



# FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 6/17/2021

EXCEPTION REVIEW COMMITTEE: 8/4/2021

V I R G I N I A

July 21, 2021

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

STAFF REPORT

RESOURCE PROTECTION AREA (RPA)  
ENCROACHMENT EXCEPTION #3276-WRPA-003-1 &  
WATER QUALITY IMPACT ASSESSMENT #3276-WQ-004-4

**APPLICANT NAME:** Edwin Yeshvanth D Tr

**PROJECT LOCATION:** 8747 Brook Road

**LEGAL ADDRESS:** Woodside Estates Lot 16A, Section 3

**TAX MAP REFERENCE:** 020-3-03-0016A

**DISTRICT:** Dranesville District

**DATE APPLICATION ACCEPTED:** June 17, 2021

**WATERSHED NAME:** Difficult Run

**CBPO PROVISION:** Section 118-6-9. General RPA Encroachment Request

100-YEAR FLOODPLAIN PRESENT

LOT SIZE 1.07 Ac; 46,770 SQ FT; 73 % LOT RPA

AREA OF REQUESTED ENCROACHMENT (DISTURBED AREA) 330 SQ FT (IN THE RPA)

PROPOSES ENCROACHMENT INTO THE SEAWARD 50 FEET

**LOT RECORDATION DATE: OCTOBER 14, 1952; DEED BOOK 1019 PAGE 39;**

**RESUBDIVISION 1995, DEED BOOK 9536, PAGE 1704**

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 Woodside Estates lot was created with the recordation of the Record Plat (Deed Book 9536, Page 1704) in 1995 and does not qualify for an administrative waiver of loss of buildable area or qualify for an exception for loss of buildable area under Article 6, Section 118-6-7 because the lot was created after the RPA was designated in 1993. The exception to build the new house was submitted under Article 6, Section 118-6-9 and this new request must also be submitted under Section 118-6-9.

Request to add a new turnaround to the driveway:

- 330 square feet (sq. ft.) of disturbance;
- increase in impervious area of 184 sq. ft. in the RPA; and
- no impervious area in the seaward 50 ft. of the RPA.

See the water quality impact assessment, plan sheet 1, page 24 of the applicant's PDF, for the impervious area tabulation (**Attachment B2i**).

**STAFF RECOMMENDATIONS:**

Staff recommends denial of the RPA encroachment exception request #3276-WRPA-003-1 and the Water Quality Impact Assessment #3276-WQ-004-4.

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 July 21, 2021).

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.

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:**

<b>CBPO Section</b>	<b>Required Finding</b>	<b>Department of Environmental Quality (DEQ) Guidance<sup>1</sup></b>	<b>Staff Comment</b>
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"> <li>• size of the structure</li> <li>• type of proposed structures</li> <li>• placement of the structures in relation to the size, layout and location of the lot or parcel.</li> <li>• how the size of the structure compares to the lot size on the graph for properties within 500 ft. See <b>Attachment C6i</b>.</li> <li>• DEQ discourages “serial exceptions” because the criteria for granting exceptions are based on the minimum necessary to provide use of the property.</li> </ul>	<p>After Exception #3276-WRPA-002-1 and Water Quality Impact Assessment (WQIA) #3276-WQ-002-1, the following changes were made to the property, which increased the total impervious area:</p> <p>An area of paving located in the courtyard, which is also in the RPA; and a deck with paving beneath, outside the RPA. See Impervious Comparison, <b>Attachment C6ii</b>.</p> <p>The ERC questioned the size of the house in the October 3, 2012, public hearing. The applicant’s representative explained that the applicant and owners want to live and build a “dream” home where several extended family members can stay.</p> <p>There was discussion as to the extent of the home and redevelopment – considering a larger, and more impervious area than any other comparable homes in the area.</p> <p>The request was amended to include pervious paving on the driveway, approximately 60 feet from the guest house and in the courtyard area between the two structures. There was also to be a rain garden/infiltration trench between Brook Road and the trench basins that can handle runoff from Brook Road. See The Final Meeting Minutes October 3, 2012, <b>Attachment C1</b>.</p> <p>The ERC approved #3276-WRPA-002-1 and Water Quality Impact Assessment (WQIA) #3276-WQ-002-1, finding the use requested was the minimum necessary to afford relief. The previously approved uses within the RPA were requested at the discretion of</p>

CBPO Section	Required Finding	Department of Environmental Quality (DEQ) Guidance <sup>1</sup>	Staff Comment
			<p>the owners, including a dwelling, guesthouse, and paved courtyard, much of which are in the RPA. The amount of approved impervious cover in the RPA, therefore, was the <i>minimum</i> necessary to afford relief.</p> <p>The currently requested driveway turn-around was not included in the original exception application and is therefore not the minimum necessary to afford relief.</p>
118-6-6.b	<p>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>	<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>See the 500 ft Buffer Analysis, <b>Attachment C6i</b> and <b>C6ii</b>. Although higher than the average, the total impervious area in the RPA and the percent impervious in the RPA for properties within 500 feet is not the largest.</p> <p>It is the staff’s opinion that the exception for a driveway itself would not confer a special privilege.</p> <p>However, if approved, the “serial exception” nature of this exception request is itself a special privilege.</p>
118-6-6.c	<p>The exception is in harmony with the purpose and intent of this chapter and is not of substantial detriment to water quality;</p>	<p>This finding focuses on the actions of the property owner, and appropriate use of the property.</p>	<p>The impervious area in the RPA in 2012 was 3,293 sq. ft., the exception approval for the current house increased the impervious area in the RPA to 5,966 sq. ft. The addition of the impervious area under the new deck added to the lot after the first RPA exception is approximately 475 sq. ft. (see page 8 of the WQIA), but not within the RPA. See the Water Quality Impact Assessment,</p>

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			<p>Sheet 2, PDF page 24, for the impervious areas added to the property by year; <b>Attachment B2i.</b></p> <p>The proposed turnaround would increase the impervious area in the RPA by 184 sq. ft. That area is currently turf grass.</p> <p>The applicant previously requested to add four parking spaces at the entrance of the driveway; adjacent to Brook Road. See the Water Quality Impact Assessment, PDF page 26; <b>Attachment B2i.</b></p> <p>The applicant is proposing to add an additional area of vegetation between the vegetated buffer required by the 2012 exception and the house. The proposed vegetation is on a slope; large trees should not be planted on slopes per the Public Facilities Manual. See <b>Attachment B3.</b></p> <p>It is the opinion of staff that if the applicant wants to increase the impervious area on the parcel beyond what was authorized under the previous exception, the water quality computations should be based on the entire parcel. All changes to the land use based on the land use before the first exception should be mitigated with appropriate vegetation and/or Best Management Practices (BMPs).</p>
118-6-6.d	The exception request is not based upon conditions or circumstances that are self-	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	The applicant's original request was four parking spaces at the end of the driveway. This has been modified to a single turnaround adjacent to the guesthouse.

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	created or self-imposed;	a small house would be more suitable for the lot size.	<p>The previously approved exception allowed for the construction of a dwelling and guesthouse, and paved courtyard, much of which are located in the RPA. The ERC approved the exception subject to the condition that pervious pavers were installed over a portion of the driveway.</p> <p>This request for further encroachment in the RPA beyond and in addition to the previously approved encroachment, and this desire to use more of the RPA is self-created as evidenced by the fact that it was not included in the original application as the minimum encroachment needed.</p> <p>The applicant is opting for more impervious area as a self-created situation instead of seeking an alternative solution. For example, the applicant may consider meeting their stated goal of turnaround access for delivery vehicles by raising or razing the archway which separates the existing driveway from the existing turnaround. See <b>Attachment B2i</b>, pages 24 and 26.</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 vegetative plantings elsewhere on the lot	<p>The applicant provided water quality computations to show that an area of turf grass could be converted to vegetated buffer to offset the increase in impervious area for the new turnaround.</p> <p>It is the opinion of staff that the water quality computations should be revised and based on the pre- (before the new house) and post land use for the entire parcel. The computations used in the first exception are based on the land use for the entire parcel and this application changes those calculations.</p>

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		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).	Staff proposes conditions in <b>Attachment A</b> to ensure maintenance of the riparian buffer plantings and any proposed BMP facilities if it is the intent of the ERC to approve this application.  See <b>Attachment B2iii</b> , and C4, page 34.
118-6-6.f	Other findings, as appropriate and required herein, are met. (32-03-118.)		See 118-6-9 below.
118-6-9	Water Quality benefit exceeds the detriment.		The water quality computations submitted with this exception propose additional planting. An area of turf grass is to be changed to vegetated buffer.  It is the opinion of staff that the water quality computations for the lot should be based on the entire lot and include the additional impervious area added to the lot after approval of the first exception. See <b>Attachment C4</b> , page 34 for the original water quality computations. Staff's opinion is that the calculations provided do not demonstrate that the water quality benefit of the entire site is maintained with this proposal.

<sup>1</sup>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 timeline, **Attachment C7**.

- The lot was created October 14, 1952; Deed Book 1019, Page 39.
- The lot was re-subdivided, May 5, 1995; Deed Book 9536, Page 1704.

- The RPA was designated on the lot by the county in 1993.
- The most recent RPA field delineation is January 22, 2021.
- The following waivers/exceptions were requested:
  - April 26, 2012: 3276-WRPA-001-1 and 3276-WQ-001-1; submitted under 118-5-4(b) Loss of buildable area; denied; the lot was created with Deed Book 9536, Page 1704 in 1965, after the designation of the RPA on the property. The encroachment request does not qualify for a waiver of loss of buildable area under CBPO Section 118-5-4. Directed to submit under 118-6-9 with a public hearing.
  - July 26, 2012: 3276-WRPA-002-1 and 3276-WQ-002-1 accepted for public hearing with the ERC under 118-6-9.
  - October 3, 2012: ERC approved exception 3276-WRPA-002-1 and 3276-WQ-002-1 subject to conditions: vegetated buffer 10,000 sq. ft.; pervious pavers on the driveway approximately 60 ft. from the front of the guest house and in the courtyard between the two structures.
  - January 22, 2013: grading plan 3276-INF-003-1 approved for the new house.
  - July 29, 2019: 3276-WRPA-003-1; denied; request for parking spaces at the entrance cannot be approved administratively. Referenced the exception 3276-WRPA-002-1 and 3276-WQ-002-1 approved under CBPO Section 118-6-9. Directed to submit under CBPO 118-6-9.
  - April 26, 2021: 3276-WQ-004 deemed administratively complete in advance of the required submittal of RPA exception for public hearing.
  - June 17, 2021: 3276-WRPA-003-1 and 3276-WQ-004-4 accepted for public hearing August 4, 2021. The proposed exception is to add a turnaround to the driveway; increase the paved area on the lot by 185 sq. ft., in adding the new turnaround there would be 330 sq. ft. of land disturbance. The proposal is to mitigate the impervious area and land disturbance by turning 845 sq. ft. of turf grass in the RPA to vegetated buffer.

**STAFF ANALYSIS:**

**Requested Exception**

This application is submitted under CBPO Section 118-6-9.

The request to permit a new driveway turnaround in the RPA cannot be processed under the provisions of CBPO Sections 118-6-7 or 118-6-8 as the lot was created after the RPA was designated in 1993.

Since the first exception to build a new house, a deck with paved area beneath has been added to the lot. To remain, this improvement should be accounted for in the water quality computations and be granted an exception.

Upon consultation with the Office of the County Attorney, the following interpretation was made by Land Development Services (LDS):



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.

Therefore, the application is submitted under Section 118-6-9.

See **Attachment A** for staff's recommended conditions on the Water Quality Impact Assessment.

### **Floodplain**

Although there is a minor floodplain on the property, neither the proposed disturbance nor the proposed mitigation plantings for the turnaround are in the floodplain, therefore, separate floodplain approvals are not required.

### **LIST OF ATTACHMENTS:**

1. ATTACHMENT A: PROPOSED EXCEPTION CONDITIONS
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  - C5 – 2012 PHOTOGRAPHS OF THE PROPERTY
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