

Chesapeake Bay Preservation Area Board Agenda

June 22, 2020



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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, June 22, 2020, 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 Council Chamber, Virginia Beach Municipal Center, Virginia Beach, Virginia. 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 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 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 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 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 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 (CBPA) BOARD AGENDA

Public Hearing Date **June 22, 2020**

- 9:00 AM INFORMAL STAFF BRIEFING OF PUBLIC HEARING AGENDA ITEMS. STAFF'S BRIEFING WILL BE HELD IN THE CITY COUNCIL CHAMBER.
- 10:00 AM FORMAL REVIEW OF PUBLIC HEARING AGENDA ITEMS. FORMAL REVIEW IS HELD IN THE CITY COUNCIL CHAMBER.

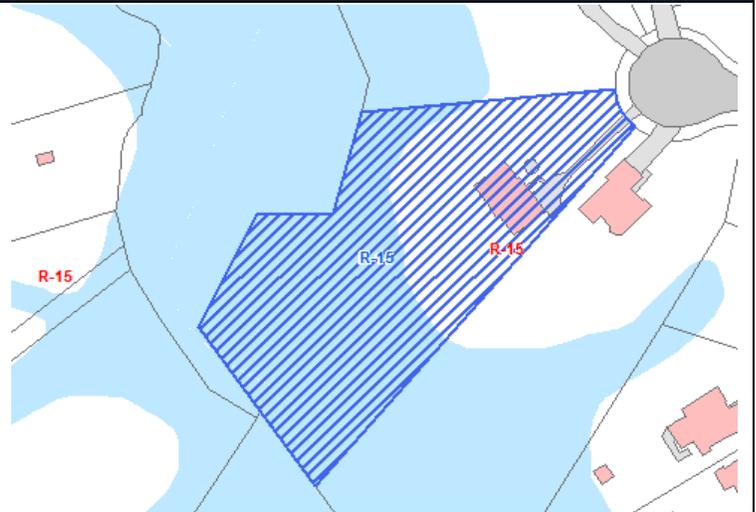
NEW BUSINESS AGENDA ITEMS

1. Daniel A. & Sara Bailey
[Property Owner & Applicant]

3725 Albacore Key
GPIN 1487-49-2578
Council District – Lynnhaven
Accela Record 2020-CBPA-00014

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

Staff Planner – PJ Scully
Staff Report – page 7

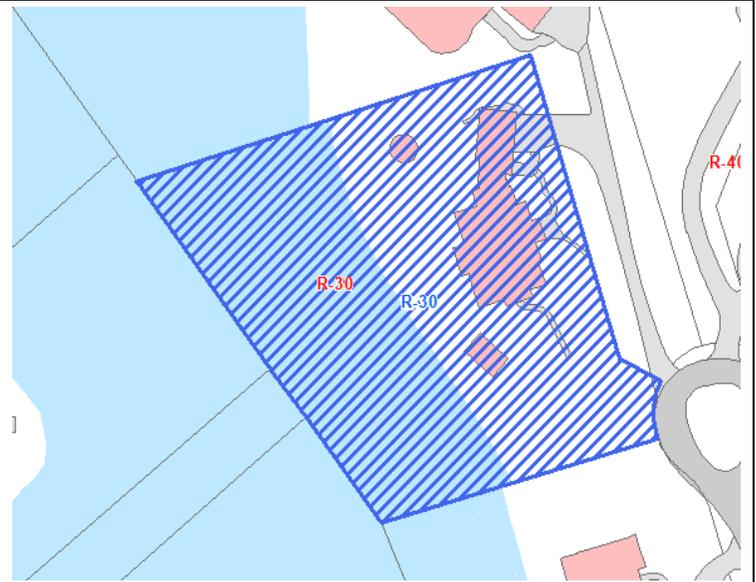


2. Alan & Julie Faneca
[Property Owner & Applicant]

1321 Five Point Road
GPIN 1498-67-9106
Council District – Lynnhaven
Accela Record 2020-CBPA-00015

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing swimming pool, front entry with walks and construct a detached garage with covered breezeway and paver drive.

Staff Planner – PJ Scully
Staff Report – page 19



3. Todd Matthew Ehrenzeller Trust

[Property Owner & Applicant]

3858 Little Neck Point

GPINs 1489-43-9290 & 1489-43-6188

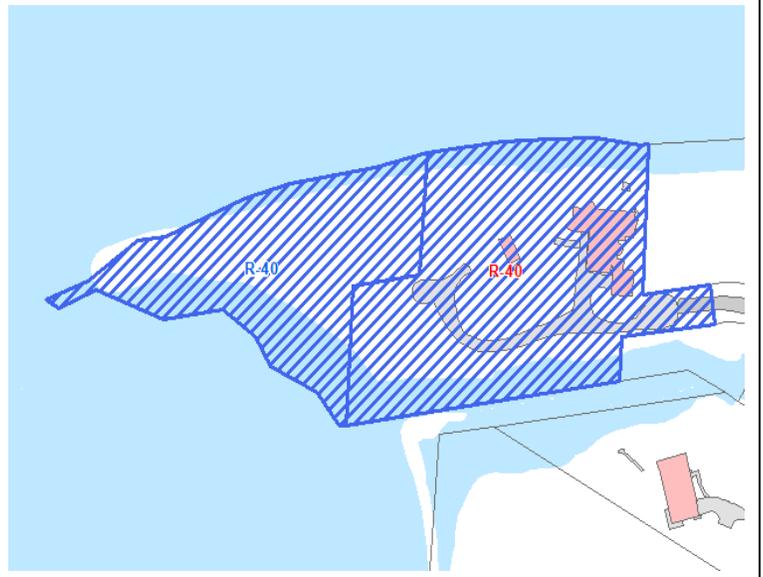
Council District – Lynnhaven

Accela Record 2020-CBPA-00016

Variance Request – Demolish portions of the existing single-family residence and an encroachment into the Resource Protection Area (RPA) buffer to construct a new single-family residence with associated accessory structures.

Staff Planner – PJ Scully

Staff Report – page 37



4. Patricia Laney Clarke

[Property Owner & Applicant]

128 Pinewood Road

GPIN 2418-53-9402

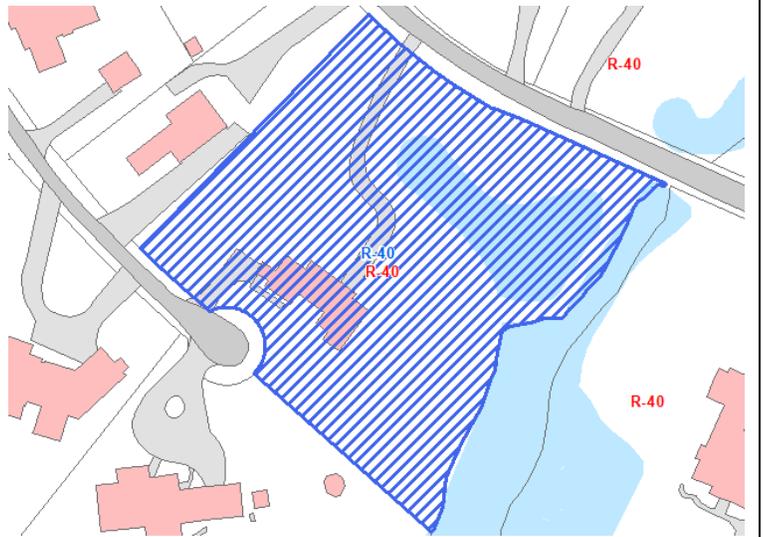
Council District – Beach

Accela Record 2020-CBPA-00017

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing driveways and walks and construct a swimming pool with associated surround.

Staff Planner – PJ Scully

Staff Report – page 57



5. Arthur G. Wilson Jr., & et al

[Property Owner & Applicant]

605 E. Lynn Shores Circle

GPIN 1487-19-4625

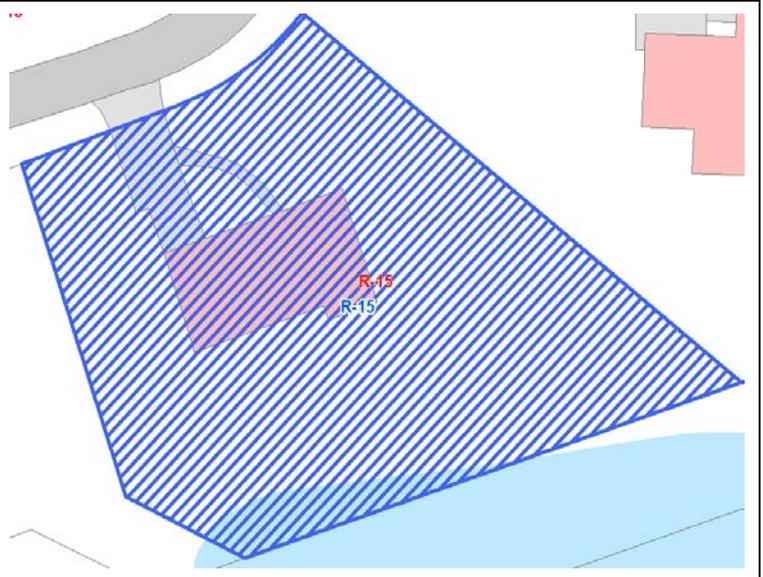
Council District – Lynnhaven

Accela Record 2020-CBPA-00021

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing wood deck, construct a building addition, wood deck, porch addition, patio area and driveway expansion.

Staff Planner – PJ Scully

Staff Report – page 71

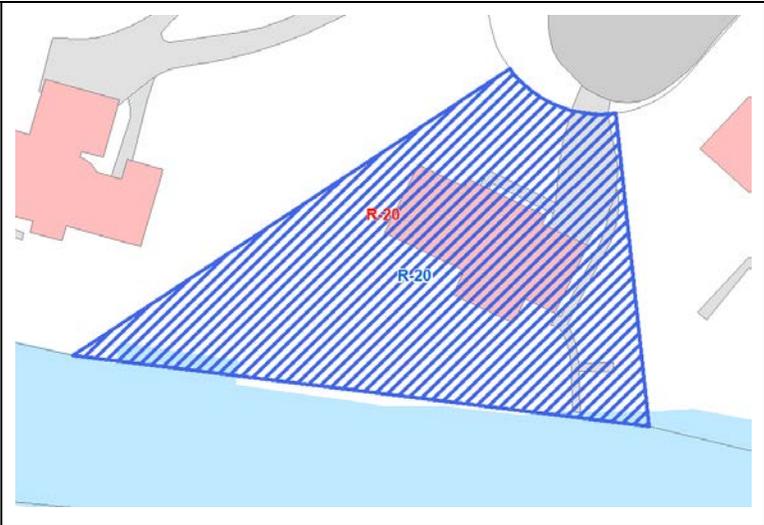


6. David & Jessica Flage
 [Property Owner & Applicant]

2225 Spinnaker Circle
 GPIN 1488-37-2894
 Council District – Lynnhaven
 Accela Record 2020-CBPA-00018

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct 2 wood decks off the rear of the residence.

Staff Planner – PJ Scully
Staff Report – page 85

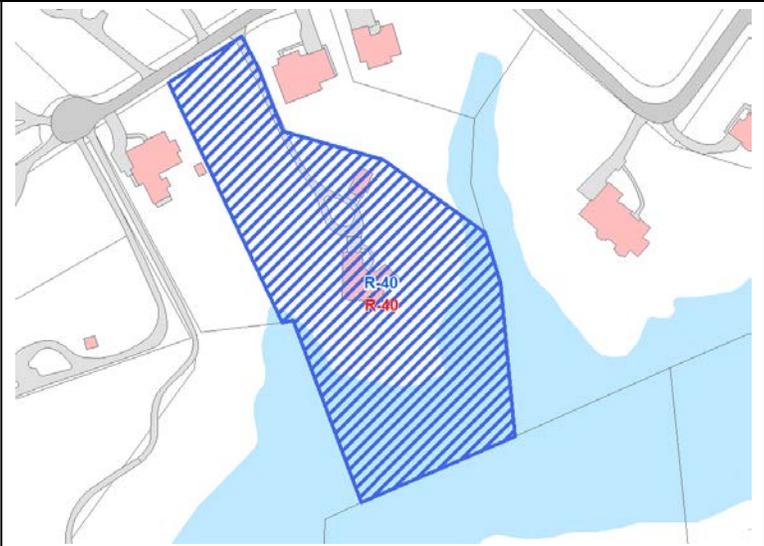


7. Morgan Wise
 [Property Owner & Applicant]

1333 W. Little Neck Road
 GPIN 1488-37-2894
 Council District – Lynnhaven
 Accela Record 2020-CBPA-00020

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop an existing patio area with walk and construct a swimming pool with associated patio area.

Staff Planner – PJ Scully
Staff Report – page 97



SHOW CAUSE AGENDA ITEMS

8. Freedom Operations LLC
 [Property Owner]

2809 Crusader Circle
 GPIN 1495-48-7777
 Council District – Rose Hall
 Accela Record 2020-CBPV-00001

Statement of Noncompliance – Development within the Resource Protection Area (RPA) buffer with the construction of a building storage addition.

Staff Planner – PJ Scully
Staff Report – page 113



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Applicant & Property Owner **Daniel A. & Sara Bailey**
 Address **3725 Albacore Key**
 Public Hearing **June 22, 2020**
 City Council District **Lynnhaven**

Agenda Item

1

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop and expand the existing driveway.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 62, Page 15
 Recorded 08/07/1964

GPIN

1487-49-2578

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

1,165 square feet

Area of New Development in RPA

390 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Demolition Details

- Concrete driveway

Construction Details

- Asphalt driveway, redevelop existing 7-foot wide concrete driveway to construct a 12-foot wide asphalt driveway

CBPA Ordinance Variance History

October 25, 1999 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to construct a single-family residence, concrete driveway and wood deck with the following conditions:

1. *Construction limits shall lie a maximum of 15' from the residence and 10 feet from the driveway.*
2. *A doubling of erosion and sedimentation control measures shall be installed along the channelward portion of this project prior to any land disturbing activity.*
3. *The wood deck shall employ underdeck treatment of sand and gravel.*
4. *Tree compensation shall be at a 1:1 ratio.*
5. *If in the future shoreline hardening is considered a riprap revetment shall be installed as opposed to a vertical bulkhead.*
6. *The driveway shall be constructed of concrete tracks and a concrete parking pad as shown on the revised plan dated 10-7-99.*
7. *All area outside of construction limits shall remain in a natural state, to include the forest floor (leaf litter) left intact. Said condition shall be so noted in **BOLD** on the site plan.*
8. *All stormwater associated with this site's impervious cover shall be conveyed to a structural stormwater treatment facility.*
9. *The staging area shall be relocated to the vicinity of the front porch sidewalk.*
10. *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.*

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is in a natural state with a tidal marsh contiguous along the entire toe of slope.

Riparian Buffer

Moderately wooded lot

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

Stormwater Management Methodology

The amount of land disturbance associated with the proposed improvements is less than 2,500 square feet.

Evaluation and Recommendation

The 1999 CBPA Variance conditioned *“the driveway shall be constructed of concrete tracks and a concrete parking pad as shown on the revised plan dated 10-7-99.”* With the stem portion of the driveway measuring approximately 78 linear feet, the applicant desires to expand the existing driveway from a width of 7 feet to 12 feet to accommodate for vehicular passing, if needed and additional area for vehicles exiting the property in reverse. With the overall post-impervious cover for this variance request being less than 17 percent, minimal land disturbance proposed within the Resource Protection Area (RPA), and the existing riparian buffer with mature forest floor being retained seaward of all the improvements, both existing and proposed, Staff supports the application as submitted.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because, *“the majority of driveway is single lane, 7 foot wide and the majority of homes in Kings Forest have double lane driveways.”* Staff concurs.
- 2) Staff provides 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 property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“the request driveway expansion is in order to be able to enter and exit vehicles without stepping in mud or grass.”* Staff adds that the proposed expansion is minimal, a 5-foot wide expansion to the drive aisle of the driveway resulting in less than 450 square feet of new impervious cover on a lot with an overall impervious cover less than 17 percent of the land above water and wetland.
- 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 current situation *“causes vehicles to kill grass causing mud, silt and vegetation to drain off*

therefore, seeking to expand driveway to avoid impacting land with vehicle traffic.” Staff offers that the proposed redevelopment of the driveway will improve the conditions explained by the applicant and does not impact any riparian buffer canopy cover or mature forest floor located along the shoreline of the lot.

- 5) Staff offers as a means to manage towards a no net increase in nonpoint source pollution load, the construction access will occur from a single point, land disturbance will be minimal, and all denuded areas will be stabilized post construction as conditioned below.

Given the above comments, Staff recommends the following 3 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

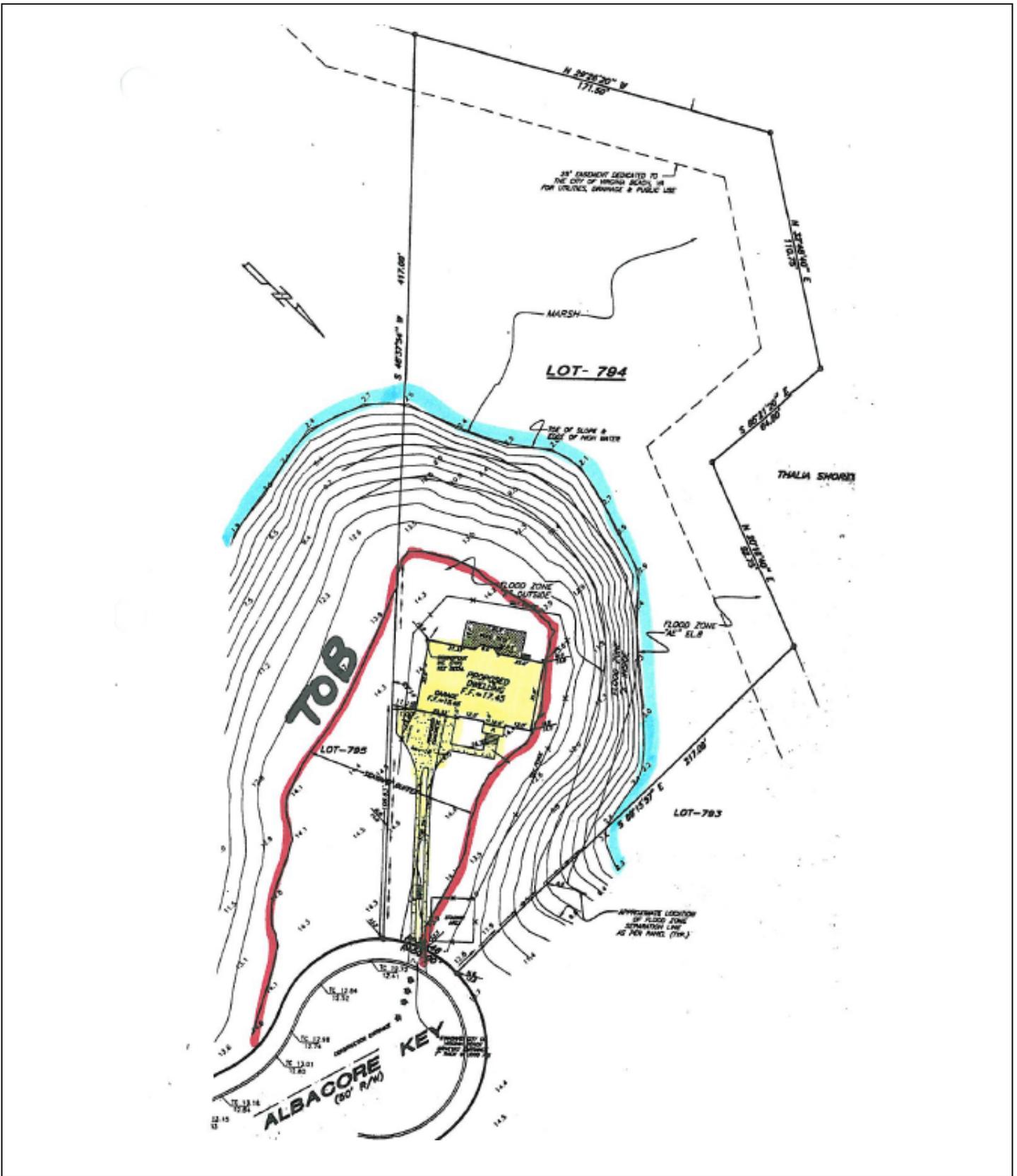
Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. 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.**
3. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

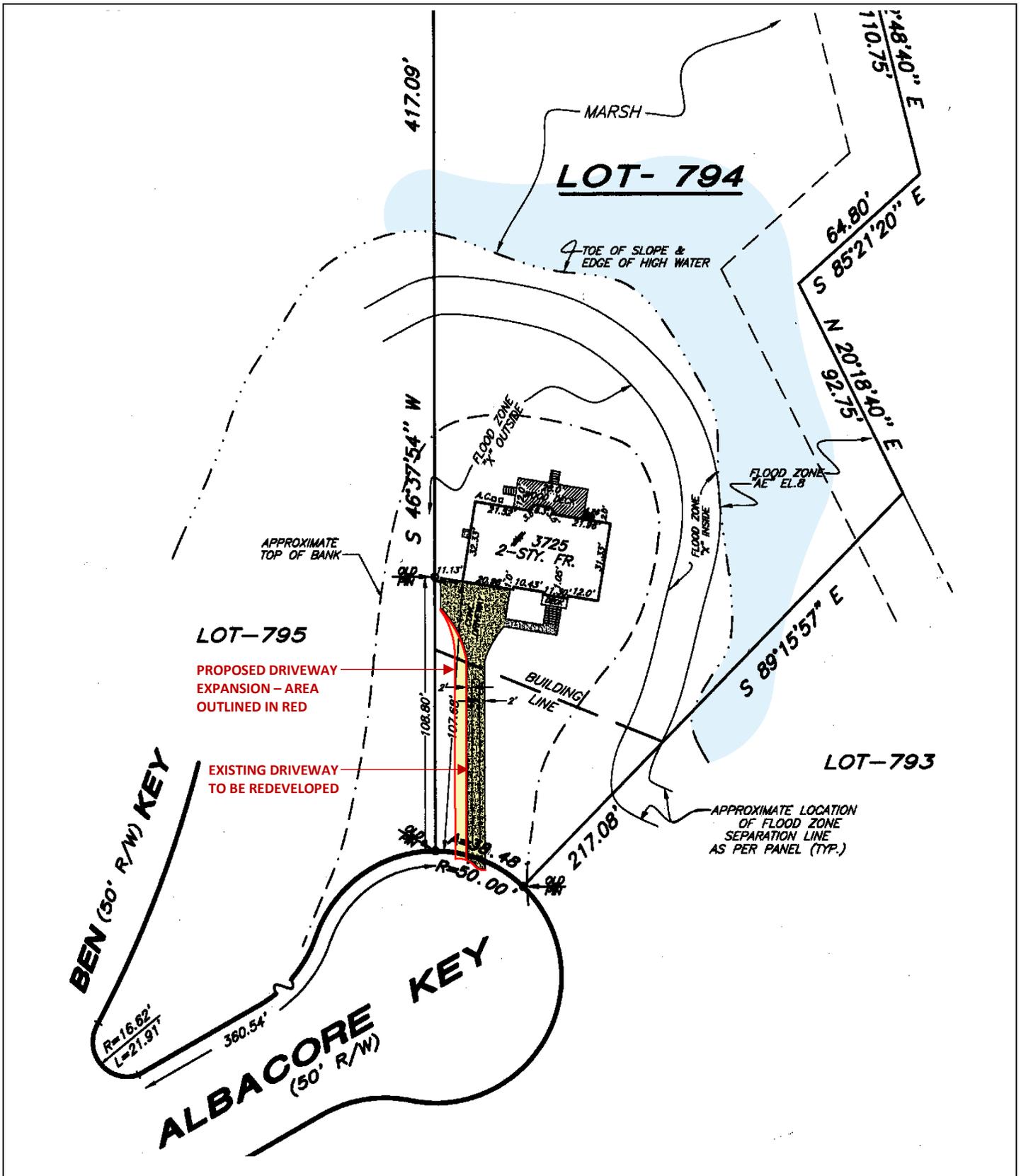
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME _____

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 Board of Zoning Appeals	Economic Development Investment Program (EDIP)	Nonconforming Use Changes
Certificate of Appropriateness (Historic Review Board)	Encroachment Request	Rezoning
Chesapeake Bay Preservation Area Board	Floodplain Variance	Street Closure
Conditional Use Permit	Franchise Agreement	Subdivision Variance
	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: _____
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

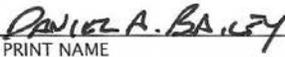
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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

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

		
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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



Applicant & Property Owner **Alan & Julie Faneca**
 Address **1321 Five Points Road**
 Public Hearing **June 22, 2020**
 City Council District **Lynnhaven**

Agenda Item

2

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing swimming pool, front entry with walks and construct a detached garage with covered breezeway and paver drive.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 89, Page 54
 Recorded 11/1971

GPIN

1498-67-9106

SITE AREA

57,732 square feet or 1.325 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

32,819 square feet or 0.753 acres

EXISTING IMPERVIOUS COVER OF SITE

9,345.1 square feet or 28.5 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

12,241 square feet or 37.3 percent of site

Area of Redevelopment in RPA

2,593.8 square feet

Area of New Development in RPA

4,488.8 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Swimming pool with associated patio areas, gazebo and wood deck
- Paver walkways

Construction Details

- Swimming pool with associated stone pool deck and cabana*
**(Board of Zoning Appeals variance required)*
- Front entry with associated walks
- Detached garage with cover breezeway and paver driveway

CBPA Ordinance Variance History

July 26, 2004 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted to demolish the existing single -family residence and construct a new single-family residence and circular driveway with the following conditions:

1. *A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition.*
2. *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.*
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 (vinyl, timber or steel bulkhead). Said condition shall be so noted on the site plan.*
7. *The renovation of the existing pool shall be addressed on the revised site plan and renovation of the pool shall occur prior to or concurrent with the residence.*
8. *Under deck treatment of sand and gravel shall be installed.*
9. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program prior to or concurrent with site plan approval. Payment shall be in the amount of \$1,411.00 and is based on 25% of the proposed impervious cover. Said payment shall provide for the equivalent of an approximate 1,539 sq. ft., 12-inch deep oyster shell plant within the Lynnhaven River Basin.*

10. *All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.*
11. *Buffer restoration shall be installed equal to 100% of impervious cover (6,155 sq. ft.) and shall utilize bayscape landscaping principles. The required restoration shall be installed in areas currently devoted to turf. Said restoration shall be installed prior to the issuance of the certificate of occupancy. Said condition shall be so noted on the site plan.*
12. *A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed.*
13. *Tree compensation shall be at a 3:1 ratio and shall be comprised of 50% evergreen and 50% deciduous species.*
14. *The proposed gravel driveway shall be constructed of #57 washed aggregate at a minimum depth of 6 inches.*
15. *The conditions and approval associated with this variance are based on the site plan dated June 14, 2004, prepared by Gallup Surveyors and Engineers Ltd.*
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 26, 2004 Board granted variance has not been acted upon.

Environmental Conditions

Flood Zone

Multiple Zones – Zone X and AE, Base Flood Elevation (BFE): 8 and 0,2% Annual Chance of Flooding

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

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

Shoreline

Shoreline is hardened by a rip rap revetment and bulkhead.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 24
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The trees being requested to remove are within the delineated limits of construction shown on the CBPA Exhibit. The majority of the request, approximately 17 trees located within the 50-foot landward and variable width buffer, is associated with the footprint and limits of construction for the proposed detached garage and associated driveway.

Stormwater Management Methodology

On the CBPA Exhibit for this variance request, BMP mulched beds are shown seaward of the proposed improvements and below the top of bank feature. Staff is of the opinion that the use of linear BMPs below the top of bank and

traversing an elevation change of approximately 2 feet is a concern given the slope of the area and underlying Rumford soil. As such, Staff has provided recommended Condition 5 below that requires the use of infiltration wells as a means towards the variance request being in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood or of substantial detriment to water quality.

Evaluation and Recommendation

Although the overall impervious cover of the variance request increases by approximately 2,800 square feet, the redevelopment of the lot offers an approximate 970 square foot retreat of impervious cover from the 50-foot seaward buffer. The proposal also consists of the redevelopment of approximately 1,940 square feet of existing impervious cover within the 50-foot landward buffer associated with the proposed swimming pool and provides approximately 1,900 square feet of pervious pavers of which 1,500 square feet is located within the 50-foot landward buffer. Staff offers that a permeable pavement system has a high runoff reduction capability and is typically capable of capturing the stormwater that falls on the pavement surface area. Such a system may also accept run-off from small adjacent impervious areas, such as adjacent rooftops such as proposed in this specific application. In addition, the use of a permeable pavement systems provides merit towards annual runoff volume reduction, total phosphorus reduction and load removal, and total nitrogen reduction and load removal. Staff is of the opinion that above land development activities, such as the use of permeable pavement systems, provide merit towards infiltrating stormwater runoff with the use of structural best management practices. However, given the extent of new development proposed and the post-development impervious cover at 37 percent for the lot, Staff questions the intent of the proposal as being the minimum necessary to afford relief. As such, Staff has provided recommended conditions 14 and 15 below to address this concern.

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 *"this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991, numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners."* Staff offers that the depth of the platted lots along the west side of Five Points Road ranges from approximately 120 linear feet to 178 linear feet measured from the City right-of-way to the edge of water or wetlands. Six of the lots along the west side of Five Points Road, exclusive of this lot, have both primary and accessory structures within the 100-foot RPA of which all 6 of the lots contain swimming pools. Staff provides that the intention of this exception is intended to make sure that the variance request *"would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision."*
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser because *"the buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away."* Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing the entire lot within the RPA.

- 3) The variance is the minimum necessary to afford relief because *“the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 % of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds.”* Staff is of the opinion that the minimum necessary to afford relief allows Staff to work with the applicant to balance a variance request with the performance standards of the CBPA Ordinance. In some situation, the dimensions of the lot and existing environment features, such as topography add additional challenges towards situating improvements while being cognitive to *“the minimum necessary to afford relief.”* Staff offers that a retreat of impervious cover from the 50-foot seaward buffer, redevelopment of existing impervious cover within the 50-foot landward provides merit toward the variance request being the minimum necessary to afford relief.

- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* Staff offers the recommended conditions below, specific to this variance request as a means towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance.

- 5) *“Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. If properly implemented and maintained, Staff concurs with the statement provided by the applicant’s agent and has provided recommend Conditions 14 and 15 below to further address pollution load from the redevelopment of this lot.

Given the above comments, Staff recommends the following 20 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

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

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

- 3) All remaining pervious area within the 100-foot RPA buffer and existing areas of landscape beds within the Variable Width buffer shall be restored to buffer mitigation or supplemented with vegetation to create a riparian buffer ecosystem.

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 have a mulch layer of organic material 4 inches to 6 inches in

depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) In-lieu of the infiltration trenches shown on the CBPA Exhibit, infiltration wells shall be utilized as a means to manage stormwater and minimize land disturbance within the critical root zones of trees outboard the limits of construction.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 15) The brick portion of the existing driveway shall be redeveloped with a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.

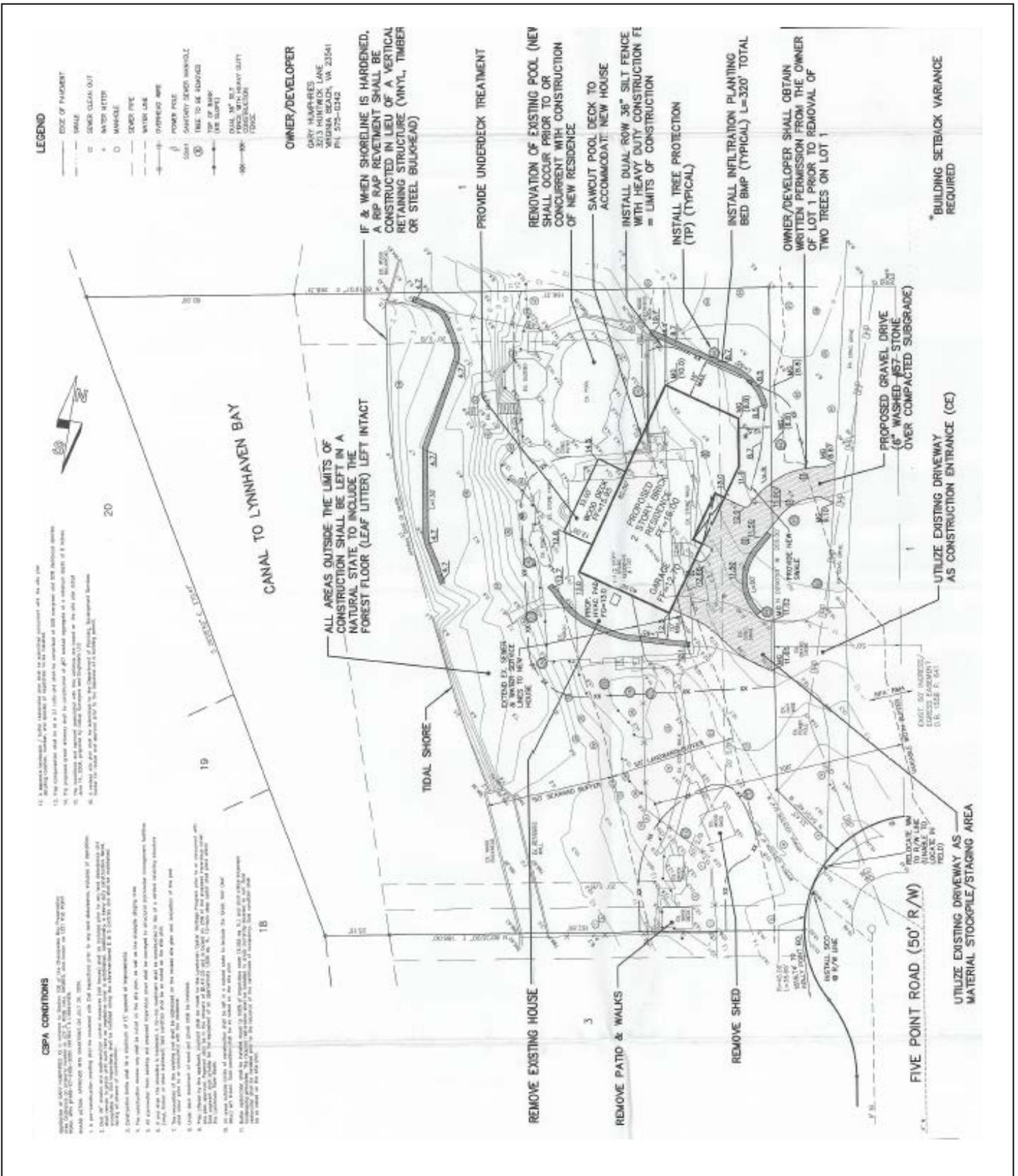
- 16) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 17) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,028.50 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.
- 18) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 19) This variance and associated conditions **will supersede** the conditions of the Board variance granted July 26, 2004.
- 20) The conditions and approval associated with this variance are based on the exhibit plan dated December 3, 2019, prepared by Gallup Surveyors & Engineers, signed March 19, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

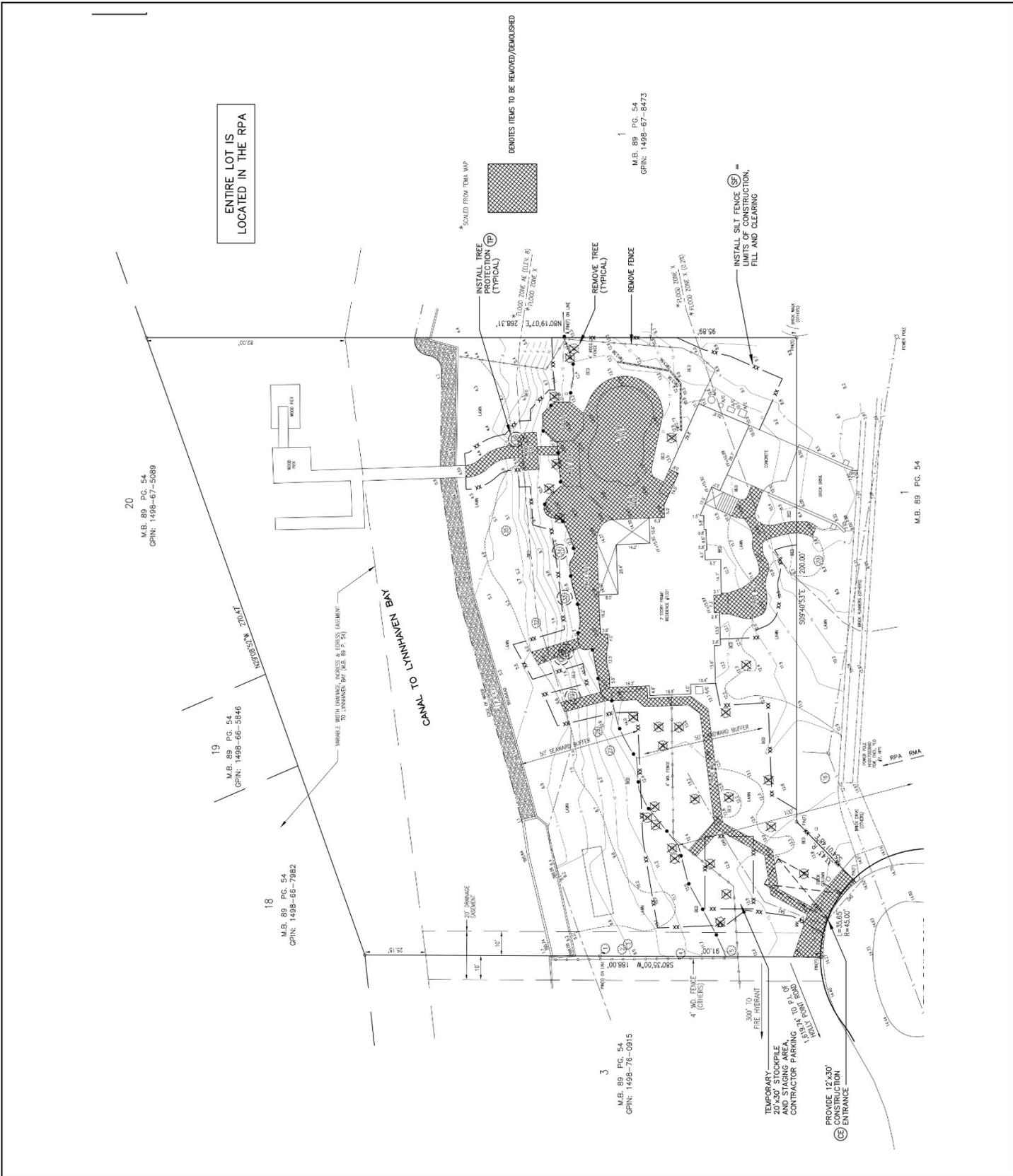
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial





CBPA Exhibit – Demolition and E&S Plan





APPLICANT'S NAME Alan Faneca

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

<small>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).</small>		
<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: Alan Faneca
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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



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

- (B) List the businesses that have a parent-subsidary¹ or affiliated business entity² relationship with the Property Owner: *(Attach list if necessary)*

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

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidary 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	<i>John Watson & Siska/Award</i>
<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	<i>Gallop Surveyors & Billy Garrington</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financing (include current mortgage holders and lenders selected or being considered to provide financing for acquisition or construction of the property)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Legal Services	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

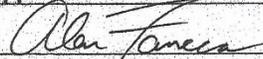
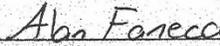
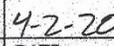
If yes, what is the name of the official or employee and what is the nature of the interest?



CERTIFICATION:

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

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

		
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Demolish portions of the existing single-family residence and an 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 111, Page 20
 Recorded 07/0/1975

GPINs

1489-43-9290 & 1489-43-6188

SITE AREA

183,982 square feet or 4.2237 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

124,572 square feet or 2.86 acres

EXISTING IMPERVIOUS COVER OF SITE

27,507 square feet or 22.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

29,983 square feet or 24.1 percent of site

Area of Redevelopment in RPA

3,047.2 square feet

Area of New Development in RPA

12,234.7 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

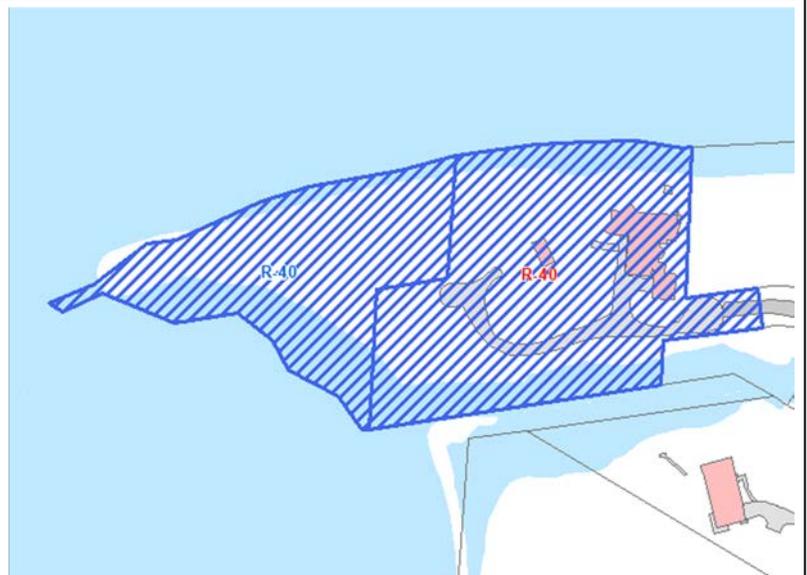
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Portions of asphalt driveway
- Swimming pool, pool house and associated patio area
- Patio and concrete areas adjacent to existing residence
- Portion of existing residential structure
- Vacate interior lot line

Construction Details

- Two-story single-family residence with associated covered porch and lanai
- Asphalt driveway with gravel driveway runners
- Swimming pool with concrete pool patio

CBPA Ordinance Variance History

July 22, 1996 a Chesapeake Bay Preservation Area (CBPA) Board after the fact variance was granted to construct concrete patios and walkways. Footing and rebar had been installed prior to the request, as well as associated grading and cutting of the slope. The applicant requested approval for a 465' wood walkway adjacent to the existing rip-rap and bulkhead feature, an upland retaining wall, an eco-stone deck and steps with the following conditions:

- 1. A doubling of erosion and sedimentation control measures shall be installed along the bulkhead capboard.*
- 2. A minimum 2.5 wide planting bed shall be installed between the pervious walkway and timber bulkhead/rip rap revetment. Vegetative plantings of shrubs shall be 4' on center.*
- 3. All disturbed areas associated with the project not devoted to the deck, stairs, walkway shall be stabilized with sod or landscaped plantings.*
- 4. The project shall be completed by September 23, 1996. The applicant shall contact the Planning Department upon completion of the project for a final inspection.*
- 5. A detailed site plan shall be submitted to the Planning Department, Development Services Center, for review and approval prior to the issuance of a building permit.*

Portions of the July 22, 1996 Board granted variance has been acted upon and the associated improvements constructed.

September 26, 2011 a CBPA Board after the fact variance was granted to repair the boat house wall, boardwalk timber wall and wooden walkway and construct a planter wall 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 10 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 (if possible) 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 10' 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 / rehardened, a rip-rap revetment shall be constructed in lieu of a vertical retaining structure (vinyl, timber or steel bulkhead). The toe of said revetment shall lie at or landward of mean high water or tidal vegetated wetlands, unless the Wetlands Board determines that site specific conditions warrant a more seaward alignment.*
9. *Under deck treatment of sand and gravel shall be installed.*
10. *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.*
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. The landscape plan shall clearly delineate existing naturalized (trees, landscaping and mulched organic surfaces) areas, planting beds, and turf zones.*
12. *The conditions and approval associated with this variance are based on the site plan sealed September 29, 2011 by Adam M. Nowocin, prepared by Kastaway Engineering.*
13. *Retaining walls supporting 2' or greater of unbalanced fill will require a building permit.*
14. *Retaining walls 3' high or higher, the detail must be certified by a Professional Engineer or Architect licensed in Virginia.*
15. *Planning / Permits and Inspections / Civil Inspections shall require evidence of all wetlands permits required by law prior to authorizing grading or other on-site activities to begin.*
16. *Stormwater runoff from proposed impervious cover shall be conveyed to stormwater management facilities. Low maintenance best management practices shall be employed to the maximum extent practicable. Stormwater facilities shall be installed prior to the certificate of occupancy or release of the building permit.*
17. *Buffer restoration shall be installed equal to 200% of the proposed new impervious cover within the RPA (560 sq. ft. x 200% = 1,120 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. Trees shall not be planted within fifteen (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.

18. *Buffer restoration shall be installed equal to 100% of the proposed area of redevelopment within the RPA (1,461 sq. ft. x 100%= 1,461 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. Trees shall not be planted within fifteen (15) feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. 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. *Upon granting of a variance, a revised site plan shall be submitted to the Department of Planning, Development Services Center for review and approval within 60 days from the date of this hearing. Once the plans have been approved, **CBPA / CIVIL permit** must be obtained within 30 days. All required restoration must be installed within 90 days after issuance of the building permit. Failure to comply with this condition may result in a show cause hearing.*
20. *The 950 square foot gravel walkway with steppingstones is required to be revised to either grass with steppingstones or a wooden walkway; neither to exceed 951 square feet.*

The September 26, 2011 Board granted variance has been acted upon and the associated improvements constructed.

Environmental Conditions

Flood Zone

Multiple Zones – Zone VE, Base Flood Elevation (BFE): 9, Zone AE, BFE: 8, Zone X and 0.2% Chance of Annual Flooding

Soil Type(s)

Tetotum Series (deep, moderately well-drained soils)

Rumford Series (highly erodible soils)

Shoreline

The shoreline is hardened by a rip rap revetment that transitions into a wood bulkhead.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2

- **Evaluation of existing canopy tree removal request:** The 2 trees requested for removal are within the footprint of the proposed improvements, as shown on the CBPA Exhibit.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds will be provided as a best management practice for stormwater run-off mitigation. The preliminary location of the bioretention planting beds are shown on the CBPA Exhibit.

Evaluation and Recommendation

Staff is of the opinion that the redevelopment of these lots, Sites A-1 and A-2, is challenging given the existing shoreline and geometry of the uplands. However, with the variance request the applicant intends to vacate the interior lot line creating one lot that offers a minimal increase, approximately 1,753 square feet to the overall impervious cover on a 3.05-acre lot. Staff provides that these lots could be developed separately each with a single-family residence. On the exhibit provided by the applicant's agent, refer to page 51 of this report, Lot A1 is shown at a proposed development of 23.3 percent overall or approximately 9,383 square feet of new impervious cover within the RPA. Lot A2 is shown as being redeveloped with the existing 27,507 square feet of impervious cover plus providing access to Lot A1 for a total of 29,403 square feet of impervious cover in the RPA. Collectively, this exhibit represents a development proposal of approximately 38,786 square feet of impervious cover in the RPA if these lots were to be developed individually. As shown, developing each lot individually increases the overall impervious cover of this peninsula by approximately 8,803 square feet. Staff is of the opinion that the 50-foot seaward buffer of Site A-1 is the most sensitive portion of the lot and is most susceptible to future inundation and associated hazards given the location of the lot within the Lynnhaven River basin and the exposure to wind driven tides. However, this area of the lot offers substantial benefit towards coastal ecosystem restoration if properly restored to prevent against increased nutrient loads into the river. The use of structural and non-structural elements as provided on the CBPA Exhibit and conditioned below by Staff provides merit towards reestablishing the ecological benefit of the coastal ecosystem. With these measures, water quality has the potential to improve while allowing the RPA to function as intended by not introducing an extensive amount of fill material or severely altering existing site conditions. In addition, with the redevelopment of these lots an approximate 3,073 square foot retreat of impervious cover from the 50-foot seaward buffer is offered.

For the Board's deliberation, the applicant's agent has provided the following comments with respect to the findings of the CBPA Ordinance, specific to this variance request.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"these two (2) legally created building lots on this peninsula of land were subdivided in 1975, some 16 years before Virginia Beach adopted the CBPA Ordinance. Both of these existing building lots are now entirely within the RPA (i.e. they have been and are significantly impacted by the Ordinance). Since our adoption of the CBPA Ordinance in 1991, numerous owners of existing lots have made variance requests to develop their property consistent with the character of the communities in which they are located and been granted the necessary relief. Approval of this request will in no way confer and special privilege to the current owners. In fact, these owners, by proposing to combine the (2) lots and redeveloping the property as a single family residence with a guest house, are significantly reducing the existing, necessary and justified encroachment into the 50' seaward portion of the RPA and significantly reducing the amount of impervious surface below that which would exist if both of the existing lots were to be developed as separate home sites."* Staff reviews each variance application based on the unique features, location and scope of a project. Staff is of the opinion that the recommend

conditions below, specifically Conditions 3, 4, and 13 offer the applicant the ability to redevelop the lot within the performance standards of the CBPA Ordinance.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or contract purchaser *“as indicated in the response concerning required finding #1 above, the existing conditions and circumstances of these two (2) building lots, the long shared driveway access and existing improvements preceded adoption of the CBPA Ordinance and its imposition of the RPA buffer on the entirety of the 2.85 acres of high land (above the 3’ contour) on the combined lots.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“the minimum necessary is a very subjective and arbitrary concept, which necessarily involves a comparative evaluation of the level of improvements upon similarly sized and situated parcels in the same zoning district and vicinity. The Board has consistently granted variances for the development of residential homesites with the general understanding that the total impervious cover on a site not exceed 30% of the land area, which leaves a substantial amount of land to be used for buffer restoration, bioretention beds and other techniques for addressing the performance standards adopted in the furtherance of the Act’s goals of protecting and enhancing water quality. By combining these two (2) building lots, and redeveloping Site A-2, the applicants will both (a) reduce the total impervious surface within the 50’ seaward buffer; and (b) reduce dramatically, the total impervious surface on the combined 2.85 acres of high land (above the 3’ contour), that would occur if both existing sites were developed. At 30% impervious cover on the two (2) lots the total impervious surface would be 37,372 square feet. Given the lengthy shared driveway access, the 30% impervious surface would be reached, and likely exceeded, with a development of both lots”* Given the challenges of this lot related to the shape and length of the shoreline, Staff commends the applicant for voluntarily vacating the interior lot line, as it would ultimately have been required during site plan review, and redeveloping the uplands in a manner that retreats from the 50-foot seaward buffer and is cognitive of climate-related drivers such as relative sea level rise, extreme weather events and existing topographic elevations while maintaining the overall impervious cover under 25 percent.
- 4) The applicant’s agent provides that *“the purpose and intent of the Ordinance is [to] simply protect water quality in the Bay and its tributaries by preventing pollution of the Bay as a result of non-point source discharge. Like the home and improvements on Site A-2, a very significant percentage of existing homes currently have little or no onsite stormwater treatment. Consequently, these applicants will install biorientation beds, extensive buffer restoration in areas within the 50’ seaward buffer currently devoted to turf along with creating canopy cover. In addition, offsite treatment will be aided by contribution to the Lynnhaven Oyster Heritage Program.”* Staff offers that the proposed improvements provide a retreat from the 50-foot seaward buffer and situates the proposed improvements in areas that allow for the restoration of said buffer towards reestablishing the ecological benefit of the coastal ecosystem.
- 5) *“Strict erosion and sediment control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. If properly implemented and maintained, Staff concurs with the statement provided by the applicant’s agent.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **12,235 square feet x 200 percent = 24,470 square feet.**

All the required restoration shall be located in the 50-foot seaward buffer of the Resource Protection Area, in areas currently devoted to turf and transition landwards as needed to fulfill the required buffer restoration square footage. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, grasses and groundcovers suitable for the existing grade elevations and environmental conditions to the greatest extent practicable. Areas of the lot inundated by abnormal high tides or storm surge may be converted to no-mow zones as a component of the required buffer restoration. Said areas will be reviewed by Staff prior to approval.

Buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 30 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 9) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved.

These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$2,803.62 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) This variance and associated conditions **will supersede** the conditions of the Board variance granted July 22, 1996 and September 26, 2011.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 3, 2020, prepared by Gallup Surveyors & Engineers, signed June 8, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

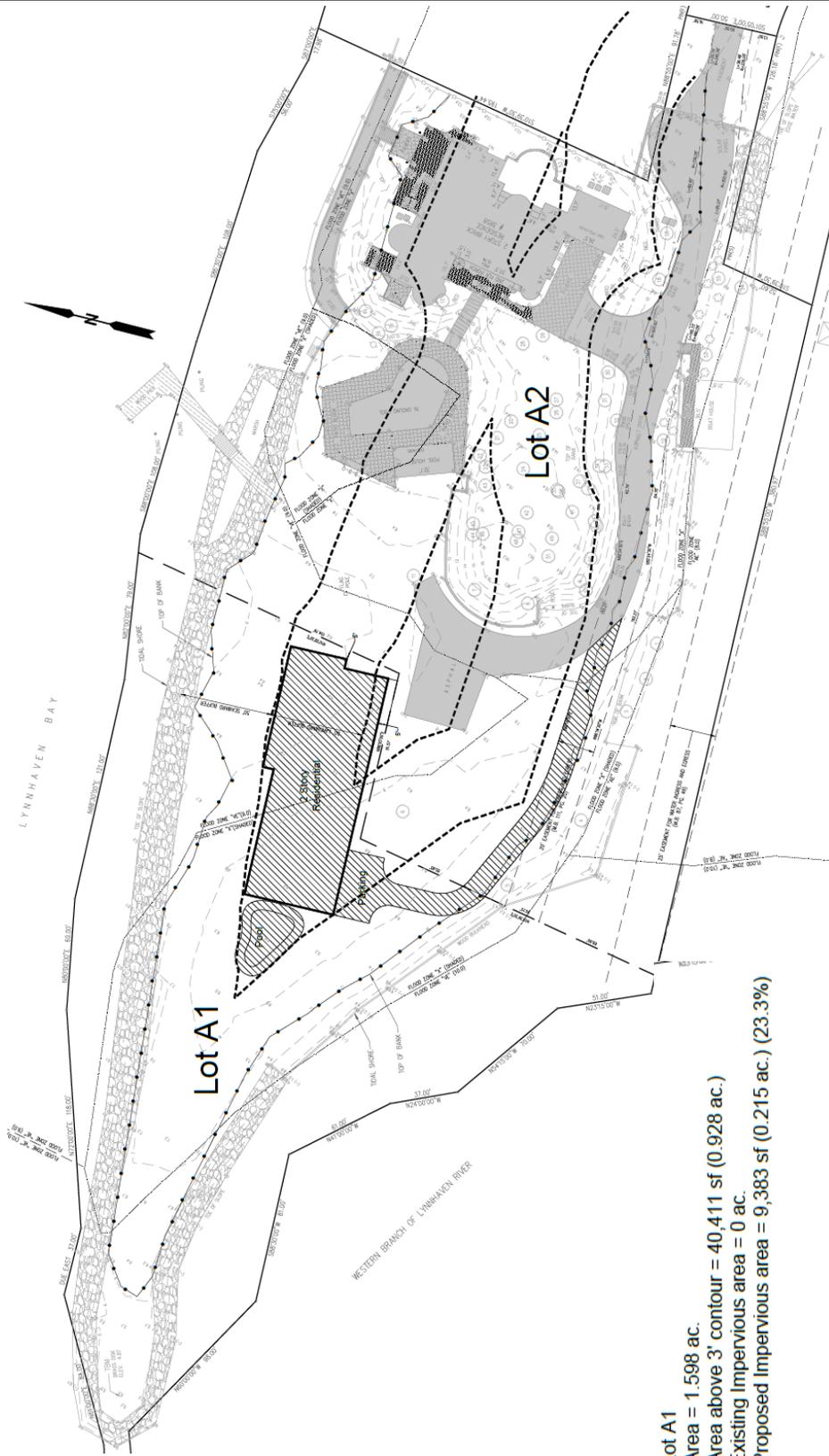
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – lots developed separately, each with a single-family residence



Lot A1
 Area = 1,598 ac.
 Area above 3' contour = 40,411 sf (0.928 ac.)
 Existing Impervious area = 0 ac.
 Proposed Impervious area = 9,383 sf (0.215 ac.) (23.3%)

Lot A2
 Area = 2,626 ac.
 Area above 3' contour = 84,161 sf (1.932 ac.)
 Existing Impervious area = 27,507 sf (0.631 ac.)
 Impervious area proposed driveway = 1,896 sf (0.044 ac.)
 Total Impervious area = 29,403 sf (0.646 ac.) (34.94%)
 Total Impervious area = 38,786 sf 0.890 ac.



APPLICANT'S NAME TODD M. EHRENZELLER

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: TODD M. EHRENZELLER
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
- (A) List the Property Owner's name: _____
If an LLC, list the member's names:

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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



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	WDG 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 checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	TONY DISILVESTRO
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	GALLUP ENGINEERING
<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	SYKES, AUBURN, AHERN,
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	FLEY P.C.

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.

	TODD M. EHRENZELLER	4-2-20
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Todd Matthew Ehrenzeller Trust

Agenda Item 3

Page 56



Applicant & Property Owner **Patricia Laney Clarke**
Address **128 Pinewood Road**
Public Hearing **June 22, 2020**
City Council District **Beach**

Agenda Item

4

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing driveways and walks and construct a swimming pool with associated surround.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 5, Page 151

Recorded 11/29/1916

GPIN

2418-53-9402

SITE AREA

83,960 square feet or 1.927 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

80,632 square feet or 1.851 acres

EXISTING IMPERVIOUS COVER OF SITE

9,120 square feet or 11.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

10,578 square feet or 13.1 percent of site

Area of Redevelopment in RPA

4,298 square feet

Area of New Development in RPA

2,832 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

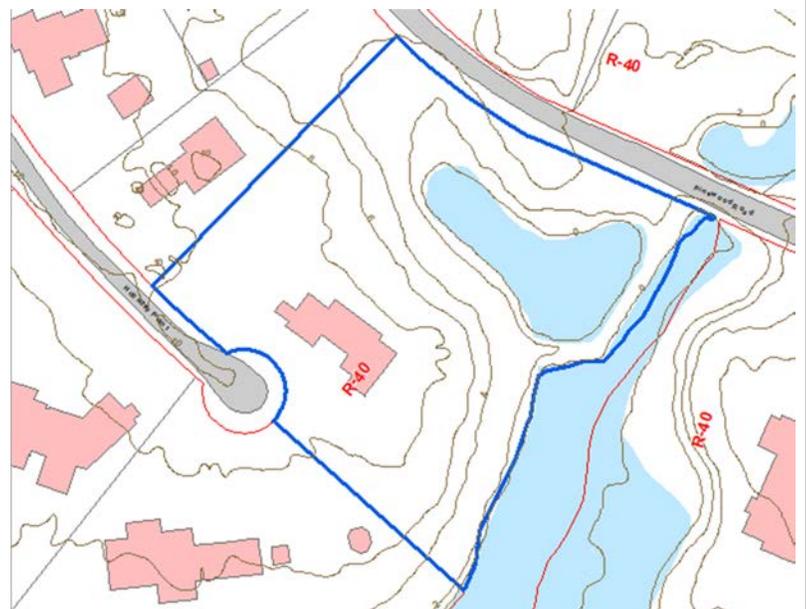
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Driveway – 2 in total
- Brick paver walkways and patio area

Construction Details

- Redevelopment of driveway off Pinewood Road with bridge over low-lying portion of lot
- Redevelopment of driveway off Holladay Point
- Redevelopment of front walk and patio area
- Swimming pool with associated pool surround

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Multiple Zones – 0.2% Annual Chance of Flooding and Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

The Wetlands Board approved a request from the applicant to remove the existing land bridge and bulkhead and excavate the uplands to construct a rip rap revetment and living shoreline.

Riparian Buffer

Moderately to sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of existing understory trees requested for removal within the RPA: 1
- Evaluation of existing canopy tree removal request: Trees being requested for removal are within the delineated limits of construction, approximately 15 feet outboard the proposed improvements.

Stormwater Management Methodology

The applicant's agent has stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds, constructed wetlands and a living shoreline will be provided as best management practices for stormwater run-off mitigation.

Evaluation and Recommendation

The variance request proposes to redevelop a lot that was platted in 1916 with an existing single-family residence constructed in 1952. The redevelopment request utilizes the existing driveway footprints to the greatest extent practicable. The variance request does encroach further into the RPA with proposed accessory structures – swimming pool and patio area; however, these improvements are situated in an area that Staff is of the opinion is the least sensitive portion of the property. Staff met with the applicant's Landscape Architect in the field to discuss the variance request. The discussion included the redevelopment of the driveway off Pinewood Road to limit land disturbance and allow for tidal inundation to occur in said area, the creation of a restoration plan including the restoration of the riparian ecosystem along the existing shoreline with a proposed living shoreline, rather than hardening the shorelines, in the area where the land bridge is being removed.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because, *"the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* Staff concurs and is of the opinion that the redevelopment request for this lot does not exceed those variances that have been granted to other owners of property within this neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief with, *"the house was originally built in the 1950's in its current location on the lot. We feel the best areas for expansion/redevelopment for the property is as shown to help avoid additional impacts to the resource protection area. In addition, the proposed improvements have been limited to landward buffer."* Staff offers that the majority of the variance request is redevelopment of existing impervious cover and with the overall impervious cover of the lot increasing less than 1,500 square feet, the overall impervious cover for the lot remains below 15 percent of the lot area above water or wetlands.
- 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, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment or buffer restoration provided between the improvements and the bay."* Staff is of the opinion that the restoration of the riparian ecosystem along the existing shoreline offers merit towards improving water quality and not being detrimental to the public welfare.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant's agent provides that, *"planting buffer restoration and/or bio-retention stormwater management will be placed between the improvements and the river to capture and treat runoff prior to discharging into the bay. The*

owner has also voluntarily opened up an enclosed pond o the tidal waters to alleviate and help flooding, and the shorelines have been constructed of several hundred feet of living shoreline and rip-rap.” Staff concurs.

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

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,832 square feet x 200 percent = 5,664 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: **7 canopy trees, 14 understory trees, 28 large shrubs, and 42 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**

- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
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- 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 \$649.004 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 February 12, 2020, prepared by WPL, signed February 12, 2020 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

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

Site Aerial





APPLICANT'S NAME Patricia Laney Clarke

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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: Patricia Laney Clarke
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes ¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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



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

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

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



CERTIFICATION:

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

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

	<i>Laney Clarke</i>	4/3/20
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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



Applicant & Property Owner **Arthur G Wilson Jr., et al.**
 Address **605 E. Lynn Shores Circle**
 Public Hearing **June 22, 2020**
 City Council District **Beach**

Agenda Item

5

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop the existing wood deck, construct a building addition, wood deck, porch addition, patio area and driveway expansion.

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 39, Page 24
 Recorded 08/18/1955

GPIN

1487-19-4625

SITE AREA

25,601 square feet or 0.587 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

22,565 square feet or 0.518 acres

EXISTING IMPERVIOUS COVER OF SITE

3,907 square feet or 17.3 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

4,899 square feet or 21.7 percent of site

Area of Redevelopment in RPA

1,130 square feet

Area of New Development in RPA

1,779 square feet

Location of Proposed Impervious Cover

50-foot Landward Buffer

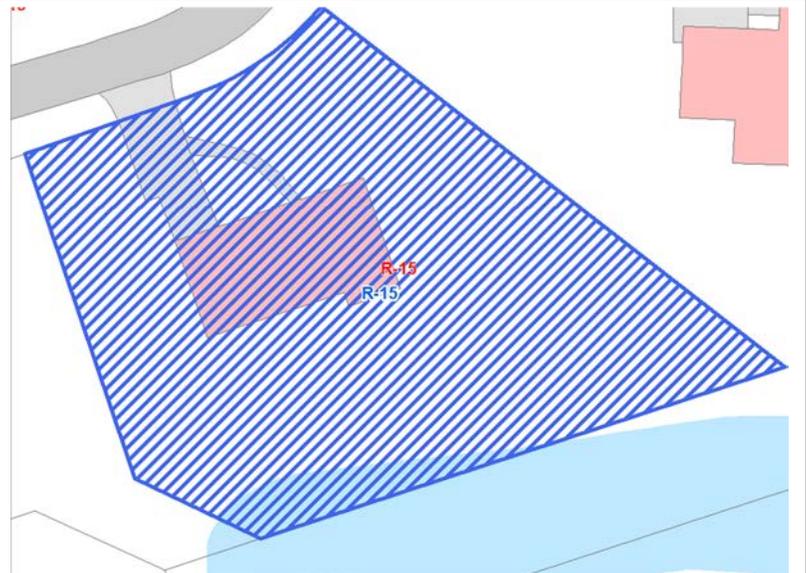
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Elevated deck with pavers below
- Paver patio
- Brick and concrete driveway with gravel parking area

Construction Details

- Redevelopment of existing wood deck
- Redevelopment of existing patio area
- Two-story building addition
- Paver drive with cobble band
- Entrance addition with porch and associated walkway
- Wood deck with stairs off side of existing residence

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

Shoreline

The shoreline is hardened by a wood bulkhead.

Riparian Buffer

Heavily to moderately wooded lot

- Number of existing canopy trees requested for removal within the RPA: 8
- Number of existing understory trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: The applicant's Landscape Architect has evaluated the existing canopy cover and vegetation on the property and has provided a minimal request to remove 8 canopy trees. Three of the 8 trees requested for removal are within the Variable Width Buffer of the Resource Protection Area (RPA). Staff supports the request to remove the subject canopy trees.

Stormwater Management Methodology

The applicant's agent stated in the Water Quality Impact Assessment (WQIA) for this variance request that bioretention planting beds, sand and gravel underdeck treatment, and the preservation of existing riparian buffer are offered as a best management practice for stormwater run-off mitigation.

Evaluation and Recommendation

The variance request proposes to redevelop the majority of this lot and existing single-family residence that was constructed in 1964. The proposed redevelopment occurs within the 50-foot seaward buffer, however, does not deviate from the existing footprints of the patio area and wood deck. The new improvements utilize the existing footprint of the primary structure with minimal expansions proposed along the west side of the residence for the garage addition and a minimal accessory structure, which is a wood deck proposed off the east side of the residence. Although the variance request does encroach further into the 100-foot RPA with these proposed improvements, these improvements are situated in an area that Staff believes is the least environmentally sensitive portion of the lot.

The applicant's agent has provided comments relative to the findings of the CBPA Ordinance specific to this variance request and is of the opinion that the redevelopment of this parcel will be in harmony with the purpose and intent of the CBPA Ordinance based on the following.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the applicant is not requesting further encroachment into the RPA. The entire site is within the variable width buffer and the entirety of the structure is within the 100' RPA. The homeowners would like to renovate the existing structure to house aging parents. Due to the site conditions, additional impervious within the RPA is unavoidable. Proposed improvements are located on the most landward portion of the structure."* Staff concurs and is of the opinion that the redevelopment of the lot is in harmony with other variances within the neighborhood.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief *"with the additional impervious surface that is proposed on the front of the home which is the adjacent area furthest from the feature. A BMP is proposed to capture runoff and promote infiltration and mitigation is provided to offset the development and reestablish the trophic layers."* Staff concurs and offers that the majority of improvements proposed are located within the upper reach of the RPA feature.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because, *"this site will have greater environmental benefits after the proposed improvements by capturing and treating more stormwater and promoting greater infiltration to improve water quality and reduce the overall load on infrastructure through the use of stormwater bmp and installation of buffer mitigation."* Staff concurs.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant's agent provides that *"an infiltration channel and rain garden is proposed as well as a shoreline buffer to capture and treat runoff."* Staff is of the opinion that reestablishing the ecological benefits of the riparian buffer offers substantial benefit towards coastal ecosystem mitigation as well as sediment capture and nutrient recycling through the decomposition of organic material produced annual from healthy woody ecosystems.

Given the applicant's awareness and respect towards redeveloping this property with the intent to preserve and restore environmental conditions, coupled with the extent of site analysis performed associated with this variance request, Staff supports this request and offers the following 15 recommended conditions for the Board's deliberation relative to the findings of the CBPA Ordinance specific to this variance request.

Recommended Conditions

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,779 square feet x 200 percent = 3,558 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: **9 canopy trees, 9 understory trees, 18 large shrubs, and 27 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as

vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.

- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$407.68 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 May 1, 2020, prepared by Painted Fern, signed May 2, 2020 by Jessica Nelson. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

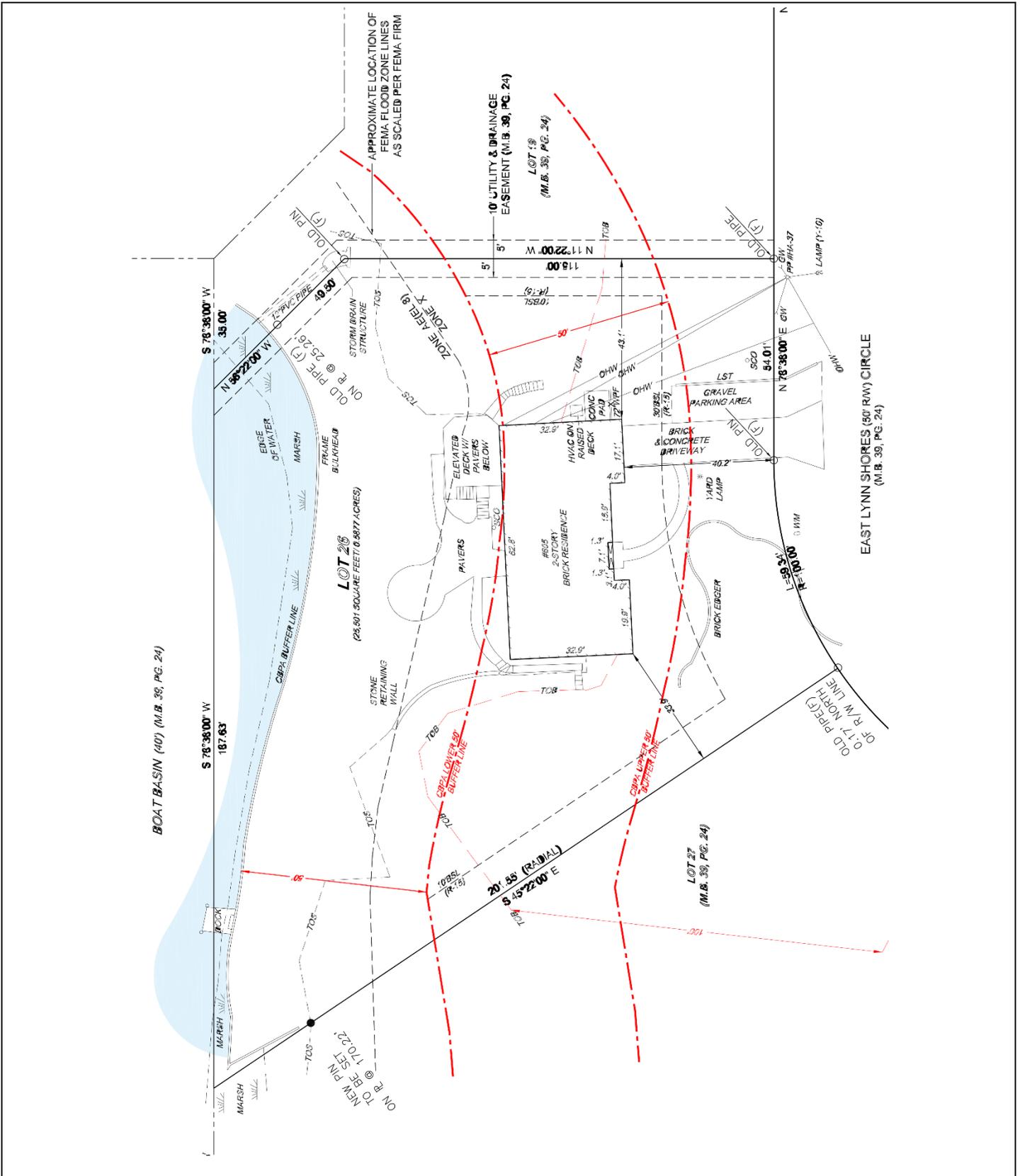
**** NOTE:** The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



CBPA Exhibit – Existing Conditions





APPLICANT'S NAME _____

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: Heather and Michael Strock
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

- Check here if the **PROPERTY OWNER IS NOT** a corporation, partnership, firm, business, or other unincorporated organization.
- Check here if the **PROPERTY OWNER IS** a corporation, partnership, firm, business, or other unincorporated organization, **AND THEN**, complete the following.
- (A) List the Property Owner's name: Heather and Michael Strock
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-subsidary¹ or affiliated business entity² relationship with the Property Owner: *(Attach list if necessary)*

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

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SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

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

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

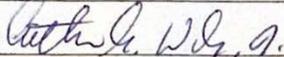
If yes, what is the name of the official or employee and what is the nature of the interest?



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.

	Arthur G Wilson	6/9/20
PROPERTY OWNER'S SIGNATURE	PRINT NAME	DATE

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

AS NEEDED, PAGE LEFT BLANK

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct 2 wood decks off the rear of the residence.

Applicant's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 48, Page 15
 Recorded 10/5/1959

GPIN

1488-37-2894

SMALL PROJECT IN THE RPA

PROPOSED IMPERVIOUS COVER

Area of Redevelopment in RPA

115 square feet

Area of New Development in RPA

758 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

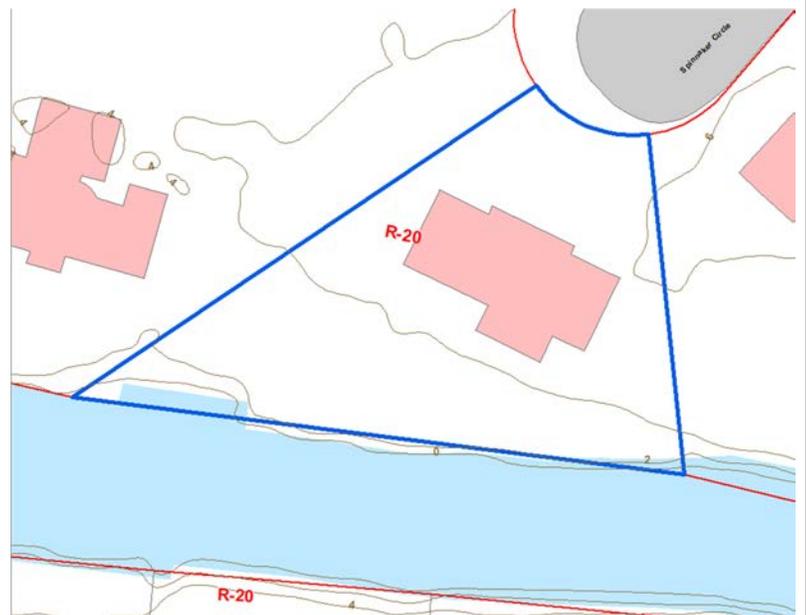
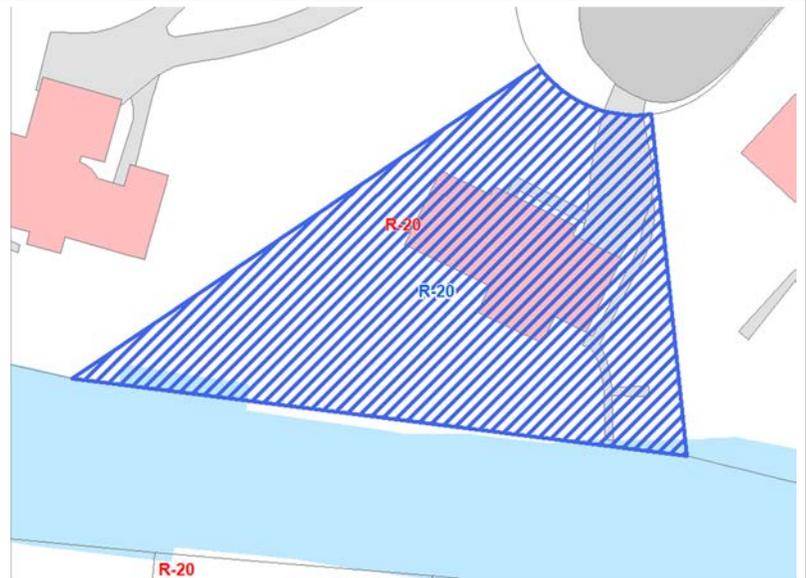
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as submitted



Summary of Proposal

Construction Details

- Wood deck – 2 in total

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is hardened with a bulkhead and small riprap revetment

Riparian Buffer

Heavily Wooded Lot

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

Stormwater Management Methodology

The land disturbance associated with proposed improvements will be less than 2,500 square feet; therefore, no stormwater management facility is required.

Evaluation and Recommendation

The applicant desires to construct 2 wood decks, directly off the rear of the residence, as shown below on the CBPA Exhibit. The proposed improvements are located within the upper reach of the 50-foot seaward and 50-foot landward buffer and within an area currently devoted to turf. Staff is of the opinion that the scope of the variance request and minimal land disturbance anticipated to construct the wood decks will not be detrimental to water quality, nor be an increase in nonpoint source pollution load into the adjacent tidal waters given the required underdeck treatment.

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 for the Board's deliberation.

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of

this Ordinance and are similarly situated because *“the proposed improvements are similar to redeveloped lots within the neighborhood that have encroached into the RPA.”* Staff concurs.

- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *“the lot was not platted prior to the adoption of the CBPA ordinance.”* Staff concurs.
- 3) The variance is the minimum necessary to afford relief because *“the deck offers reasonable space for the desired use.”* Given the location of the proposed wood decks within the upper reach of the 100-foot RPA 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 will be a drip through deck and will include the proposed vegetation, shrubbery, trees, to ensure water quality is maintained. Additionally, the bio-retention beds will be planted to collect any rain-off from the deck.”* Staff concurs.
- 5) *“Buffer restoration and under deck treatment”* will be installed as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs.

Given the above comments, Staff recommends the following 5 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

Recommended Conditions

1. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning & Community Development, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
2. Submitted concurrent with the CBPA exhibit to the Department of Planning & Community Development, Zoning Division shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
3. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **758 square feet x 200 percent = 1,516 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

The required restoration shall be located in the Resource Protection Area 100-foot buffer in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to

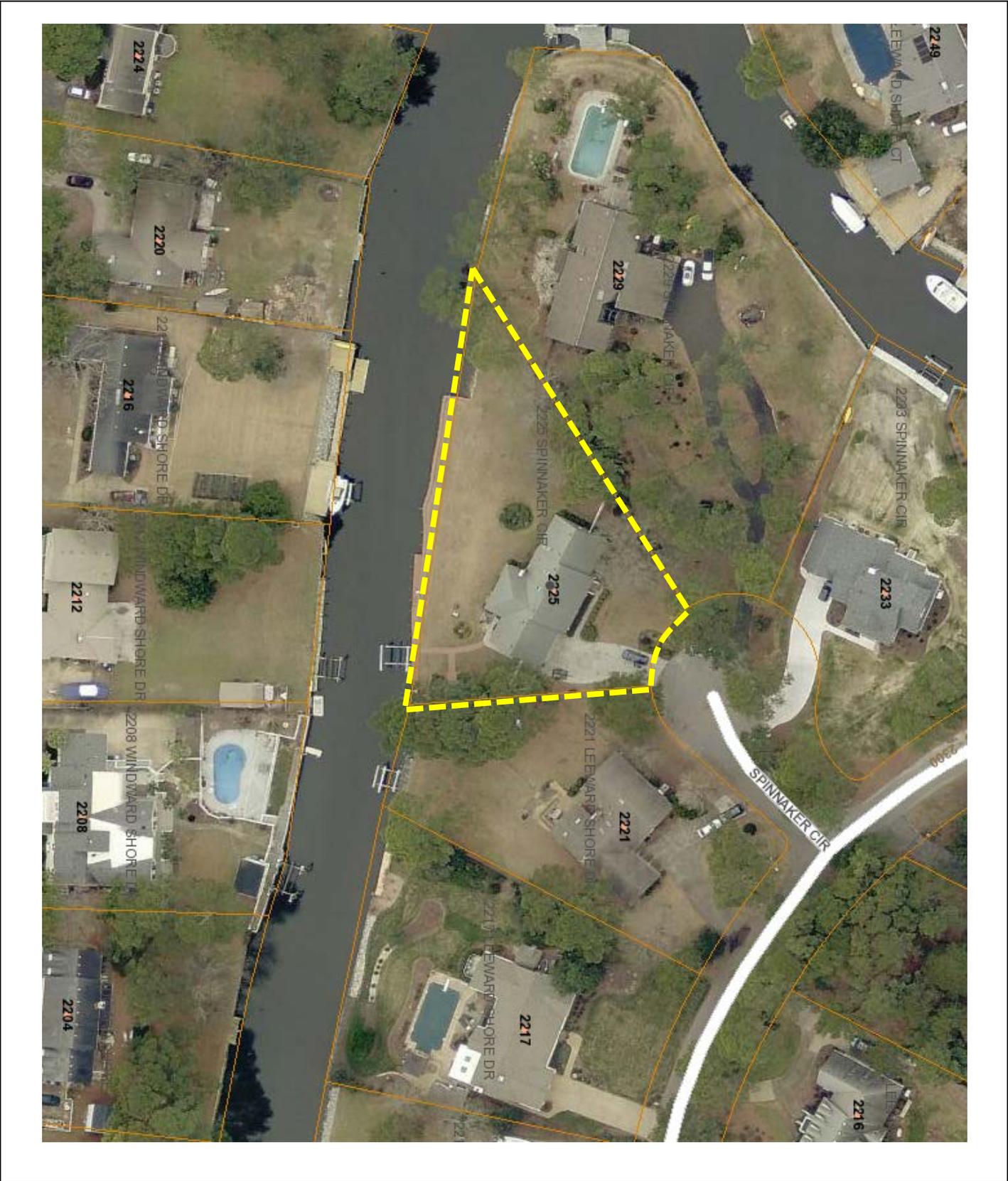
revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Under deck treatment of sand and gravel shall be installed.

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

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

Site Aerial





APPLICANT'S NAME David Flage

DISCLOSURE STATEMENT FORM

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

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

SECTION 1 / APPLICANT DISCLOSURE

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

Page 1 of 7

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



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

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

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

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

See next page for information pertaining to footnotes¹ and ²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

(A) List the Property Owner's name: David Flage
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If a Corporation, list the names of all officers, directors, members, trustees, etc. below: *(Attach list if necessary)*

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

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

SECTION 3. SERVICES DISCLOSURE

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



APPLICANT

YES	NO	SERVICE	PROVIDER (use additional sheets if needed)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accounting and/or preparer of your tax return	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Michael Tilley
<input type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	
<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)	Langley Federal Credit Union
<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"/>	

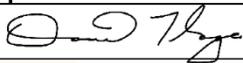
If yes, what is the name of the official or employee and what is the nature of the interest?



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.**

	David Flage	4/30/20
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

AS NEEDED, PAGE LEFT BLANK



Applicant & Property Owner **Morgan Wise**
 Address **1333 W. Little Neck Road**
 Public Hearing **June 22, 2020**
 City Council District **Lynnhaven**

Agenda Item

7

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Instrument No. 200402270032860

Recorded 02/27/2004

GPIN

1488-37-2894

SITE AREA

154,935 square feet or 3.557 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

95,625 square feet or 2.20 acres

EXISTING IMPERVIOUS COVER OF SITE

11,587 square feet or 12.1 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

14,281 square feet or 14.9 percent of site

Area of Redevelopment in RPA

231.9 square feet

Area of New Development in RPA

2,693.6 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

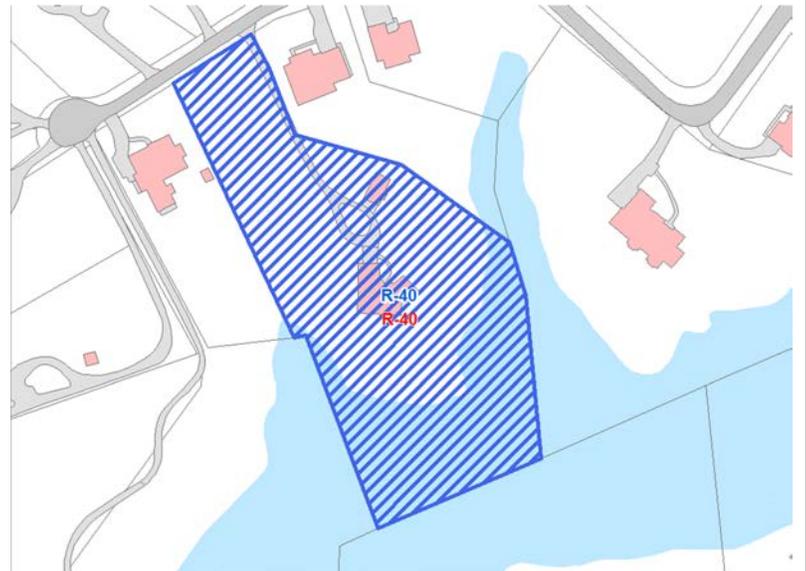
50-foot Landward Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Concrete walk
- Paver patio with a portion of the existing retaining wall
- Wood deck with associated steps

Construction Details

- Redevelop and expand existing concrete walk
- Redevelopment of paver patio
- Concrete walk with associated retaining wall and steps
- Stoop and associated steps
- Swimming pool with associated concrete patio

CBPA Ordinance Variance History

May 22, 1995 an after-the-fact Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the construction of a room addition with the following conditions:

1. *Drywells should be sized properly to accept the stormwater runoff that will be collected and transported from the existing gutter and downspout system.*
2. *The applicant's request to waive the requirements to have a licensed Engineer prepare the BMP calculations should be approved.*
3. *A revised site plan, showing the above recommendations, shall be submitted to the Development Services Center for a full plan of development review.*

August 26, 1996 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the subdivision of Parcel B, 1333 W. Little Neck Road with the following conditions:

4. *A metes and bounds description of the building envelopes shall be shown and shall be recorded with the final subdivision plat for the property. The metes and bounds shall describe the construction limits for each lot, as opposed to describing the building footprint.*
5. *The remainder of each lot, not identified as the construction limits within the metes and bounds description shall remain in a natural state. A note to this effect shall be added in BOLD to the site plan.*
6. *Erosion and sedimentation control measures as well as landscaping plans identifying the types and number of trees to be removed must be provided during the site plan review for each individual lot. Tree compensation shall be at a 3:1 ratio. Stormwater management details must also be provided at site plan review.*
7. *Each individual lot with development within the Resource Protection Area shall submit a final site plan to the Planning Department Development Services Center for a full plan of development review prior to the issuance of a building permit.*

Environmental Conditions

Flood Zone

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

Soil Type(s)

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

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

Shoreline

Shoreline is in a natural state

Riparian Buffer

Heavily to moderately wooded lot

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

Evaluation and Recommendation

The 1995 CBPA Staff report stated the application submitted was for an after-the-fact approval of a room addition and that *“the property owners were led to believe, by the contractor that all of the required approvals were secured. This contractor was subsequently dismissed from the project.”* In 1996 the Board approved the request to establish a 4-lot subdivision, exhibit provided on page 105 of this Staff report, of which some of the proposed development was within the RPA. The Board limited encroachments within the RPA by the recordation of building envelopes. Said envelopes were described by metes and bounds.

The current applicant was not associated with the 1995 nor 1996 CBPA Board variances. At this time, the applicant desires redevelop the existing paver patio, redevelop and expand the existing concrete walk along the western portion of the lot which traverses below the top of bank feature, and construct a swimming pool off the rear of the residence. Of the 2,693 square feet of new impervious cover in the RPA, approximately 82 square feet of impervious cover is proposed in the 50-foot seaward buffer. The applicant desires this encroach to provide a safe means for pedestrian travel from the existing paver patio area to the proposed swimming pool. The existing grade elevations differs between these two areas by approximately 7 feet with the existing paver patio area at an elevation of 7.52 feet above mean sea level and the proposed swimming pool at approximately 14 feet above mean sea level.

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

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *“this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991, numerous homes have made similar variance requests and been granted so the approval of this request will in no way confer any special privilege to the current owners.”* Staff offers that the development of the lot with the proposed encroachments into the 100-foot RPA buffer does not convey a special privilege to the applicant given the extent of redevelopment on adjacent lots within the neighborhood.

- 2) The applicant 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 *“the buffer zones were made part of the Bay Act and these houses were already in place when The Act was enacted and that the hardship is now on this lot and will never go away.”* Staff acknowledges the statement provided by the applicant’s agent and offers that the original struct, specific to this lot was constructed in 1958, granted an addition to the primary structure by the CBPA Board in 1995 which could have been granted administratively had the request not been after-the-fact, and did not have any improvements proposed with the 1996 CBPA Board variance to subdivide the original lot.
- 3) The variance is the minimum necessary to afford relief given that *“the minimum necessary is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30 percent of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds.”* Staff is of the opinion that the amount of development that is proposed with the variance request with an overall impervious cover less than 15 percent, coupled with the encroachments into the upper reaches of the 100-foot RPA buffer, provides merit towards the variance request being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the purpose and intent of the Ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these homes currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* Staff concurs and offers that the proposed improvements are situated in areas currently devoted to turf and does not require the removal of any mature vegetation within the riparian buffer.
- 5) The applicant’s agent provides that *“strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating and denuded areas all help to limit pollution from entering the adjacent waters”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff concurs that providing needed maintenance to the preserved riparian buffer and mitigating with the installation of addition plant material into the riparian buffer both offers a management practice that aids in a no net increase in nonpoint source pollution. These are also coupled with the recommended conditions below and the use of non-structural best management practices as provided on the CBPA Exhibit.

Given the above comments, 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 Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required drywells associated with the 1995 CBPA Variance for stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.

- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,693 square feet x 200 percent = 5,386 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: **7 canopy trees, 7 understory trees, 28 large shrubs, and 42 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.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.**
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.

- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$617.14 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) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
- 16) This variance and associated conditions **are in addition to** the conditions of the Board variance granted May 22, 1995 and August 26, 1996.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated May 1, 2020, prepared by Gallup Surveyors and Engineers, signed May 1, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

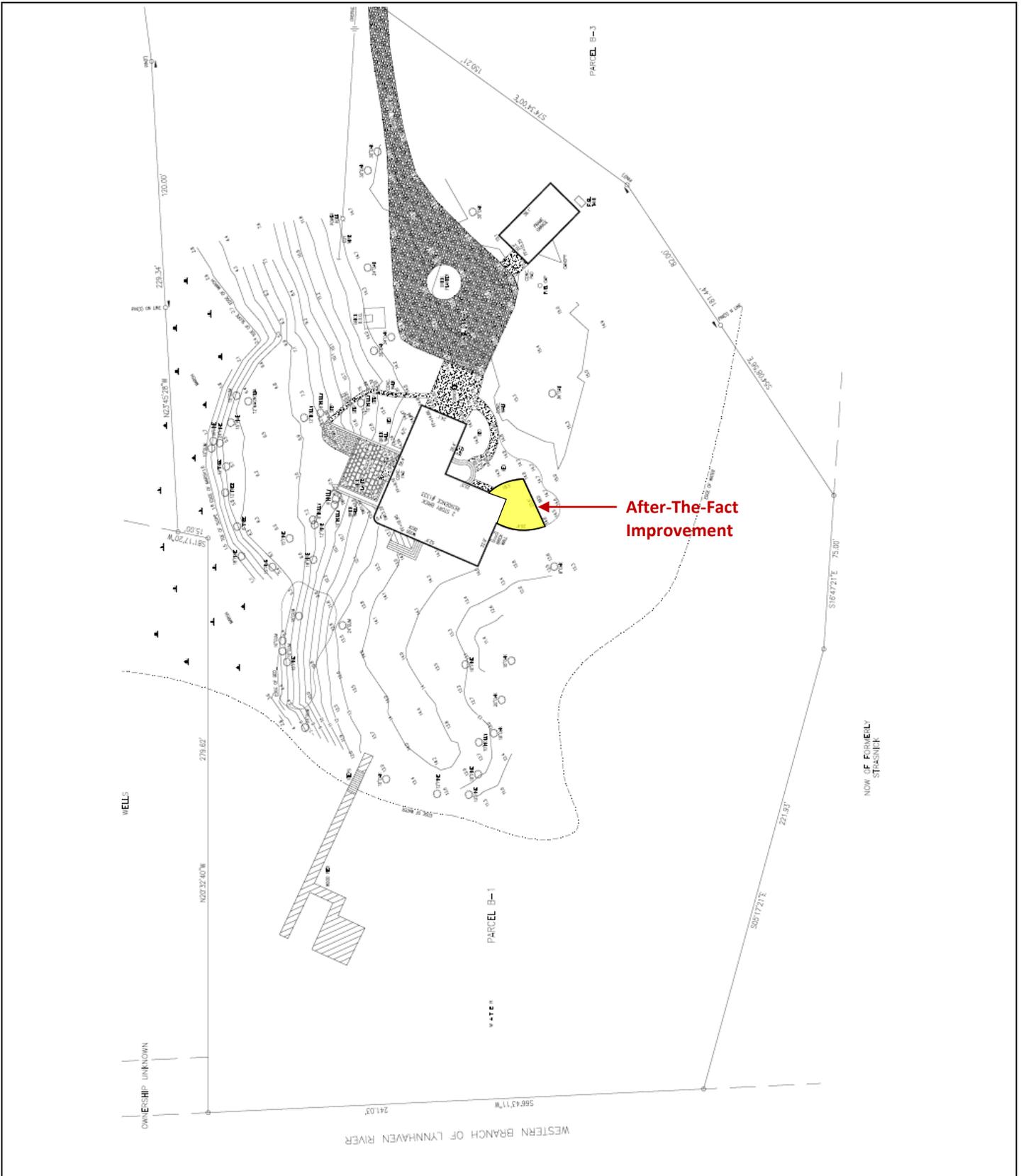
** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

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

Site Aerial



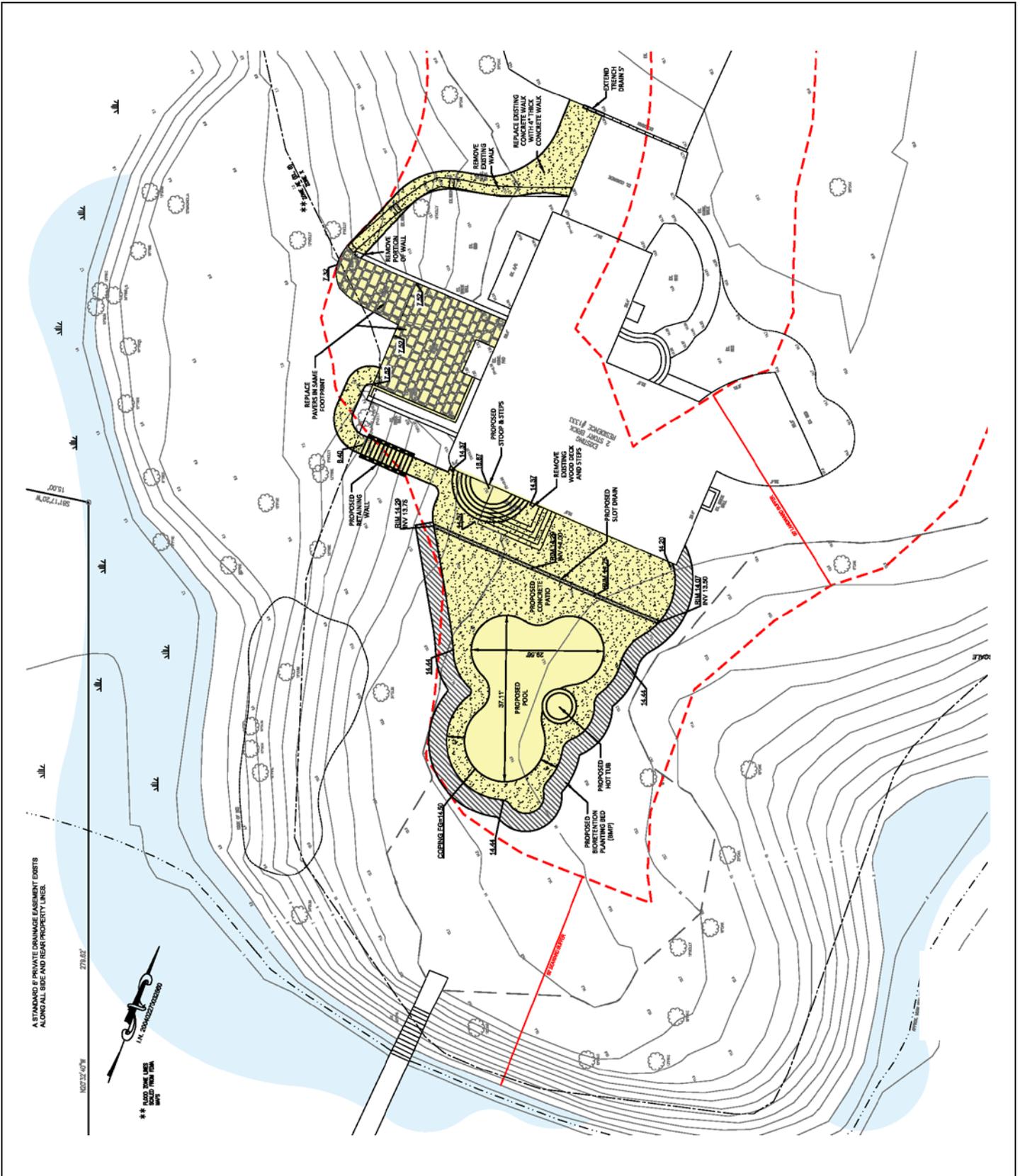
Exhibit - May 22, 1995 After-The-Fact Improvements



CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements





APPLICANT'S NAME Morgan Wise

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
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	License Agreement	

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<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: Morgan Wise
If an LLC, list all member's names:

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

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

See next page for information pertaining to footnotes ¹ and ²

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

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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 ¹ or affiliated business entity ² relationship with the Property Owner: *(Attach list if necessary)*

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

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

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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	Michelli Booker
<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	Aegean Pools
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Gallup Surveyors / Billy Carrington
<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)	Mortgage - Chase
<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.

	Morgan Wise	5-5-2020
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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



Address of Noncompliance **2809 Crusader Circle**
Property Owner **Freedom Operations, LLC**
Public Hearing **June 22, 2020**
City Council District **Rose Hall**

Agenda Item

8

Property Owner's Agent

Self-represented, Bob Brush

Staff Planner

PJ Scully

Lot Recordation

Instrument No. 20150401000283760

Recorded 04/01/2015

Lot Description

Resubdivision of Parcel AA, O & I, Oceana West Industrial Park, 2809 Crusader Circle

GPIN

1495-48-7777

Current Property Owner

Freedom Operations, LLC

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Development within the Resource Protection Area (RPA) buffer with the construction of a building addition

Location of Unauthorized Improvements

50-foot Seaward Buffer

50-foot Landward Buffer

CBPA Ordinance

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

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet



CBPA Ordinance Variance History

No known prior Chesapeake Bay Preservation Area Board variance history.

History of Noncompliance

To Staff's knowledge, Freedom Operations, LLC has no known history of noncompliance with the Chesapeake Bay Preservation Area Board prior to this incident for this lot.

Chronology of Noncompliant Event

- January 1, 2020 Site plan to construct an office/warehouse building approved by the Development Services Center (DSC). Proposed improvements associated with the approved site plan are located within the Resource Management Area (RMA) of the Chesapeake Bay Preservation Area.
- March 3, 2020 Stop Work Order issued by Permits & Inspections, Civil Inspections for *"an unauthorized modification performed to the existing building, that voids the existing site plans and violates the CBPA Ordinance. No construction work can proceed until all documentation is corrected. The only work authorized to proceed is stabilization of denuded areas and work necessary to maintain Erosion and Sediment Controls."* The unauthorized modification to the existing building occurred within the 50-foot seaward and 50-foot landward buffer of the Resource Protection Area (RPA) buffer of the Chesapeake Bay Preservation Area.
- March 10, 2020 Planning Staff met with a representative of the property owner, Engineer of Record and Architect to discuss the unauthorized improvements and the needed process to bring the lot and unauthorized improvements into compliance with City code and Ordinances.
- March 20, 2020 Staff met in the field with the property owner regarding the unauthorized improvements within the RPA and proposed improvements being constructed within the RMA. Staff explained the situation and postponement of public hearings due to the COVID-19 pandemic and informed the property owner once a public hearing date is determined that a letter will be sent to attend a Show Cause Hearing.
- March 24, 2020 Staff accepted a field change to review the finalized stormwater management design, a modification to the construction general permit (CGP) for additional coverage issued by Virginia Department of Environmental Quality (VA DEQ) and verify the location of the unauthorized improvements within the RPA.
- April 14, 2020 DSC Staff issued a review letter of the submitted field change to the property owner. Staff informed the property owner in the review letter that *"the building addition constructed along the south side of the metal shop and warehouse encroaches into the 50-foot seaward buffer of the Chesapeake Bay Resource Protection Area (RPA). In accordance with the Chesapeake Bay Preservation Area (CBPA) Ordinance, projects of this type, which encroach further within the RPA, require that a variance to the CBPA Ordinance must be granted by the CBPA Board. Given that the constructed improvements occurred without CBPA Board approval, a Notice to Comply letter will be sent to the property owner and a Show Cause hearing scheduled to be heard by the CBPA Board once the public hearing process resumes."*

May 8, 2020

Staff sent written notice to the property owners to appear before the Chesapeake Bay Preservation Area Board at the public hearing scheduled for Monday, June 22, 2020 for a show cause hearing.

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance, unauthorized construction of a building addition to the existing warehouse was performed without Staff review, approval and permitting. Land disturbance associated with the unauthorized improvements is less than 2,500 square feet.

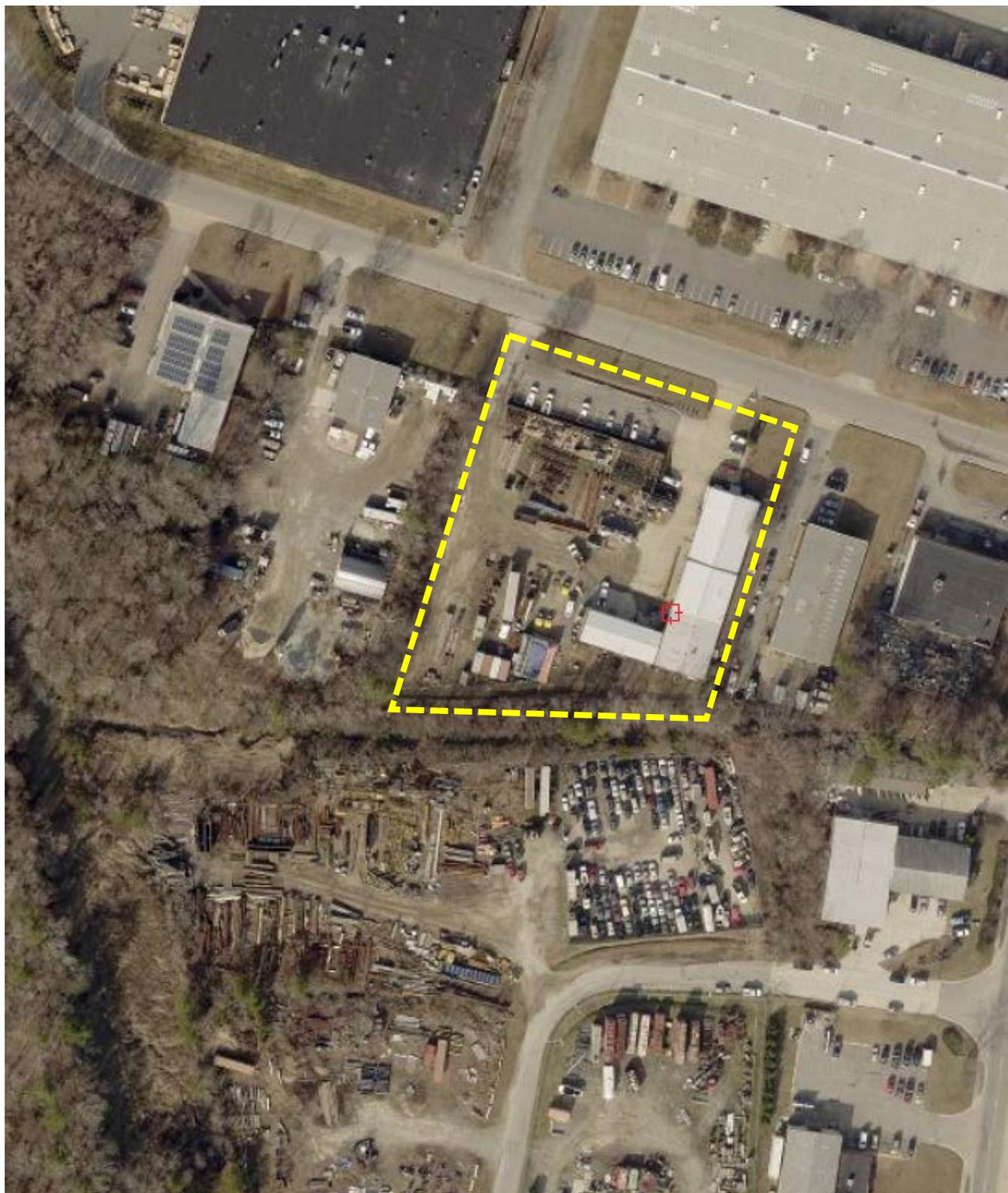
Environmental Impact

The subject area of noncompliance lies within the 50-foot seaward and 50-foot landward buffers of the Chesapeake Bay Preservation Area (CBPA) Resource Protection Area (RPA) adjacent to a contiguous tidal waterway.

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

Recommended

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



Site Aerial



AS NEEDED, PAGE LEFT BLANK