



FAIRFAX COUNTY

APPLICATION FILED: 9-25-2020

EXCEPTION REVIEW COMMITTEE: 4-7-2021

V I R G I N I A

March 10, 2021

LAND DEVELOPMENT SERVICES

SITE DEVELOPMENT AND INSPECTIONS DIVISION

STAFF REPORT

RESOURCE PROTECTION AREA (RPA) ENCROACHMENT EXCEPTION #129-WRPA-005-1 & WATER QUALITY IMPACT ASSESSMENT #129-WQ-001-3

DRANESVILLE DISTRICT

APPLICANT:	Mr. and Mrs. Bergoglio
PROJECT LOCATION:	6630 Holland Street, McLean, VA 22101
TAX MAP REFERENCE:	021-2-02-0006
APPLICATION ACCEPTED:	January 27, 2021
WATERSHED:	Dead Run
CHESAPEAKE BAY PRESERVATION ORDINANCE (CBPO) PROVISION:	Section 118-6-9, under General RPA encroachment request
PROPOSAL:	To permit an unpermitted patio and grill in the Resource Protection Area (RPA).
LOT SIZE:	41,500 Square feet (0.953 acres)

<p>AREA OF REQUESTED RPA ENCROACHMENT:</p>	<p>6,398 square feet (Total Disturbed Area associated with the violation)</p>
<p>PUBLIC HEARING:</p>	<p>RPA Encroachment Requests under Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-9 require approval by the Exception Review Committee (ERC).</p> <p>An application for an exception to include an unpermitted patio and grill in the Resource Protection Area (RPA). The encroachments are considered accessory uses but do not qualify under CBPO Section 118-6-8 because the principal structure (the house) was constructed in 2006.</p>
<p>DESCRIPTION:</p>	<p>The applicant is requesting an RPA exception to permit construction of the following:</p> <ul style="list-style-type: none"> □ A 750 square foot patio (1,081 with 331 square feet to be removed); □ Masonry Grill installed on the patio; and □ Remove a fire pit (not permitted). <p>The patio to remain is located outside the seaward 50 feet of the RPA buffer. The fire pit to be removed is in the seaward 50 feet of the buffer. The proposed increase in impervious area in the RPA since the 2004 RPA exception is approximately 2,458 square feet (Attachment C3B – Approved Grading Plan; Attachment B3 – Plat).</p>
<p>BACKGROUND:</p>	<p>Langley Forest, Lot 6, Section 4, was created on June 26, 1951, Tax map parcel 021-2 ((02)) 0006, of Langley Forest, Section One, Deed Book 918, Page 86.</p> <p>A perennial stream is located to rear (the east) of the property. The drainage area is approximately 32 acres. For this new 2018 exception request, the applicant provided a field delineation, which indicates that the RPA covers 62 percent of the lot. See Attachment B3.</p> <ul style="list-style-type: none"> • An RPA waiver (129-WRPA-001-1) was denied 07-29-2004; loss of buildable area; the request encroached into the seaward 50 feet of the RPA. See Attachment C3A. • An administrative waiver (129-WRPA-002-2) was approved 10-15-2004; loss of buildable area; conditional on the planting of a vegetated buffer area of 9,810 square feet. The planting requirement for the buffer was 23 overstory trees, 46 understory trees, 246 shrubs, and ground covers in a mulch bed, if seedlings were used the number of trees was required to be doubled (Waiver #026928 condition #8).

	<p>The location of the plantings required by the waiver are shown on the grading plan. See attachment C3B, Sheet 4. The patio and masonry grill are located over part of the required planting area. The current RPA exception request does not verify or speak to the condition of the plantings required by waiver #026928.</p> <p>The waiver limited the impervious area in the RPA to 4,930 square feet (Waiver #026928 condition #9). See Attachment C3C and C3A, Sheet 2.</p> <p>The applicant's plat states (2019 conditions) 5,398 square feet of impervious area in the RPA, and with the proposal to remove the part of the patio in the seaward 50 feet and the fire pit, the impervious area requested would be 5,067 square feet. To offset the increase in impervious area, the applicant is proposing two planter boxes. One located on the west side of the driveway, and one located between the driveway and the patio.</p> <ul style="list-style-type: none">• A grading plan (129-INF-004-1) was approved 12-7-2004; revised 5-18-2007. The lot impervious area was 7,459 square feet, and the impervious area in the RPA was 4,719 square feet. The applicant's plat states the requested lot impervious area as 9,917 square feet, and the requested impervious area in the RPA as 5,067 square feet. <u>The requested increase in lot impervious area is 2,458 square feet. The requested increase in impervious area in the RPA is 348 square feet.</u> See Attachments C3A, Sheet 2, and Attachment B3.• An RPA waiver 129-WRPA-003-1 was approved 7-31-2018 for a spiral staircase. The spiral staircase is located on the subject patio. As water may flow through the staircase there is no increase in impervious area, and provided the staircase is in an area of prior disturbance it would qualify as re-development. See Attachments C9B and C9A.• Three dead trees were removed from the RPA with application 129-WRPA-004-1; approved 1-23-2020. See Attachment C11A.• Water Quality Impact Assessment 129-WQ-001-3 was deemed complete 9-10-2020; and the complete exception
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	<p>package was requested. See Attachment B2 and Attachment E, Correspondence.</p> <p>As the house was constructed in 2006, the requested improvements do not qualify for loss of buildable area under 118-6-7 or 118-6-8; to qualify under these sections the house had to be constructed before November 18th, 2003.</p> <p>Since the original exception request and grading plan approvals in 2004, there have been further encroachments into the RPA buffer. See Attachment C1A.</p> <p>The current owner (Mr. and Mrs. Bergoglio) acquired the house on January 28, 2016.</p>
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<p>DOCUMENTS AND CORRESPONDENCE:</p>	<ul style="list-style-type: none"> • <u>Attachment A:</u> Proposed Exception Conditions. • <u>Attachment B:</u> Applicant’s Application Package. <ul style="list-style-type: none"> B1 – Application form. B2 – Water Quality Impact Assessment (WQIA): <ul style="list-style-type: none"> ○ Project site description ○ Location map ○ Topographic map ○ General performance criteria ○ Map identifying soil types ○ Water Quality Impact Assessment Components (CBPO 118-4-3) ○ Additional Criteria ○ Photographs ○ Virginia Runoff Reduction Method Spreadsheet B3 – Plat: B4 – Applicants Statements of Justification addressing the Required findings (CBPO 118-6-6) • <u>Attachment C:</u> Support Information for Staff Analysis. <ul style="list-style-type: none"> C1A – GIS Multiple Images C2A – 500 ft buffer Impervious Areas C2B – INF calculation of areas C2C – Impervious Area within 500ft C3A – Denied RPA waiver C3B – Approved grading plan_129-INF-004-3 C3C – Approved RPA waiver C4 – Patio Dimensions C5A – Deed lot creation C6A – WQ review C7A – Policy Statements C8A – SWPD email potential wetland C8B – Photo of the potential wetland C8C – Location of the potential wetland C8D – Drainage areas to potential wetland C9A – A_Plan_182120021_W-18-4605 Staircase C9B – Spiral Stair 129-WRPA-003-1 6630 Holland St C10A – 5203-WRPA-007-1 Plat C10B – Exception 5203-WRPA-007-1 C11A – 129-WRPA-004 Dead Trees C12A – Resolution 3218-WRPA-025-1 & 3218-WQ-005-1 C12B – 3218-WQ-005-1 plan C12C – Limits of Disturbance 3218-WRPA-025-1 C12D – GIS Image 3218-WRPA-025-1 C13 – Soil map • <u>Attachment D:</u> Notices. <ul style="list-style-type: none"> D1 – List of adjoining properties to be notified. D2 – Requested Newspaper Ad.
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	<ul style="list-style-type: none"> • <u>Attachment E</u>: Correspondence. E1 – Acceptance letter with the date of the Hearing. E2 – Email correspondence accepting the April 7, 2021 Hearing. • <u>Attachment F</u>: Department of Conservation and Recreation (DCR) guidance on Exemptions, revised June 15, 2009
<p>ANALYSIS:</p>	<p><u>Requested Exception</u> This application is submitted under CBPO Section 118-6-9.</p> <p>The request to permit part of the patio and the masonry grill to remain in the RPA cannot be processed under the provisions of CBPO Sections 118-6-7 or 118-6-8 as the principal structure (the house) was constructed in 2006.</p> <p>Upon consultation with the Office of the County Attorney, the following interpretation was made by Land Development Services (LDS):</p> <p style="padding-left: 40px;">Exceptions to the criteria and requirements of Chapter 118 to permit encroachment into the RPA that do not qualify for review under Section 118-6-7 or Section 118-6-8 may be granted provided that the exception meets the required findings listed in Section 118-6-6 and subject to the additional finding under Section 118-6-9.</p> <p>Therefore, the application is submitted under Section 118-6-9.</p> <p>See Attachment C6 for Staff’s comments on the Water Quality Impact Assessment. Conditions to address deficiencies are included in Attachment A.</p> <p><u>Floodplain concerns</u> Floodplain is not designated on the property; the drainage area to the property is approximately 32 acres.</p>

<p>REQUIRED FINDINGS:</p>	<p>Exceptions to the requirements may be granted only if the required findings of Section 118-6-6 and the additional finding in 118-6-9, that the water quality benefits exceed the water quality detriments, are met. It is the opinion of county staff that the required findings, as discussed below, have been satisfied for this application.</p> <p><i>(a) The requested exception to the criteria is the minimum necessary to afford relief;</i></p> <ul style="list-style-type: none">❑ The DEQ Guidance is to consider the extent that the applicant wishes to use the property. The size of the structure, the types of proposed structures, and the placement of the structures in relation to the size, layout and location of the lot or parcel are important considerations. An extremely large structure on a given lot or parcel, especially when compared to the size of the structures in the adjacent lots would not be the minimum necessary to afford relief.❑ The subject property is zoned R-1, the RPA covers approximately 65% of the lot (Attachment C2A).❑ In 2004, an administrative exception was denied as it encroached into the seaward 50 feet of the RPA. The property owner revised the request such that it did not encroach into the seaward 50 feet, and this revised encroachment request was approved by staff as the minimum necessary to afford relief.❑ The requested exception is to resolve the violation (Attachment B2, page 35). The applicant states on page 3 (pdf page 4) of the Statement of Justification that, “The plans remove large sections of the existing patio area in order to continue the use of the patio and to satisfy the applicant’s needs. Removal of the entirety of the patio is an alternative to the proposed plans; however, the applicants desire to have some use of their backyard through the use of the portion of patio to remain.”❑ Staff analyzed the impervious area on surrounding properties. The results are presented in Attachment C2A and C2C. Attachment C2C shows that the size of the house in comparison to the size of the lot is within the upper and lower limits for properties within 500 feet, and that the percentage of impervious area in the RPA is
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	<p>within the upper and lower limits for properties within 500 feet.</p> <ul style="list-style-type: none">□ It is the opinion of staff that the request is the minimum necessary to afford relief. <p><i>(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;</i></p> <ul style="list-style-type: none">□ 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.□ In June 2010 a violation was issued on 5825 River Drive, for 2 patios and associated walls. The owner submitted an exception request under 118-6-9 to allow the patios adding an additional 480 square feet to the property to remain. The ERC approved the request, #CBE 026800, for the encroachments into the RPA to remain and required that additional RPA buffers be planted. See Attachments C10A and C10B. <p>This request was made prior to the new Stormwater Regulations and Chapter 124 of the County code, the new clearinghouse BMPs.</p><p>The imperviousness on the lot exceeded 18 percent. As the site conditions precluded the addition of BMPs, this requirement was waived.</p><p>The applicant was required to plant an additional 1,500 square feet of vegetated buffer.</p>□ An outdoor chimney, not attached to the house, was approved by the ERC; exception 3218-WRPA-025-1. See Attachments C12A through C12D.
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- The decision to approve/deny the current request should be based on the decision that would have been made should the request for the house, patio and grill have been made in its entirety in 2004, and be consistent with other similar approvals/denials.
- If the applicant had submitted a request for loss of buildable area in 2004, which included the house and patio encroaching into the seaward 50 feet, the request would have been subject to approval by the ERC and subject to the findings under 118-6-7 and 118-6-6. Refer to the RPA policy statements, attachment C7A.
- Given the percentage of impervious area on the lot and the impervious area in the RPA in comparison to that for lots within 500 feet, it is the opinion of staff that granting the exception would not confer a special privilege.

(c) The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;

- DEQ Guidance is that the appropriate vehicle for determining whether water quality will be adequately protected should a given request be approved is the Water Quality Impact Assessment (WQIA). The deficiencies in the WQIA referenced above should be addressed.
- The applicant is proposing two planter boxes and planting/re-planting of vegetated buffer areas. The Virginia Runoff Reduction Method (VRRM) spreadsheet water quality computations should use the land use from the approved grading plan and demonstrate that compared to the site conditions approved in 2004, there will be a water quality benefit; there is a discrepancy between the impervious area shown on the approved grading plan and the pre-developed condition (2004 condition) in the VRRM spreadsheet; see the WQIA review item #33. A small adjustment in the planting/planter box design may be required.
- Chapter 118 has provisions to grant exceptions under 118-6-9 if there is a water quality benefit. With the provision noted above, the VRRM calculations are showing a slight water quality benefit. With this

provision, the request may be considered in harmony with the purpose and intent of the CBPO and staff would consider this required finding to be met.

(d) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;

- ❑ This finding focuses on the actions of the property owner, and appropriate use of the property.
- ❑ As the lot was created before the adoption date of the RPA (2003), the request is deemed to be not entirely self-created or self-imposed.
- ❑ The previous owners and the current property owner violated the 2004 RPA waiver disturbing approximately 1,042 additional square feet of RPA and constructing a patio, masonry grill and fire pit. The mitigation required by the 2004 exception has not been maintained. The property owner's actions should not be a consideration in the granting of an exception. Exceptions are granted for the property.
- ❑ The basis for the exception is the approval in 2004. The applicant is proposing additional impervious area beyond that approved in 2004.
- ❑ When considering a violation for an already-constructed encroachment, the removal and remediation of the violation may generate costs and/or be a detriment to water quality, which may be a consideration.
- ❑ An exception may be granted provided it meets all the exception criteria. If the exception request resulting from a violation, does not meet all the criteria, it may be a self-imposed condition.

(e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality;

- ❑ The applicant is proposing to remove the part of the patio in the seaward 50 feet of the RPA, to remove the fire pit, install two planter boxes and distribute flow via a gravel area around the patio.

	<ul style="list-style-type: none"> ❑ With the provision noted in 118-6-6(c) above, that the land use from the 2004 grading plan is used as the pre-developed condition in the VRRM calculations, and a water quality benefit is clearly demonstrated, this requirement would be met. <p><i>(f) Other findings, as appropriate and required herein, are provided;</i></p> <ul style="list-style-type: none"> ❑ To ensure that a water quality benefit is maintained, the deficiencies in the WQIA should be addressed. ❑ The applicant should provide a maintenance agreement for the planter boxes and required plantings.
<p>STAFF RECOMMENDATIONS:</p>	<p>Staff recommends approval of the RPA encroachment Exception request #129-WRPA-005-1 and the Water Quality Impact Assessment #129-WQ-001-3.</p> <p>If it is the intent of the Exception Review Committee (ERC) to approve the water quality impact assessment and the encroachment request, staff recommends the proposed development conditions provided in Attachment A (dated March 10, 2021).</p> <p>It is not staff's intent to recommend that the ERC, in adopting any conditions, relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.</p> <p>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.</p>



**FAIRFAX
COUNTY**

APPLICATION FILED: 9-25-2020

EXCEPTION REVIEW COMMITTEE: 4-7-2021

V I R G I N I A

ATTACHMENT A

PROPOSED EXCEPTION CONDITIONS

**APPLICANT'S APPLICATION
PACKAGE**

**SUPPORT INFORMATION
FOR STAFF'S ANALYSIS**

NOTICES

CORRESPONDANCE

**Department of Conservation and
Recreation (DCR) guidance on
Exemptions, revised June 15, 2009**