



FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 5/10/2021

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 #4135-WRPA-003-1 &
WATER QUALITY IMPACT ASSESSMENT #4135-WQ-001-1

APPLICANT NAME: Matthew McGill

PROJECT LOCATION: 1932 Great Falls Street, McLean, VA 22101

LEGAL ADDRESS: Falls Run Estates, Lot 1

TAX MAP REFERENCE: 040-2-01-0003B

DISTRICT: Dranesville District

DATE APPLICATION ACCEPTED: July 24, 2021

WATERSHED NAME: Pimmit 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): 756 SQ. FT.

LOT SIZE: 2 Ac.; 87,120 SQ. FT.; 73 % LOT RPA

LOT RECORDATION DATE: JULY 9TH, 1981; DEED BOOK 5579 PAGE 1297

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:

The lot was created with the recordation of the Record Plat (Deed Book 5579, Page 1297) in 1981. The applicant is requesting an accessory structure in the RPA and an exception is required under Article 6, Section 118-6-8.

The request for a shed in the RPA includes:

- 756 sq. ft. of disturbance;
- 256 sq. ft. of total impervious area; an increase of 136 sq. ft. from the foot print of the existing shed;
- no impervious area in the seaward 50 feet.

See the application's water quality impact assessment, plat (**Attachment B3**).

STAFF RECOMMENDATIONS:

Staff recommends approval of the RPA encroachment exception request #4135-WRPA-003-1 and the Water Quality Impact Assessment #4135-WQ-001-1 with development conditions proposed and provided in **Attachment A** (dated July 9, 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:

| Chesapeake Bay Preservation Ordinance (CBPO) Section | Required Finding | Department of Environmental Quality (DEQ) Guidance | Staff Comment |
|---|--|--|---|
| 118-6-6.a | The requested exception to the criteria is the minimum necessary to afford relief; | Consider the extent that the applicant wishes to use the property: <ul style="list-style-type: none"> • size of the structure; • types of proposed structures; • placement of the structures in relation to the size, layout and location of the lot or parcel; • how the size of the structure compares to the lot size and with properties within 500 ft. (GIS Exhibit) | The lot is 2 acres (87,120 sq. ft.). The disturbance in the RPA is 756 square feet. See the Notice of Violation, Attachment C1 . 74% of the lot is encumbered with RPA. See Attachment C4 . The disturbance is 0.85% of the lot. It is the opinion of staff that the 256 sq. ft. shed, which does not require a building permit, is a reasonable encroachment. |
| 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; | 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. | The 120 sq. ft. shed existed before the RPA was designated on the lot. The shed was displaced during a rainfall event in 2019. The applicant was unaware that an exception was required for the 256 sq. ft. replacement shed. Although an RPA exception is required for accessory structures in the RPA, a building permit is not. Before November 2018, the county policy was that sheds less than 256 sq. ft. and installed over existing maintained lawn were de minimis and an RPA exception was not required. The replacement shed has already been constructed. |

| Chesapeake Bay Preservation Ordinance (CBPO) Section | Required Finding | Department of Environmental Quality (DEQ) Guidance | Staff Comment |
|--|---|---|--|
| | | | It is the opinion of staff that permitting the shed to remain, would not give the applicant something that has been denied to others. |
| 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>See the applicant’s statement of justification, 118-6-6(c), and Water Quality Impact Assessment, page 2. The applicant has planted: 1 black walnut, 3 dogwoods, and 16 swamp azaleas to mitigate the impact of the land disturbance.</p> <p>The plantings are taken from the recommended tree and shrub plant list for RPAs.</p> <p>Staff calculation for appropriate mitigation plants require 2 overstory trees, 3 understory trees and 16 shrubs. In the opinion of staff, an additional overstory tree, from the recommended RPA plant list should be planted.</p> <p>The applicant proposes planting mitigation throughout the 2 acre site (including the front and rear yard). It is staff’s recommendation that buffer mitigation be concentrated and planted in the lower portions of the site where runoff would be more effectively captured from the shed.</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 a lot area is 10,000 square feet, and encumbered by the RPA, then a property owner’s desire to place a 7,000 square foot house on the lot would essentially be a self-imposed condition, in that a small house would be more suitable for the lot size. | <p>Sheds less than 256 sq. ft. do not require a building permit. Before 2018, the county did not require an exception to locate such sheds in the RPA.</p> <p>The 256 sq. ft. shed is small in comparison to the 2 acre (87,120 sq. ft.) lot and is similarly located to the</p> |

| Chesapeake Bay Preservation Ordinance (CBPO) Section | Required Finding | Department of Environmental Quality (DEQ) Guidance | Staff Comment |
|--|--|---|---|
| | | | <p>previous shed (pre-RPA establishment) location.</p> <p>It is the opinion of staff that the size of the shed, 0.3% of the lot, is reasonable.</p> |
| 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 vegetive 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). | The applicant is proposing to re-vegetate an area of 636 sq. ft. within the RPA, meeting the density prescribed by Section 118-3-3(f). |
| 118-6-6.f | Other findings, as appropriate and required herein, are met. (32-03-118.) | | Not applicable. |

BACKGROUND:

See the timeline, **Attachment C5**.

- July 9th, 1981: The lot was created; Book 5579, Page 1297.
- Exact date unknown: A 10 x 12 sq. ft. shed was constructed.

- 1993: The RPA was designated on the lot by the county.
- July 8th, 2019: The 10 x 12 sq. ft. shed was damaged/relocated due to flooding.
- Date unknown: Construction of the replacement shed; Pictures in **Attachment B2**.
- November 17, 2020: Notice of Violation, Chapter 118; **Attachment C1**.
- November 20, 2020: revised July 28, 2021; Floodplain Use Determination for the shed approved.
- May 12, 2021: 4135-WQ-001-1 deemed administratively complete in advance of the required submittal of RPA exception for public hearing.
- July 21, 2021: 4135-WRPA-003-1 and 4135-WQ-001-1 accepted for public hearing October 6, 2021. The proposed exception is to permit a 16 x 16 sq. ft. shed to remain in the RPA; the 16 x 16 sq. ft. shed is a replacement for a 10 x 12 sq. ft. shed in existence before the designation of the RPA on the lot. The proposal is to mitigate the additional impervious area and disturbance with additional plantings in the RPA.

STAFF ANALYSIS

Requested Exception

The proposal meets the required findings. Staff's recommended conditions to address the deficiencies in the WQIA are in **Attachment A**.

Floodplain

There is FEMA Special Flood Hazard Area (SFHA) on the property. The subject shed is in the SFHA. The applicant applied for and was granted approval of a Floodplain Use Determination permitting the shed to be located in the SFHA. See **Attachment C4**.

LIST OF ATTACHMENTS:

1. ATTACHMENT A: PROPOSED EXCEPTION CONDITIONS
2. ATTACHMENT B: APPLICANT'S APPLICATION PACKAGE
 - B1 – RPA EXCEPTION APPLICATION FORM
 - B2 – WATER QUALITY IMPACT ASSESSMENT (WQIA) FORM
 - B3 – PLAT
3. ATTACHMENT C: SUPPORT INFORMATION FOR STAFF'S ANALYSIS
 - C1 – SIGNED NOTICE OF VIOLATION
 - C2i – HOLD HARMLESS
 - C2iia – FLOODPLAIN USE DETERMINATION SS# 90
 - C2iib – FLOODPLAIN USE DETERMINATION SS# 90 REVISED
 - C3 – 2020 PHOTOGRAPHS OF THE PROPERTY
 - C4i – 500FT BUFFER ANALYSIS TABLE
 - C4ii – 500FT BUFFER ANALYSIS PHOTO AND TABLE

C5 – TIMELINE

C6 – STAFF COMMENTS ON THE WATER QUALITY IMPACT ASSESSMENT.

C7 – SOIL MAP

4. ATTACHMENT D: NOTICES

D1 – LIST OF ADJOINING PROPERTIES TO BE NOTIFIED

D2 – NEWSPAPER AD COORDINATION

5. ATTACHMENT E: CORRESPONDENCE

E1 – WQ ACCEPTABLE FOR PUBLIC HEARING

E2 – WRPA EXCEPTION ACCEPTANCE LETTER AND NOTIFICATION OF THE HEARING DATE

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

Applicant's Application Package

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B1 – RPA EXCEPTION APPLICATION FORM

B2 – WATER QUALITY IMPACT ASSESSMENT (WQIA) FORM

B3 – PLAT

Support Information for Staff's Analysis

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Notices

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E2 – WRPA EXCEPTION ACCEPTANCE LETTER AND NOTIFICATION OF
THE HEARING DATE

E3 – SAMPLE