

**CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE  
STAFF REPORT  
September 15, 2021 Hearing Date**

**DATE:** August 30, 2021

**SUBJECT:** Chesapeake Bay Preservation Ordinance Exception Request – 3380 N Dickerson Street

**STAFF RECOMMENDATION:** Approve exception request.

The proposed single-family project will increase Resource Protection Area (RPA) encroachment, but is similar in terms of scope and water quality impact to projects previously approved by CBORC. The project will require the removal of 3 trees within the Resource Protection Area (RPA) but protects two trees in the RPA and does not alter existing stream valley topography. Invasive plant removal and riparian buffer planting is proposed to enhance the RPA buffer as a mitigation measure in association with the new home construction project.

**BACKGROUND:** The RPA on the property is relatively flat and has extensive invasive species and four trees. The stream channel is concrete lined. The existing RPA encroachments within the property boundaries include portion of the existing house and a walkway to the backyard and a side yard. The existing home was built 1949 and is deemed unsafe for occupancy by the building maintenance official in the Department of Community Planning, Housing and Development in March 2018.

The proposed plan is for tear down and construction of a new home and a porch in the rear of the home within the RPA. The proposed home encroaches in the Resource Protection Area and therefore, the project requires Chesapeake Bay Ordinance Review Committee (CBORC) review.

**SUMMARY OF EXCEPTION REQUEST:** On March 3, 2021, pursuant to Section 61-16.A of the Chesapeake Bay Preservation Ordinance ("Ordinance"), MR Custom Homes, filed an exception request and Water Quality Impact Assessment (Attachment 1) on behalf of the property owner, Amy Marra and Douglas Grundhoefer, to create a encroachment within the RPA for Little Pimmit Run - E. Branch.

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 encroaches into the RPA.
- A new encroachment for the principal single-family structure is proposed. A porch addition attached to the rear of the home is proposed to encroach into the RPA.
- The RPA is currently covered by invasive species.
- Three trees located within the RPA will be removed as a result of the development proposed (tree #5, #3, #6)
- Two trees within the RPA will be protected (tree #6, #7).
- Overall, the home increases impervious cover by 983 sq. ft in the RPA and encroaches roughly 18 ft towards the RPA feature.
- Bioretention planters have been proposed to manage 2521 sq. ft of the dwelling roof.
- Site will be stabilized post development per erosion and sediment control requirements.
- Permeable pavements were considered for the project, but the infiltration test conducted does not support such practices based on the report presented.
- The back corner of the property has a small portion on a floodplain setback

### Mitigation Proposed

- Riparian buffer planting will be incorporated to enhance the water quality and improve the riparian planting.
- Two overstory trees, five understory trees and twenty-five shrubs are proposed to be planted and maintained in perpetuity.
- 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. Ongoing maintenance 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:

- There are limited alternatives for location of the building outside the RPA, as the RPA covers the existing home and the back of the lot.
- Zoning restrictions limits moving the property towards the front of the property due to setback requirements
- The existing home is deemed unsafe for occupancy and a tear down and rebuild is necessary
- the new home has been sited to minimize encroachment and impervious cover in the RPA;
- the new home is comparable in size to homes in the area
- the RPA area has already been disturbed by the existing home; 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 CBORC for tear down and rebuilds. 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 tear down and rebuild project attached deck project at 609 N Livingston St. approved by CBORC involved increase of 775 square feet relative to existing development footprint in the RPA of 1,840 square feet.
- However, projects that involve a tear down and rebuild in the RPA that increases both impervious area and encroachment in the RPA is required to be reviewed by CBORC.

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 riparian planting serves as mitigation to offset the increase in impervious cover.
- One tree near the limit of disturbance is being protected to limit tree impact in the RPA.
- Silt fence will control construction-related runoff.
- The RPA is impacted by invasive species which are proposed to be removed as part of the mitigation for this project.
- 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.
- The riparian buffer planting to be proposed within the RPA will enhance the vegetated Resource Protection Area buffer and be maintained in perpetuity.

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:*

- Proposed stormwater management practices will manage the roof drainage. This is approximately 80 percent of the total impervious cover on the property. Additional stormwater management was evaluated in the driveway and walkway but soil test evaluation determined the soil type was not appropriate for infiltration. Staff does not consider it valuable to impose a requirement for additional stormwater controls in conjunction with this exception.
- As presented in Finding 3, the proposed riparian planting and stormwater controls 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 **September 15, 2021, at 6:00 pm**. This meeting will be held on Microsoft Teams.

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

- Sheet 2 Grading Plan
- Sheet 3 Erosion and Sediment Controls Phase 2,
- Sheet 4 Tree Preservation Plan
- Sheet 5 Tree Planting Plan and Details
- Sheet 11 Water Quality Impact Assessment

For questions or additional information about this exception request, please contact Ty Asfaw at 703-386-6918 or [rpareview@arlingtonva.us](mailto:rpareview@arlingtonva.us).

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