

CBPA-2018-0001

City of Newport News.

CHESAPEAKE BAY PRESERVATION AREA AMENDMENT NO. CBPA-2018-0001 CITY OF NEWPORT NEWS

BACKGROUND

The request is to amend Chapter 37.1, Stormwater Management, Article V., Chesapeake Bay Preservation, Section 37.1-52, Plan of Development, to reflect recommendations from a state Department of Environmental Quality (DEQ) compliance review of the city's Chesapeake Bay Preservation Act program. (See Appendix A-1.)

Specifically, DEQ recommended that the city adopt provisions in the Chesapeake Bay Preservation Area regulations to require notations on subdivision plats and plans of development which state the Resource Protection Area (RPA) will be retained as an undisturbed and vegetated 100-foot wide buffer area and development in the RPA is limited to water dependent facilities or redevelopment. The RPA is the component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flows that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state and local waters.

Secondly, DEQ recommended that the city also amend the Chesapeake Bay Preservation Area regulations to require a note on plans of development and subdivision plats that there is a requirement for pump-out of onsite sewage treatment systems every 5 years and a 100% reserve drain field site for those properties developed with a septic system or onsite sewage treatment system.

Therefore, the change will require the 2 notations mentioned above to be placed on plans of development and subdivision plats.

On January 17, 2018, the Regulations Committee reviewed and recommends approval of the above referenced amendment.

STAFF RECOMMENDATION

It is recommended that the City Planning Commission recommend to City Council adoption of Chesapeake Bay Preservation Area amendment CBPA-2018-0001.

APPENDIX

A-1 CHAPTER 37.1, STORMWATER MANAGEMENT, ARTICLE V., CHESAPEAKE BAY PRESERVATION , SECTION 37.1-52, PLAN OF DEVELOPMENT

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 37.1, STORMWATER MANAGEMENT, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE V., CHESAPEAKE BAY PRESERVATION, SECTION 37.1-52, PLAN OF DEVELOPMENT.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

That Chapter 37.1, Stormwater Management, of the Code of the City of Newport News, Virginia, Article V., Chesapeake Bay Preservation, Section 37.1-52, Plan of development, be, and the same hereby is, amended and reordained as follows:

CHAPTER 37.1

STORMWATER MANAGEMENT

ARTICLE V. CHESAPEAKE BAY PRESERVATION

Sec. 37.1-52. Plan of development.

(a) *Required information.* In addition to the requirements of Chapter 33.02, Site Plan Ordinance, or the requirements of Appendix B, Subdivision Ordinance, of the City Code, all development in the Chesapeake Bay Preservation Areas shall follow the plan of development process consisting of the additional plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the city manager, or designee. The city manager, or designee, may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

The following plans or studies shall be submitted to the city manager, or designee, unless otherwise noted in each subsection:

- (1) An environmental site assessment;
- (2) A landscaping/tree preservation plan;
- (3) A stormwater management plan in accordance with section 37.1-36;
- (4) An erosion and sediment control plan in accordance with the Virginia Erosion and Sediment Control Handbook, as adopted by Article VII of this Chapter; and

- (5) A water quality impact assessment as necessary under the requirements of subsection (f).

(b) *Environmental site assessment.* An environmental site assessment shall be prepared, based upon reliable on site investigation, and shall be submitted for any development or redevelopment.

- (1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
- a. Tidal wetlands;
 - b. Tidal shores;
 - c. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; and
 - d. A buffer area not less than one hundred (100) feet in width located adjacent to and landward of the components listed in subsection (a) through (c) above, and along both sides of any water body with perennial flow.
- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.
- (3) The environmental site assessment shall delineate the site-specific geographic extent of the resource protection area.
- (4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor.

(c) *Landscaping and tree preservation plan.* A landscaping/tree preservation plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping/tree preservation plan. No landscaping/tree preservation plan shall be required in connection with development in Industrial Waterfront IDAs.

Landscaping/tree preservation plans shall be prepared and certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

(1) *Contents of the plan.*

- a. The landscaping plan shall be drawn to scale and clearly delineate the location, size and description of existing and proposed plant material. All existing trees on the site five (5) inches or greater DBH shall be shown on the landscaping plan. Where there are groups of five (5) or more trees, stands may be outlined instead. The specific number of trees to be preserved outside of the limits of clearing shall be indicated on the plan. Dead, diseased and dying trees to be removed shall be clearly delineated on the landscaping plan. The plan shall be consistent with Chapter 33.02 of the City Code, Site Plan Ordinance.
- b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees to be removed for sight lines, vistas, vehicular access, paths, and shoreline erosion control, as provided for in this article shall be shown on the plan. Vegetation required to replace any existing trees within the buffer area shall be also shown on the landscaping plan.
- d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required shall be shown on the landscaping plan.
- e. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- f. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction, consistent with such measures as described in Article IV of Chapter 37.1 and Chapter 33.02, Site Plan Ordinance of the City Code.

(2) *Plant specifications.*

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the disturbed land area shall be installed in accordance with the specifications referred to in Chapter 33.02, Site Plan Ordinance of the City Code.
- b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most

recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.

- c. When existing trees and other vegetation to be preserved, as designated on an approved landscaping plan, are encroached upon, they shall be replaced. Replacement trees shall be planted at a ratio of three (3) to one (1), at the time of planting.

(d) *Stormwater management plan.* A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval; provided, however, a stormwater management plan shall not be required if discharge of stormwater from an applicant's land is governed by a VPDES Individual Industrial Stormwater permit or MS4 permit provided such permits are determined by the Virginia Department of Environmental Quality to be protective of water quality and in compliance with the assumptions contained in approved TMDLs, if any, for the waters into which they discharge. In such cases, a copy of the permit shall be submitted to the city manager, or designee, in lieu of the stormwater management plan.

- (1) *Contents of the plan.* The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanation, and citations to supporting references as appropriate to communicate the information required by this article. At a minimum, the stormwater management plan must be prepared in conformance with section 37.1-36 of this Chapter.

(e) *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted to the city manager, or designee, that satisfies the requirements of, and in accordance with, Article VII of this Chapter, in conjunction with site plan or subdivision plan approval.

(f) *Resource protection area and resource management area water quality impact assessment.*

- (1) *Purpose and intent.* The purpose of the water quality impact assessment is to:
 - a. Identify the impacts of proposed development or redevelopment on water quality and lands within the resource protection areas and the resource management areas as deemed necessary by the city manager, or designee, due to the unique characteristics of the site or based upon the intensity of development;
 - b. Ensure that, where development does take place within these areas, it will be the least disruptive;
 - c. Provide for administrative relief from the terms of this article when

warranted and in accordance with the requirements contained herein; and

- d. Specify mitigation which will address water quality protection.
- (2) *Water quality impact assessment required.* A water quality impact assessment is required for any proposed land disturbances within the resource protection area, including any buffer area encroachment as provided for in section 37.1-51(b)(2), resource protection area buffer requirements. There shall be two (2) levels of water quality impact assessments: a minor assessment and a major assessment.
- (3) *Minor water quality impact assessment.* A minor water quality impact assessment pertains only to land disturbance, development or redevelopment within the resource protection area which causes no more than ten thousand (10,000) square feet of land disturbance and requires any modification or reduction of the landward fifty (50) feet of the one hundred-foot buffer area. Submission of a plan of development that demonstrates through the use of calculations provided for by section 37.1-52(d)(1)c., that the remaining buffer area and necessary Best Management Practices will result in removal of no less than seventy-five (75) percent of sediments and forty (40) percent of nutrients from post-development stormwater runoff shall be deemed to have satisfied the requirement for a minor water quality impact assessment. Best Management Practices should retard runoff, prevent erosion and filter nonpoint source pollution the equivalent of the full undisturbed one hundred-foot buffer area.
- (4) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any land disturbance, development or redevelopment which: (i) exceeds ten thousand (10,000) square feet of land disturbance within a resource protection area or (ii) disturbs any other component of the RPA seaward of the landward fifty (50) feet of the one hundred-foot buffer area. The information required in this section shall be considered a minimum, unless the city manager, or designee, determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
- a. A hydrogeological element that:
1. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
 2. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site.
 3. Describes the proposed mitigation measures for the potential hydrogeological impacts which may include:

- i. Proposed erosion and sediment controls; including minimizing the extent of the cleared area, and cut and fill, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
 - ii. Proposed stormwater management system;
 - iii. Creation of wetlands to replace those lost; and
 - iv. Minimizing cut and fill.
 - b. A landscape element that describes the potential measures for mitigation of the water quality and land impacts including:
 - 1. Replanting schedule for trees and other significant vegetation removed for construction;
 - 2. Demonstrating that the design of the plan will provide effective erosion control and overland flow benefits from such vegetation; and
 - 3. Demonstrating the use of indigenous plants to the greatest extent possible.
 - c. As part of any major water quality impact assessment submittal, the city manager, upon his own review or the recommendation of the designee, may require a review by the Department of Environmental Quality (DEQ). Upon receipt of a major water quality impact assessment, the city manager, upon his own review or the recommendation of the designee, will determine if such review is warranted and may request DEQ to review the assessment and respond with written comments. Any comments by DEQ may be incorporated into the final review by the city manager, or designee, provided that such comments are provided by DEQ within ninety (90) days of the request.
- (5) *Evaluation procedure.*
- a. Upon the completed review of a minor water quality impact assessment, the city manager, or designee, will determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this article and that the following criteria have been satisfied:

1. The proposed encroachment is necessary due to the inability to place improvements elsewhere to provide a reasonable and appropriate buildable area on the site;
 2. Impervious surface is minimized;
 3. Proposed Best Management Practices, where required, achieve the requisite reductions in pollutant loadings; and
 4. The development, as proposed, meets the purpose and intent of this article.
- b. Upon completed review of a major water quality impact assessment, the city manager, or designee, will determine if the proposed development satisfies the following criteria:
1. Within any RPA, the proposed development is water-dependent;
 2. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 3. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 4. Proposed re-vegetation of disturbed areas will provide effective erosion and sediment control benefits; and
 5. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, will not result in a significant degradation of water quality.
- (g) *Final plan.*
- (1) Final plans for all lands in connection with all development within a resource protection area shall include the following additional information.
- a. The delineation of the ~~resource protection area~~ Resource Protection Area (“RPA”) boundary and any Resource Management Area (“RMA”) boundary. The final plan shall include a note that states that the RPA will be retained as an undisturbed and vegetated 100 foot buffer not subject to development under City Code Section 37.1-51(b)(1), unless the

development is a water dependent facility or redevelopment. If the area to be developed has a septic system, or other onsite sewage treatment facility, the final plan shall include a note citing to City Code Section 33-91.1, indicating that there is a requirement for pump-out of the system every five years and a 100% reserve drain field sites for onsite sewage treatment systems.

- b. The delineation of required buffer areas;
 - c. Evidence of all wetlands permits required by law or a letter from a licensed engineer certifying that in his opinion no such permits are required. A copy of said letter shall be submitted to the city manager, or designee; and
 - d. A maintenance agreement as deemed necessary and appropriate by the city manager, or designee, to ensure proper maintenance of Best Management Practices in order to continue their functions shall be submitted to the city manager, or designee, for review and approval.
- (2) Installation and surety requirements.
- a. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specification of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the city manager, or designee, a form of surety satisfactory to the city attorney in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or other specifications or maintenance costs for any required stormwater management facilities.
 - b. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the City of Newport News.
 - c. All required stormwater management facilities or other specifications shall be installed and approved within eighteen (18) months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to City of Newport News. The City of Newport News may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
 - d. After all required actions of the approved plan have been completed, the applicant must submit a written request for a final inspection. If the

requirements of the approved plan have been completed to the satisfaction of the city manager, or designee, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The city manager, or designee, may require a certificate of substantial completion from a professional engineer or Class III B Surveyor before making a final inspection.

(h) *Administrative responsibility.* Administration of the plan of development process shall be in accordance with Chapter 33.02, Site Plan Ordinance of the City Code.

(i) *Denial of plan, appeal of conditions or modifications.*

- (1) In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the city manager, or designee. Such appeals must be in writing and be filed within ten (10) working days of the decision from which appeal is sought. Prior to granting relief to an application, the city manager must find that the plan is in accordance with all applicable ordinances and includes all necessary elements to mitigate any detrimental impact on water quality. If the city manager finds that the applicant's plan does not meet the above stated criteria, he shall deny the relief sought.
- (2) If the city manager denies the relief sought as provided herein and the applicant contends such denial was not proper, he may appeal in writing to the circuit court of Newport News, provided that such appeal is filed with the circuit court within sixty (60) days following the date of denial. Such appeal shall be heard by the court, which shall uphold the decision of the city manager unless it finds that appellant has proved by clear and convincing evidence that there exists no rational basis to support the denial.