



# Board of Zoning Appeals Staff Report

**Agenda Title:** Variance Application

**Agenda Date:** April, 14<sup>th</sup>, 2026

**Prepared by:** Jack Steinmayer, Zoning Compliance Officer

**Reviewed By:** Katie Nunez, Director of Planning

**Date:** March 19<sup>th</sup>, 2026

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**Applicant:** Brad and Kimberly Goldstein      **Type Of Application:** Exception to the CBPA

**Site Address:** 165 Sunset Boulevard      **Specific Request:** Allow for the rear patio and walking path from the house to the patio (totaling 150 sq. ft) to encroach into the 50-foot landward portion of the 100-foot Resource Protection Area.

**Tax Map:** 83A1-1-84      **Zoning:** PUD-R2

**Lot Size:** 8712 sq. ft.      **Current Zoning:** PUD-R2

**Date Received:** March 13<sup>th</sup>, 2026

**Date Deemed Complete:** March 13<sup>th</sup>, 2026

**Legal Deadline (90 Days from Complete Application – Directory, not Mandatory):** June 11<sup>th</sup>, 2026

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**Legal Ad**

- A. Application from Brad and Kimberly Goldstein, for a variance from the Accawmacke Plantation Planned Unit Development Section 9.17 and Town Code Chapter 32, Article VII, Section 32-186 (Development Criteria for Resource Protection Areas) & Section 32-189 (C), to allow for a patio to encroach into the Resource Protection Area (RPA).

**Narrative of Proposal**

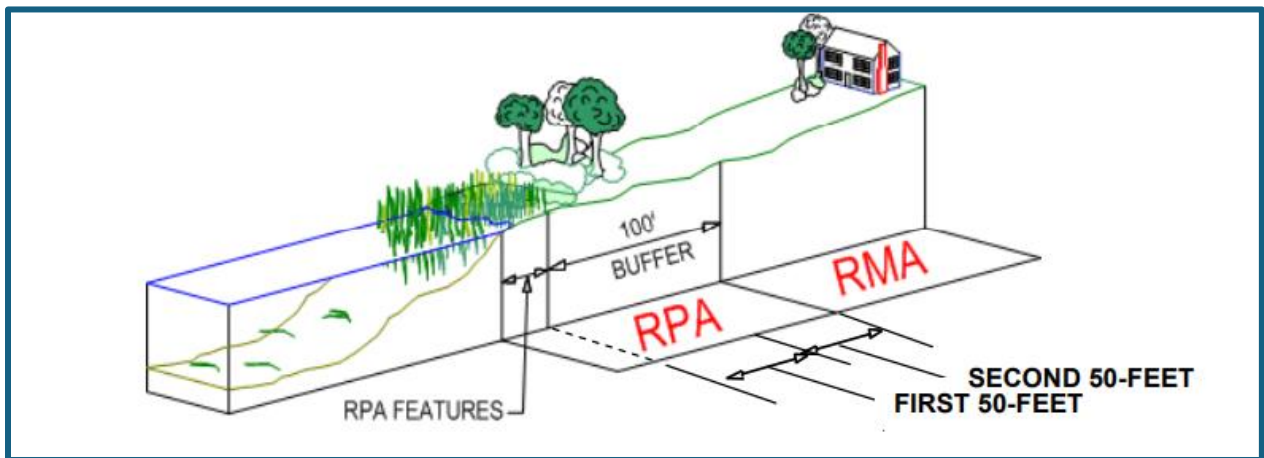
In 2025, the Department of Planning and Zoning received notice of a possible zoning violation at 165 Sunset Boulevard. The alleged violation involved the unauthorized construction of a patio within the 50-foot landward part of the Resource Protection Area



**Aerial Map**



A key part of the Chesapeake Bay Preservation Act is the requirement for a 100-foot vegetated buffer measured from the water's edge, wetlands, or stream. This buffer is called the Resource Protection Area (RPA). Within the RPA, the 100-foot buffer is divided into the Seaward 50 feet, closest to the water, and the Landward 50 feet, closest to the structure. Through an exception process, some development can occur in the landward 50 feet of the RPA, but never in the Seaward 50 feet.



**Background of the Chesapeake Bay Act**

It is important to understand the history and requirements of the Chesapeake Bay Preservation Act as they relate to Cape Charles and the state's land-use development rules. The goal of the Act is to *protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by reducing the impact of human activities and enforcing the Act, which defines and safeguards certain lands called Chesapeake Bay Preservation*

*Areas. Improper use or development of these areas can significantly degrade water quality in the Chesapeake Bay and its tributaries.*

The Code of Virginia requires each locality to adopt a subdivision ordinance, which the Town of Cape Charles completed on January 11th, 1977. However, adopting a zoning ordinance is a permissive legislative action rather than a statutory obligation. If a locality chooses to adopt a Zoning Ordinance, the Code of Virginia outlines the necessary components and standards that must be followed.

However, the Town of Cape Charles did not consider adopting a Zoning Ordinance until after the state enacted the Chesapeake Bay Preservation Act (CBPA) in 1989, codified in Code of Virginia Sections 10.1-2100 to 10.1-2115. Under this law, each locality within the CBPA watershed was given a timeline to progressively adopt compliance measures, including the CBPA Overlay District and Map, with specific ordinance requirements for establishing the Resource Protection Areas (RPAs), Resource Management Areas (RMAs), and Intensely Developed Areas (IDAs) of the CBPA.

On September 11th, 1990, the Town of Cape Charles adopted the first required component—an overlay district with a map and a necessary Zoning Ordinance component describing the CBPA. The Town then adopted an Erosion and Sediment Control (E & S) Ordinance on June 11th, 1991, and finally a full Zoning Ordinance on July 14th, 1992. In the early 1990s, the Town annexed land from the County, which led to the development and adoption of the Planned Unit Development (PUD) Ordinance, also known as the Accawmacke Plantation Planned Unit Development Ordinance, on February 9th, 1993.

The development of the PUD happened at the same time as the Town adopted the CBPA (Town Code Section 32, Article VII), the E&S Ordinance, and the Town Zoning Ordinance. As a result, the PUD initially did not fully meet or align with the state requirements of the CBPA and the related provisions of the Town Zoning Ordinance. To fix these issues, the Town and Bay Creek engaged in a multi-year process with the Virginia oversight agency for the CBPA – the Chesapeake Bay Local Assistance Department (CBLAD). Through this cooperative effort, the Town made necessary updates to the Comprehensive Plan and received the first of several recognitions of its progress in meeting CBPA requirements on February 26th, 1999.

**Ordinance Requirements of the Chesapeake Bay Preservation Act Overlay District**  
**Sec. 32-186. - Development criteria for resource protection areas.**

*(a) Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment.*

(1) A new or expanded water dependent facility may be allowed, provided that the following criteria are met:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in [section 32-190](#) of this article;
- c. Any non-water dependent component is located outside of the RPA; and
- d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

(2) Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under [section 32-189](#) and erosion and sediment control requirements outlined under [section 32-189](#) of this article.

(b) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs and for any development within RMAs when required by the zoning administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of [section 32-190](#) of this article.

### **Town Code Chapter 32, Article VII, Section 32-189 - Performance Standards**

- A. *Purpose and Intent.* The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces the potential for stormwater runoff. The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve a 40% reduction in nonpoint source pollution from agricultural uses.
- B. *General Performance Standards for Development and Redevelopment*
  1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. A. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.

2. *Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.*
  - a. *Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.*
  - b. *Before clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drop line 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.*
3. *Land development shall minimize impervious cover to promote infiltration of storm water into the ground consistent with the proposed use or development.*
  - a. *Grid and modular pavements may be used for any required parking area, alley, or other low-traffic driveway unless otherwise approved by the Zoning Administrator.*
4. *Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Cape Charles' Erosion and Sediment Control Ordinance.*
5. *All development and redevelopment exceeding 2,500 sq. ft. of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.*
6. *All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years in accordance with the provisions of the State Health Code.*
7. *A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the State Health Code. This requirement shall not apply to any lot or parcel recorded before October 1989 if such lot or parcel is insufficient in capacity to accommodate a reserve sewage disposal site as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the State Water Control Board until the structure is served by a public sewer.*
8. *For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:*
  - a. *For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.*
  - b. *For sites within the IDAs and other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least 10%. The Zoning*

*Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied.*

- i. In no case may the post-development non-source pollution runoff load exceed the pre-development load.*
    - ii. Runoff pollution loads must have been calculated, and the BMPs selected for the expressed purpose of controlling non-point source pollution.*
    - iii. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this article.*
  - c. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.*
- 9. Before initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained, and evidence of such shall be submitted to the Zoning Administrator in accordance with section 32-191 of this article.*
- 10. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices about soil erosion and sediment control, nutrient management, and pesticide management, and, where necessary, result in a plan outlining additional practices needed to ensure that water quality protection is accomplished in a manner consistent with the article.*

### **C. Buffer Area Requirements**

*To minimize the adverse effects of human activities on other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.*

*(c). 2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded before October 1<sup>st</sup>, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.12, Plan of Development Process, and the following criteria:*

- a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
- b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
- c. The encroachment may not extend into the seaward 50-feet of the buffer area.

**Ordinance Requirements to be Considered when Evaluating an Exception Application under the Chesapeake Bay Preservation Act Overlay Ordinance:**

The Board of Zoning Appeals shall review the request for an exception pursuant to Section 32-186 & 32-189 (C) and the minor water quality impact assessment provided by the applicant. The Board *may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the board of zoning appeals finds favorably to meet all of the conditions and requirements contained in Section 32-194 (C) (1 through 5) (full section of ordinance below:*

### **Section 32-194 Exceptions**

- A. *A request for an exception to the requirements of 32-186 and 32-189 (c) of this overlay district shall be made in writing to the board of zoning appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment that complies with the provisions of section 32-190.*
- B. *The Town of Cape Charles shall notify the affected public of any such exception requests. It shall consider these requests in a public hearing in accordance with 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.*
- C. *The board of zoning appeals shall review the request for an exception and the water quality impact assessment. It may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the board of zoning appeals finds:*
  - 1) *Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in this overlay district;*
  - 2) *The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;*
  - 3) *The exception request is the minimum necessary to afford relief;*
  - 4) *The exception request will be consistent with the purpose and intent of the overlay district and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and,*
  - 5) *Reasonable and appropriate conditionals are imposed, which will prevent the exception request from causing a degradation of water quality.*
- D. *If the board of zoning appeals cannot make the required findings or refuses to grant the exception, the board of zoning appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.*
- E. *A request for an exception to the requirements of the provisions of this article other than those in sections 32-186 and 32-189 (c) shall be made in writing by the zoning administrator. The zoning administrator may grant these exceptions provided that:*
  - 1) *Exceptions to the requirements are minimum necessary to afford relief; and reasonable and appropriate conditions are placed upon any exception that is granted as necessary so that the purpose and intent of this article is preserved.*
  - 2) *Exceptions to 32-189 (b) may be provided that the findings noted in section 32-194 (c) are made.*

### **Discussion Points**

- a. Does the Board feel that allowing the exception for 165 Sunset Boulevard, as requested, is reasonable? If yes, why? If not, why?
- b. Has the applicant demonstrated that the buffer plantings will provide an equivalent – or greater level – of water quality protection compared to what would have existed had the RPA buffer remained undisturbed?
- c. Are there other mitigation efforts that can be included on this property to increase the impact of runoff reduction impact on the land and into the Bay?

### **Staff Recommendation**

Staff acknowledges that the unauthorized construction of a patio within the 50-foot landward RPA buffer constitutes a violation of the applicable zoning and environmental standards; however, after careful consideration of the totality of circumstances, staff has found several factors that warrant a favorable recommendation.

First, it is important to note that the original dwelling was built right up to the maximum extent of the 50-foot landward RPA buffer, leaving no space for future improvements or expansion in the rear yard. The staff's position is that the new owner may not have had sufficient knowledge or understanding about the CBPA and the RPA requirement, and the specific location of said on the property, and may not have had a practical or reasonable way to determine the exact location of the RPA boundary line when constructing the patio. Considering how close the dwelling is to the buffer boundary; it is entirely plausible that the applicants were unaware that the patio would extend into the protected area.

The RPA is determined on a lot-by-lot basis at the time development occurs. The development of the various homes on the Bay-facing side of Sunset Boulevard has spanned 20 years. Therefore, the actual RPA buffer of 100 feet varies by lot, with some lots having a larger "yard" that is outside the RPA buffer, where additional house amenities such as a patio can be placed. This particular lot was one of the more recently constructed homes, and the RPA measurements and its placement on the lot reflect the coastal erosion that has occurred in this north beach area of the Bay Creek development, and the application of the RPA extends further into the lot.

Furthermore, staff notes that Mrs. Goldstein has demonstrated a good-faith willingness to cooperate with the Department of Planning and Zoning since receiving the Notice of Violation. Rather than pursuing a formal appeal, she has proactively engaged with staff to explore remedies. She has expressed a genuine commitment to achieve compliance in a manner that upholds the intent and purpose of the Chesapeake Bay Preservation Act.

The 400 plantings identified in the supplemented Minor Water Quality Impact Assessment will improve water filtration on the lot and more than adequately offset the impervious coverage caused by the patio and walkway within the RPA buffer. The applicant even expresses willingness to continue planting along the dune to further enhance water filtration. They then suggest various grasses and plants for consideration: American Beach Grass, Saltmeadow Cordgrass, Sea Oats, Bitter Seabeach Grass, Seaside Litter Bluestream, Wax Myrtle, Groundsel Bush, Switchgrass, March Hibiscus, and Beach Plum. However, even with this willingness, **staff recommends that a condition be placed on the approval of this exception application for the applicant to install an additional 100 native plantings of their choosing to fully offset the lot's total impervious coverage.**

For the reasons set forth herein, the staff finds that, given the circumstances of the case, granting a variance with certain conditions would represent a reasonable and equitable resolution for all parties.

**Proposed Motion for Consideration**

Staff will assist in developing any motion by the Board of Zoning Appeals after the public hearing and thorough discussion and review of public comments, the application, and the staff report. If approved, staff recommends that a condition be placed on the approval, requiring the applicant to install an additional 100 native plantings of their choosing to fully offset the lot's total impervious coverage, as outlined above.

**Attachments:**

Attachment 1: Application

Attachment 2: Site Plan

Attachment 3: Minor Water Quality Impact Assessment

Attachment 4: Chesapeake Bay Preservation Act Overlay Map

Attachment 5: Cape Charles Resolution for 1999-04-12

Attachment 6: Cape Charles Zoning Ordinance Article VII – Chesapeake Bay Preservation Act Overlay

**Reference Materials**

Exhibit A: VA DCR RPA Permitted Development Activities Guidance Sheet

Exhibit B: VA DCR Exceptions Guidance Sheet

Exhibit C: VA DCR RPA Buffer Area Encroachments Guidance Sheet