

**APPEAL OF JOHN ZECCA AND LINDSY NOBLE  
OF THE RESOLUTION OF DENIAL OF THE APPLICATIONS  
1996-WRPA-016 AND 1996-WQ-005 BY THE EXCEPTION REVIEW  
COMMITTEE OF FAIRFAX COUNTY, VIRGINIA, ESTABLISHED  
AS ARTICLE 7, SECTION 118 OF THE FAIRFAX COUNTY CODE**

**John Zecca and Lindsay Noble  
917 Whann Avenue, also known as  
Lot 13A, Section One of Langley Forest Subdivision  
McLean, Virginia 22101**

**The Board of Supervisors of Fairfax County, Virginia  
By: Elizabeth D. Teare  
Fairfax County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035**

**And**

**Jill Cooper, Clerk  
Board of Supervisors of Fairfax County, Virginia  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035**

**And**

**William Hicks, P.E.  
Director of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035**

**REED SMITH LLP  
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**WETLANDS STUDIES AND  
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## **APPEAL**

### **Facts**

This Application was filed by John Zecca and Lindsay Noble (the “Appellants”) for the installation of an in-ground swimming pool and spa, associated utilities, pool deck, retaining wells and a planter bed. It was filed in accordance with the regulations and procedures of the Chesapeake Bay Preservation Ordinance (“CBPO”), Chapter 118 of the Fairfax County Code. Because the Field-Verified RPA encompasses all property to the rear of the existing residence, it is impossible to construct any accessory structures without RPA encroachment. As a result, the Appellants desire to utilize the specific exception for approval of accessory structures (118-6-8(b) CBPO).

The Appellants lot is described as Lot 13A, Section 1, Langley Forest Subdivision. A house is located on the lot, also known as 917 Whann Avenue, McLean, Virginia 22101. The lot was created by a Deed of Dedication recorded in the land records on July 28, 1947.

Engineers, scientists, surveyors, soil consultants were retained by the Appellants that provided professional studies submitted to the staff of the Land Development Division for the County for review, revisions, approval and recommendations for approval to the Chesapeake Bay Exception Review Committee (ERC) of Fairfax County. This staff acts as one of the staff members of the ERC. On September 7, 2022, the ERC by Resolution (Exhibit A) denied the application. The denial was contrary to the Professional Staff’s recommendation for approval. John Zecca and Lindsay Noble, by counsel, appeal this denial to the Board of Supervisors of Fairfax County, Virginia.

### **Engineering and Scientific Information**

Attached to this Appeal is the Supplemental Appeal prepared by John T. Kelley, Jr., P.E., CFM, LEED AP, Wetlands Studies and Solutions, Inc.

### **Grounds for Appeal**

The record of the ERC reflects that every section of Chapter 118 of the Fairfax County Code was addressed, satisfied and met by the Appellants.

This denial violates the equity and fairness consideration of the Code. It is clearly an act by the ERC that is arbitrary, capricious and in violation of the Fairfax County Code, the Code of Virginia, the Constitution of Virginia, the United States Constitution, and the Common Law of Virginia.

### **Relief Requested**

The Appellants request the Board reverse the denial of the ERC Resolution denying the application and adopt a Resolution for approval.

Respectfully submitted,  
JOHN ZECCA AND LINDSY NOBLE  
By counsel



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Justin Angotti (VSB No. 96858)  
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Dated: October 6, 2022



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## **Encroachment Exception Application #1996-WRPA-016 and #1996-WQ-005**

Resource Protection Area (RPA) Encroachment Request for John Zecca and Lindsay Noble, 1996-WRPA-016 and 1996-WQ-005 under Section 118-6-8 of the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO) at 917 Whann Avenue, McLean, VA 22101, Dranesville District, Tax Map 0214-06-0013A, to include a pool within the Resource Protection Area (RPA).

At a regular meeting of the Exception Review Committee (the Committee) on September 7, 2022, Chairperson Elizabeth Martin, moved that the Committee adopt the following resolution.

### **RESOLUTION**

WHEREAS, the Committee has made the findings that:

- b) granting the exception **will** confer upon the applicant special privileges that are denied to other property owners who are similarly situated;
  - a. *This exception, if granted, would be the ERC's first approval to build a swimming pool within the 50 seaward feet of the RPA, according to staff. A recent request (Wooded Glen) for a swimming pool within the seaward 50 feet was denied. Although the circumstances for every exception request are different, approving an exception within the 50 seaward feet for the purpose of building a swimming pool may confer a special privilege on this applicant, and may establish a precedent for approving future similar applications.*
- c) the exception request **is** based upon conditions or circumstances that are self-created or self-imposed.
  - a. *The applicant's request to place a swimming pool so extremely close to the stream, within the 50 seaward feet, is essentially a self-created condition. Applicant had no reasonable expectation that a pool would be approved. Approval would depend on the appropriateness of the project.*

Now, therefore, be it resolved that the Exception Review Committee **DENIES** Exception Request 1996-WRPA-016-1 under Section 118-6-8 of the CBPO.



John Zecca, Lindsay Noble  
1996-WRPA-016  
917 Whann Avenue  
Page 2 of 2

### **ACTION OF THE COMMITTEE**

The motion was seconded. The motion carried by a vote of 9-2.

A Copy Teste:

DocuSigned by:  
*Nicola Mutesi*  
09D817F77C49408

Nicola Mutesi  
Clerk to the Exception Review Committee



October 6, 2022

The Board of Supervisors of the County of Fairfax  
12000 Government Center Parkway  
Fairfax County, Virginia 22035  
c/o Jill Cooper, Clerk to the Board

Re: Appeal to the Board of Supervisors of Chesapeake Bay Preservation Ordinance  
Exception Review Committee (ERC) Denial of RPA Encroachment Application  
(1996-WRPA-016 and 1996-WQ-005)  
917 Whann Avenue  
Fairfax County, Virginia  
Tax Map: 0214 06 0013A; Dranesville District  
WSSI #31448.01

Dear Board Members:

On behalf of Mr. John Zecca and Ms. Lindsay Noble, hereafter referred to as Appellant, we respectfully appeal the ERC Resolution to deny Application 1996-WRPA-016 and 1996-WQ-005. This application seeks authorization for encroachment into the Resource Protection Area (RPA) to construct a pool on the Appellant's property in accordance with Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-8 (Exception for Accessory Structures).

**I. Grounds for Appeal**

It is the position of the Appellant that the ERC resolution to deny the Application has significant issues with respect to authority granted by the CBPO, rationale of determinations, and accuracy of information referenced as referenced by the ERC.

The ERC Resolution of denial stated that the Appellant's exception request is self-created or self-imposed, and that granting the exception will confer special privileges that are denied to similarly situated property owners and may establish precedent for approving future similar applications. These findings were supported in the resolution by comparison to the recently denied Wooded Glen request and statement that requesting a pool location in close proximity to the stream was "essentially" a self-created condition.

It is our opinion that the ERC erred in the following ways:

1. Erred on the facts when referencing the Wooded Glen denial as "a recent request for encroachment into the inner 50-foot seaward buffer for a new pool" when determining that the exception will confer special privileges on the Appellant.



2. Erred in the law by considering establishment of precedent for future approvals by others in the decision-making process, rather than evaluate the request on its specific merits and circumstances, when determining that the exception will confer special privileges upon the Appellant.
3. Erred in the law by basing their decision on the location of the swimming pool within the seaward 50' buffer (after a majority vote of the ERC confirmed that the pool was in the only location possible), when determining that the exception will confer special privileges upon the Appellant.
4. Abused their discretionary authority by stating the Applicant "had no reasonable expectation that a pool would be approved" when determining the exception request is self-created or self-imposed.

## **II. Justification of Appeal**

1. Error on the facts when referencing the Wooded Glen denial as "a recent request for encroachment into the inner 50-foot seaward buffer for a new pool" when determining that the exception will confer special privileges on the Appellant.

In the adopted resolution, the ERC drew direct comparison between the recent 9407 Wooded Glen Avenue application denial (#5255-WRPA-003-1 and #5255-WQ-001-3) and the 917 Whann Avenue application as both being requests for a swimming pool within the 50-seaward buffer.

The first issue is that the ERC statement of project purpose is incorrect. The application for Wooded Glen was a request for the expansion of an existing pool deck, and installation of a new spa and outdoor barbeque surface. It was not a request to establish a new pool where one did not previously exist – the Wooded Glen pool was previously established. This distinction was clearly stated in the LDS materials provided to the committee in advance, and specifically highlighted during the Applicant presentation at the public hearing prior to their discussion.

The second issue is that Wooded Glen was denied by the ERC only on the basis that the requested exception "cannot be determined to be the minimum necessary to afford relief because the application does not adequately address reasonably expected stormwater requirements". In contrast, the application for 917 Whann Avenue was confirmed<sup>1</sup> at the public hearing to be the minimum necessary by a majority vote of the ERC.

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<sup>1</sup> The ERC agreed (with a majority vote) that the proposed disturbance was the minimum necessary because it was the only possible pool location on the property.

Therefore, it is our opinion that not only is Wooded Glen not a comparable project because they have completely different purposes, but that there was clear justification for the denial of Wooded Glen because the application was incomplete. The Appellant's Application was not only complete, but also confirmed to be the minimum necessary to afford relief – therefore it is not justified to state approval of the Appellant's Application will confer special privileges upon on the Appellant.

2. Error in the law by considering establishment of precedent for future approvals by others in the decision-making process, rather than evaluate the request on its specific merits and circumstances, when determining that the exception will confer special privileges upon the Appellant.

There are no issues raised in the ERC resolution regarding the specifics of the request (disturbance/impervious area, stormwater management, nutrient reduction, or buffer reforestation) as a reason for the ERC denial. Approving or denying the Application based on fear of setting precedent for others is clearly not an applicable criterion with respect to the CBPO.

This Application (and any future applications by others) must be reviewed on their individual merits and circumstances - if all applicable required findings are met, the exception should be approved. LDS reviewed the specifics of the case and recommended Approval with Conditions, the ERC did not have issue with the project specifics, evidenced by statements agreeing that the project would likely improve water quality by several members who voted for denial.

3. Error in the law by basing their decision on the location of the swimming pool within the seaward 50' buffer after a majority vote of the ERC confirmed that the pool was in the only location possible, when determining that the exception will confer special privileges upon the Appellant.

It was frequently and passionately stated by several members, that the key factor in their decision-making process was the proposed encroachment into the 50-foot seaward buffer for the specific activity of constructing a pool<sup>2</sup>. However, there is no prohibition on encroachment into this area for accessory structures in the CBPO if the request is the minimum necessary to afford relief. This point was also noted in the LDS staff report stating that RPA policy statements recognize the inner 50-foot buffer as a sensitive area, but that the CBPO allows exceptions in that area provided all exception criteria are met.

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<sup>2</sup> The ERC made statements specifically regarding swimming pools in the inner 50-foot seaward buffer not being a necessary amenity, in contrast to the construction of a residence being justified in encroaching into the outer 50-feet if no other options exist. As discussed in Footnote 3, a pool has been determined to be a necessary structure for purposes of the CBPO, and there is no specific prohibition on accessory structures in the inner portion of the buffer if the required findings for an exception are met.



The required findings and criteria for approval of an exception for Accessory Structures are clearly stated in CBPO Section 118-6-6 and Section 118-6-8 respectively. Since there is no prohibition on encroachment within the 50-foot seaward buffer, the ERC rendered this issue moot with their majority vote confirming that the proposed pool location was the only possible location on the property, and thus represented the minimum disturbance necessary to afford relief.

4. The ERC abused their discretionary authority by stating the Applicant “had no reasonable expectation that a pool would be approved” when determining the exception request is self-created or self-imposed.

Respectfully, the rationale for calling the conditions of this request self-created or self-imposed condition is not sound. The ERC confirmed that the proposed pool location was the only available option on the property through a majority vote. Neither the location of the RPA, nor the pool location were voluntarily chosen (or even within the Appellant’s control) – thus the request is clearly demonstrated not to be self-created or self-imposed.

An argument that an Applicant applying for an accessory structure application and meeting the written requirements of the CBPO would have “no reasonable expectation that a pool would be approved” is not supported. There is ample evidence that the ERC has approved exceptions for pools<sup>3</sup> in the RPA, and there is no regulation in the CBPO that prohibits encroachment within the seaward 50-foot buffer to construct one<sup>4</sup>.

### III. Additional Information/Investigation Subsequent to Public Hearing

Several areas of discussion were raised by the ERC during discussion, although they were not mentioned in the adopted resolution or necessarily integral to member voting. The Appellant would like to provide the following additional information:

1. Concerns regarding the discharge of pool water

There were questions from ERC members about the manner in which pool water would be discharged due to concerns about impacts to the receiving stream. Subsequent planning by the Appellant stipulates pool water will be discharged in accordance with all County standards and requirements.

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<sup>3</sup> A pool has been determined to qualify as a necessary amenity for a residence by both policy and practice. It is included in the Fairfax County RPA Policy Committee guidance in C7 of the LDS Public Hearing materials and has been approved by the ERC for other applications if CBPO requirements are met.

<sup>4</sup> Further, it is important to note that the encroachment area is currently a maintained lawn within the seaward 50-foot buffer. This is not a disturbance to a natural area and does not result in the removal of any trees.

2. Effects on existing 2' to 3' tall retaining wall

The issue of retaining wall stability was raised by LDS and the ERC. In response, the Appellant has engaged Mark E. Clippinger, P.E., Vice-President of Soils, Inc. to evaluate the effects of the proposed pool on the small retaining walls. His evaluation concluded that the planned in-ground pool will not undermine the existing retaining wall. Nor will the planned in-ground pool superimpose additional lateral loads on the existing wall. Conversely, no loads will be superimposed on the planned in-ground pool from the existing retaining wall. In summary, the construction of the planned in-ground pool will not adversely affect the existing retaining wall.

**IV. Conclusion**

It is the Appellant's position that they as Applicant had met the outlined criteria for approval of an exception under Section 118-6-6 and 118-6-8 of the Chesapeake Bay Preservation Ordinance and should have been granted approval by the ERC had the ERC maintained its findings within the jurisdiction of that which the ERC is authorized to review by State law and the Code of Fairfax County using the application contents, supplemental information presented by the Appellant's agent, and the information contained within the staff report and provided by LDS staff.

The ERC's decision to deny this application, prevents the Appellant from exercising their legal right to install a pool on their property in what was determined to be the only possible location – a right granted to many others in Fairfax County, including the Appellant's rear neighbor<sup>5</sup>.

We therefore ask the Board of Supervisors overturn the decision of the ERC and approve County Application 1996-WRPA-016 and 1996-WQ-005 and assign applicable and appropriate and typical conditions consistent with prior RPA exception approvals and/or those recommended by staff within the LDS staff report for this application.

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<sup>5</sup> The ERC approved Resource Protection Area Encroachment Exception #1996-VVRPA-015-3 and Water Quality Impact Assessment #1996-WQ-004-3 for 908 Mackall Road on March 20, 2019.

917 Whann Avenue  
1996-WRPA-016 and 1996-WQ-005  
October 6, 2022  
WSSI #31448.01  
Page 6 of 6

Thank you for your consideration and please feel free to contact me at (703) 679-5652  
(email at [jkelly@wetlands.com](mailto:jkelly@wetlands.com)).

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.

A handwritten signature in blue ink, appearing to read "J. T. Kelley, Jr.", written in a cursive style.

John T. Kelley, Jr., PE, CFM, LEED AP  
Manager - Engineering

cc: Bill Hicks, Director Fairfax County LDS  
Camyllyn Lewis, Senior Engineer III, North Branch, SDID, LDS  
Bin Zhang, Chief, North Branch, SDID, LDS  
John Zeca & Lindsay Noble  
Theodore D. Britt, Tri-Tek Engineering  
Grayson P. Hanes, Reed Smith LLP



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

September 9, 2022

Mr. John Zecca  
Ms. Lindsay Noble  
917 Whann Avenue  
McLean, VA 22101

Subject: 917 Whann Avenue, McLean, VA 22101; Langley Forest, Section 1, Lot 13A;  
Dranesville District; Tax Map No.: 0214-06-0013A

Reference: Resource Protection Area Encroachment Exception # 1996-WRPA-016 and  
Water Quality Impact Assessment (WQIA) # 1996-WQ-005

Dear Mr. Zecca and Ms. Noble:

Enclosed you will find a copy of a Resolution adopted by the Exception Review Committee (ERC) at their regular meeting held on September 7, 2022, **denying** Resource Protection Area (RPA) Encroachment Exception #1996-WRPA-016 and Water Quality Impact Assessment (WQIA) #1996-WQ-005, under Section 118-6-8 of the Chesapeake Bay Preservation Ordinance (CBPO), to permit encroachment into the RPA at the subject property.

Please be advised that the decision of the Exception Review Committee may be appealed to the Board of Supervisors in accordance with Article 8 of the CBPO within 30-days from the date of the adopted Resolution.

If further assistance is desired, please contact Camylyn Lewis, Stormwater Engineer, Site Development and Inspection Division (SDID), at 703-324-1808.

Sincerely,

DocuSigned by:  
*Nicola Mutesi*  
082817F77C49408...

Nicola Mutesi  
Clerk to the Exception Review Committee

Enclosure

cc: John T. Kelley, Jr., P.E., Manager-Engineering, Wetlands Studies and Solutions, Inc.  
Supervisor Foust, Dranesville District Supervisor

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Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)



Mr. John Zecca and Ms. Lindsay Noble  
1996-WRPA-016 and 1996-WQ-005  
Page 2 of 2

Jill Cooper, Clerk to the Board of Supervisors  
Elizabeth Martin, Chairperson, Exception Review Committee (ERC)  
Mr. Edward W. Monroe, Jr., ERC Dranesville Representative  
Camyllyn Lewis, Senior Engineer III, North Branch, SDID, LDS  
Bin Zhang, Chief, North Branch, SDID, LDS  
Matthew Hansen, P.E., CFM, Director, SDID, LDS  
Brandy Mueller, Environmental Compliance Coordinator, LDS  
Waiver File



# County of Fairfax, Virginia

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## Encroachment Exception Application #1996-WRPA-016 and #1996-WQ-005

Resource Protection Area (RPA) Encroachment Request for John Zecca and Lindsay Noble, 1996-WRPA-016 and 1996-WQ-005 under Section 118-6-8 of the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO) at 917 Whann Avenue, McLean, VA 22101, Dranesville District, Tax Map 0214-06-0013A, to include a pool within the Resource Protection Area (RPA).

At a regular meeting of the Exception Review Committee (the Committee) on September 7, 2022, Chairperson Elizabeth Martin, moved that the Committee adopt the following resolution.

### RESOLUTION

WHEREAS, the Committee has made the findings that:

- b) granting the exception **will** confer upon the applicant special privileges that are denied to other property owners who are similarly situated;
  - a. *This exception, if granted, would be the ERC's first approval to build a swimming pool within the 50 seaward feet of the RPA, according to staff. A recent request (Wooded Glen) for a swimming pool within the seaward 50 feet was denied. Although the circumstances for every exception request are different, approving an exception within the 50 seaward feet for the purpose of building a swimming pool may confer a special privilege on this applicant, and may establish a precedent for approving future similar applications.*
- c) the exception request is based upon conditions or circumstances that are self-created or self-imposed.
  - a. *The applicant's request to place a swimming pool so extremely close to the stream, within the 50 seaward feet, is essentially a self-created condition. Applicant had no reasonable expectation that a pool would be approved. Approval would depend on the appropriateness of the project.*

Now, therefore, be it resolved that the Exception Review Committee **DENIES** Exception Request 1996-WRPA-016-1 under Section 118-6-8 of the CBPO.

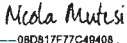


John Zecca, Lindsay Noble  
1996-WRPA-016  
917 Whann Avenue  
Page 2 of 2

### **ACTION OF THE COMMITTEE**

The motion was seconded. The motion carried by a vote of 9-2.

A Copy Teste:

DocuSigned by:  
  
09D817F77C49408

Nicola Mutesi  
Clerk to the Exception Review Committee



# FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 7/6/2022

EXCEPTION REVIEW COMMITTEE: 9/7/2022

V I R G I N I A

August 19, 2022

LAND DEVELOPMENT SERVICES (LDS)

SITE DEVELOPMENT AND INSPECTIONS DIVISION (SDID)

STAFF REPORT

RESOURCE PROTECTION AREA (RPA)  
ENCROACHMENT EXCEPTION #1996-WRPA-016-1 &  
WATER QUALITY IMPACT ASSESSMENT #1996-WQ-005-2

**APPLICANT NAME:** Mr. John Zecca and Mrs. Lindsay Noble

**PROJECT LOCATION:** 917 Whann Avenue, Mclean, VA 22101

**TAX MAP REFERENCE:** 0214-06-0013A

**DISTRICT:** Dranesville District

**DATE APPLICATION ACCEPTED:** June 28, 2022

**WATERSHED NAME:** Dead Run

**CBPO PROVISION:** Section 118-6-8(b). Exceptions for Accessory Structures

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

**LOT RECORDATION DATE:**

- 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:**

Install an in-ground swimming pool and spa with a deck on previously leveled ground (18 x 13 feet pool; pool and pool deck, the proposed increase in impervious area is 998 square feet) within existing retaining walls (additional 44 square feet), on the back side of the residence. See Attachment B3 - Plat, Grading Plan.

**STAFF RECOMMENDATIONS:**

Staff recommend approval subject to the conditions in Attachment A.

**REQUIRED FINDINGS:**

The staff review of the applicant's Water Quality Impact Assessment (WQIA) includes a detailed discussion of the required findings; Attachment C5.

*118-6-6(a) How the requested exception is the minimum necessary to afford relief.*

- i. See Attachments C3 and C5. The proposed impervious area for this lot is: 5,841 square feet existing impervious + 998 square feet increased impervious = 6,839 square feet total impervious. The proposed impervious area is not excessive compared to the lots within 500 feet. It is the opinion of staff that the proposed impervious area is comparable to other similarly situated properties.
- ii. Staff concur with the applicant's statement that the proposed location for the pool is the only possible location for a pool, and that the limits of clearing and grading are necessary for the construction of the proposed pool.
- iii. Staff concur that the proposed limits of clearing, and grading would be necessary and reasonable for the proposed pool, provided that the existing retaining wall is in good condition and is demonstrated to be able to support any additional load from the proposed pool. Compliance with geotechnical standards is required at the time of grading plan and building permit submission (see Attachment C5, how the requested exception is the minimum necessary to afford relief) and that calculations for the wall are included with a future grading plan for the proposed pool and planter boxes.

*118-6-6(b) That granting the exception will not confer any special privileges denied in similar situations.*

- iv. There are 4 cases which are similar (See Attachment C6):
  - Wooded Glen Lt 4 Sec 1; 5255-WRPA-003-1; in the seaward 50 feet; denied.
  - Peacock Station Lot C1A; 1131-WRPA-006-1; not in seaward 50 feet, approved.
  - Briarlynn Estates Sec 3 Lot 12A; not in the seaward 50 feet, approved.
  - Collier Residence; 1996-WRPA-015; not in the seaward 50 feet, approved.

It is the opinion of staff that, although the cases above are similar, in that they are all pools in the RPA, they are all unique and are not precedents.

*118-6-6(c) How the exception request is in harmony with the purpose and intent of the CBPO and is not a substantial detriment to water quality; provide VRRM computations and a narrative explaining.*

- v. The applicant is proposing to plant an area of 0.05 acres, primarily on the opposite side of the stream to the pool (Attachment B2, Pages 44 and 75), and provide a planter box adjacent to the proposed pool (Attachment B2, Page 63).

Staff's review of the aerial images (Attachment C2, and Attachment C5, page 10) indicate that the proposed planting area was more vegetated when the RPA was designated in 2003.

It is the opinion of staff that the vegetation on the opposite side of the stream should be restored to the condition when the RPA was designated prior to considering any of this area as mitigation for the increase in the impervious area. Restoration should be in accordance with Chapter 118 and the Public Facilities Manual (PFM), as determined by the Site Development and Inspections Division (SDID) and Urban Forest Management Division (UFMD).

Staff notes that prior to construction of the original house, the water quality requirements were waived for the proposed grading plan for the house.

*118-6-6 (d) How the exception is not based on circumstances that are self-created and self-imposed.*

- vi. It is the opinion of staff that the proposed exception is not entirely self-created in that the lot was recorded in 1947, and the present house built in 1998, before the RPA was designated on the lot in 2003. The impervious area on the lot is not uncharacteristic for the area. Nor is the proposed swimming pool. The subject lot differs from other lots in that the stream runs almost through the middle of the lot. See Attachment C3 and Attachment C5, Page 11.

*118-6-6(e) Proposed conditions/mitigation to prevent a degradation of water quality.*

- vii. It is the opinion of staff that the proposed planter box is an acceptable BMP (any of the Best Management Practices listed on the Department of Environmental Quality (DEQ) Clearinghouse would be acceptable) to ensure that there is not a water quality detriment. The area on the opposite side of the stream should be restored to the condition at the time the RPA was designated on the lot before considering any remaining area for mitigation planting. The applicant should revise the water quality computations (VRRM) accordingly and include the VRRM with a future grading plan.

*118-6-6 (f) Other findings*

- viii. The property was acquired in "good faith." See the sales history, Attachment C8 6.
- ix. The subject lot differs from many of the other lots within 500 feet in that the stream runs almost through the center of the property. Prior to the designation of the RPA, a retaining wall was constructed for the house and the area inside the existing retaining wall, where pool is proposed, is the only usable area of the yard.

LDS/SDID Staff Report RPA Exception 1996-WRPA-016 & 1996-WQ-005

- x. The RPA policy statements recognize that the seaward (inner) 50 feet of the RPA is more sensitive. However, because the Chesapeake Bay Preservation Ordinance (CBPO) allows for exceptions to encroach into the seaward 50 feet an exception may be permitted provided all exception criteria are satisfied. See Attachment C7.

**BACKGROUND:**

<b>Date</b>	<b>Event</b>
07/16/1947	Lot created. Deed book 565, page 425 (Attachment C8 2); Platted, deed book 670, page 170 (Attachment C8 3)
05/04/1983	Floodplain study approved (Attachment C8 5)
04/08/1993	Soil Report; Langley Forest, Sec 001; 1996-SR-001-1
04/20/1994	1996-WRPA-002 (No. 015092) waiver of water quality requirements (Attachment C8 13)
08/12/1994	Building Permit for the new house (Attachment C8 12)
12/28/1994	Grading plan for the new house (Attachment C8 4)
06/22/1995	Demolition of the old house (Attachments C8 7, C8 8 and C8 9)
02/19/1998	Residential Use Permit for the new house (Attachment C8 11)
11/18/2003	RPA designated on the lot in 2003
07/23/2020	Conveyed to the current owner deed book 26377 page 0544 (Attachment C8 1, and Attachment C8 6)
05/16/2022	Water Quality Impact Assessment deemed complete: Langley Forest Sec 1, Lot 13A- 917 Whann Ave; 1996-WQ-005-2
06/28/2022	Application accepted for public hearing: Langley Forest Sec 1, Lot 13A- 917 Whann Ave; 1996-WRPA-016-1

**STAFF ANALYSIS:**

Subject to the recommended approval conditions, see Attachment A, the request for the pool qualifies under CBPO section 118-6-8(b).

The detailed review of the water quality assessment and the required findings are in Attachment C5. Staff note the presence of unpermitted activities in the floodplain (including the foot bridges, paving and electrical lighting). Under separate application, the applicant should submit a floodplain use determination to retain or remove the unpermitted uses, in conformance with the county's Floodplain Regulations.

**LIST OF ATTACHMENTS:**

1. ATTACHMENT A: PROPOSED EXCEPTION CONDITIONS
2. ATTACHMENT B: APPLICANT'S APPLICATION PACKAGE
  - B1 – EXCEPTION APPLICATION FORM
  - B2 – WATER QUALITY IMPACT ASSESSMENT (WQIA)
  - B3 – PLAT
  - B4 – STATEMENT OF JUSTIFICATION ADDRESSING REQUIRED FINDINGS

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

C1 – STAFF PICTURES

C2 – AERIAL IMAGES

C3 – IMPERVIOUS AREA ANALYSIS

C4 – DCR GUIDANCE

C5 – STAFF REVIEW OF THE WATER QUALITY IMPACT ASSESSMENT

C6 – PAST CASES

C7 – POLICY STATEMENTS

C8 – HISTORY

4. ATTACHMENT D: NOTICES

D1 – NEWSPAPER AD COORDINATION

D2 – LIST OF ADJOINING PROPERTIES TO BE NOTIFIED

5. ATTACHMENT E: CORRESPONDENCE

E1 – EXCEPTION ACCEPTANCE LETTER AND CONFIRMATION OF HEARING DATE

ATTACHMENT A

# Proposed Exception Conditions

# Applicant's Application Package

## Table of Contents:

B1 – Exception Application Form

B2 – Water Quality Impact Assessment (WQIA):

- Project site description
- Location map
- Topographic map
- General performance criteria
- Map identifying soil types
- WQIA Components (CBPO 118-4-3)
- Photographs
- Virginia Runoff Reduction Method Spreadsheet

B3 – Plat

B4 –Statement of Justification Addressing Required Findings (CBPO 118-6-6)

# Support Information for Staff's Analysis

## **Table of Contents:**

C1 – Staff Pictures

C2 – Aerial Images

C4 – Impervious Area Analysis

C5 – WQIA Review

C6 – Past Cases

C7 – Policy Statements

C8 - History



# Notices

**Table of Contents:**

D1 – List of Adjoining Properties to be Notified

D2 –Newspaper Ad Coordination

# **Correspondence**

**Table of Contents:**

E1 – Exception Acceptance Letter with Hearing Date

# SOILS INC.



SOIL SCIENTISTS • ENGINEERS • WASTE WATER PROFESSIONALS

MARKHAM D. SMITH, A.O.S.E., L.P.S.S.,  
PRESIDENT

8399 West Main Street, Marshall, Virginia 20115  
P. 844-447-SOIL (7645) • F. 540-364-2060

SOILS-INC.COM

September 29, 2022

Mr. Ted Britt  
Tri-Tek Engineering  
690 Center Street, Suite 300  
Herndon, Virginia 20170

Re: Evaluation of Planned In-ground Pool near Existing Retaining Wall  
917 Whann Avenue  
McLean, Virginia  
Project No. T4263

Dear Mr. Britt,

As requested, an engineer from Soils, Inc. has evaluated the existing retaining wall located east of the existing home at 917 Whann Avenue in McLean, Virginia. The purpose of our evaluation is to determine if the nearby planned in-ground pool will adversely affect the overall stability of the retaining wall.

According to the information provided, the existing retaining wall retains 2 to 3 feet of earth. The face of the retaining wall is brick, likely covering concrete or masonry block. The existing retaining wall is not parallel to the pool and, consequently, the distance from the retaining wall and the east (closest) wall of the pool varies from 4 to 7 feet. The depth of the planned pool varies from 3.5 feet at the south end to 7.5 feet at the north end of the pool. Information provided indicates the pool will be constructed using spray-on concrete (gunite).

The elevation of the pool deck is EL. 215 feet. According to information provided, the top of the existing retaining wall is EL. 213.5 feet. Based on the grading plan, the planned grade slopes from EL. 214 at the pool deck to EL. 213 feet at the existing retaining wall. The depth of the footing supporting the existing retaining wall is not known. However, we have assumed a shallow footing approximately 12 inches below existing grade as a worst-case scenario for our analysis.

Because the distance between the planned pool and the existing retaining wall varies from 4 to 7 feet and the depth of the planned pool varies from 3.5 to 7.5 feet, we have analyzed the interaction between the existing retaining wall and the planned in-ground pool at two (2) locations. We have performed an analysis at the north end of the pool, and at the south end of the planned pool.

For our analysis, we projected a line from the edge of the retaining wall footing on the side closest to the planned pool, downward at a 1H:1V slope toward the pool. We also project a line from the edge of the pool foundation closest to the retaining wall at a 1H:1V slope toward the retaining wall. This was performed at the north end of the pool and at the south end of the pool.

Our analysis indicated that the lines projected at a 1H:1V slope from the retaining wall are several feet below the bottom of the planned pool where they pass below the pool. Conversely, the lines projected at a 1H:1V slope from the in-ground pool are several feet below the retaining wall where they pass below the wall. This is the case at both the north and south ends of the pool.

Based on our analysis, the installation of the planned in-ground pool will not undermine the existing retaining wall. Nor will the planned in-ground pool superimpose additional lateral loads on the existing wall. Conversely, no loads will be superimposed on the planned in-ground pool from the existing retaining wall. In summary, the construction of the planned in-ground pool will not adversely affect the existing retaining wall.

We thank you for the opportunity to be of assistance. If you or any designated users of this letter have any questions, please do not hesitate to call.

Sincerely,  
**SOILS INC.**



Mark E. Clippinger, P.E.  
Vice President