

**CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE**  
**STAFF REPORT**  
**Nov 9, 2022 Hearing Date**

**DATE:** October 25, 2022

**SUBJECT:** Chesapeake Bay Preservation Ordinance (“Ordinance”) Exception Request – 4325 37<sup>th</sup> RD North

**STAFF RECOMMENDATION:** Staff recommends that the Chesapeake Bay Ordinance Review Committee approve the exception request. The proposed demolition and rebuild of a single family home will impact (3) trees within the Resource Protection Area (RPA) on the property that extends from Gulf Branch. The project will reduce impervious cover and include stormwater planter system for runoff control along with planting in the riparian buffer.

**BACKGROUND:** The property at 4325 37<sup>th</sup> RD North currently contains a single-family home built in 1954. This project proposes the construction of a new 2-story dwelling with basement, deck, porches, driveway, and a planter box. The proposed total impervious cover for the site is 3,669 sq ft. The new project results in an overall decrease in impervious cover. However, a portion of the proposed home, deck and patio will encroach further into the RPA boundary (see Attachment 1-Grading Plan).

**SUMMARY OF EXCEPTION REQUEST:** On July 2022, Mr. Michael Schnitzer of Stanley Martin Homes on behalf of the property owners Eric A Peterson and Jennifer A Grover, filed an exception request and Water Quality Impact Assessment (WQIA) (see Attachment 2) pursuant to Section 61-16.A of the Chesapeake Bay Preservation Ordinance to construct a new single family home within the RPA on the property that extends from Gulf Branch Run stream. A concrete pad within the RPA is proposed for removal resulting in a reduction in impervious cover in the RPA. However, the new principal structure will encroach roughly 15.5 feet further into the RPA than the existing structure.

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

**WATER QUALITY IMPACT ASSESSMENT:**

The proposed development will reduce impervious cover on the property from an existing coverage 1513 sq ft to 1481 sq ft and to attenuate runoff from the development project, the following mitigation measures are proposed:

- A stormwater planter box to treat a portion of the runoff from the rooftop. The planter box is placed on the site to catch and treat water before releasing it through an outlet pipe to a drywell located in the side yard of the property. The facility is designed to pond water, filter it, and release it at a non-erosive rate. The planter box is planted with shrubs and other water tolerant vegetation.
- Proposed river rock at roof downspouts for energy dissipation and a drywell

The existing condition of the RPA on the property consists primarily of a wooded steep slope extending from Gulf Branch. The RPA portion of the property consists mainly of a grassed yard, a retaining wall, and trees on the slope. Two trees (in the RPA) will be removed on the property due to the proposed construction. An additional two trees are proposed for removal outside the RPA. There are 10 additional trees within the wooded slope portion of the RPA which will not be affected by the proposed development. The limits of clearing and grading will be minimized to within the existing flat yard area and as close to the existing footprint of the house. Invasive removal from trees and ground cover is also proposed by the applicant.

**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 because the proposed development footprint will remain within the portion of the property previously developed and graded when the original home was constructed. The limits of disturbance do not extend beyond this existing yard area and does not encroach upon the wooded slope extending from Gulf Branch stream beyond the retaining wall. Furthermore, the home is meeting the setback requirement and will be situated similar to homes in the neighborhood. A home across the street that has been redeveloped is similar in size to the proposed home. Adjacent property size data is provided.

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 request is like many of the exception requests granted by staff that involved other RPA projects for tear down and rebuild. Because the proposed project involves an increase in encroachment into the RPA, it is required to be reviewed by CBORC.

In 2007, staff approved a project (4091 35<sup>th</sup> Street North) for a new home replacing an existing structure. The project did not increase impervious area within the RPA or increase RPA encroachment (due to the removal of a patio structure that encroached into the RPA), but final impervious cover in the RPA (250 square feet) was greater. Overall, the change from existing to proposed conditions for the main house and driveway and the proposed mitigation measures and small extent of tree impacts were comparable. Therefore, since other requests for similar exceptions have been granted in the past, it would be fair and equitable to grant this exception. Staff has concluded that this finding has been 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: Staff has concluded that this finding has been satisfied and that water quality will be adequately protected by the mitigation measures described in the WQIA section which are planter box for stormwater management of the roof runoff and proposed planting of two trees in the riparian buffer to mitigate for the two trees being removed in the RPA. Additionally, there is an overall reduction in impervious cover on the lot.

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 proposed home will be located on a portion of the property previously impacted by residential development. There are limited trees proposed for removal in the RPA.

The applicant wants to replace their existing home, with a home compatible in bulk and scale to others in the vicinity and supported by the current real estate market. They have chosen the least impactful location and footprint for the home considering the topography of the site.

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: Staff has concluded that this finding has been satisfied, as discussed in The WQIA section of this report

- A stormwater planter to manage roof runoff will be installed
- Two trees will be planted in the riparian buffer
- Runoff from roof downspouts will be managed with river rock for energy dissipation and a drywell is also proposed
- Invasive plant management
- Erosion and sediment control during construction

**CHESAPEAKE BAY ORDINANCE REVIEW COMMITTEE HEARING:** CBORC will consider this exception request at a public hearing to be held on **November 9th at 7:00 pm.**

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

- Attachment 1 – Grading Plan
- Attachment 2 – Water Quality Impact Assessment Data Sheet and Exception Request Form
- Attachment 3 – Tree Preservation and Protection

For questions or additional information about this exception request, please contact

Cc: Jason Papacosma, DES/OSEM  
Christin Jolicoeur, DES/OSEM

Brian Withrow, DES/DS  
Aftab Hussain, DPR  
Voltaire Ronquillo, DES/DS

Adjacent Property Information

| Address             | Finished Area (sf) | Year Constructed | RPA encroachment |
|---------------------|--------------------|------------------|------------------|
| 4329 37TH RD N      | 1375               | 1955             | Yes              |
| 4319 37TH ROAD<br>N | 1836               | 1954             | Likely No        |
| 4315 37TH RD N      | 1390               | 1954             | Yes              |

4328 37TH RD N Fin area is 4519 sq ft built 2010

