



# FAIRFAX COUNTY

APPLICATION FILED: October 10, 2017

EXCEPTION REVIEW COMMITTEE: December 6<sup>th</sup>, 2017

V I R G I N I A

November 16, 2017

## LAND DEVELOPMENT SERVICES

### SITE DEVELOPMENT AND INSPECTIONS DIVISION

#### STAFF REPORT

#### RESOURCE PROTECTION AREA (RPA) ENCROACHMENT EXCEPTION #2582-WRPA-006-1 & WATER QUALITY IMPACT ASSESSMENT #2582-WQ-003-1

#### BRADDOCK DISTRICT

<b>APPLICANT:</b>	K2NC, LLC
<b>PROJECT LOCATION:</b>	4104 Woodlark Drive
<b>TAX MAP REFERENCE:</b>	059-4-10-0042
<b>APPLICATION ACCEPTED:</b>	October 19, 2017
<b>WATERSHED:</b>	Unnamed tributary to Accotink Creek
<b>CHESAPEAKE BAYPRESERVATION ORDINANCE (CBPO) PROVISION:</b>	Section 118-6-7, Loss of buildable area within an RPA
<b>PROPOSAL:</b>	New residential development to construct a dwelling unit within 50-foot seaward
<b>LOT SIZE:</b>	45,000 Square feet (1.03 acres)

<b>AREA OF REQUESTED RPA ENCROACHMENT:</b>	7,568 square feet
<b>PUBLIC HEARING:</b>	<p>RPA Encroachment Requests under CBPO Section 118-6-7 require approval by the Exception Review Committee (ERC).</p> <p>The application proposes to construct a new dwelling unit and to encroach into the seaward 50 feet of the RPA buffer. The encroachment into the seaward 50 feet is primarily because of a covenant, which requires a 75 foot setback from the front property line. Reference condition #8, Deed Book S-14 (DB 357), Page 553.</p>
<b>DESCRIPTION:</b>	<p>The applicant is requesting an RPA exception to construct a new house and its amenities. The amenities include a concrete patio (10 feet x 20 feet, with pervious paving) and wooded deck (maximum of 15 feet long and elevated above the patio). See Attachment F (Exhibit 6). The improvements create 2,462 square feet of encroachment within 50-foot seaward.</p>
<b>BACKGROUND:</b>	<p>The lot on 4104 Woodlark Drive was legally created and recorded on 03/24/1941 in deed book S-14 (DB 357) and page 53. The lot is vacant. The stream is located at the rear of the property. The RPA extends from the rear of the property and covers approximately 80% of the lot. A proposed house grading plan was approved in May 2016 (# 2582-INF-004-1). The grading plan showed the improvements outside the 50-foot seaward. However, the grading plan did not consider the restrictive covenant, which requires a 75-foot setback from the front property line.</p> <p>When the lot was created in 1941, a covenant was recorded which restricts building within 75 feet of the front property line. Reference condition #8, Deed Book S-14 (DB 357), Page 553.</p>

<p><b>DOCUMENTS AND CORRESPONDANCE:</b></p>	<p>Attachments A through E are provided by Staff. Attachments F is provided by the Applicant.</p> <ul style="list-style-type: none"> <li>• <u>Attachment A</u>: Proposed Exception Conditions.</li> <li>• <u>Attachment B</u>: October 19, 2017, letter acknowledging receipt of the RPA exception application, indicating the application package is complete and notifying the applicant of the public hearing.</li> <li>• <u>Attachment C</u>: List of properties to be notified per CBPO 118-6-3(c).</li> <li>• <u>Attachment D1</u>: Aerial Photography.</li> <li>• <u>Attachment D2</u>: Statistics of House and Deck Footprint Size in Relation to Adjacent Lots.</li> <li>• <u>Attachment E</u>: UFMD (Urban Forestry Management Division) memorandum, dated November 9, 2017.</li> <li>• <u>Attachment F</u>: Application request, revised November 6, 2017 <ul style="list-style-type: none"> <li>○ Applicant's statement for Section 118-6-6 of the Chesapeake Bay Ordinance (Cover Letter, Section III)</li> <li>○ WQIA Statement of Justification (Cover Letter, Section VII);</li> <li>○ Completed and Signed Application Form for an RPA Encroachment Exception (Exhibit 1);</li> <li>○ Site Photographs dated September 12, 2017 and existing site condition (Exhibits 3 &amp; 4);</li> <li>○ Preliminary Injunction Order (Exhibit 5);</li> <li>○ RPA Reforestation Exhibit (Proposed Planting Plan) (Exhibit 6);</li> <li>○ Plats for RPA Exception Request (Exhibit 6);</li> <li>○ Soils map data (Exhibit 7);</li> <li>○ Floodplain Exhibit (Addendum).</li> </ul> </li> </ul>
<p><b>ANALYSIS:</b></p>	<p><u>RPA</u> This application cannot be approved administratively by staff because the limits of disturbance for the new house extend into the seaward 50 feet of the RPA.</p> <p>A site-specific RPA delineation was provided by the applicant in accordance with CBPO 118-1-7(b) with the grading plan # 2582-INF-004. From the staff site visit on October 26, 2017, there is no sign of wetlands on the property, and the RPA delineation appears to be 100 feet from stream top of bank. The field-delineated RPA confirms that RPA covers nearly 80% of the property</p>

In accordance to the LTI 09-05, a 10-foot wide work zone around the perimeter of the proposed structure is required. The applicant proposes 15 feet wide of work zone around the building, see Attachment F, Exhibit 6.

The applicant has evaluated 50 existing house footprints in the same proximate vicinity and found that the average house footprint is approximately 2,350 square feet. The applicant proposes a house footprint of 1,900 square feet. Additionally, the staff has tabulated, using County GIS, existing house and deck footprints within 500 feet of the subject property and found that the average house and deck footprints are 2,242 and 329 square feet, respectively (See Attachment D2). As part of the disturbance and impervious areas are encroaching into the seaward 50 feet of RPA buffer, the application cannot be approved by staff under CBPO Section 118-5-4(a), the application must be made under CBPO Section 118-6-7 and approved by the ERC.

The ERC may approve an exception for loss of buildable area in an RPA under CBPO 118-6-7 where the total disturbance is limited to 10,000 square feet with no more than 5,000 square feet of impervious area within the RPA. The applicant proposes 7,568 square feet of disturbed area and 2,711 square feet of impervious area (access is included).

CBPO Section 118-6-7(d) requires that where practical a vegetated buffer equal to the area of encroachment into the buffer, is established elsewhere on the lot. The RPA covers 80% of the lot, and due to the density of the existing vegetation, an equal area of mitigation cannot be achieved. The proposed disturbance in the RPA is 7,568 square feet which the applicant proposes to mitigate with 4,395 square feet. The planting plan was reviewed by the County Urban Forestry Management Division (UFMD). The UFMD staff has provided a memorandum indicated adequate planting on the subject site, see attachment E. UFMD agree that the proposed vegetation plan, Attachment F (Exhibit 6) is the maximum amount of reforestation practical in order to ensure long term survivability of the proposed plantings and existing vegetation. The planting mitigation for an area of 4,395 square feet is 11 overstory trees, 21 understory trees, and 110 shrubs.

Floodplain

As the drainage area to the property is greater than 70 acres, a

	<p>minor floodplain exists on the property. The applicant used the water surface elevations from the County Watershed Plan, HEC-RAS model to delineate the extent of the floodplain on the property, see Attachment F (Addendum). The proposed grading is to ensure that the minimum of 18" above the flood elevation, and the required minimum yard (15 feet away from the flood limits) are provided. The freeboard requirement precludes the house having a basement.</p> <p><b><u>Best Management Practices (BMP)</u></b>          As the disturbance is less than one acre and the proposed total impervious area is approximately 0.06 acres, including impervious area outside the RPA, and representing approximately 6.0% of the lot area, the project is exempt from Chapter 124 of the County code and is not required to provide BMPs. Reference Chapter 124-1-7(3).</p>
<p><b>REQUIRED FINDINGS:</b></p> <p><i>document address the condition</i></p>	<p>Exception requests for disturbance within seaward 50 feet of RPA buffer may be granted only upon the findings listed in the <u>CBPO 118-6-6</u>. It is the opinion of the county staff that the required findings, as discussed below, have been satisfied in the application.</p> <p><i>(a) The requested exception to the criteria is the minimum necessary to afford relief;</i></p> <p>The subject property is zoned R-2. The CBPO allows a total of 5,000 square feet of impervious surfaces in the RPA. The applicant proposed 2,711 square feet of impervious area within RPA on this lot.</p> <p><i>(b) Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;</i></p> <p>Given the fact that the 80% of the lot is within RPA, the restrictive covenant which requires a 75-foot setback from the front property line, and the house footprint is an average size compared with existing houses on this street (Attachment D2), it is the staff opinion that granting the exception as proposed to allow the development, would not confer upon the applicant any special privileges.</p>

	<p>(c) <i>The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;</i>                  The RPA buffer should remain intact or be established to minimize the adverse effects of human activities on other components of the RPA, state water, and aquatic life. The project proposes additional trees and vegetation of shrubs and groundcover to increase the density of the remaining RPA buffer along the rear and sides of the house. It is the opinion of staff that the exception request is not a substantial detriment to the water quality. Staff's recommendations are given in Attachment A.</p> <p>(d) <i>The exception request is not based upon conditions or circumstances that are self-created or self-imposed;</i>                  Given the fact that this lot was legally created in 1941, it is the opinion of staff that the request is <u>not entirely</u> based upon circumstances that are self-created or self-imposed.</p> <p>(e) <i>Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality;</i>                  The applicant proposes to mitigate by planting trees and vegetating shrubs and groundcover to increase the density of the trees and vegetation in the remaining RPA buffer on the property (Attachment F; Exhibit 6). The Exhibit also shows that existing trees have been preserved and protected from the impacts of planting new trees. The available mitigation area of 4,395 square feet for the subject site is 11 overstory trees, 21 understory trees, and 110 shrubs. UFMD agree with the proposed vegetation plan (see Attachment E). If it the intent of the ERC to approve the exception, staff recommends that approval be subject to proposed development conditions, including, but not limited to, minimal disturbance of the RPA. The proposed development conditions are contained in Attachment A of this staff report.</p> <p>(f) Other findings, as appropriate and required herein, are provided.</p>
<p><b>STAFF RECOMMENDATIONS:</b></p>	<p>Staff recommends approval of RPA encroachment Exception 2582-WRPA-006-1 and Water Quality Impact Assessment 2582-WQ-003-1 subject to the proposed development conditions dated November</p>

*not based in part on self-created conditions?*

	<p>16, 2017.</p> <p>It is not staff's intent to recommend that the Committee, in adopting any conditions, relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.</p> <p>The content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Exception Review Committee. For further information, please contact Site Development and Inspections Division (SDID), Land Development Services, 12055 Government Center Parkway, Suite 535, Fairfax, Virginia 22035-5505, 703-324-1720.</p>
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**ATTACHMENT A****PROPOSED EXCEPTION CONDITIONS****#2582-WRPA-006-1 and #2582-WQ-003-1****November 16, 2017**

If it is the intent of the Exception Review Committee to approve 2582-WRPA-006-1 and 2582-WQ-003-1 to allow encroachment in the Resource Protection Area (RPA) located at 4104 Woodlark Drive (Tax Map 059-4-10-0042) pursuant to Section 118-6-7 of the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO), staff recommends that the Exception Review Committee condition the approval by requiring conformance with the following development conditions.

1. This RPA Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This RPA Exception is granted only for the purposes, structures and/or uses indicated on the Plat approved with the application, as qualified by these development conditions.
3. Any plan submitted pursuant to this RPA Exception shall be in substantial conformance with the Plat titled "4104 Woodlark Drive, Water Quality Impact Assessment & Exception" prepared by Wetland Studies and Solutions, Inc (WSSI), signed and sealed. Received September 28, 2017 (Revised November 6, 2017), which shows the proposed improvements.
4. In order that the project is in harmony with the purpose and intent of the CBPO, does not create a substantial detriment to water quality, and meets the performance criteria for RPAs, vegetated buffer area(s) shall be established as generally shown on the proposed planting plan, Dated November, 2017 with a combined area of at least 4,395 square feet. The size, species, density and locations shall be consistent with the planting requirements of CBPO Section 118-3-3(f), and PFM 12-0516.4 or a vegetation plan that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff, as determined by the Land Development Services (LDS) or the Urban Forest Management Division (UFMD). The Director may approve the use of a seed mixture as a supplement to or in lieu of individual plants for shrubs and groundcovers. Plants shall be native to the degree practical and adaptable to site conditions. The vegetation shall be randomly placed to achieve a relatively even spacing throughout the buffer. Notwithstanding any statements on the Plat and in the Water Quality Impact Assessment (WQIA), the size, species, density, and locations of the trees, shrubs, and groundcover will be subject to approval of the Director of the LDS or UFMD.
5. In order that the disturbed area within the RPA is the minimum necessary to



afford relief, indigenous vegetation shall be preserved to the maximum extent possible. Any further encroachment into, and/or disturbance of, the RPA not shown on the approved rough grading plan will be considered a violation of the CBPO and is subject to the penalties of the CBPO Article 9.

6. In order that the proposed construction activity does not degrade water quality, adequate erosion and sediment control measures, including, but not limited to, a super-silt fence, in lieu of the double row of regular silt fence proposed, shall be employed during construction within the RPA, and shall remain in place, and be properly maintained, for the duration of the land disturbing activity within the RPA until such time that the disturbed area is completely stabilized.

7. This RPA Exception shall automatically expire, without notice, July 1<sup>st</sup>, 2020, unless the subject grading plan has been approved and the vegetated buffers have been established.

This approval, contingent on the above noted conditions, does not relieve the applicant from compliance with the provisions of any applicable Federal, State, or County ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the approval of any required plans and permits through established procedures, and this RPA Exception shall not be valid until this is accomplished.