



FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 4/28/2021

EXCEPTION REVIEW COMMITTEE: 10/6/2021

V I R G I N I A

September 22, 2021

LAND DEVELOPMENT SERVICES (LDS)
SITE DEVELOPMENT AND INSPECTIONS DIVISION (SDID)

STAFF REPORT

RESOURCE PROTECTION AREA (RPA)
ENCROACHMENT EXCEPTION #5255-WRPA-003-1 &
WATER QUALITY IMPACT ASSESSMENT (WQIA) #5255-WQ-001-3

APPLICANT NAME: Mr. David Tortolero

PROJECT LOCATION: 9407 Wooded Glen Avenue

LEGAL ADDRESS: Wooded Glen Lot 4, Section 1

TAX MAP REFERENCE: 088-1-20-0004

DISTRICT: Springfield District

DATE APPLICATION ACCEPTED: June 24, 2021

WATERSHED NAME: Difficult Run

CBPO PROVISION: Section 118-6-8. Exceptions for Accessory Structures

- 100-YEAR FLOODPLAIN PRESENT
- PROPOSES ENCROACHMENT INTO THE SEAWARD 50 FEET

AREA OF REQUESTED RPA ENCROACHMENT (DISTURBED AREA): 2,713 SQ FT

LOT SIZE: 0.34 Ac; 14,925 SQ FT; 57 % LOT RPA

LOT RECORDATION DATE: JUNE 28, 1985; DEED BOOK 6187 PAGES 691-717

- PRIOR TO NOVEMBER 18, 2003
- AFTER NOVEMBER 18, 2003
- BETWEEN JULY 1, 1993 AND NOVEMBER 18, 2003
- PRIOR TO JULY 1, 1993
- PRIOR TO OCTOBER 1, 1989

STAFF RECOMMENDATION:

- APPROVAL
- DENIAL
- APPROVAL WITH CONDITIONS

DESCRIPTION OF EXCEPTION REQUEST:

Wooded Glen Lot 4 was created with recordation of a Record Plat (Deed Book 6187, Page 691) in 1985. The exception request was submitted under Article 6, Section 118-6-8(a). The proposal does not qualify as redevelopment or for exception as loss of buildable area because there is an increase in impervious surfaces for the accessory structure.

The request is to replace and expand a concrete pool deck as follows:

- 2,713 square feet (sq. ft.) of disturbance in the RPA;
- increase in impervious area of 256 sq. ft. in the RPA; and
- small area of new impervious surface in the seaward 50 ft. of the RPA (approximately 30 sq. ft.).

See the water quality impact assessment (**Attachment B**), Applicant's Application Package, Page 4, Section 118-6-8(a)) for the impervious area tabulation. Please note that the WQIA was deemed complete based on the Chesapeake Bay Preservation Ordinance (CBPO) Chapter 118 planting density in effect before July 1, 2021. The mitigation is tabulated based on a requirement of 100 overstory trees, 200 understory trees, and 1,089 shrubs per acres of disturbance in the RPA.

STAFF RECOMMENDATIONS:

Staff recommends approval of the RPA encroachment exception request #5255-WRPA-003-1 and the Water Quality Impact Assessment #5255-WQ-001-3 with proposed development conditions provided in **Attachment A** (dated September 15, 2021).

It is not staff's intent to recommend that the Exception Review Committee (ERC), in adopting any conditions, relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

The content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the ERC. For further information, please contact Site Development and Inspections Division (SDID), Land Development Services, 12055 Government Center Parkway, Suite 535, Fairfax, Virginia 22035-5505, 703-324-1720.

REQUIRED FINDINGS:

CBPO Section	Required Finding	Department of Environmental Quality (DEQ) Guidance¹	Staff Comment
118-6-6.a	The requested exception to the criteria is the minimum necessary to afford relief;	<p>Consider the extent that the applicant wishes to use the property:</p> <ul style="list-style-type: none"> • size of the structure; • type of proposed structures; • placement of the structures in relation to the size, layout and location of the lot or parcel. 	<p>Applying DEQs Guidance, the location or the structure remains unchanged. The increase in impervious surface around the pool deck is dictated by the location of the existing pool. The applicant proposed to repair the pool and replace the materials of the pool deck from bricks to pavers and expand for a permanent spa and outdoor kitchen area.</p> <p>Based on the county GIS record and Deed, the lot was created in 1985, and the pool was built before July 1993, depicted on the 1990 aerial map.</p> <p>Staff concurs that the proposed pool deck is the minimum to afford relief.</p>
118-6-6.b	Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;	<p>The DEQ guidance with this finding is intended to make sure that an exception request would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. For instance, a property owner requests an exception to build a pool in the RPA and neighbors have applied for and been denied a similar request. In this instance, if the exception is approved, a special privilege has been permitted for one neighbor but not the others.</p>	<p>Applying DEQs Guidance, there is another swimming pool located in the RPA and within a 500-ft radius of the subject property. The property address is 9416 Wooded Glen Avenue. The pool is found to be constructed between 1990 and 1997. There is 2003 RPA located on the lot, therefore, an RPA exception request was not required.</p> <p>The expansion of the pool deck is located within the existing encroachment area. Therefore, it is the staff's opinion that the exception for</p>

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			the pool expansion would not confer a special privilege.
118-6-6.c	The exception is in harmony with the purpose and intent of this chapter and is not of substantial detriment to water quality;	This finding focuses on the actions of the property owner, and appropriate use of the property.	<p>The additional impervious area from the improvement project is approximately 256 sq. ft. A small portion of the expansion is within the seaward 50 feet of the RPA buffer. See Attachment C3 for location.</p> <p>The applicant is proposing to mitigate by adding an additional area of vegetation. The applicant demonstrates 2,713 sq. ft. of disturbed area, including the swimming pool (water area), as depicted on the WQIA exhibit (Attachment B, Applicant’s Application Package, Appendix III). However, staff assesses the disturbance to be approximately 2,300 sq. ft. because 600 sq. ft. of the swimming pool area may be excluded from calculating the disturbed area and a 200 sq. ft. kitchen area was added (See Attachment C2). Because the total associated disturbance is less than 2,500 sq. ft., the subject project follows the minor WQIA guidance established by County LTI 20-02. The proposed planting mitigation of the RPA buffer will adequately mitigate impacts of the construction activities associated with the pool deck.</p> <p>The vegetated area of the site is restricted by the remaining rear yard area and public sanitary</p>

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			<p>sewer easements. In consideration of these restrictions, there are a few areas of vegetation proposed outside of the RPA. If the existing swimming pool area is excluded from the tabulation, the proposed vegetation in the RPA adequately mitigates the impact of the proposed pool deck.</p> <p>Please note that Fairfax County (FFX CO) does not have authority to enforce trees and other vegetation located outside of the RPA buffer.</p> <p>Staff recommends approval subject to the conditions in Attachment A.</p>
118-6-6.d	The exception request is not based upon conditions or circumstances that are self-created or self-imposed;	For example, if the area of a lot is 10,000 sq. ft., and encumbered by the RPA, then a property owner’s desire to place a 7,000 sq. ft. house on the lot would essentially be a self-imposed condition, in that a small house would be more suitable for the lot size.	Based on the county GIS record, the proposed improvement project does not create additional RPA encroachment (only additional impervious surfaces). The request for additional impervious surface within the existing RPA encroachment is self-created.
118-6-6.e	Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and	Conditions should be based, in part, upon the finding of the WQIA, as well as the specific situation of the lot or parcel on which the exception request was permitted. In addition to possible stormwater management BMP requirements to help compensate for the loss of the pollutant removal aspect of the RPA, a locality should investigate opportunities to require additional	<p>The applicant provides water quality computations (118-3-3(f)) to show an area of turf grass converted to vegetated buffer to offset the increase in impervious area created.</p> <p>Staff proposes conditions in Attachment A to ensure maintenance of the riparian buffer plantings if it is the</p>

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		<p>vegetative plantings elsewhere on the lot or parcel, to boost the functions of the undisturbed RPA. Also, a locality could require additional vegetation to be installed in the remaining portion of the RPA (including the buffer component).</p>	<p>intent of the ERC to approve this application.</p>
118-6-6.f	<p>Other findings, as appropriate and required herein, are met. (32-03-118.)</p>		<p>Please note that the violation was issued by the Department of Code Compliance (DCC) regarding the repair and replacement of the pool structure without a building permit, and not issued by the LDS Environmental Compliance and Enforcement (ECE) branch under CBPO Chapter 118. LDS was not notified of the complaint. It was found, at the time, that an expansion was created for the spa. See Attachment B, Applicant’s Application Package, Appendix II, for the violation letter.</p> <p>The subject property was created as part of rezoning case, 81-S-082. One of the proffer conditions mentions maximizing vegetation and preserving a conservation area, assuming to be on the outlot (Parcel E). The General Development Plan (GDP) did not show any house footprints or have any restriction on the rear yard coverage. Per Zoning Ordinance (ZO) 4102.7A(5), Rear Setback Coverage Limitations, the planned district allows coverage up to 50% of the maximum rear yard</p>

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			<p>area. Based on the county’s assessment, the current coverage is approximately 58% (3,700/6,400 sq. ft.). Therefore, a Special Permit is required by the Board of Zoning Appeals (BZA).</p> <p>It was also found during the July 15, 2021, site visit, that the applicant is raising chickens in the rear yard. See Attachment C4 for photo. The applicant elects to keep the animals. The county ZO 4102.7J(3)(b), Accessory Use, Keeping of Animals, allows keeping of livestock on any lot of 2 acres or more in size. As the property is 0.34 acres, a Special Permit is required by the BZA. LDS would oppose such a Special Permit application because of water quality consequences from raising poultry. Removal of the chickens and coop from the RPA is a recommended condition of approval in Attachment A.</p>

¹[DEQ Guidance](#) column is based on “Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations, September 16, 2002, Revised June 15, 2009” by the Department of Conservation & Recreation (functions now under DEQ).

BACKGROUND:

See the chronological stages below.

- The lot was created June 18, 1985: Deed Book 6187, Pages from 691 to 717.
- The pool was constructed before 1993.

- The access/driveway was extended to the rear yard sometime between 2000-2005. Note the county GIS imagery is several months behind the assigned date. The access was assumed to be constructed before 2003.
- The RPA was designated on the lot by Fairfax County in 2003.
- DCC issued the violations in October and November of 2018.
- The 1st WQIA was reviewed and disapproved in December 2019.
 - The submitted documents showed the property adjacent to the Fairfax County Park Authority (FCPA). Therefore, the WQIA request was forwarded to the FCPA for review.
- The county agreed the disturbance is located entirely within the RPA buffer. Therefore, a site-specific RPA delineation is not necessary. The WQIA was deemed complete in March 2021.
 - The latest survey information shows the existing fence line encroaching into Parcel E (not FCPA property), but the pool discharge ultimately drains to the FCPA property. The property owner has addressed the FCPA concern regarding the release of chemicals from the pool directly onto park land.
- June 24, 2021: 5255-WRPA-003-1 and 5255-WQ-001-3 accepted for ERC public hearing.
- September 6, 2021: The proposed exception request is submitted to expand the pool deck and increase the impervious area on the lot by 256 sq. ft. in the existing RPA encroachment. The proposed mitigation includes 7 overstory trees, 13 understory trees, and 68 shrubs.

STAFF ANALYSIS:

Requested Exception

This application is submitted under CBPO Section 118-6-8(a).

The request to permit a pool deck expansion in the RPA cannot be processed under the provisions of CBPO Section 118-5-5 as the increase in impervious surface is for an accessory use and is located in the seaward 50 feet of the RPA buffer.

See **Attachment A** for staff’s recommended conditions on the WQIA.

Floodplain

Based on the approved Cherry Run Tributary No. 1 Through Wooded Glen 5255-FP-001, the subject property is not located in the floodplain boundary, therefore, separate floodplain approvals are not required.

LIST OF ATTACHMENTS:

1. ATTACHMENT A: PROPOSED EXCEPTION CONDITIONS
2. ATTACHMENT B: APPLICANT’S APPLICATION PACKAGE
 - B1i – WATER QUALITY IMPACT ASSESSMENT (WQIA) FORM

B1ii – WATER QUALITY IMPACT ASSESSMENT (WQIA)

B2i – RPA EXCEPTION APPLICATION FORM – PUBLIC HEARING

B2ii – RPA EXCEPTION COMPUTATIONS; STATEMENT OF JUSTIFICATION ADDRESSING REQUIRED FINDINGS; PLAT

3. ATTACHMENT C: SUPPORT INFORMATION FOR STAFF'S ANALYSIS

C1 – DISTURBED AREA EXHIBIT (EXISTING VS PROPOSED CONDITION)

C2 – DISTURBED AREA EXHIBIT (STAFF'S ASSESSMENT)

C3 – DISTURBED AREA EXHIBIT (SEAWARD 50 FEET)

C4 – PHOTOS (EXISTING VS PROPOSED CONDITION)

4. ATTACHMENT D: NOTICES

D1 – LIST OF ADJOINING PROPERTIES TO BE NOTIFIED

D2 – NEWSPAPER AD COORDINATION

**Proposed Water Quality Impact Assessment
Conditions
&
Proposed Exception Conditions**

Applicant's Application Package

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B1i – WATER QUALITY IMPACT ASSESSMENT (WQIA) FORM
B1ii – WATER QUALITY IMPACT ASSESSMENT (WQIA)
B2i – RPA EXCEPTION APPLICATION FORM – PUBLIC HEARING
B2ii – RPA EXCEPTION COMPUTATIONS; STATEMENT OF
JUSTIFICATION ADDRESSING REQUIRED FINDINGS; PLAT

Support Information for Staff's Analysis

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CONDITION)

C2 – DISTURBED AREA EXHIBIT (STAFF'S ASSESSMENT)

C3 – DISTURBED AREA EXHIBIT (SEAWARD 50 FEET)

C4 – PHOTOS (EXISTING VS PROPOSED CONDITION)

Notices

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D2 – NEWSPAPER AD COORDINATION