23, 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 redevelop the single-family residence and construct associated accessory structures.

**Applicant's Agent**

Eddie Bourdon

**Staff Planner**

PJ Scully

**Lot Recordation**

Map Book 7, Page 193

Recorded 7/30/1926

**GPIN**

2418-22-7567

**SITE AREA**

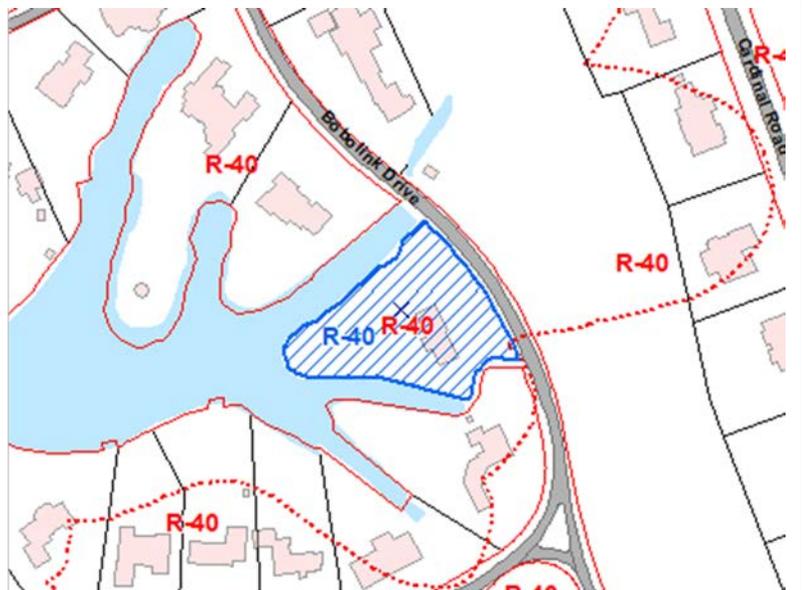
62,550 square feet or 1.436 acres

**SITE AREA OUTSIDE OF WATER/WETLANDS**

51,417 square feet or 1.180 acres

**EXISTING IMPERVIOUS COVER OF SITE**

7,158 square feet or 13.9 percent of site



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**Noncompliance with the CBPA Ordinance**

Encroachment into the Resource Protection Area (RPA) buffer with the placement of unauthorized fill material.

**Restoration Hearing**

Noncompliance found, and a motion was made at the July 22, 2019 Chesapeake Bay Preservation Area (CBPA) Board public hearing to find the unauthorized improvements in noncompliance to the provisions of the Chesapeake Bay Preservation Area Ordinance.

A civil charge was imposed, and a Restoration Hearing was ordered by the CBPA Board for the property owner – Peter A. Koumoutseas.

The civil charge has been paid.

**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.

**Lot Recordation**

Map Book 186, Page 48  
 Recorded 12/26/1984

**GPIN**

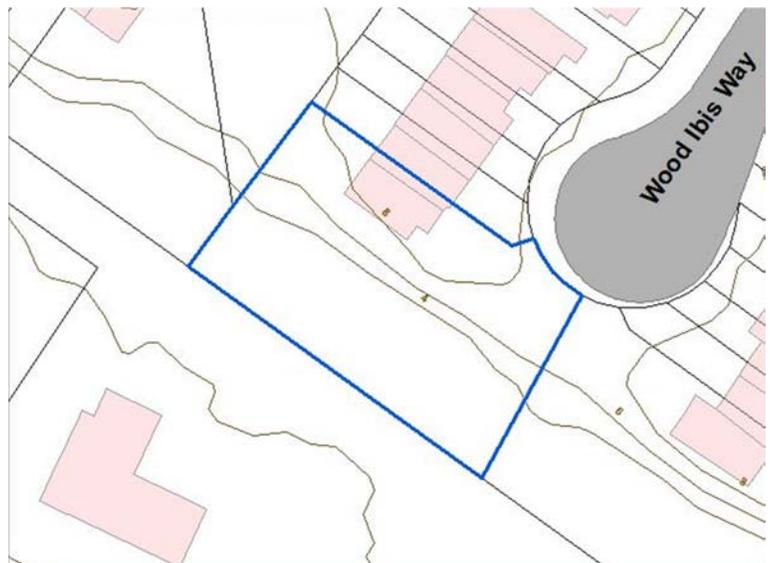
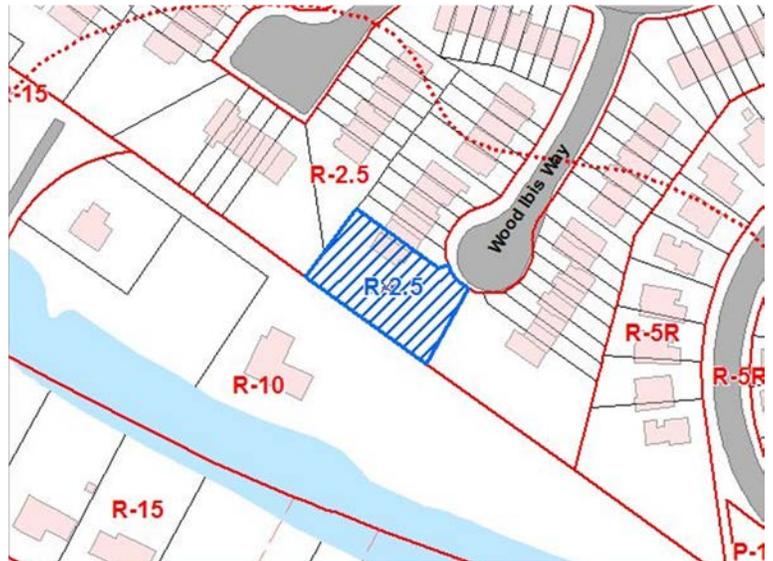
1489-09-7474

**Applicant's Agent**

Self-represented

**Staff Planner**

PJ Scully



## Environmental Conditions

### Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees removed within the RPA: 0
- Evaluation of existing riparian buffer disposition: Three mature canopy trees had fill material placed within the critical root zone of the individual tree. Staff is of the opinion that the placement of the unauthorized fill material has not caused short term damage to the trees. The applicant's methodology of removing the unauthorized fill material by hand has limited compaction to the existing root zone of the trees and should aid in sustaining the long-term health of the trees.

### Shoreline

Shoreline is in a natural state.

### Soil Type(s)

Duckston Series (fine sand soils)

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

### Flood Zone

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

## CBPA Ordinance Variance History

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

## Chronology of Events

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.”
- May 23, 2019 The CBPA Board voted to defer the Show Cause hearing to the July 22, 2019 CBPA Public Hearing to allow addition time for the property owner to remove the unauthorized fill material from the property.
- June 17, 2019 Staff received an email from the property owner stating, “I have removed approximately, 95%-97% of the fill dirt from 2201 Wood Ibis Way. I wanted to see if you had time to come by and review and validate; and let me know if it is satisfactory to resolve the issue? Please let me know when a good time is, so that we can coordinate.”
- June 24, 2019 Staff met the property owner on the lot to review the progress of removing the unauthorized fill material from the lot. At that time most of the unauthorized fill material had been removed. Staff discussed with the property owner the areas still needing to be addressed and probed the soil in the area to obtain an approximate depth.
- July 15, 2019 Staff visited the lot to review the property owners progress of removing the unauthorized fill material from the lot. The majority of unauthorized fill material has been removed from the lot with approximately 4 to 8 inches of fill material remain along the existing top of bank.

- July 22, 2019 During the public hearing, the CBPA Board found the unauthorized improvements in noncompliance to the provisions of the CBPA Ordinance. The CBPA Board imposed a civil charge to the property owner. A restoration hearing was ordered by the CBPA Board for August 26, 2019.
- July 30, 2019 Staff meet with the property owner on site to evaluate the current conditions of the remaining unauthorized fill material on the lot. Staff performed 5 soil auger holes within the area of the unauthorized fill material. Staff determined that a range of approximately 4 inches to 10 inches of fill material remains along the top of bank. This activity and information regarding the depth of material still on the lot was shared with the property owner.
- August 12, 2019 Staff visited the site to review the remaining unauthorized fill that the property owner was removing from the site. The property owner was progressing with removing the remain unauthorized fill along the top of bank with intentions to fine grade and stabilize the disturbed area.

## Evaluation and Recommendation

The subject area of the unauthorized placement of fill material and associated land disturbance occurred within the upper reach of the Resource Protection Area (RPA) and variable width buffer of the Chesapeake Bay watershed. Staff estimates that the area of land disturbance associated with the unauthorized fill material to be approximately 700 square feet with most of the fill material being placed along the existing top of bank feature.

After the Show Cause Hearing, Staff met the property owner at the site to evaluate the current conditions of the remaining unauthorized fill material on the lot. Staff performed 5 soil auger borings within the area of the unauthorized fill material to determine the depth of fill material still present. Staff determined that a range of approximately 4 inches to 10 inches of fill material remains, of which the majority is along the existing top of bank feature. This activity and information regarding the depth of fill material still present on the lot was shared with the property owner. Staff performed a follow-up site visit on August 12 and August 16, 2019 in advance of the Restoration Hearing. Staff is of the opinion that the remain unauthorized fill material has been removed. At this time, the property owner is not requesting any additional improvements so no after-the-fact CBPA variance application has been submitted. Staff offers to satisfy the restoration order that the area of land disturbance be seeded, straw placed over all denuded areas and vegetative cover established.

Site Aerial



## Site Aerial – East View

