

Chesapeake Bay Preservation Area Board Agenda

July 6, 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, July 6, 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 **July 6, 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.

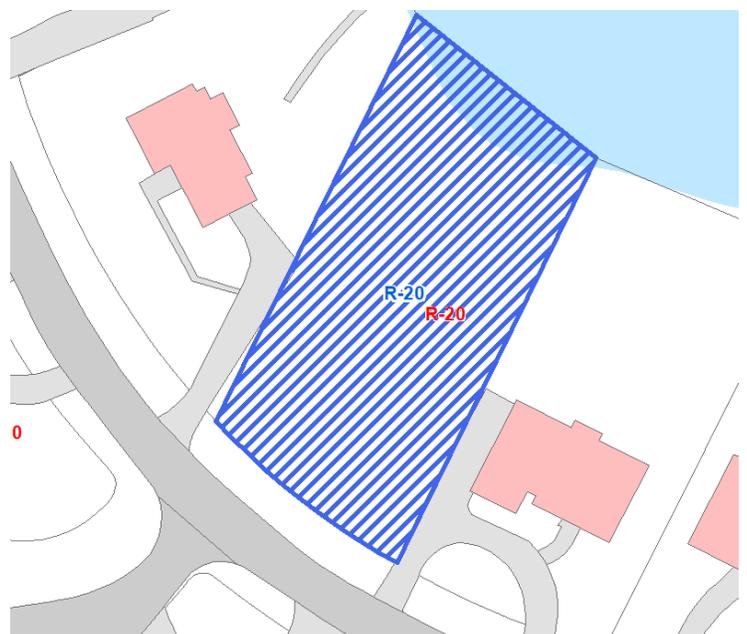
NEW BUSINESS AGENDA ITEMS

1. Charles E. & Mary G. White
[Property Owner]
Stephen Alexander Homes, LLC
[Applicant]

Leeward Shore Drive
GPIN 2409-19-8659
Council District – Lynnhaven
Accela Record 2020-CBPA-00005

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to construct a single-family residence, swimming pool with associated patio and pool house, retaining walls and rip rap revetment.

Staff Planner – PJ Scully
Staff Report – page 5

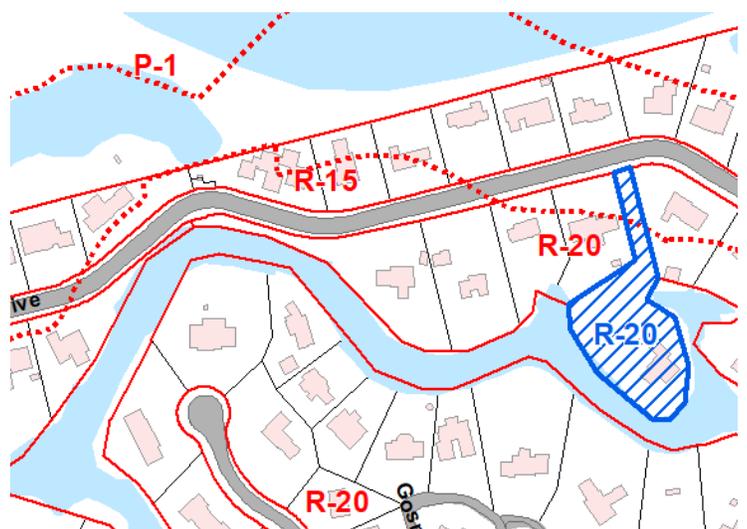


2. Jeramy & Natalie Biggie
[Property Owner & Applicant]

409 Susan Constant Drive
GPIN 2419-61-4826
Council District – Lynnhaven
Accela Record 2019-CBPA-00044

Variance Request – 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 7

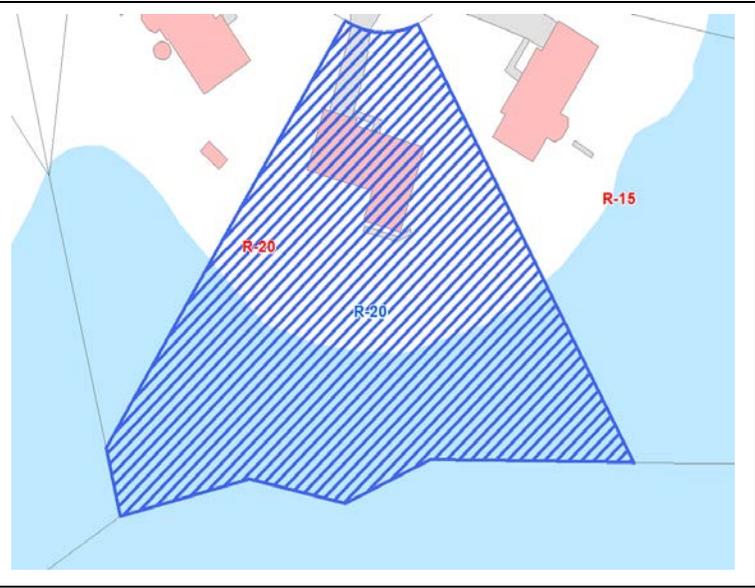


3. William & Maureen Keller
 [Property Owner & Applicant]

701 Suffolk Circle
 GPINs 1488-30-0987
 Council District – Lynnhaven
 Accela Record 2020-CBPA-00024

Variance Request – Encroachment into the Resource Protection Area (RPA) buffer to redevelop and expand existing retaining walls and driveway, redevelop existing swimming pool and deck, and construct a permeable paver driveway.

Staff Planner – PJ Scully
Staff Report – page 23

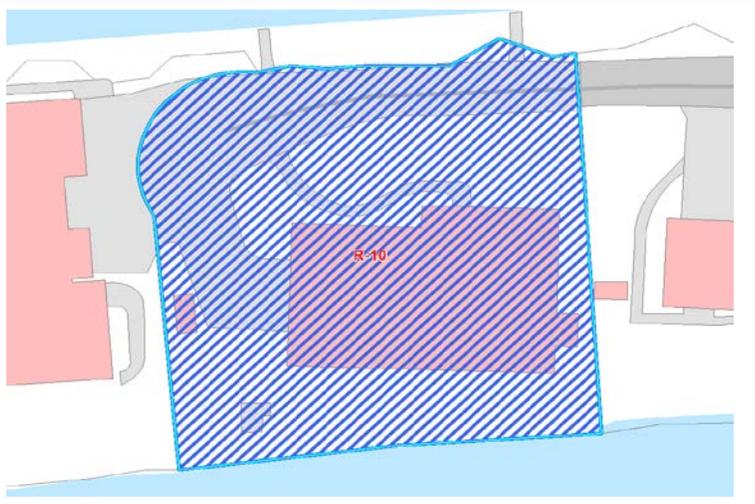


4. Ashley H. Wade
 [Property Owner & Applicant]

3121 Basin Road
 GPIN 1499-07-4938
 Council District – Lynnhaven
 Accela Record 2020-CBPA-00025

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

Staff Planner – PJ Scully
Staff Report – page 39



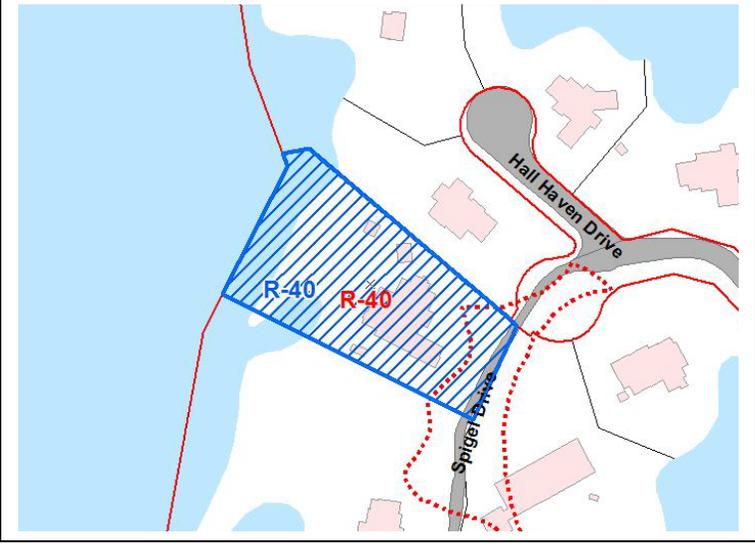
SHOW CAUSE AGENDA ITEMS

5. Lance P & Cheri M Shores
 [Property Owner]

2745 Spigel Drive
 GPIN 1498-42-6749
 Council District – Lynnhaven
 Accela Record 2020-CBPV-00002

Statement of Noncompliance – Unauthorized land disturbance, removal of vegetation to be preserved and placement of fill material on the lot without approval.

Staff Planner – PJ Scully
Staff Report – page 53





Property Owner **Charles E. & Mary G. White**
 Applicant **Stephen Alexander Homes, LLC**
 Address **Leeward Shore Drive, Parcel GPIN 2409-19-8659**
 Public Hearing **July 6, 2020**
 City Council District **Lynnhaven**

Agenda Item

1

**The applicant is requesting an indefinite deferral of this application.
 Staff supports the request to defer.**

Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to construct a single-family residence, swimming pool with associated patio and pool house, retaining walls and rip rap revetment.

Applicant’s Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 48, Page 15a
 Recorded 10/6/1959

GPIN

2409-19-8659

SITE AREA

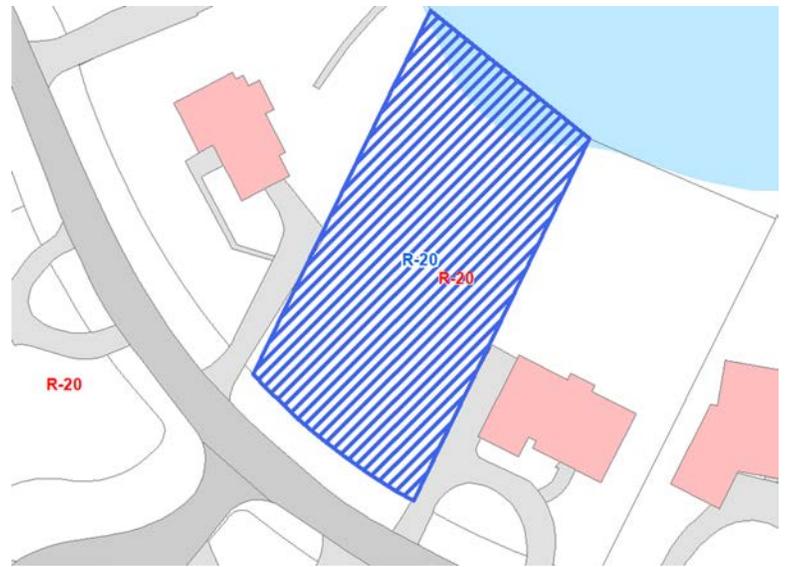
21,418 square feet or 0.49 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

19,682 square feet or 0.45 acres

EXISTING IMPERVIOUS COVER OF SITE

0 square feet or 0 percent of site



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Variance Request

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

Applicant's Agent

Robert Simon

Staff Planner

PJ Scully

Lot Recordation

Map Book 60, Page 30

Recorded 2/28/1964

GPIN

2419-61-4826

SITE AREA

44,078.9 square feet or 1.01 acre

SITE AREA OUTSIDE OF WATER/WETLANDS

41,896.9 square feet or 0.9 acre

EXISTING IMPERVIOUS COVER OF SITE

8,213 square feet or 19.6 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

11,261 square feet or 26.8 percent of site

Area of Redevelopment in RPA

7,290 square feet

Area of New Development in RPA

3,667 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

100-foot Variable Width Buffer

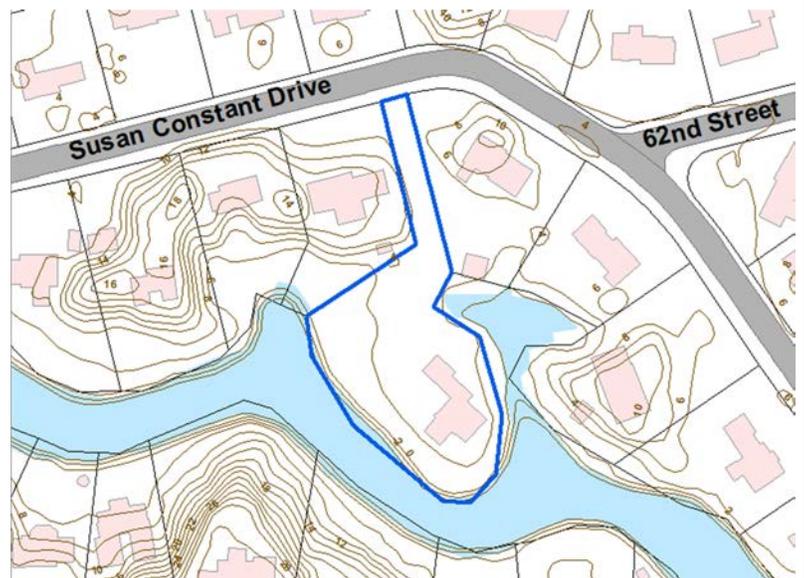
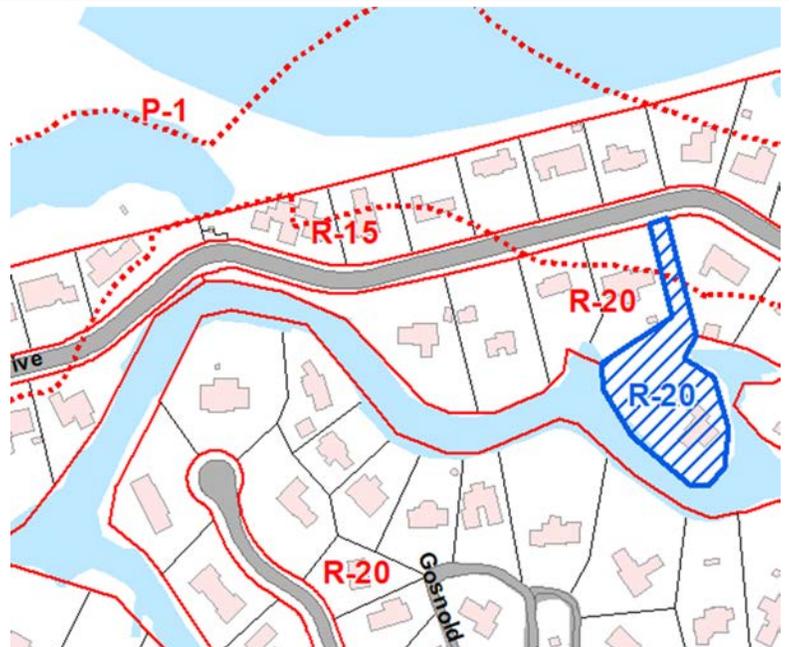
Resource Management Area (RMA)

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approve as conditioned



Summary of Proposal

Demolition Details

- Complete demolition of existing residential structure

Construction Details

- Single family residence with attached garage
- Swimming pool with associated pool patio and cabana
- Redevelop gravel driveway with concrete in the same footprint
- Limited use accessory dwelling
- Shed

CBPA Ordinance Variance History

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

This variance request was deferred at the following CBPA Public Hearings.

- November 25, 2019 CBPA Board Public Hearing
- January 27, 2020 CBPA Board Public Hearing
- June 1, 2020 CBPA Board Public Hearing

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

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

Shoreline

Shoreline is hardened with a rip rap revetment. The redevelopment of the shoreline occurred in 2019. This was associated with a September 2018 Wetlands Board permit that included the removal of a dilapidated wood bulkhead and the installation of a 595 linear foot rip rap revetment. The rip rap revetment, which required grading of the shoreline as much as 13 feet landward, now extends 4 feet channelward of the former bulkhead. existing shoreline was graded back 13 feet.

Riparian Buffer

Sparsely wooded lot

- Number of existing canopy trees requested for removal within the RPA: 2
- Number of dead, diseased or dying existing canopy trees requested for removal within the RPA: 0
- Evaluation of existing canopy tree removal request: With the initial application, the applicant proposed to remove 6 mature canopy trees. Staff is of the opinion that the trees requested to be removed associated with the construction of the new improvements for the lot could be avoided. Staff has consulted with the applicant's agent regarding the relocation of the proposed accessory structures – limited use accessory structure and shed - so that the number of trees requested to be removed is reduced, if not eliminated. Staff is of the opinion that

the available uplands surrounding the proposed accessory structures offers sufficient area for placement of the structures without impacting the existing canopy trees.

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.

Evaluation and Recommendation

This variance request was first presented to the CBPA Board at the November 25, 2019 public hearing. At that time, the applicant proposed to redevelop the existing driveway and construct a room addition off the front of the existing single-family residence and install a swimming pool with associated patio area off the rear of the existing single-family residence. Given the location of the existing improvements and relation to the geometry of the shoreline, both proposed improvements encroached into the 50-foot seaward buffer. The subsequent deferrals of the variance request were precipitated by the value of the proposed improvements associated with the November 25, 2019 exhibit to the existing single-family residence and the needed coordination with the City's Floodplain Ordinance and base flood elevation compliance with regard to redevelopment this lot. As a result, the current CBPA Exhibit depicts the redevelopment of the lot with a new single-family residence that complies with the requirements of the Floodplain Ordinance's finished floor elevation.

With the 2018 Wetland Board application, the replacement of the vertical bulkhead with rip rap resulted in the converted of approximately 7,800 square feet of RPA uplands to a nonvegetated wetlands (rip rap revetment). As a result of this conversion, the site area outside of water and wetlands was reduced from approximately 49,696 square feet to 41,896 square feet resulting in approximately 26,016 square feet or 62 percent of the site area outside of water and wetlands being located within the 50-foot seaward buffer for the lot. Although the redevelopment of the shoreline provides aquatic habitat (nonvegetated wetlands), the reduction of uplands increases the overall impervious cover of the lot by approximately 4 percent. For the area specific to the 50-foot seaward buffer, the proposed improvements redevelop approximately 1,335 square feet of existing impervious cover and proposes approximately 1,827 square feet of new impervious cover.

Staff suggested to the applicant's agent that a conceptual buffer restoration plan be developed to provide visual affirmation that the buffer restoration can be accomplished based on the location and quantities of plant material conditioned. This additional information, however, was not provided. The restoration of the buffer is essential to maximum erosion and sedimentation control and overland flow of stormwater reduction, thereby capturing pollutants prior to entering the waterway while also enhancing water quality. In the absence of anything less than the buffer restoration standard equal to 2 times the proposed impervious cover in the Resource Protection Area (RPA) [City Code, Appendix F, Sec. 106(C)(1)(a)], in addition to the 1:1 replacement ratio for the 12 trees removed with the Wetland Board approval for rehardening the shoreline, Staff does not support the variance request as submitted.

In addition, given the increase to the overall impervious cover of the lot associated with the redevelopment of the single-family residence and newly proposed accessory structures should the Board consider approval of the application Staff has provided recommended conditions 14 and 15 below to address the retention of the existing canopy trees and introduction of structural best management practices, use of permeable pavers in addition to the biorientation planting beds as stated in the WQIA as additional merit towards the stormwater treatment of nonpoint source pollution loads.

Should the Board desire to consider granting this variance request as submitted, the following comments relative to the findings of the CBPA Ordinance are offered by the applicant's agent for 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 at 26.8 percent of the site within the RPA, below the standard 30 percent threshold. The entire peninsula is bisected by the 50-foot seaward buffer with the balance encompassed by the 50-foot landward buffer.”* Staff recognizes that the peninsula-shaped lot creates challenges, as encroachment into the 50-foot seaward buffer is likely with any addition. Regardless, encroachment into the 50-foot seaward buffer often warrants additional consideration.
- 2) This variance request is not based upon conditions or circumstances that are or have been created because *“the lot was recorded in 1964 and the single-family residence was constructed in 1969. The original platting and development of this site in no way conforms to the CBPAO as adopted in 1990.”* Staff concurs that the recordation date of the plat was well in advance of the Chesapeake Bay Act adoption; however, through the variance process, development can occur subject to conditions unique to each application. In this case, the restoration of the buffer is particularly germane to Staff’s position.
- 3) The variance is the minimum necessary to afford relief because *“the subject request is reasonable in that it is at 26.8 percent and primarily associated with redevelopment of existing impervious cover.”* Staff recognizes that the peninsula-shaped lot creates challenges, as encroachment into the 50-foot seaward buffer is likely with any proposed redevelopment requests for a single-family residence on this lot. Regardless, encroachment into the 50-foot seaward buffer often warrants additional consideration.
- 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 site is not currently served by any BMPs and the entire site drains to Stratton’s Creek unabated. With this plan, BMPs will be installed downslope of all improvements.”* While BMPs are proposed, the restoration and expansion to the existing riparian buffer vegetation is essential to provide confirmation that such redevelopment of the lot can be accomplished in harmony with the existing environmental condition of the RPA as a significant component in stormwater runoff, as well as erosion control.
- 5) *“There will be a net reduction of the non-point source runoff with the installation of BMPs”* as a means to manage towards a no net increase in nonpoint source pollution load. Staff is of the opinion that while BMPs are proposed, the installation of at least 200 percent of buffer restoration is essential to towards establishment of a riparian ecosystem, further ensuring a significant reduction in stormwater runoff, and to enhance erosion control.

Given the above comments provided by the applicant’s agent and the absence of a buffer restoration plan as suggested by Staff to accompany this variance request, the following 17 reasonable and appropriate conditions are provided by Staff for the Board’s consideration 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: **3,667 square feet x 200 percent = 7,334 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 consisting of **9 canopy trees, 18 understory trees, 36 large shrub, and 54 small shrubs**. Said buffer restoration is in addition to the 1:1 replacement ratio for the 12 trees removed with the Wetlands Board approval to reharden the shoreline. Both mitigation requirements shall be shown on the CBPA Site Plan, Buffer Restoration Plan.

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.
- 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.

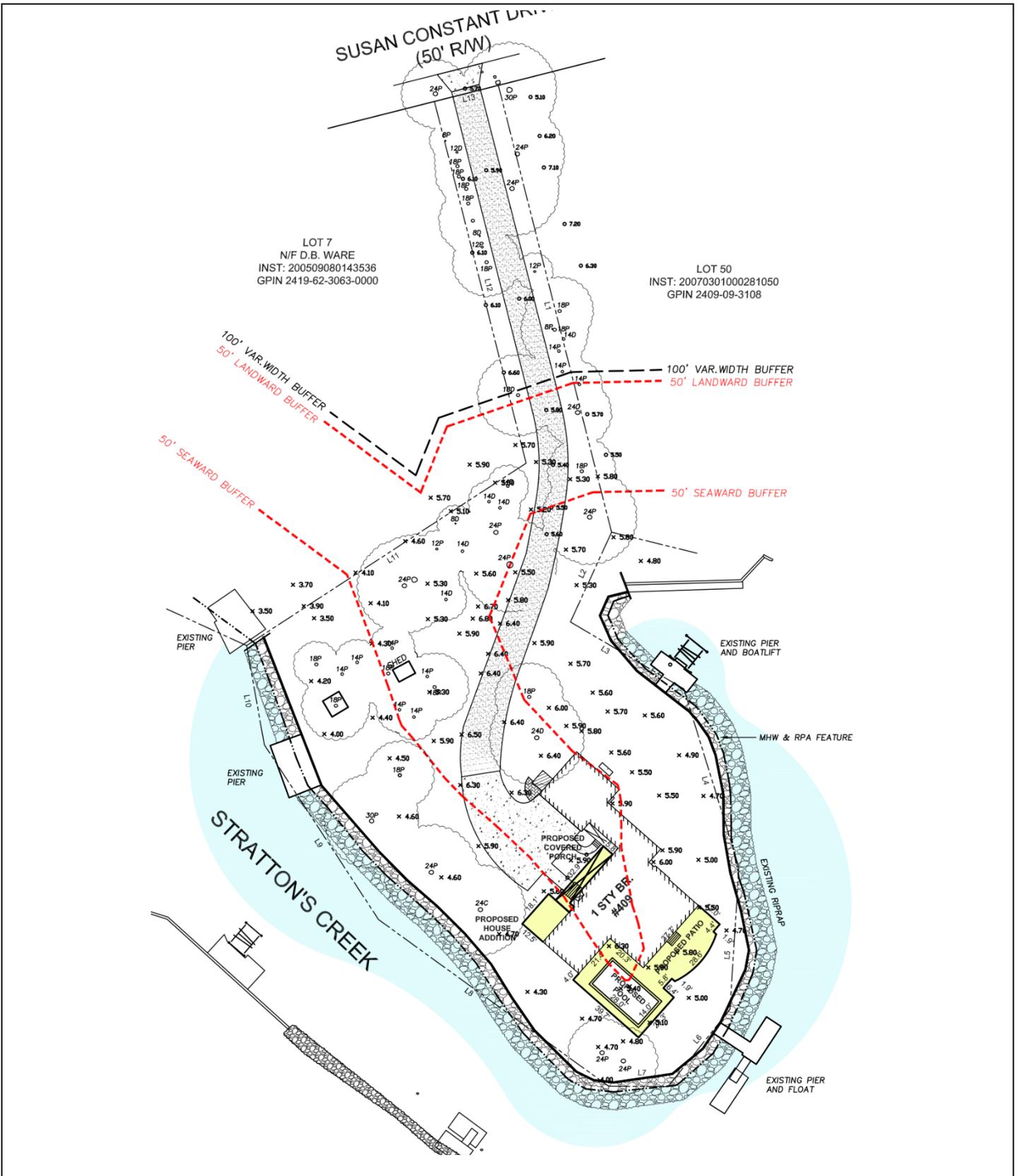
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall 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) The proposed paver path, exiting the north side of the proposed garage and all portion of the redeveloped driveway within the 50-foot seaward buffer of the RPA 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 proposed accessory structures – limited use accessory structure and shed shall be relocated so that no existing canopy trees are removed. Said relocation of the accessory structures shall no encroach into the 50-foot seaward buffer of the RPA.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$840.35 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.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated September 5, 2019, prepared by Chesapeake Bay Site Solutions, Inc. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

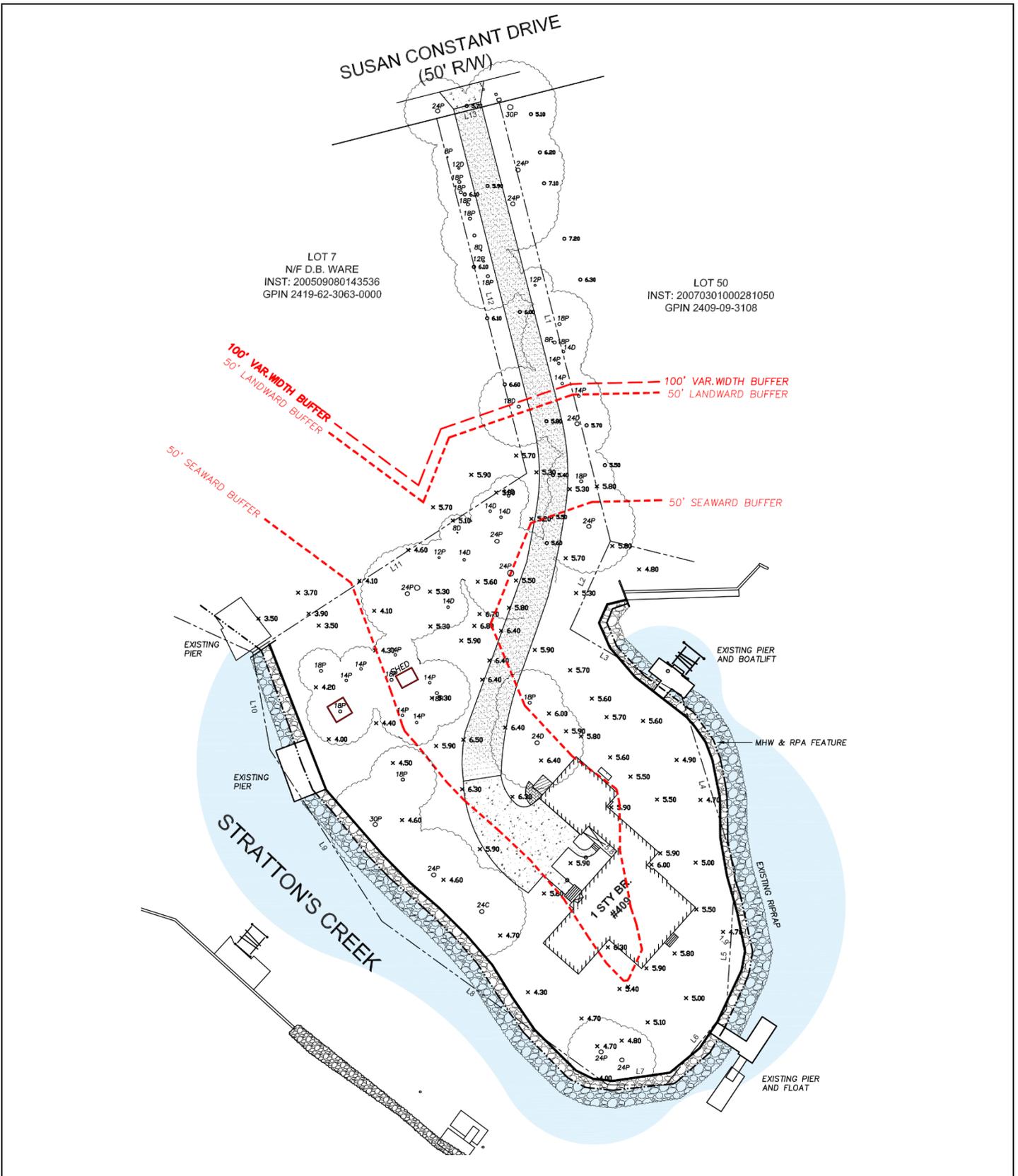
***NOTE: The applicant is responsible for removal of the Chesapeake Bay Preservation Area Variance Signs posted on the property. Said signs shall be removed within 5 days after the Board renders a final decision on the variance request. Failure to remove the signs within 5 days is a violation of Section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

Site Aerial

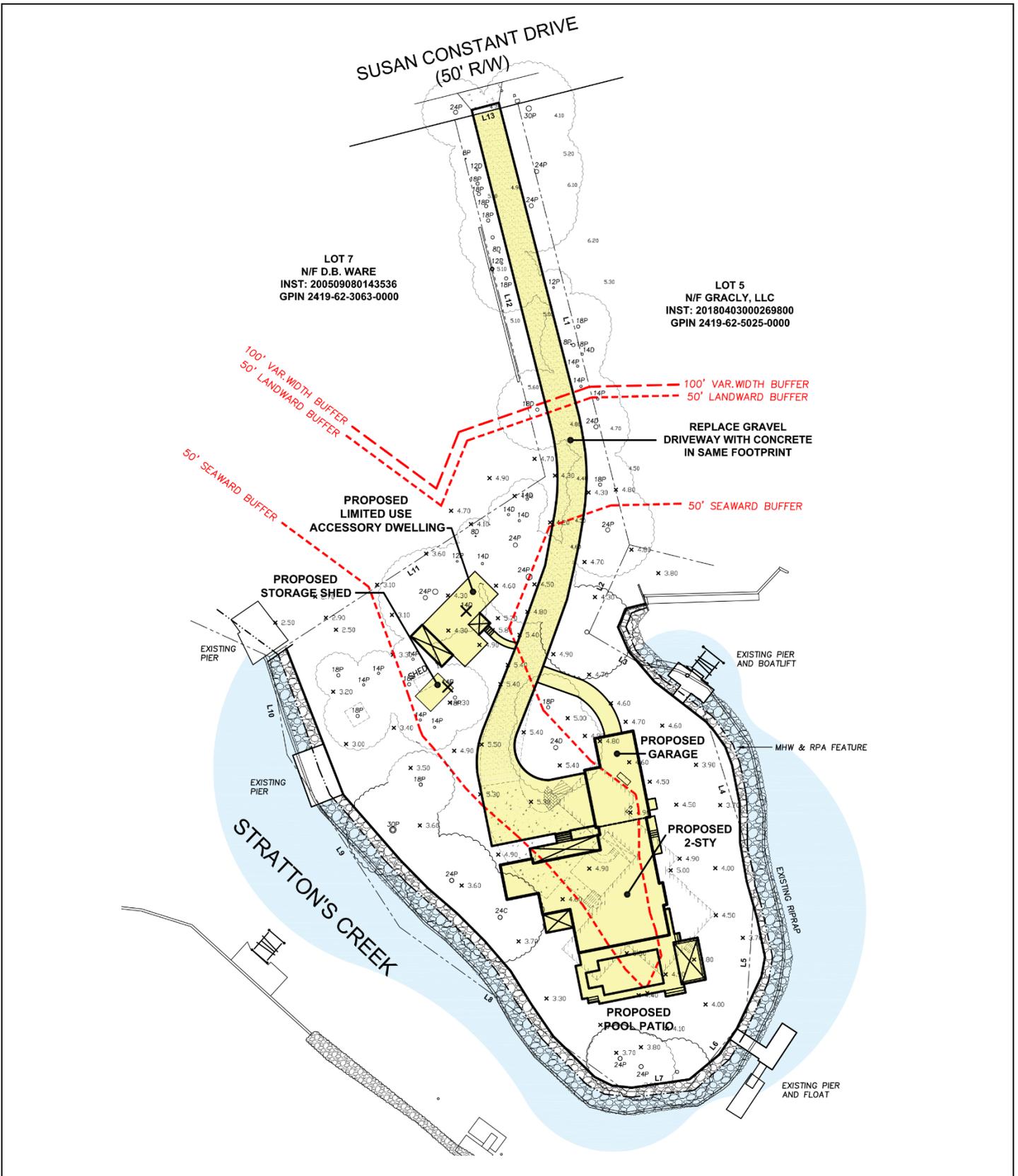




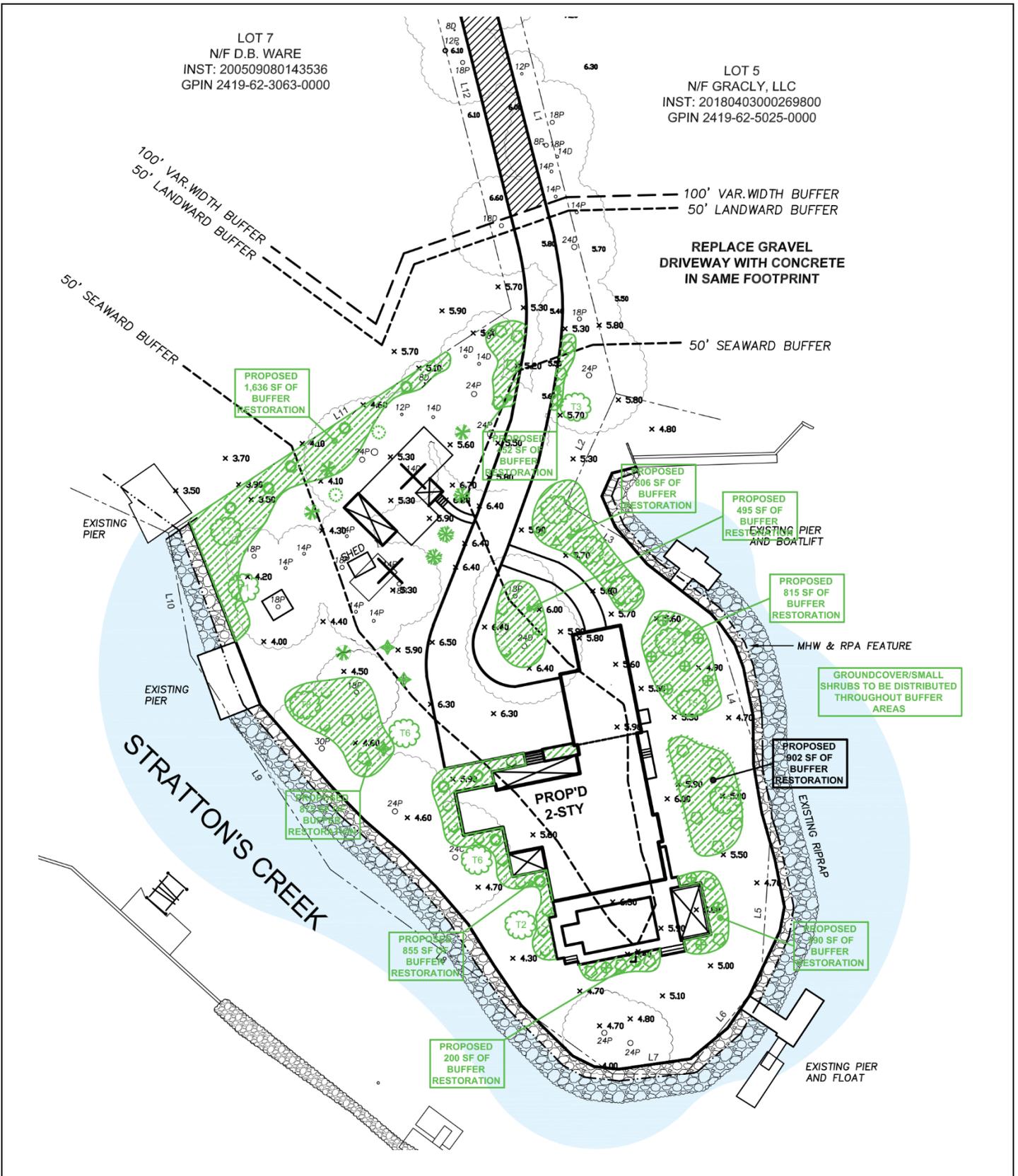
CBPA Exhibit – Existing Conditions



CBPA Exhibit – Proposed Improvements



CBPA Exhibit – Conceptual Buffer Mitigation Layout





APPLICANT'S NAME Jeremy and Natalie Biggie

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: Jeramy and Natalie Biggie
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: _____
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	Ginger Pickett
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Contractors	Project out for bid
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	WCI, Chesapeake Bay Site Solutions
<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)	Navy 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"/>	

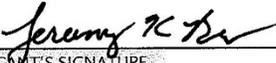
If yes, what is the name of the official or employee and what is the nature of the interest?



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.

	Jeremy K. and Natalie Biggie	Aug 25, 2018
APPLICANT'S SIGNATURE	PRINT NAME	DATE



Variance Request

Encroachment into the Resource Protection Area (RPA) buffer to redevelop and expand existing retaining walls and driveway, redevelop existing swimming pool and deck, and construct a permeable paver driveway.

Applicant’s Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Map Book 95, Page 5 & 5a
Recorded 01/18/1973

GPIN

1488-30-0987

SITE AREA

56,383 square feet or 1.294 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

21,749 square feet or 0.499 acres

EXISTING IMPERVIOUS COVER OF SITE

7,435 square feet or 34.2 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

8,588 square feet or 39.5 percent of site

Area of Redevelopment in RPA

3,032 square feet

Area of New Development in RPA

1,182.1 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

50-foot Landward Buffer

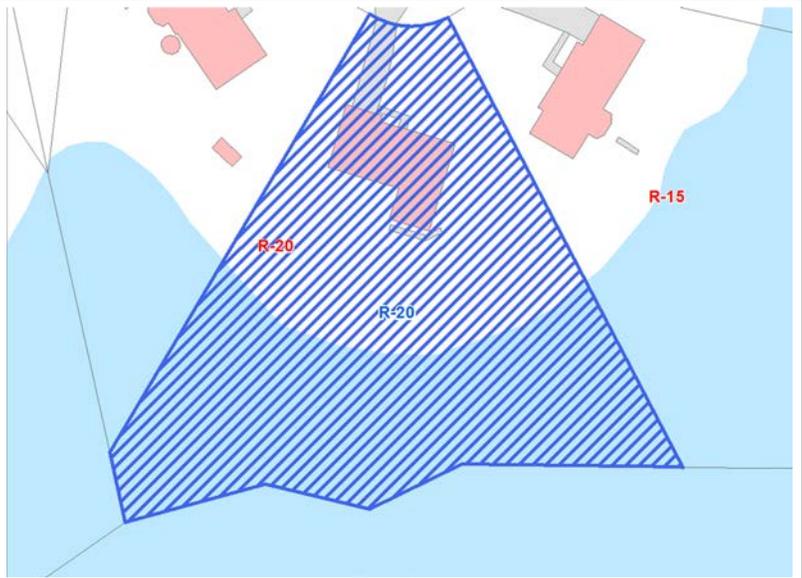
100-foot Variable Width Buffer

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Demolition Details

- Wood dock, pier and associated steps – Joint Permit Application (JPA) required
- Railroad ties retaining wall
- Slate paver walkway – redeveloped in same footprint
- Wood deck – redeveloped in same footprint
- Concrete pool deck and associated wood deck – redeveloped in existing footprint
- Concrete driveway and associated front walkway

Construction Details

- Concrete block retaining wall – 3 in total
- Concrete walk – in same footprint of existing slate walkway
- Wood deck – redeveloped in same footprint
- Concrete pool deck and associated wood deck – redeveloped in existing footprint
- Concrete driveway and associated wood deck
- Permeable paver driveway expansion

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)

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

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

Rappahanock Series (deep and poorly drained soils) located seaward of the toe of bank

Shoreline

Shoreline is in a natural state. Moderate maintenance should be performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove low lying tree branches and select canopy trees shading vegetative tidal marsh undergrowth.

Riparian Buffer

Moderately to sparsely wooded lot

- **Number of existing canopy trees requested for removal within the RPA:** 7
- **Evaluation of existing canopy tree removal request:** The applicant desires to remove 7 canopy trees associated with this variance request to improve the edge health of the existing tidal marsh along the toe of slope. Said trees are located along the 2-foot and 3-foot contours of the lot and seaward of the proposed limits of construction. The request consists of the following tree species – 2 Pine trees, 3 Holly trees, 1 Cherry tree and 1

Cedar tree. Staff is of the opinion that the request provides merit towards the holistic health of the riparian ecosystem inclusive of the existing 100-foot-wide +/- tidal marsh edge.

Stormwater Management Methodology

The applicant has stated in the Water Quality Impact Assessment (WQIA) for this variance request that rooftop disconnects with gravel downspout intercepts, grass channels, bioretention planting beds and permeable pavers will be provided as a best management practice for stormwater run-off mitigation. Staff is of the opinion that the proposed stormwater methodology for this residential lot stated by the applicant in the WQIA provides merit towards nonpoint source stormwater management.

Evaluation and Recommendation

Outboard of the proposed retaining walls, situated to manage the existing bank and minimal erosion occurring along the slope, the remaining portions of new impervious cover associated with this variance request occur within the upper reach of the 50-foot landward buffer and variable width buffer of the Resource Protection Area (RPA). Of the 1,182 square feet of new impervious cover proposed, approximately 1,054 square feet is allocated to the redevelopment and expansion of the existing driveway and associated walk with a permeable paver driveway primarily located at the front of the existing single-family residence. Of the 1,054 square feet, approximately 460 square feet of the new impervious cover is located within the variable width buffer of the RPA. Given that the location of much of the new impervious cover is within the variable width buffer, Staff is of the opinion that the variance request presented by the applicant is in line with reasonable redevelopment for a residential lot that initially developed in the early 1970's.

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 and supported by Staff for the Board's deliberation.

- 1) The applicant provides that *"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 have been granted, so the approval of this request will in no way confer any special privilege to the current owners."* Staff concurs and is of the opinion, as stated above, that the redevelopment of the lot is comparable in character to proposals to redevelop a lot that was constructed in the early 1970's and is specifically consistent with other redevelopment projects in the vicinity of the lot.
- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) Although the variance request increases the overall impervious cover of the lot, Staff is of the opinion that the variance is the minimum necessary to afford relief as presented given the limited extent of redevelopment occurring within the 50-foot seaward buffer and below the top of bank feature. These areas of the lot are the most sensitive portions of the riparian buffer and the applicant's intent is to stabilize and restore the environmental conditions and vegetation of said areas to enhance the health of the existing riparian ecosystem inclusive of the existing tidal marsh along the toe of slope.

- 4) *“The purpose and intent of the Ordinance is simply water quality, to prevent pollution of the Bay as a result of nonpoint source pollution. Most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality.”* Staff concurs with the applicant that the proposed improvements offer an enhancement to stormwater management, will improve water quality with a potential to reduce stormwater runoff velocities from upland improvements, and will promote the infiltration of rainwater with the proper selection of vegetation associated with the mitigation initiatives within the 100-foot RPA buffer (especially understory and shrub woody vegetation), all contributing towards preventing sediment and nutrient conveyance into the adjacent waterway.
- 5) *“Strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waterways.”* Staff concurs that the construction sequencing for installing the proposed improvements and diligent management of erosion and sediment control measures during all construction activities contributes significantly towards limiting additional non-point source pollution load from entering the waterway.

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: **1,182 square feet x 200 percent = 2,364 square feet.**

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

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

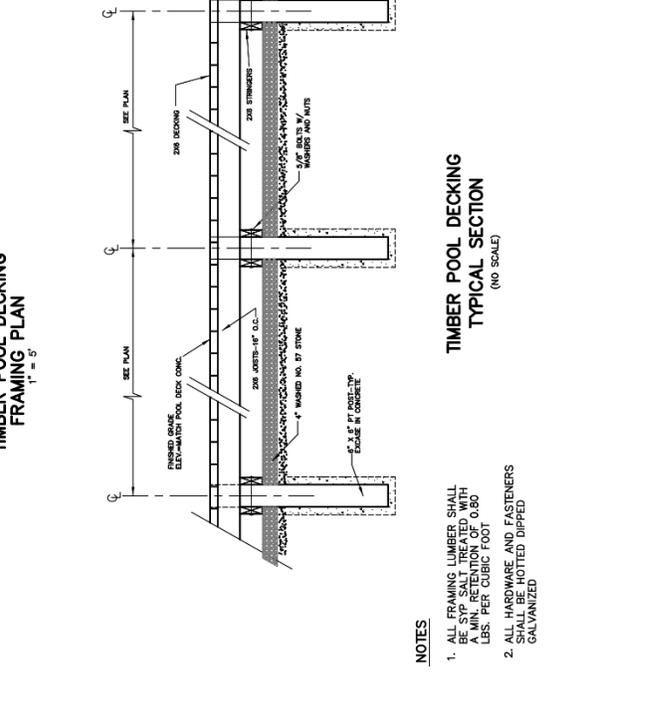
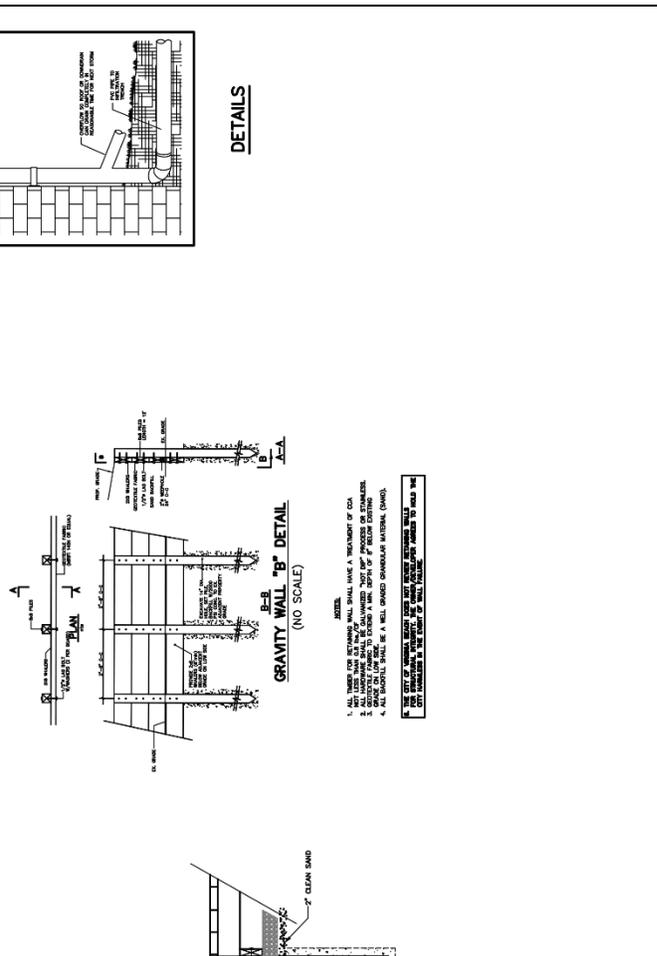
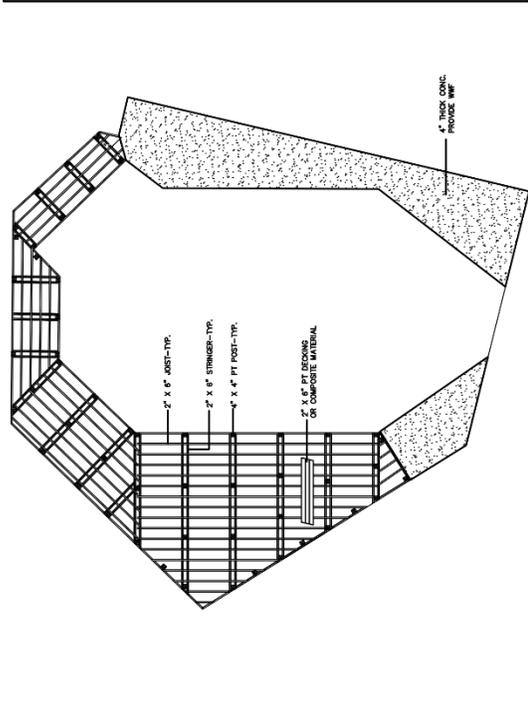
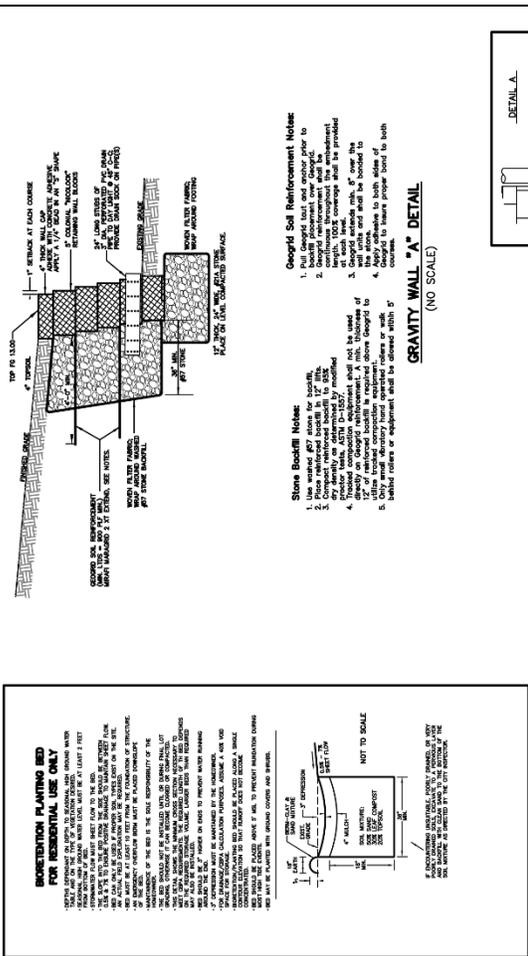
- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited 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) 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.
- 11) 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.
- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$270.87 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated May 4, 2020, prepared by Gallup Surveyors and Engineers, signed May 4, 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





NOTES

1. ALL FRAMING LUMBER SHALL HAVE A TREATMENT OF COA.
2. ALL FRAMING LUMBER SHALL BE UNADORNED "NOT DRY" PROCESS OF STANDARD.
3. ALL FRAMING LUMBER SHALL BE UNADORNED "NOT DRY" PROCESS OF STANDARD.
4. ALL FRAMING LUMBER SHALL BE UNADORNED "NOT DRY" PROCESS OF STANDARD.



APPLICANT'S NAME William G. Keller, Jr. & Maureen R. Keller

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: William G. Keller Jr
If an LLC, list all member's names: Maureen R. Keller

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Accounting and/or preparer of your tax return	Hantzmon Wiebel Charlottesville · VA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Architect / Landscape Architect / Land Planner	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contract Purchaser (if other than the Applicant) - identify purchaser and purchaser's service providers	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Any other pending or proposed purchaser of the subject property (identify purchaser(s) and purchaser's service providers)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Contractors	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	Gallup Surveyors
<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.

	William G. Keller Jr.	6-4-2020
APPLICANT'S SIGNATURE	PRINT NAME	DATE
	Maureen R Keller	6-4-2020

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



Applicant & Property Owner **Ashley H. Wade**
Address **3121 Basin Road**
Public Hearing **July 6, 2020**
City Council District **Lynnhaven**

Agenda Item

4

Variance Request

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

Applicant's Agent

Billy Garrington

Staff Planner

PJ Scully

Lot Recordation

Map Book 43, Page 3
Recorded 01/15/1957

GPIN

1499-07-4938

SITE AREA

12,276 square feet or 0.282 acres

SITE AREA OUTSIDE OF WATER/WETLANDS

12,043 square feet or 0.276 acres

EXISTING IMPERVIOUS COVER OF SITE

6,598 square feet or 54.8 percent of site

PROPOSED IMPERVIOUS COVER OF SITE

7,313 square feet or 60.7 percent of site

Area of Redevelopment in RPA

319 square feet

Area of New Development in RPA

719 square feet

Location of Proposed Impervious Cover

50-foot Seaward Buffer

AMOUNT OF LAND DISTURBANCE

Less than 2,500 square feet

Staff Recommendation

Approval as conditioned



Summary of Proposal

Construction Details

- Convert a portion of the existing wood deck to a screened porch
*(Board of Zoning Appeals Variance required)
- Swimming pool with associated pool deck

CBPA Ordinance Variance History

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

Environmental Conditions

Flood Zone

Zone AE, Base Flood Elevation (BFE): 7

Soil Type(s)

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

Shoreline

Shoreline is hardened with a segmented block wall with a rip rap toe

Riparian Buffer

Sparsely wooded lot

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

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. Although the land disturbance associated with the proposed impervious cover is less than 2,500 square feet, the applicant's Engineer of Record intends to provide stormwater management for the new impervious cover within the RPA. The intent is to integrate the stormwater management facilities within areas of buffer restoration.

Evaluation and Recommendation

The applicant's agent provides the following comments relative to the findings of the CBPA Ordinance as merit towards the variance request being in harmony with the purpose and intent of the CBPA Ordinance and believes that the construction of the proposed improvements, coupled with restoration initiatives of stormwater management and riparian buffer mitigation stated in the WQIA will aid with the redevelopment of this lot from not being of substantial detriment to water quality.

- 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 *“other homeowners similarly situated have been granted a variance to build pools in similar situations.”* While Staff acknowledges the statement provided by the applicant’s agent, Staff reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Basin Road with most residential structures being built during the 1960’s and the density of the area equal to or greater than 4 dwelling units per acre, Staff is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by Staff for this variance request. The recommended conditions require the applicant to meet additional standards for stormwater management and riparian buffer mitigation that would not be required if the residential lot was not located within the RPA Buffer of the Chesapeake Bay watershed.

- 2) Staff offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City’s CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *“it is a modest request for a small pool and pool deck.”* Staff acknowledges the statement of the applicant’s agent with regard to *“the minimum necessary to afford relief”* and provides the recommended condition, condition 10 that evaluates the overall impervious cover of the lot in relationship to the redevelopment of the neighborhood and is of the opinion that the limit provided to the overall impervious cover associated with the redevelopment of this lot is more harmonious with the findings of the CBPA Ordinance than that provided with the CBPA Exhibit.
- 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 entire property will be designed for stormwater management; the proposed stormwater mitigation of the existing runoff will improve water quality.”* Staff is of the opinion that the introduction of stormwater management with a request that disturbs less than 2,500 square feet of uplands, coupled with riparian buffer mitigation in an area with underlying soils that are moderately well drained offers merit towards providing water quality. Staff offers that the selection of plant material associated with the stormwater management facilities and riparian buffer mitigation should be evaluated off indigenous plants specific to the USDA Plant Hardiness Zone for this area, Zone 8a and selected based off valuable water uptake specific to the selected plant species.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load, *“the BMP’s will treat stormwater runoff before it enters Long Creek.”* Staff concurs and is of the opinion that the analysis and layout of the stormwater management facilities, if sequenced thought-out the lot offers nutrient reduction annually on a lot and associated project that would not require stormwater management as proposed.

In addition to the above comments provided by the applicant’s agent, Staff provides the following analysis of the subject lot and surrounding area for the Board’s consideration. The northern reach of Basin Road is a narrow manmade canal that creates a thin peninsula of land where the subject lot is located. The average width of the peninsula ranges from approximately 70 feet to 145 feet. Given the width of the peninsula, both the front and rear portions of all the residential lots along Basin Road are within the 50-foot seaward buffer of the RPA. Of the 12,043 square feet of the subject lot above water or wetlands, approximately 7,658 square feet are located within the 50-foot seaward buffer. Given the environmental constraints created by the peninsula and the overall impervious cover proposed with the variance request, Staff performed a conceptual analysis based off aerial photography to examine existing impervious cover of lots in the vicinity for comparison. It was determined that the average existing impervious cover for properties in the vicinity range from approximately 42 percent to 58 percent. The

proposal results in an impervious cover of 60 percent, just slightly above the range. Recommended condition 10 below is designed to further limit the small increase in impervious surfaces beyond what currently exists on this site.

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 Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
- 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: **507 square feet x 200 percent = 1,014 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs, and 9 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) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.**
- 6) 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 5 feet from improvements.

- 7) Construction limits along the seaward portion of the project shall lie a maximum of 5 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.**
- 8) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 9) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 10) The maximum impervious cover of the parcel shall not exceed 7,105 square feet.
- 11) Stormwater treatment shall be provided equal to 200 percent of the proposed new impervious cover within the RPA – treatment of 1,014 square feet of impervious cover.
- 12) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 13) The proposed pool deck 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.
- 14) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 15) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$116.18 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 16) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated June 16, 2020, prepared by Clark Design Group, LLC. 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.

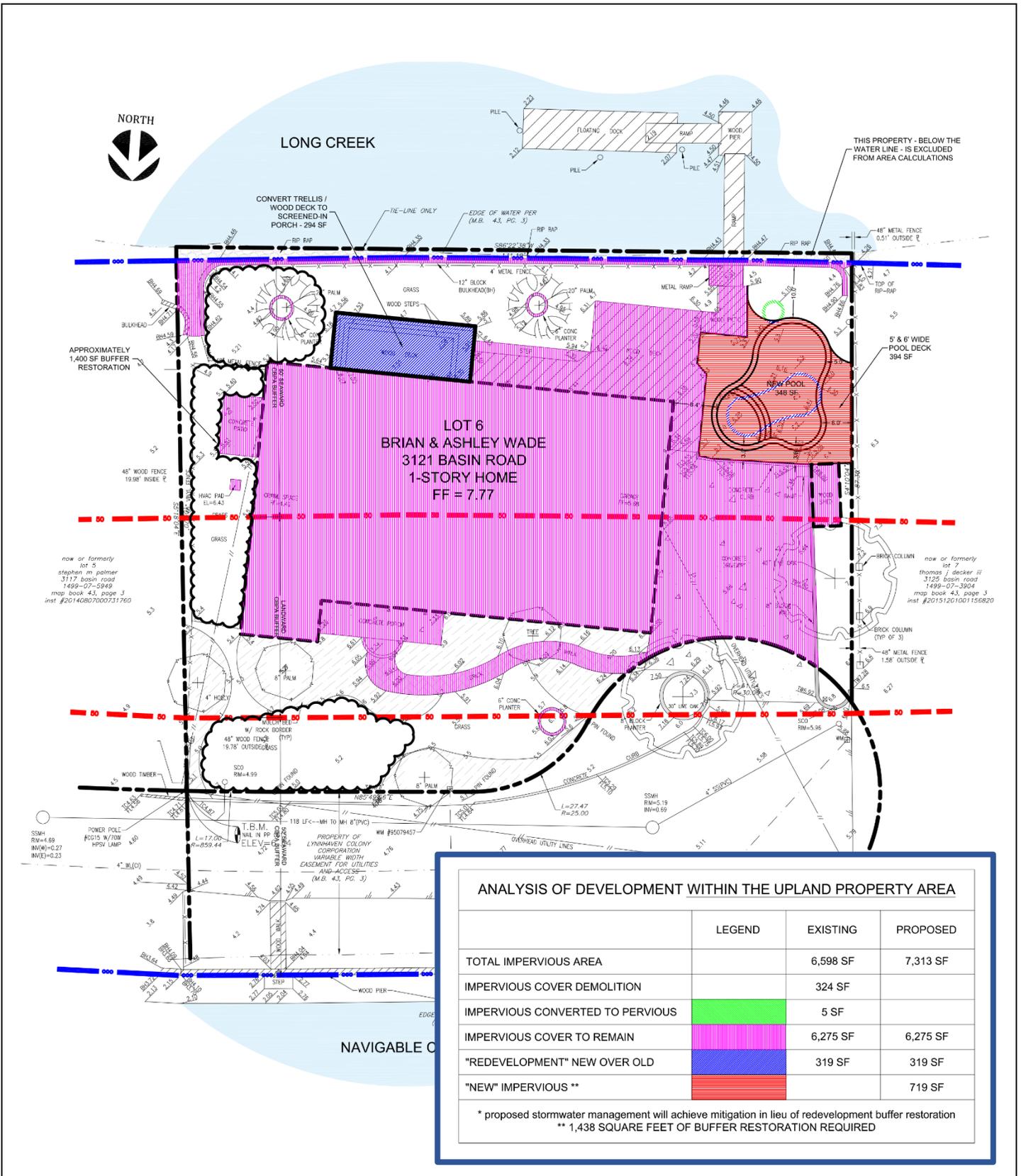
****** NOTE: The amount to be paid into the Lynnhaven River Oyster Heritage Fund may change based on the square footage of impervious cover shown on the final submitted site plan.

*******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 – Color Analysis





APPLICANT'S NAME Ashley & Brian Wade

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: Ashley & Brian Wade
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 and²

SECTION 2 / PROPERTY OWNER DISCLOSURE

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

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

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

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

- (B)** List the businesses that have a parent-subsiary 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.

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	Stewart & Company
<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	CLARK BUILDING GROUP, INC.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineers / Surveyors/ Agents	CLARK DESIGN GROUP, LLC
<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)	CrossCountry Mortgage, Inc
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legal Services	GPC, Inc Billy Garrington
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Real Estate Brokers / Agents/Realtors for current and anticipated future sales of the subject property	

SECTION 4. KNOWN INTEREST BY PUBLIC OFFICIAL OR EMPLOYEE

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

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



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.

	ASHLEY WADE	6/17/2020
APPLICANT'S SIGNATURE	PRINT NAME	DATE

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

Property Owner's Agent

Self-represented

Staff Planner

PJ Scully

Lot Recordation

Deed Book 2724, Page 370-371
 Recorded 04/14/1988

Lot Description

Lot B, Part of Property of Lydia B. Roper Estate,
 2745 Spigel Drive

GPIN

1498-42-6749

Current Property Owner

Lance P. & Cheri M. Shores

DESCRIPTION OF NONCOMPLIANCE

Unauthorized Improvements

- Unauthorized land disturbance, removal of vegetation to be preserved and placement of fill material on the lot without approval.

Location of Unauthorized Improvements

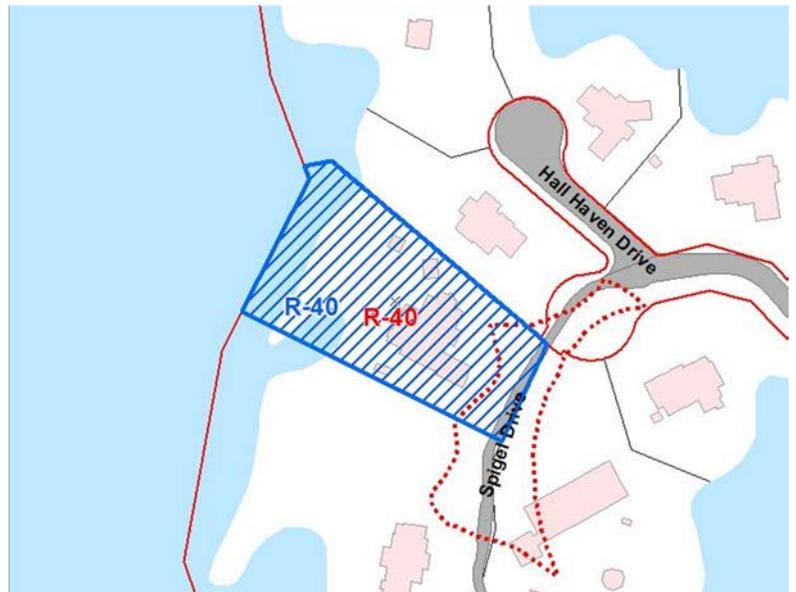
50-Seaward Buffer
 50-Landward Buffer

CBPA Ordinance

- The unauthorized land disturbance constitutes a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.

AMOUNT OF LAND DISTURBANCE

Greater than 2,500 square feet



CBPA Ordinance Variance History

March 25, 2019 a Chesapeake Bay Preservation Area (CBPA) Board variance was granted for the removal of an existing pool and patio and to construct a pool, patio and retaining wall and an addition to primary structure 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. Said areas of land disturbance shall be quantified on revised site plan submittals.
3. The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
5. Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
6. Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
9. A site plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
10. Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
11. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
12. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,876 square feet x 200 percent = 3,752 square feet.** As a component of the required restoration, areas of

denuded marsh and created marsh – 1,588 square feet shall be sprigged and the suitable areas sprigged may be counted towards the vegetative restoration requirements.

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

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

13. *No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.*
14. ***As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$429.91 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.*
15. *The conditions and approval associated with this variance are based on the exhibit plan dated January 31, 2019, prepared by Gallup Surveyors and Engineers, signed March 7, 2019 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.*
16. *All patio and walkways shall be constructed of a permeable pavement system.*

History of Noncompliance

To Staff's knowledge, Lance P. & Cheri M. Shores have no known history of noncompliance with the Chesapeake Bay Preservation Area Ordinance beyond the aforementioned description of noncompliance.

Chronology of Noncompliant Event

- | | |
|----------------|---|
| March 13, 2020 | Staff received an email inquiry from the Virginia Marine Resource Commission (VMRC) regarding an anonymous complaint that <i>"a large amount of sand has been dumped in the tidal wetlands on the landward side of the rock sill / breakwater."</i> |
| March 18, 2020 | On or about March 18, 2020 CBPA Staff visited the lot to review the upland impacts to the CBPA Resource Protection Area (RPA) buffer. |

March 27, 2020

CBPA Staff sent a Notice to Comply email to the property owner stating the following.

On March 26, 2020 Staff visited the property located at 2745 Spigel Drive to investigate a citizen's complaint. At that time, it was observed that a matter of noncompliance to the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance had occurred, specifically the unauthorized land disturbance within the Resource Protection Area (RPA) 100-foot buffer, a direct deviation from the conditions of the March 25, 2019 CBPA Variance and the July 11, 2019 approved site plan. In addition, the Virginia Marine Resource Commission (VMRC) and the City of Virginia Beach Wetlands Board's Staff have indicated the site is in non-compliance with the Living Shoreline Group 2 General Permit. Unauthorized fill has been placed in jurisdictional wetlands landward of the proposed Living Shoreline and is a violation of the Wetland Zoning Ordinance.

Accordingly, this correspondence shall serve as written notice that you have thirty (30) days from the date of this correspondence to bring the property into compliance with the following items of the approved site plan.

- a. Install silt fence as delineated on sheet C03 of C04. All construction activity shall always remain within the delineated Limits of Construction. The existing silt fence currently installed on the site shall also remain in place until vegetative cover is established on the site and approved by Staff.*
- b. Remove all unauthorized fill material outboard of the delineated Limits of Construction associated with the approved site plan and dispose of in a lawful manner. All area outboard of the Limits of Construction, associated with the approved site plan for the upland improvements shall be reestablished to existing grade elevations as shown on Sheet C04 of C04. Said approved site plan is attached for your review. This activity and disposal of material in a lawful manner is separate from the active Shoreline General Permit.*
- c. All reestablished grade elevations outboard of the Limits of Construction shall be verified by the Engineer of Record and stabilized with vegetative cover.*

Jurisdictional vegetated wetlands have been filled landward of the proposed Living Shoreline. The following corrective measures are required to bring the site into compliance with the Living Shoreline General Permit:

- a. Immediately install a silt fence on the landward side of the previously constructed living shoreline (planted sandy area) to prevent the further deposition of upland sand into the tidal wetlands and river.*
- b. Have the previously constructed living shoreline surveyed and raised or lowered as necessary to match the elevations per the previously issued permit. Remove all unauthorized fill landward of the previously constructed living shoreline restoring the wetlands area that was to remain undisturbed, to its previous contours.*
- c. Re-sprig the living shoreline area and any denuded wetlands areas landward of the Living Shoreline with *spartina alterniflora* on 12" centers. **NOTE: IMMEDIATE** removal of the unauthorized fill landward of the Living Shoreline **may** allow the previous diverse community of wetlands vegetation to reestablish.*

The above corrective measures do not negate the potential for further legal action through the CBPA Board or Wetlands Board regarding the unauthorized activities that have occurred outboard of the conditions of the CBPA Variance and wetland impacts outboard the permitted criteria associated with the Living Shoreline General Permit.

May 9, 2020

CBPA Staff sent an email to the property owner regarding the mitigation requirements for the unauthorized tree removal in the RPA buffer stating that, "Fourteen (14) trees were removed without authorization and in noncompliance with the approved conditions of the Chesapeake Bay Preservation Area (CBPA) Variance. Where areas to be preserved are encroached upon, replacement of existing trees and other vegetation shall be achieved at a ratio of three (3) trees planted to one (1) tree greater than six (6) inches diameter at breast height removed, or by such other measures as in the judgment of the City Manager will adequately compensate for the removal of such trees and other vegetation. Replacement trees shall be a minimum two (2) to

two and one-half (2½) inches caliper at the time of planting [City Code, Appendix F, Sec 107 (A)(2)(h)].

Please be advised the above corrective measures do not negate the potential for further legal action through the CBPA Board or Wetlands Board regarding the unauthorized activities that have occurred outboard of the conditions of the CBPA Variance and wetland impacts outboard the permitted criteria associated with the Living Shoreline General Permit.”

The property owner responded to Staff regarding the preparation of a landscape plan to address the noncompliance in conformity with the conditions of the 2019 CBPA Variance.

- June 5, 2020 CBPA Staff sent a Notice to Comply Letter to the property owners at 2745 Spigel Drive scheduled to heard at a CBPA Board Public Hearing.
- June 12, 2020 CBPA Staff met with the property owners and landscape contractor to discuss the requirements of the CBPA Variance to develop a mitigation plan.
- June 18, 2020 Staff developed a Corrective Measures Compliance Outline to address conditions 7 and 12 of the 2019 CBPA Variance and a comparative analysis of the plant list provided by the landscape contractor. Staff quantified the plant list provided and compared the provided canopy trees and understory trees to the requirements to comply with the 2019 CBPA Variance. Staff developed a conceptual plan to document the applicability of the compliance requirements for the property owner and landscape contractor to use as guidance for the development of a mitigation plan.
- June 19, 2020 Staff met with the property owner and landscape contractor to review the Corrective Measures Compliance Outline developed by Staff to address conditions 7 and 12 of the 2019 CBPA Variance.

Evaluation and Recommendation

Relative Degree of Deviation

The subject activity of noncompliance, unauthorized land disturbance, removal of vegetation to be preserved, and placement of fill material within the RPA buffer on the lot deviates from the March 25, 2019 CBPA Variance, specifically conditions 2, 5, 7 and 13.

2. *Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.*
5. *Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.***
7. *For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.*
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*

The unauthorized activities were performed without Staff and CBPA Board review or approval. Land disturbance associated with the unauthorized activity is greater than 2,500 square feet. To address the above conditions of the March 2019 CBPA Variance, the applicant has performed or is in the process of performing the following corrective actions.

- Corrected the activities or access occurring outboard of the delineated limits of construction to comply with condition 2 and 5 of the March 2019 CBPA Variance.
- Provided a mitigation plan for the unauthorized tree removal in the RPA buffer outboard of the limits of construction. Mitigation addresses the required buffer restoration quantities conditioned by the March 2019 CBPA Variance and provides an additional 32 canopy tree and 32 understory trees for compliance towards condition 7 of the March 2019 CBPA Variance.
- The property owner's contractor has removed the unauthorized fill material on the lot to comply with condition 13 of the March 2019 CBPA Variance. The property owner had the Engineer of Record stake the lot with grade elevations to comply. Portions of the unauthorized fill material included the placement of sand material associated with the construction of the living shoreline.

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 wetland of the Lynnhaven River. Staff is of the opinion that the unauthorized removal of mature canopy trees from the lot provides a consequential impact to the overall environmental quality of the lot and adjacent waterway as the trees are highly valuable to the intrinsic water quality and their removal disrupts the ecological and biological processes that are performed by a functioning riparian buffer ecosystem.

Recommendation

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 high.

Site Aerial



March 25, 2019 CBPA Variance – CBPA Exhibit

