



FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 2/15/2023

EXCEPTION REVIEW COMMITTEE: 6/7/2023

V I R G I N I A

May 11, 2023

LAND DEVELOPMENT SERVICES (LDS)

SITE DEVELOPMENT AND INSPECTIONS DIVISION (SDID)

STAFF REPORT

RESOURCE PROTECTION AREA (RPA)
ENCROACHMENT EXCEPTION #7996-WRPA-002-1 &
WATER QUALITY IMPACT ASSESSMENT #7996-WQ-001-2

APPLICANT NAME: Mr. J. Matthew Wilson & Mrs. Jazmine D. Wilson

PROJECT LOCATION: 1008 Springvale Road, Great Falls, VA 22066

TAX MAP REFERENCE: 0121-08B-0004A2

DISTRICT: Dranesville

DATE APPLICATION ACCEPTED: February 23, 2023

WATERSHED NAME: Difficult Run

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

- 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:

Application to resolve a violation and allow a portion of sport court to remain in the RPA.

In accordance with the requirements of Chapter 101 of the County Code; Sections 101-2-2 and 101-2-3, notes were placed on the subdivision plat (See notes 7 and 8 in Attachment C8-1) requiring that the RPA remain undisturbed and vegetated in accordance with the requirements of section 118-3-3(f) of Chapter 118 of the County Code.

In accordance with the Subdivision Ordinance, Public Facilities Manual, and Chapter 118 of the County Code, for the portion of the sport court to remain in the RPA an exception must be approved by the Exception Review Committee (See Attachments C9-1 through C9-5).

As the RPA was designated on the property on November 18, 2003, and the lot was created June 7, 2004, an exception for an accessory structure cannot be granted under Section 118-6-8. Therefore, the applicant has submitted a request for an exception under Section 118-6-9.

STAFF RECOMMENDATIONS:

Staff recommend denial of the application. As presented, the proposed application does not meet the following findings:

- Section 118-6-6.a: Minimum Necessary to Afford Relief.
 - The sport court could be located outside the RPA.
- Section 118-6-6.c: The application is a detriment to water quality.
 - The applicant proposed to restore the Home Owners Association (HOA) property with turf grass instead of appropriate riparian species.
 - The applicant's water quality computations are incorrect and inconsistent.
- Section 118-6-6.d: The request is self-created and self-imposed.
 - The house is significantly larger than surrounding properties and the sport court could be located outside the RPA.
- Section 118-6-6.e and 118-6-9: The applicant's water quality computations are inconsistent with the plan and do not demonstrate that there will be a water quality benefit.

BACKGROUND:

Timeline

- 11/18/2003 RPA designated on the lot
- 6/7/2004 Lot created; 001129-RP-007-2 (Attachment C8-1); Subdivision recorded in deed book 16080, page 0848 (Attachment C8-2)
- 6/20/2005 Request to install a water well in the RPA; 007996-WRPA-001-1; denied (Attachment C8-3)
- 6/20/2005 Request for a waiver of best management practices; denied; 007996-WBMP-001-1
- 11/2/2005 Infill Lot Grading Plan; Approved - Not constructed; 007996-INF-001-2 (Attachment C8-4)
- 11/3/2010 Infill Lot Grading Plan; Approved; 007996-INF-002-1 (Attachment C8-5)
- 9/8/2011 House Constructed and Residential Use Permit Issued (Attachment C8-6)
- 9/19/2011 Mr. and Mrs. Wilson purchased the property
- 2011-2015 Yard extended onto to the HOA property *
- 7/7/2020 Notice of Violation (NOV) (Attachment C8-7)
- 10/8/2020 Floodplain Use Determination; FPUD-2020-00062 (Attachment C8-8); denied, conflict with the notes on the subdivision plat
- 1/17/2023 Water Quality Impact Assessment; deemed complete; 007996-WQ-001-2 (Attachment B2)
- 4/4/2023 Exception request accepted for public hearing; 007996-WRPA-002-1 (Attachment B1 and B2)

* A review of the aerial images (See Attachment C2-8) indicates that sometime between the construction/sale of the property in 2011 and 2015, the yard was extended onto the HOA property. Somewhere between 2015 and 2017, the sport court was constructed partly on the applicant's property and partly on the HOA property.

The violation came to the attention of LDS in July 2020. The formal notice of violation was issued July 21, 2020. The applicant submitted a FPUD on September 9, 2020, in an attempt to resolve the floodplain violation. The FPUD was rejected directing the applicant to first consider locating the sport court outside the floodplain and resource protection area or obtain an exception to locate the court in the RPA.

STAFF ANALYSIS OF THE REQUIRED FINDINGS:

See the Virginia Department of Conservation and Recreation (DCR) guidance (Attachment C4).

Section 118-6-6.a: The requested exception to the criteria is the minimum necessary to afford relief.

DCR Guidance:

The term “minimum necessary to afford relief” is inherently a subjective standard. The direction is to consider the placement of the structures in relation to the size, layout and location of the lot or parcel. The direction is also to consider if an alternative location, sizing, or orientation would void the need for an exception. If an alternative location is available, then the finding of “minimum necessary to afford relief” would not be present.

Staff:

Attachment C5-3A shows three alternative locations where the requested half sport court could be located outside the RPA. Since an alternative location is available that negates the need for an exception, the request is not the minimum necessary to afford relief. See Attachment C5-3A for alternative locations outside of the RPA. The request does not meet this required finding.

Section 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.

DCR Guidance:

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.

Staff:

There is no record of a case for a sport court in the RPA. There are a number of exception requests for accessory structures submitted under 118-6-8, and a number of cases submitted under 118-6-9. Some cases were approved, some denied based on their individual circumstances. See Attachment C6 for a list of cases. It is the opinion of staff that granting approval would not give the applicant something that has been denied to others.

Section 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.

DCR Guidance:

The purpose of the Regulation is to protect water quality. The WQIA is the best way to determine water quality will be adequately protected should a given request be approved.

Staff:

The computations submitted in the WQIA are inconsistent with the plan. The applicant should correct the computations and demonstrate that the proposed sport court improvement results in a water quality benefit for the subject parcel.

The applicant's computations (Attachment B2, pdf page 7; applicants page 6) show that 0.1444 acres, or 6,288 square feet, of turf will be converted to forest open space to mitigate the increase in impervious area from the portion of the sport court to remain in the RPA. This proposed mitigation is approximately 7.8 times the size of the requested portion of the sport court to remain. However, the exhibit (Attachment B2, pdf page 33) indicates a reforestation area of 1,180 square feet onsite and a reforestation area of 2,167 square feet on the HOA property. This is inconsistent with the applicant's statement (Attachment B2, pdf page 7) that "*These plantings will be installed within an approximate 6,288 square foot area of the adjacent property as permission to locate plantings here has been provided by the adjacent HOA.*" Staff's opinion is that all water quality benefits should be provided on the subject parcel, instead of the offsite HOA property.

Staff note that the limit of disturbance used in the Virginia Runoff Reduction Method (VRRM) computations (Attachment B2, pdf page 33) is 0.0546 acres (2,378 square feet) which is more than the disturbed area on the applicant's property for the portion of the sport court to remain.

Staff estimate approximately 1,800 square feet of additional turf area would need to be restored to RPA buffer, or a best management practice be provided, for the improvement to result in a water quality benefit. This is in addition to the tree planting required to resolve the violation as stated in the Forest Conservation Branch (FCON) memo. See Attachments C5-2A, C5-2B, and C5-4.

In accordance with Section 118-9-1 and the NOV (Attachment C8-7), the trees illegally removed from Chesapeake Bay Preservation Areas should be replaced by other trees of the same or comparable species of equal value and/or be replaced two-for-one with 1.5-inch caliper trees. The approved grading plan identifies seven trees in the RPA and one on the RPA boundary line, on the applicant's property. See attachment B2, pdf page 64, and the FCON memo (attachment C5-4).

Mitigation plantings should be proposed outside the storm drain easement or supporting information (a cross section with the 10-year water surface elevation) provided to demonstrate that the trees will not impact the drainage.

To address the vegetation removed from the HOA property, the area should be restored in accordance with the guidance from the FCON memo (attachment C5-4).

The request as proposed does not meet this required finding.

Section 118-6-6.d: The exception request is not based upon conditions or circumstances that are self-created or self-imposed;

DCR Guidance:

This finding focuses more on the actions of the property owner. For instance, 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 smaller house would be more suitable for the lot size. This finding relates, in most cases, to a property owner's failure to realize that their property is not suited for their intended use. When the circumstance for the request is "self-created," the request should be denied by the local body, board or commission.

Staff:

The house footprint and the impervious area on the subject lot are the largest among properties within 500 feet. See Attachment C3. The lot was subdivided, and the house constructed, after the RPA was designated on the property. Further, there appears to be sufficient area outside the RPA to locate the portion of the sport court. See Attachment C5-3A.

It is the opinion of staff that the sport court is a self-created situation. The request does not meet this required finding.

Section 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.

DCR Guidance:

Conditions should be imposed to ensure, among other things, that water quality is protected, and that the function of the undisturbed RPA remains. Conditions should be based, in part, upon the findings 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 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:

Staff estimate that approximately 1,800 square feet of turf area would need to be restored to the RPA buffer, or a best management practice be provided, for the improvement to result in a water quality benefit. See Attachments C5-2A and C5-2B.

The request as proposed does not meet this required finding, additional measures would be required to ensure there is not a detriment to water quality. The HOA property should

be fully restored in accordance with the memo from FCON (attachment C5-4), and an additional 1,800 square feet of turf grass on the applicant's property should be restored to RPA buffer.

Section 118-6-9: The water quality benefits must exceed the detriments.

Staff:

Impervious area on the lot when the house was constructed was calculated to be 16.49% (6,591 square feet of impervious area). Since the impervious area at the time the house was constructed was less than 18%, best management practices were not required. See Attachment B2, pdf page 58.

The HOA property should be fully restored. See the memo from FCON (attachment C5-4). Mitigation plantings to account for the water quality detriment on the applicant's property may not be placed on the HOA property. The mitigation for the sport court must be on the property requesting the exception.

To address the annual impact of the requested portion of the sport court, staff estimate that approximately 1,800 square feet of additional turf area would need to be restored to RPA buffer, or a best management practice be provided, for the improvement to result in a water quality benefit. See Attachments C5-2A and C5-2B.

The request as proposed does not meet this required finding, additional measures would be required to ensure there is a water quality benefit.

LIST OF ATTACHMENTS:

1. ATTACHMENT A: PROPOSED EXCEPTION CONDITIONS
2. ATTACHMENT B: APPLICANT'S APPLICATION PACKAGE
 - B1 – EXCEPTION APPLICATION FORM
 - B2 – WQIA including the
STATEMENT OF JUSTIFICATION ADDRESSING REQUIRED
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 - B3 – PLAT
3. ATTACHMENT C: SUPPORT INFORMATION FOR STAFF'S ANALYSIS
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 - C4 – DCR GUIDANCE
 - C5 – STAFF REVIEW OF THE WQIA
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 - C8 – HISTORY
 - C9 – REGULATIONS
4. ATTACHMENT D: NOTICES
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 - D2 – NEWSPAPER AD COORDINATION
5. ATTACHMENT E: CORRESPONDENCE
 - E1 – LETTER DEEMING THE WQIA COMPLETE
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 - E2.2 – APPROVAL OF WAIVER OF PLAT REQUIREMENTS
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MAP IDENTIFYING SOIL TYPES

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PHOTOGRAPHS

VIRGINIA RUNOFF REDUCTION METHOD SPREADSHEET

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