



**CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE  
STAFF REPORT  
May 3, 2018 Hearing Date**

**DATE:** April 9, 2018

**SUBJECT:** Chesapeake Bay Preservation Ordinance Exception Request – 2938 26<sup>th</sup> Street N

**STAFF RECOMMENDATION:** Approve exception request.

The proposed single-family deck addition project will create a new RPA encroachment, but is similar in terms of scope and water quality impact to projects previously approved by CBORC. The project will not require the removal of any trees within the Resource Protection Area (RPA) and does not alter existing stream valley topography. An increase in the volume or intensity of runoff will not result. Runoff from a previously permitted addition and a portion of the existing home is controlled by a stormwater planter (urban bioretention). English ivy removal to enhance the RPA buffer is proposed as a mitigation measure in association with the deck project.

**BACKGROUND:** The Resource Protection Area on the property with address 2938 26<sup>th</sup> Street N extends more than 100 feet from Windy Run due to the presence of steep slopes (greater than 25%) on the parcel. The RPA on the property is currently substantively forested – existing RPA encroachments within the property boundaries include a gravel path and a public storm sewer outfall to the rear of the home and walkways and tiered landscaping in the side yards. In November 2016, the County issued Land Disturbing Activity (LDA) and building permits for the construction of a two-story addition to the existing single-family home. The project resulted in 1,367 sf of RPA disturbance. However, the project did not add any impervious cover or propose to encroach into the RPA and was approved by staff.

The current **revision to the prior approved plan** proposes a deck addition on the rear of the home. The proposed deck will create a new encroachment in the Resource Protection Area and therefore, the revised project requires Chesapeake Bay Ordinance Review Committee (CBORC) review.

**SUMMARY OF EXCEPTION REQUEST:** On March 21, 2018, pursuant to Section 61-16.A of the Chesapeake Bay Preservation Ordinance (“Ordinance”), Trent Wahl Homes filed an exception request and Water Quality Impact Assessment (Attachment 1) on

behalf of the property owner, Julia Norton, to create a new encroachment within the RPA for Windy Run.

As required by the Ordinance, written notice of the exception request and hearing date has been sent to the parties required to be notified by the Ordinance.

**WATER QUALITY IMPACT ASSESSMENT:**

- The existing principal single-family structure does not encroach into the RPA.
- A new encroachment for the principal single-family structure is proposed. A deck addition attached to the rear of the home is proposed to encroach into the RPA.
- The RPA currently consists of steep (greater than 25 percent) forested slopes. The RPA buffer width for Windy Run is greater than the minimum RPA buffer width of 100 feet due to the steep slopes.
- A gravel path, a storm sewer outfall and, in the side yards, walkways and tiered landscaping encroach into the RPA on the property. These features altogether have a footprint of 564 sf in the RPA.
- The proposed deck will encroach 25 sf into the RPA and decrease the distance between the principal structure and Windy Run from 117.4 feet to approximately 104.7 feet at the east corner of the home.
- The proposed project will add 4 sf of impervious cover to the RPA. This is associated with a deck footer.
- The RPA in the vicinity of the deck has recently been disturbed by construction of a two-story addition to the home. The stormwater controls for the property, consisting of a detached 50 sf stormwater planter and 12 sf dry well, are located under the deck (Attachment 2). Disturbed area in the RPA will be stabilized with mulch.
- Newly constructed stormwater controls capture 1" of runoff from 1,022 sf of roof area. No other controls are proposed.
- The proposed project will not remove any trees in the RPA. Root pruning and tree protection will be implemented to protect existing trees. Silt fence will be installed at the downslope extent of the disturbance limits to prevent construction-related sediment runoff.
- To enhance the riparian buffer and mitigate for the new RPA encroachment, removal of English ivy within the RPA on the property is proposed in perpetuity (Attachment 3). Ongoing control efforts for English ivy on the property will be guaranteed via a Stormwater Facility Maintenance and Monitoring Agreement.

**REQUIRED FINDINGS:** Section 61-16.C of the Ordinance specifies the required findings that must be made prior to granting an exception. This section summarizes these findings and staff's analysis of each finding for this case.

**Finding 1.** The requested exception to the criteria is the minimum necessary to afford relief. This standard evaluates whether alternative location, footprint, and/or orientation options are available in order to reduce or avoid the need for the encroachment into the RPA.

*Staff analysis:*

Staff believes that the 'minimum necessary' criterion is met by this proposal for the following reasons:

- steep slopes result in extension of the RPA beyond the minimum 100-foot buffer on the property;
- the site topography is such that the delineated RPA does not encompass the home footprint, but does extend into the side yards and to the rear edge of the newly constructed addition;
- zoning requirements prohibit the deck from being added other than to the rear of the principal structure;
- the deck has been sited to minimize encroachment and impervious cover in the RPA;
- the RPA in the vicinity of the deck has already been disturbed by construction activities; and
- the overall limits of clearing and grading will be minimized.

**Finding 2.** Granting the exception will not confer upon the applicant any special privileges that are denied by this Chapter to other property owners who are subject to its provisions and who are similarly situated. This finding is intended to make sure that a granted exception 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 analysis:*

- The request is similar in scope and RPA impact to exception requests approved by staff for attached decks and small additions. Those exception requests also involved limited impacts to trees and natural topography of the RPA and result in negligible increases in intensity or volume of stormwater runoff.
- For example, a comparable attached deck project at 105 S Aberdeen Street approved by staff involved 1446 square feet of RPA disturbance and added 500 square feet of development footprint and 51 square feet of impervious cover in the RPA.
- However, because this project involves expansion of non-conforming, non-attached structure in the RPA and increases both impervious area and encroachment in the RPA, it is required to be reviewed by CBORC.

- In 2014, CBORC approved a similar exception request for a new RPA encroachment for a principal structure. The new home project at 612 N. Abingdon Street added 78 sf of impervious cover and created a new encroachment of 143 sf in the RPA. The new encroachment included a 48 sf rear deck.

Staff concludes that this finding will be satisfied.

**Finding 3.** The exception request is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality. This finding is made after reviewing the required WQIA that accompanies any exception request and involves an evaluation of the footprint and location of the proposed development/use, the existing condition of the RPA, the impacts to the RPA, and the proposed mitigation measures.

*Staff analysis:*

- The proposed deck addition has a minimum RPA footprint and is largely pervious.
- The resultant impervious cover increase of 4 sf will not result in increased volume or intensity of runoff.
- The project also will not alter the existing topography.
- Tree protection and root pruning will be implemented to protect existing RPA trees. No RPA trees are proposed to be removed for the project.
- The RPA in the vicinity of the deck has recently been disturbed by construction.
- Silt fence installed at the downslope limit of construction will control construction-related runoff.
- The proposed English ivy removal within the RPA (guaranteed in perpetuity through the Stormwater Facility Maintenance and Monitoring Agreement) will enhance the vegetated Resource Protection Area buffer.

Staff concludes that this finding will be satisfied.

**Finding 4.** The exception request is not based upon conditions or circumstances that are self-created or self-imposed. The emphasis of this evaluation is on the applicant's responsibility for and control over the conditions or circumstances on the parcel that require the need for an exception. More broadly, this finding evaluates whether the proposed use is suitable given the characteristics of the property and RPA (e.g., lot size, existing development footprint, topography, trees, etc.).

*Staff analysis:*

Staff believes that this condition has been satisfied for many of the same reasons outlined above for Findings 1 and 2.

**Finding 5.** Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality. This finding is similar to Finding 3, with an emphasis on the proposed mitigation measures.

*Staff analysis:*

- Newly constructed on site stormwater controls capture 1" of runoff from 1,022 sf of roof area. This is approximately 29 percent of the total impervious cover on the property. Due to the site topography, forested condition of the RPA, and limited RPA footprint associated with the proposed deck addition, staff does not consider it valuable to impose a requirement for additional stormwater controls in conjunction with this exception.
- However, siting a deck above a stormwater planter is contrary to County policy, since shading by overhanging structures like decks can negatively impact bioretention vegetation and compromise facility performance. The proposed deck at this property will be 20 feet above ground and 16 feet above the top of the planter. Moreover, the planter is already partially shaded by existing trees. A Stormwater Management Ordinance waiver that would enable the deck to be installed above the stormwater planter has been obtained by the property owner with the condition that shade-tolerant native plantings are planted in the bioretention.
- As presented in Finding 3, the previous implemented stormwater controls and proposed buffer enhancement measures included in the project and discussed in the WQIA section of this report will adequately protect water quality.

Staff concludes that this finding will be satisfied.

**CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE HEARING:** CBORC will consider this exception request at a public hearing to be held on **May 3, 2018, at 7:30 pm.** This meeting will be held in the **Azalea Conference Room** of Courthouse Plaza, 2100 Clarendon Boulevard, lobby level.

The following information is attached for review, prior to the CBORC hearing:

- Attachment 1 – Water Quality Impact Assessment (WQIA)
- Attachment 2 – BMP and Stormwater Management Plan
- Attachment 3 – Landscape Conservation Plan

For questions or additional information about this exception request, please contact Christin Jolicoeur at 703-228-3588 or [cjolicoeur@arlingtonva.us](mailto:cjolicoeur@arlingtonva.us).

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Attachments