

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

**DATE:** September 03, 2021

**SUBJECT:** Chesapeake Bay Preservation Ordinance Exception Request – 2510 N. Upland St & 2516 N Upland St

The exception request is for the removal of an existing retaining wall with stairs and replacement with a new retaining wall and stairs. The new retaining wall will be down slope from the existing wall and stairs.

Existing RPA structures may be maintained, but expansion or enlargement, specifically of “non-attached structures”, requires approval from the Chesapeake Bay Ordinance Review Committee (per 61-14.C.3). A CBORC exception is also required for the proposed increase in encroachment associated with the wall replacement.

Replacement of the deteriorating retaining wall is being proposed as part of the construction of a new home on the property. A new single-family home is being constructed outside the RPA. The existing site doesn't include any water quality treatment, while the proposed construction will include stormwater planters and pervious pavers.

The proposed wall is greater than 100 feet from Donaldson Run stream but is within the RPA due to the steepness of the slope. The proposed wall will allow for the slope above the wall to be regraded to a more consistent slope.

Removal of the existing wall and construction of the replacement wall is not anticipated to have a significant impact on trees. However, one tree is proposed to be removed due to the construction of the retaining wall. The replacement of the existing wall with the new wall will have a negligible impact on stormwater runoff. There is proposed silt fence downhill of the wall construction to prevent any erosion impacts on the RPA during construction and the area will be permanently stabilized with seeding, sodding or plant beds after construction.

**STAFF RECOMMENDATION:** Approve exception request with staff recommended additional mitigation measures. The proposed retaining wall will impact one tree within the Resource Protection Area (RPA) on the property and will limit the impacts on the

natural topography of the RPA. In addition, runoff from the house will be treated by bioretention planters and permeable pavers.

Staff recommends the following additional mitigation measures:

1. Provide native planting to replace the tree being removed and enhance the condition of the RPA on the parcel by providing additional planting. The area of additional planting should be equivalent to the area of impervious area being added in the RPA.

**BACKGROUND:** The exception request is for the removal of an existing retaining wall with stairs and replacement with a new retaining wall and stairs. The existing wall is deteriorating and needs to be rebuilt and this is being proposed as part of the construction of a new home on the property. The new retaining wall will be down slope from the existing wall and stairs. A new single-family home is being constructed outside the RPA.

The existing site doesn't include any water quality treatment while the proposed construction will include stormwater planters and pervious pavers.

The proposed wall is within the RPA due to the steepness of the slope (greater than 25%). The proposed wall will allow for the slope above the wall to be regraded to a more consistent slope.

**SUMMARY OF EXCEPTION REQUEST:** On August 20<sup>th</sup>, 2021 Mr. Charles DeLashmutt filed an exception request and Water Quality Impact Assessment (WQIA) under Section 61-16.A of the Chesapeake Bay Preservation Ordinance to construct a retaining wall within the RPA on the property that extends from Donaldson Run stream. The proposed retaining wall is 115 feet in length, with a maximum height of seven feet. A portion of the wall encroaches onto the adjoining property, 2516 N Upland Street.

According to the applicant, the retaining wall is proposed due to the condition of the existing wall and in order to grade the area upslope.

**WATER QUALITY IMPACT ASSESSMENT:** The area of disturbance within the RPA to construct the proposed retaining wall and remove existing wall and stairs is 1448 square feet. The distance from the retaining wall to Donaldson Run stream ranges from 136.1 feet to 146 feet. New impervious cover in the RPA will be limited to the footprint of the wall itself and the stairs – approximately 172 square feet.

There is one tree that will be impacted by construction of the retaining wall.

The new house contains several design features that attenuate stormwater runoff from the property - permeable pavers and three bioretention planters to treat impervious cover on the lot.

**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 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.

The applicant is removing the existing deteriorating wall and replacing it with a new wall. The location of the existing retaining wall is within the RPA and the new retaining wall will be in the RPA and cannot be placed outside the RPA to avoid encroachment. The size of the wall, encroachment extent and impervious cover associated with the wall is the minimum necessary. The zone of the house is R-10.

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: This project is similar in terms of overall disturbance to and has similar increases in impervious cover and encroachment as many of the exception requests handled by staff that involve other RPA projects such as decks, retaining walls, and small additions to homes. Because the proposed project involves a retaining wall above the height of 4ft, it is required to be reviewed by CBORC. Redevelopment project approved by staff and CBORC often increase the impervious cover in RPA due to the proximity of the home to the RPA boundary. The placement of a retaining wall in the RPA will have minimal impact on the water quality and impervious cover placed in the RPA.

For example, in 2013, CBORC approved a project at 500 N. Abingdon St. The project added less impervious cover to the RPA (17 square feet). The development footprint also increased from 1,718 square feet (existing) to 3,202 square feet (proposed). Mitigation measures included with the 500 N Abingdon St project provided less water quality benefit overall. The project approved at 500 N. Abingdon St more likely to result in negative water quality impacts than the project currently being considered.

Staff has approved exception requests of similar scale with limited impacts on trees and the natural topography of the RPA and, as a result, believes approval of this project, with staff's recommended modifications, would satisfy this finding.

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: Staff analysis: Staff believes that the 'minimum necessary' criterion is met by this proposal because of the runoff attenuation benefits relative to the existing condition, the overall minimal tree impacts (one tree is proposed for removal) within the RPA and the proposed location of the wall which is as close to the existing deteriorating wall with limited new encroachment into the RPA. The retaining wall provides some water quality benefits as it slows down the flow of water down the steep slope. There is potential for water to infiltrate and slow down preventing erosion downslope.

Staff has concluded that this finding, with staff's recommended modifications, has been satisfied, as discussed in the WQIA section of this report.

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 several key reasons:

1. The new retaining wall is replacing an existing deteriorating wall on the property with the extent of the retaining wall being expanded onto neighbors' lot.
2. The proposed retaining wall is a reasonable way to create a boundary between the developed portion of the property and the steep slope; and,
3. The best management practices proposed on the new property will provide even more effective control of stormwater runoff than currently exists on the property.

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: Erosion control practices are proposed such as silt fence downslope of the proposed retaining wall. Applicant is also removing invasive species on the property. In addition, staff is recommending additional riparian planting to enhance riparian vegetation. The amount of riparian planting proposed should be equivalent to the impervious footprint in the RPA. Additionally, a tree replacement should be provided for the tree being removed. Location and species of tree planting should be provided. Staff has concluded that with implementation of mitigation measures, this finding has been satisfied, as discussed in the WQIA section of this report.

**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 3 Erosion Control Plan
- Sheet 5 Site Plan
- Sheet 7 BMP Plan
- Sheet 8 CBAY and Runoff Calculations
- Sheet 11 WQIA
- Sheet 12 Tree Conservation Plan
- Sheet 13 Tree Conservation Plan -2

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

Cc:

Jason Papacosma, DES/OSEM  
Gayle England, DES/OSEM  
Qianqian Li, DES/ DS  
Vincent Verweij, DPR  
Julie Massie, CAO