



# FAIRFAX COUNTY

EXCEPTION APPLICATION FILED: 7/6/2022

EXCEPTION REVIEW COMMITTEE: 9/7/2022

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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.

- 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:

Date	Event
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

# **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