

CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE
STAFF REPORT
February 13, 2023 Hearing Date

DATE: January 27, 2023

SUBJECT: Chesapeake Bay Preservation Ordinance (“Ordinance”) Exception Request – 2643 N Upshur St

STAFF RECOMMENDATION: Approve exception request.

The project will result in a new encroachment into the Resource Protection Area (“RPA”) for an impervious patio. The project will add 101 square feet of new impervious surface in the RPA and encroach 9’ feet into the Resource Protection Area for Donaldson Run. The project also involves repair of steps in the RPA which does not require an exception. The project proposes to mitigate for RPA and water quality impacts by removing invasive species in the RPA and planting native shrubs and groundcover. With the mitigation provided, water quality impacts from the proposed project will be negligible.

BACKGROUND: The RPA on the property with address 2643 N Upshur St slopes steeply towards the stream and is wooded with an invasive understory. The existing single-family home located on the property does not encroach into the RPA. The owners plan to add two new detached stone patios with connecting walkways to the rear of their home. One of the patios will be located within the RPA. This will add 101 sf square feet of impervious surface in the RPA, and a total disturbance of 1227 square feet on the property. The disturbance in the RPA is 281 square feet. The RPA buffer on the property extends to include steep slopes adjacent to the required minimum 100-foot RPA buffer; the new RPA encroachment created by the project is greater than 100 feet from Donaldson Run. The homeowner has started work on the patio outside the RPA.

SUMMARY OF EXCEPTION REQUEST: On December 20, 2022, pursuant to Section 61-16.A of the Chesapeake Bay Preservation Ordinance, Mr. Patrick Stodel filed a Water Quality Impact Assessment (WQIA) and Exception Request (Attachments 1 and 2) to create a new encroachment within the RPA adjacent to Donaldson Run. The proposed project will add a new encroachment and impervious cover within the RPA (Attachment 1).

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 total disturbance on the lot is 1227 sq ft and includes two patios. One of the patios creates new encroachment in the RPA and increases the impervious area by 101 sf.
- The existing single-family home does not encroach into the RPA. There are steps in the backyard that encroach into the RPA. The steps have an RPA footprint of 41 square feet.
- The current RPA on the property consists of a steeply sloping wooded area with an understory of invasive species.
- The proposed patio in the RPA will be built in the existing open area near the home. It will be constructed of mortared flagstone. It will increase impervious cover in the RPA by 101 square feet (Attachment 1).
- The patio will add 101 square foot of impervious cover in the RPA at 110 feet from Donaldson Run.
- There are no trees proposed to be removed in the RPA.
- The mitigation provided is to seed with rye grass (*elymus virginicus*), plant a mix of native bush honeysuckle (*diervilla lonicera*) and native northern spicebush (*lindera benzoin*), 21 total, throughout the full area identified in Attachment 1, which is 445 ft².
- Additionally, 50 landscape plugs of lady fern and 2 American hophornbeam trees (with deer protection) will be planted within the RPA.
- The following species of invasive vegetation has been identified in the planting area within the RPA and will be removed prior to planting: English Ivy, Japanese pachysandra and Weeping forsythia and aggressive Swith cane.

- There are existing stairs in the backyard in the RPA leading to the stream which will be repaired and the new stairs will be the same height and width as the existing stairs. This maintenance activity will not add encroachment or impervious cover to the RPA.

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:

- the patio abuts the primary structure and was chosen to minimize grading and preserve existing trees;
- the patio encroaches as little as possible into the RPA while retaining the use desired by the property owner; and
- there is no orientation of the patio that would avoid encroachment into the RPA
- the RPA extends beyond the 100 foot minimum on the property due to adjacent steep slopes. The RPA impact is within the extended RPA.

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:

Staff finds that this proposal is similar in impact and nature to prior exceptions granted both administratively by staff and by CBORC.

- The request is similar to many of the administrative exception requests staff have granted for decks, retaining walls, small additions, sheds, and garages. Those exception requests also involved limited impacts on trees and natural topography of the RPA.
- For example, a comparable attached deck project at 105 S Aberdeen Street 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.
- At 2938 26th St N a deck addition which added 4 square feet of impervious cover in the RPA was approved and allowed a new encroachment into the RPA

extending from Windy Run. Encroachment requests for detached hardscape areas have also been granted CBORC exceptions. In 2015, CBORC approved a new 461 square foot patio in the RPA at 4432 26th Rd N.

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 concludes that this finding is satisfied.

- The project will not substantively alter existing topography
- The project will remove of invasive understory and
- The project will add supplemental replanting, including groundcover, seeds, bushes and two trees. This will improve the ability of the riparian buffer to intercept stormwater and benefit water quality. It will also increase the habitat value of the RPA buffer.

It is the conclusion of staff, that the mitigation measures included as part of the project and discussed in the WQIA will adequately protect water quality.

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:

The owner has minimized encroachment of the patio into the RPA and there is limited opportunities to locate the patio outside the RPA. 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:

- The invasive plant management and riparian buffer planting proposed will ensure water quality is protected.
- The mitigation 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 **February 13, 2023, at 7:00 pm**. This meeting will be held on the virtual platform MS Teams.

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

- Attachment 1 – Water Quality Impact Assessment Data Sheet and Plan
- Attachment 2 – Exception Request and photos

For questions or additional information about this exception request, please contact Ty Asfaw at 703-228-3588 or tasfaw@arlingtonva.us.

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Attachments