

Board Agenda Item April 9, 2019

CONSIDERATION – 1

Appeal of K2NC, LLC, from a Decision by the Exception Review Committee Pursuant to the Chesapeake Bay Preservation Ordinance for 4104 Woodlark Drive; Fairfax Hills, Section 1, Lot 42; Tax Map No. 059-4-10-0042 (Braddock District)

ISSUE: Board of Supervisors (Board) consideration of an appeal of the Exception Review Committee's (ERC) decision denying an exception request under § 118-6-7, Loss of Buildable Area, of the Chesapeake Bay Preservation Ordinance (CBPO), and disapproving the associated Water Quality Impact Assessment (WQIA).

TIMING: Board consideration is requested on April 9, 2019.

BACKGROUND: K2NC, LLC (Appellant), appeals to the Board to reverse the ERC's denial of an exception request under the CBPO. The Appellant owns the vacant lot located at 4104 Woodlark Drive in the Braddock District, which contains an unnamed tributary to Accotink Creek and an associated Resource Protection Area (RPA). The Appellant submitted exception request #2582-WRPA-007-1 (Application) seeking approval from the ERC to construct a new residence in the RPA, including a deck and patio. Construction of the residence also requires the placement of fill into the seaward 50 feet of the RPA, though the principle structure is at least 50 feet from the stream bank.

The ERC resolution denying the Application which is being appealed is included as Attachment 1. A site layout summarizing the RPA encroachment is included as Attachment 2. The Appellant's complete appeal is included as Attachment 3.

The Application was submitted on July 3, 2018, and is included as Attachment 4. The ERC held a public hearing to consider the Application on October 3, 2018, and moved to defer decision until December 12, 2018. Minutes of the October 3, 2018, ERC meeting are included as Attachment 5. After the October public hearing, the Appellant amended the Application (Amended Application) to address concerns raised by the ERC. The Amended Application shifted the house farther from the stream, reduced the size of the proposed deck, added Dry Swales that comply with Virginia Department of Environmental Quality standards, and studied the floodplain elevation. The ERC discussed the amended application as a "decision-only" item on December 12, 2018.

Board Agenda Item April 9, 2019

The Appellant's materials amending the Application, dated November 9, 2018, are included as Attachment 6.

The Department of Land Development Services (LDS) prepared a staff report for the ERC dated August 21, 2018, recommending approval of the Application. That report is included as Attachment 7. Staff recommended approval of the Application subject to adoption of the conditions in Attachment A to the August 2018 staff report. Then, to account for the Amended Application, LDS drafted an addendum to its first staff report. Staff recommended approval, determining that the Amended Application met the exception criteria in CBPO § 118-6-6, provided that the ERC adopted the conditions in the August staff report. Staff's addendum, dated November 28, 2018, is included as Attachment 8.

Under CBPO § 118-6-6, the ERC can grant an exception only if it finds, among other things, that a request is the minimum necessary to afford relief; a request is not of substantial detriment to water quality; and the exception request is not based on conditions or circumstances that are self-created or self-imposed.

On December 12, 2018, after considering the Amended Application, the ERC denied the Appellant's request for an exception to the CBPO. The ERC resolution denied the request, citing that the total encroachment into the RPA is 8,915 square feet, 2,680 square feet of which is in the seaward 50 feet of the RPA. The ERC made the following findings in support of its denial resolution:

- (1) The requested encroachment "is not the minimum necessary to afford relief";
- (2) "It is not possible to conclude that the exception would not be of substantial detriment to water quality"; and
- (3) "The exception is based on conditions that are self-created and selfimposed" because the property is not suited for the intended use.

The resolution also states that the feasibility and effectiveness of the proposed stormwater management dry swales were not demonstrated in the application

The Appellant alleges that the ERC's decision improperly considered the proposed fill in the floodplain. The floodplain was addressed in the application materials, and was raised as an issue at the ERC hearings and during the discussion on the decision. The purpose of the Amended Application and this appeal is to determine whether an exception under the CBPO should be granted to encroachment into the RPA for the purpose of building a residence. As part of the Amended Application, the Appellant seeks an exception to add fill in the seaward 50 feet of the RPA in order to move the

Board Agenda Item April 9, 2019

floodplain boundary towards the stream. This is necessary for the proposed house location to meet the setback requirements of the floodplain provisions in the Zoning Ordinance. Without the fill, the Appellant could not construct the proposed home in compliance with the Zoning Ordinance.

The Applicant conducted a preliminary floodplain analysis, included as Attachment 9, which establishes the existing floodplain boundary and was used to determine the extent that the addition of fill will encroach into the RPA. The ERC has the authority to approve the encroachment into the RPA. It cannot consider the effects of the additional fill in its exception review process, except to the extent that it would cause a substantial detriment to water quality. LDS is charged with reviewing and approving the addition of fill in the floodplain through a floodplain use determination, which the Applicant would have to submit in order to proceed to site development. This review ensures that the addition of fill will have no effect on water surface elevations on adjacent or neighboring properties.

FISCAL IMPACT: None.

ATTACHMENTS:

Attachment 1. - ERC Resolution denying 2582-WRPA-007-1

Attachment 2. - Summary Layout: "Exhibit 6: Proposed Conditions" "Sheet 2 of 4" dated November, 2018

Attachment 3. - Appeal dated January 9, 2019 by GJB Engineering, Inc.

Attachment 4. - Application Package for 2582-WRPA-007-1 and 2582-WQ-007-1

Attachment 5. - Minutes of the October 3, 2018 ERC meeting

Attachment 6. - Supplemental material to the application, dated November 9, 2018

Attachment 7. - Staff report dated August 21, 2018

Attachment 8. - Staff report addendum, dated November 28, 2018

Attachment 9. - Floodplain analysis, dated November, 2018, by Wetland Studies and Solutions, Inc.

STAFF: Rachel Flynn, Deputy County Executive William D. Hicks, P.E., Director, Land Development Services

ASSIGNED COUNSEL: Marc Gori, Assistant County Attorney

61

[LINK TO BOARD AGENDA ITEM WITH ATTACHMENTS](#)