

CHESAPEAKE BAY PRESERVATION AREA AMENDMENT NO. CBPA-2018-0002 CITY OF NEWPORT NEWS

BACKGROUND

This request was deferred by the Planning Commission on July 18, 2018 to further clarify the amendment.

The request is to amend Chapter 37.1, Stormwater Management, Article V., Chesapeake Bay Preservation, Section 37.1-55.1, Appeals, Limitations, by adding "Standard" in the heading. The amendment also specifies what an aggrieved party must prove when appealing the action of the Board of Zoning Appeals to the Circuit Court.

Currently, when the Circuit Court hears an appeal from the Board of Zoning Appeals, the zoning ordinance gives guidance to the court to presume the Board of Zoning Appeals' decision is correct. However, with appeals from the Board of Zoning Appeals to the Circuit Court for Chesapeake Bay Preservation cases, no such presumption is written in the Chesapeake Bay Preservation Ordinance. The amendment is necessary to give guidance to the Circuit Court when hearing an appeal for Chesapeake Bay Preservation cases.

Specifically, the amendment to the Chesapeake Bay Preservation Ordinance stipulates that the Circuit Court, in reviewing an appeal, must presume the decision of the Board of Zoning Appeals is correct, unless the aggrieved party can satisfactorily show it applied erroneous principles of law in reaching the decision. (See Appendix A-1.)

On August 15, 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-2018-0002.

APPENDIX

A-1 CHAPTER 37.1, STORMWATER MANAGEMENT, ARTICLE V., CHESAPEAKE BAY PRESERVATION , SECTION 37.1-55.1, APPEALS, LIMITATIONS, STANDARD.

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 37.1-55.1, APPEALS, LIMITATIONS.

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 37.1-55.1, Appeals, limitations, be, and the same hereby is, amended and reordained as follows:

CHAPTER 37.1

STORMWATER MANAGEMENT

ARTICLE V. CHESAPEAKE BAY PRESERVATION

Sec. 37.1-55.1. Appeals, limitations, standard.

An aggrieved party must file any appeal in the circuit court of the city of any decision of the board of zoning appeals regarding ordinances pursuant to this article within thirty (30) days of the date of the decision of the board. On appeal in the circuit court, the decision of the board of zoning appeals shall be presumed to be correct. The aggrieved party may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or that the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of this article, and is not fairly debatable.