

Guide to the Newport News Chesapeake Bay Preservation Program for Residential Property



City of Newport News, Virginia
April 2005

The Department of Planning is pleased to provide guidance to property owners and developers in regard to the City's Chesapeake Bay Preservation Program. The information within this brochure addresses procedures for minor land disturbance plan review and the appeals process. The department staff is available to address any additional inquiries at 2400 Washington Avenue, Newport News VA 23607, (757)926-8761, or frontdesk-planning@nngov.com

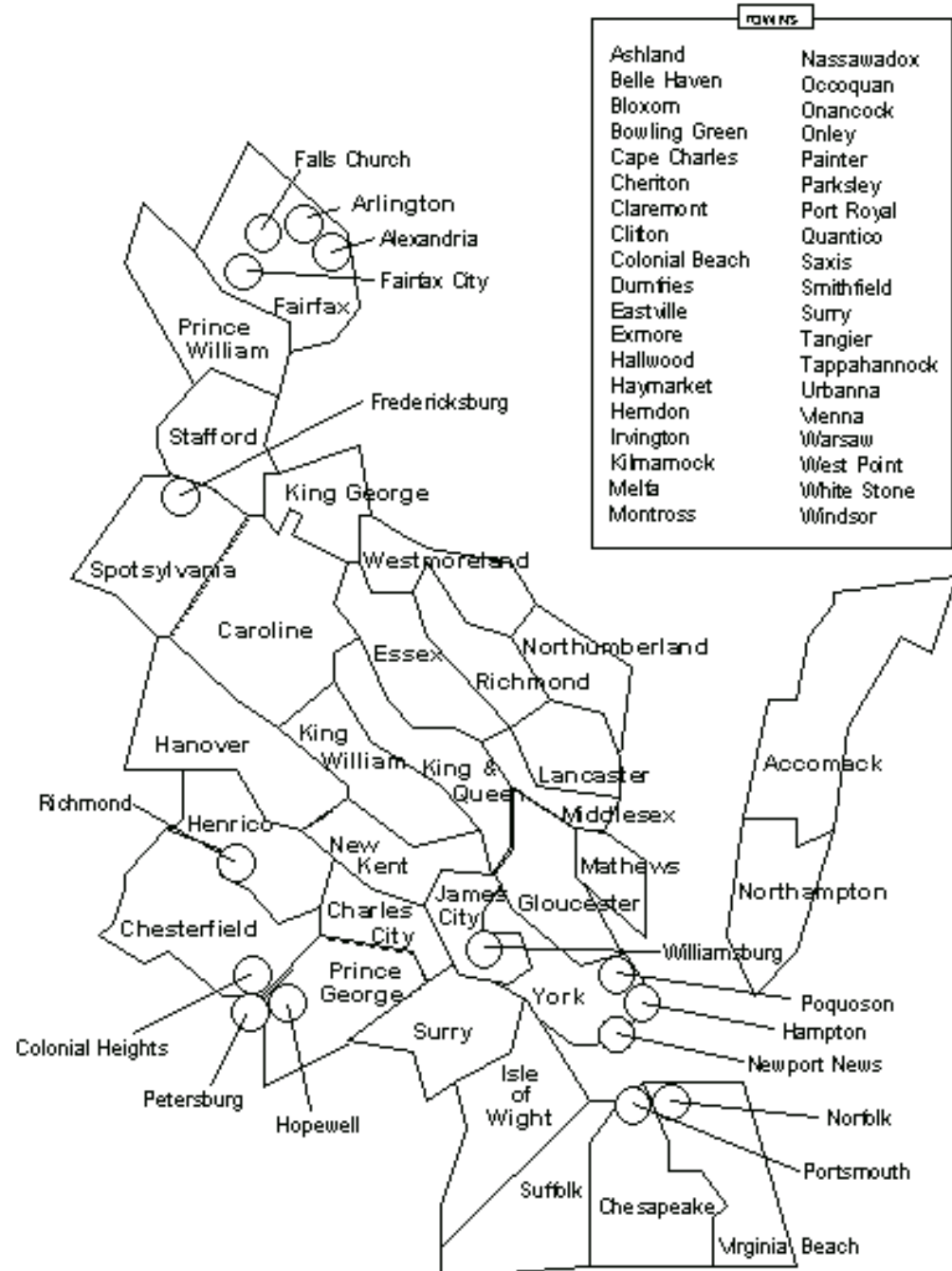
Virginia's Bay Act Localities

HISTORICAL REVIEW

The Chesapeake Bay Commission began in 1980 and includes the States of Virginia, Maryland, Pennsylvania as well as the District of Columbia. The actions of the Commission resulted in the signing of the Chesapeake Bay Agreement in 1987. This agreement forms the basis for each state program for the improvement of the Chesapeake Bay and its tributaries.

Virginia enacted its Chesapeake Bay Preservation Act in 1988 when the General Assembly authorized the creation of both the Local Assistance Board (CBLAB) and the Local Assistance Department (CBLAD). It is the responsibility of both the Board and the Department to develop regulations and provide guidance to localities for the creation and implementation of local bay preservation programs. In 2005, CBLAD ceased to exist and became a Division of the Department of Conservation and Recreation (DCR).

On September 7, 1990 the City of Newport News established its Chesapeake Bay Preservation Program. On April 12, 2005, the City adopted additional revisions to their Chesapeake Bay Preservation Ordinance to comply with recommendations of CBLAB.



Map courtesy of the Virginia Joint Legislative Audit Review Commission

GENERAL OVERVIEW

This sediment-clouded waterway is one result of non-point pollution, in this case soil erosion, entering waterways.



Photo by Kathy James-Webb. August 2002

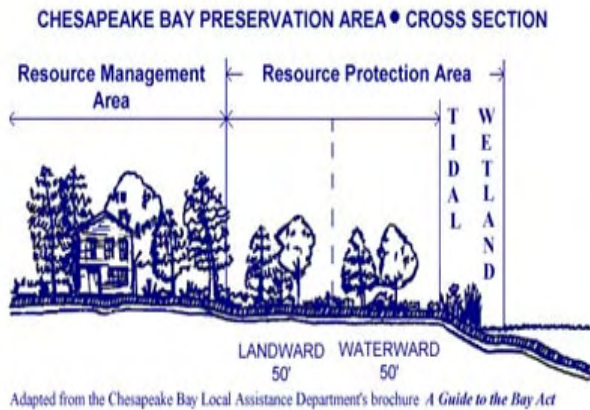
Sediments, nutrients and toxins enter the Bay via storm water runoff. As rain-water flows across the land, pollutants are collected in the form of sediments from loose or exposed soils, nutrients from fertilized lawns and toxins, such as petrochemicals and antifreeze from paved driving surfaces. These are all examples of what is commonly referred to as non-point source pollution since the pollutants are derived from many different sources.

The terms that the residential property owner needs to be familiar with are the Chesapeake Bay Preservation Area (CBPA), Resource Management Area (RMA) and the Resource Protection Area (RPA). The City's ordinance defines the Chesapeake Bay Preservation Area as:

Any land designated as a CBPA on the Map adopted by the City Council subject to a site-specific delineation during the development process. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area, a Resource Management Area and any designated Industrial Waterfront Intensely Developed Area.

Properties most impacted by the City's regulations are those parcels containing Resource Protection Areas (RPA). An RPA is defined as:

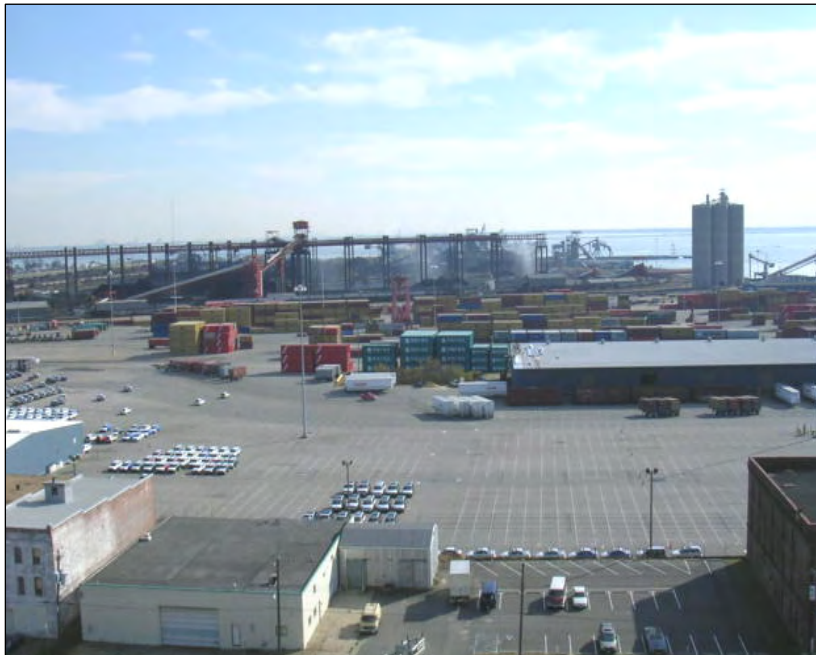
That component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state and local waters.



The RPA is a 100-foot buffer from the edge of wetlands, shores, or perennial streams. If this buffer is disturbed or developed, water quality could diminish. The buffer often encompasses existing or permitted uses and remains 100-feet in width regardless of the presence of these structures. Immediately adjacent to the RPA is the Resource Management Area (RMA).

The City's ordinance defines the RMA as:

That component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of a Resource Protection Area. At its narrowest point the RMA will extend 100 feet inland from the edge of the RPA. It can be significantly wider in areas containing floodplains, slopes greater than 15% and/or soils highly prone to erosion.



VA Port Authority. Photograph by David F. Watson

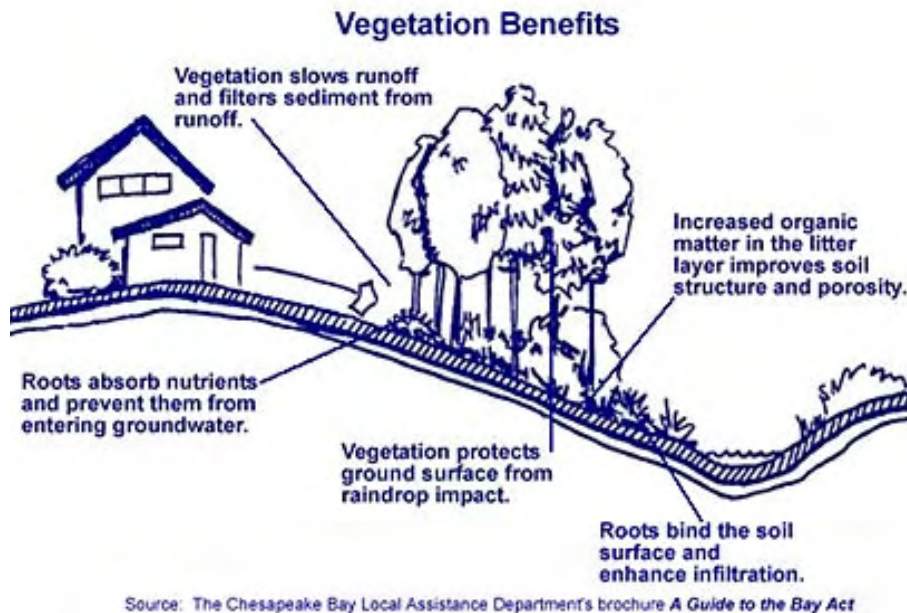
Industrial Areas

Areas of heavy industrial development, such as the Virginia Port Authority property shown to the left, are designated Industrial Waterfront Intensely Developed Areas (IWIDA) and are regulated by the Virginia Department of Environmental Quality. Development and redevelopment within IWIDAs is permitted if it meets applicable erosion and sediment control and storm-water management requirements. A Water Quality Impact Assessment must be submitted for any land disturbance within the Resource Protection Area of the IWIDA overlay.

Minor Landscaping and Gardening

Minor landscaping or gardening activities that occur within the CBPA do not require a full review process. These minor activities include landscaping, gardening, pruning or general maintenance of vegetation. Removal of dead or diseased trees or creating pathways is allowed; however, the Department of Planning should be consulted prior to any action taken.

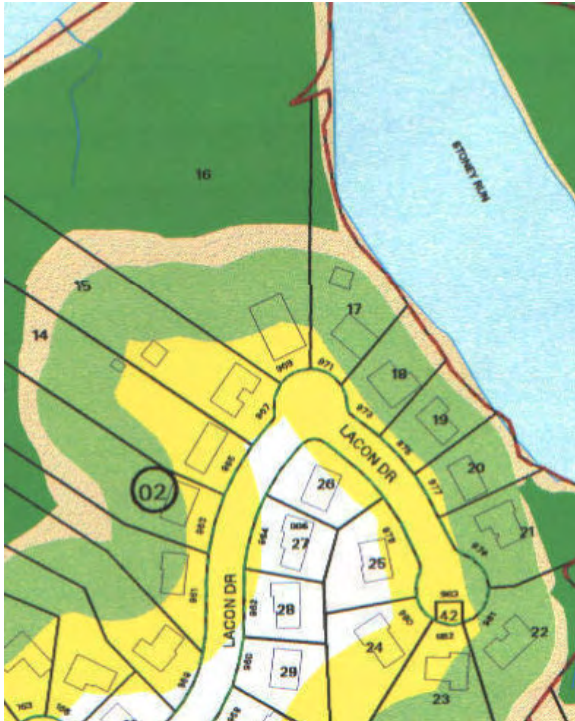
Installation of additional vegetation is allowed without a review by the Planning Department. If your property is not currently vegetated near or in the RPA, any vegetation will improve water quality as long as the topography is not significantly altered, such as a "terraced" slope to the water. Fertilizer can aid in the establishment of newly installed plants or the maintenance of existing vegetation. However, it should be used sparingly and only when absolutely necessary. Landscaping is a good way to improve the aesthetics of your property and the quality of storm water runoff at the same time.



Pruning and general maintenance of existing vegetation is permitted without CBPA review. Pruning is an excellent way to create a view or vista without negatively impacting the natural vegetation or soil. Gardening does not require CBPA review as long as it disturbs less than 2500 square feet in area and is landward of the RPA. The City's ordinance allows the removal of dead or diseased trees and the clearing of underbrush to create a pathway in the RPA. A site visit by a Planning staff member is encouraged prior to this activity so that erosion is kept to a minimum and vegetation is not removed that is still viable. Paths shall be surfaced with mulch or similar material that will allow runoff to infiltrate into the soil and limit erosion. Any existing vegetation located in tidal wetlands, non-tidal wetlands or along tidal shores cannot be disturbed.

PLAN REVIEW AND DEVELOPMENT PROCESS

This map illustrates the Chesapeake Bay Protection features of water (blue), wetland (tan and dark green), RPA (light green), RMA (Yellow) and unprotected area (white). These parcels pre-date the Chesapeake Bay regulations and show some structures entirely within the RPA



All proposed development or redevelopment in the delineated CBPA requires a plan review process. The extent of the review depends on the proposed location of the project. In the City's Ordinance, development is defined as the construction, or substantial alteration, of facilities or structures. Redevelopment is defined as the process of developing land in CBPA that is previously developed to at least sixty percent impervious area within the preceding five years.

Single Family

The CBPA plan review process for single-family residential infill development is less involved. The Department of Planning reviews the plot plan and then forwards the plan to Engineering for review by the Stormwater Management division. The review generally involves an on-site delineation of the RPA and any perennial streams that may be on the property. Plot plans for single-family houses, additions, or accessory structures require varying amounts of information dependant on the amount, if any, of encroachment necessary for the project. Table 1 at the end of this section lists the required information for exceptions, modifications and development waivers.

The City's Ordinance lists the performance standards for developing single-family sites in Chesapeake Bay Protection Areas. These standards ensure that non-point source pollution does not increase as a result of development. General requirements are given for development that would occur in the Resource Management Area. Development proposed in the Resource Protection Area must meet other performance standards in addition to ensuring that the intrusion into the RPA is the least amount needed for development. Required standards can include replacing trees that were removed during development and using a Best Management Practices (BMP) as a means of mitigating the impacts.

Development in the RMA

Plan review of any activity requiring a building or land disturbance permit that will be located in the RMA must be reviewed by the Planning Department. This review is minor and is generally completed at the time of request.

Development that disturbs more than 2500 square feet in land area will need a Land Disturbance Permit from the Department of Engineering. Should the impervious surface area on the site exceed thirty-six percent, additional review by the Department of Engineering is required.

Development and Redevelopment Considerations

Is there sufficient building area outside of the RPA?

Can the structure be placed further from the shoreline?

Is the proposed project harmonious to the surrounding neighborhood?

Can a second floor be utilized to reduce the overall footprint?

Can an adequate amount of vegetation be planted to mitigate any increase in stormwater runoff?

Can a proposed expansion be placed over an existing impervious surface?

Development in the RPA

As of January 1, 2004, the City of Newport News is approximately ninety-three percent developed. This number includes almost all of the properties along the James River and its tributaries. Thus, the application of the Chesapeake Bay Preservation Area significantly impacts a large number of parcels and structures that were in existence well before the City adopted its Bay Act Ordinance. As a means of relief, development in the RPA can be permitted administratively where the application of the buffer results in the loss of a building envelope AND the parcel was created prior to October 1, 1989. Such development may not result in more than fifty feet of encroachment. Parcels that meet these initial standards must also meet the following criteria:

- Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable building area for a principal structure and necessary utilities.
- Where practicable, a vegetated area that will maximize water quality protection, mitigate the effect of buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.
- The encroachment may not extend into the seaward fifty feet of the buffer area.

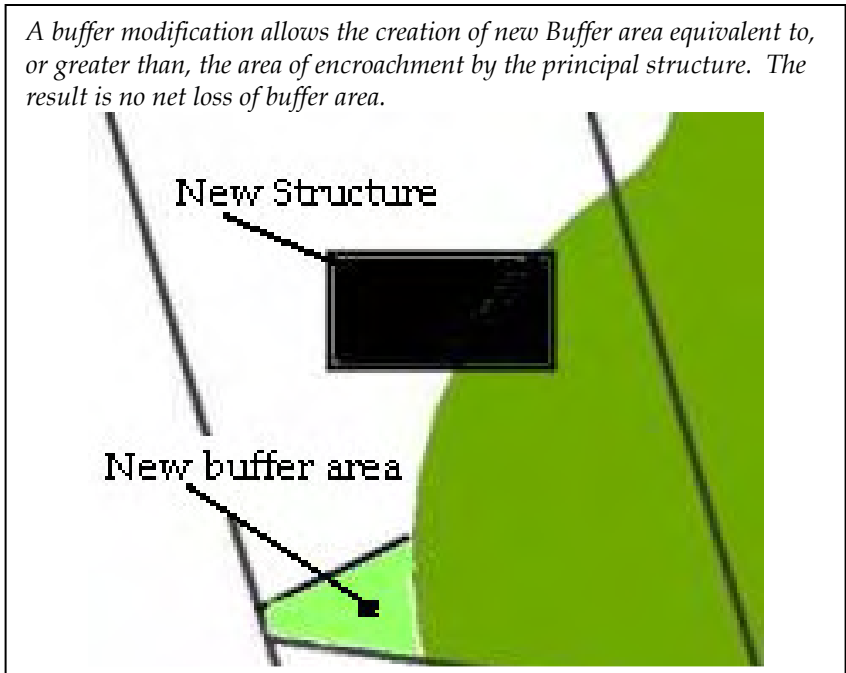
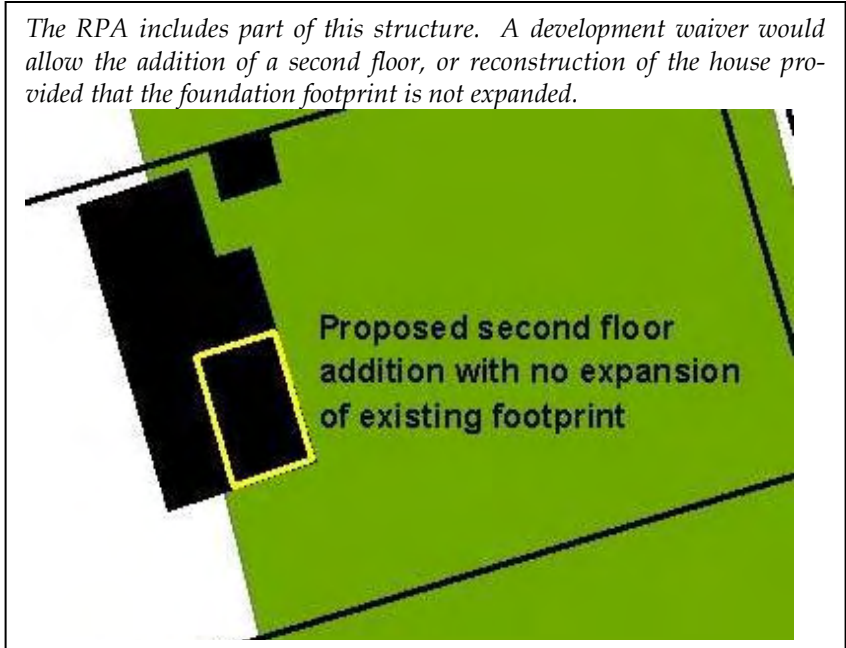
The procedures available for review are a development waiver, a buffer modification or Exception from the RPA. The steps involved for each process are listed on the following page in Table 1.

Table 1 - Application types and requirements for building in the Chesapeake Bay Resource Protection Area

| Exception | Modification | Development Waiver |
|--|--|--|
| Completed application form. | Completed application form. | Completed application form.. |
| A non-refundable processing fee of \$100.00 will be charged for a BZA hearing | No Fee | No Fee |
| A full narrative description of the proposed improvements detailing its impact on the 100-foot RPA buffer and any mitigation proposed. A survey plat (no smaller than 1"=100') showing: All existing structures, impervious areas and easements on the property and the proposed improvements, including mitigation, erosion and sediment control.. | A survey or plot plan showing the dimensions of the property to scale. Show the location of existing and proposed buildings, structures or additions as well as distances from the proposed construction to property lines and other structures. | Attach a survey or plot plan showing the dimensions of the property to scale. Show location of existing building and the foundation for reconstruction or proposed second floor additions |
| A perennial stream identification study shall be performed. A 100-foot Resource Protection Area (RPA) buffer measured from the features above and divided down showing the 50-foot midline. Identify the Resource Management Area (RMA) and Industrial Waterfront Intensely Developed Area (IWIDA) where applicable. | A perennial stream identification study shall be performed. A 100-foot Resource Protection Area (RPA) buffer measured from the features above and divided down showing the 50-foot midline. Identify the Resource Management Area (RMA) and Industrial Waterfront Intensely Developed Area (IWIDA) where applicable. | A perennial stream identification study shall be performed. A 100-foot Resource Protection Area (RPA) buffer measured from the features above and divided down showing the 50-foot midline. Identify the Resource Management Area (RMA) and Industrial Waterfront Intensely Developed Area (IWIDA) where applicable. |
| Distances from the proposed construction to property lines and other structures. Existing topography and 100-year floodplain elevation, waterways and wetlands on the property | Identify the impacts of the proposed buffer modification on water quality and on land in the Resource Protection Area. Identify any new area to be designated as RPA Area | Identify the impacts of the proposed buffer modification on water quality and on land in the Resource Protection Area. Identify any new area to be designated as RPA Area |
| Notes to include amounts of existing and proposed impervious area in square feet, total area of land disturbance, total area of land disturbance in the Resource Protection Area | Notes to include amounts of existing and proposed impervious area in square feet, total area of land disturbance, total area of land disturbance in the Resource Protection Area | Notes to include amounts of existing and proposed impervious area in square feet, total area of land disturbance, total area of land disturbance in the Resource Protection Area |
| Landscape plan for Vegetative BMP, if appropriate | Landscape plan for Vegetative BMP, if appropriate | |
| A signed seal of a licensed professional Surveyor or Engineer | A signed seal of a licensed professional Surveyor or Engineer | BMP Guidance Calculations. |
| BMP Guidance Calculations | BMP Guidance Calculations | |
| Major Water Quality Impact Assessment if more than 10,000 square feet of land disturbance occurs in the RPA; or if any portion of the seaward fifty-feet of the RPA is disturbed. A Minor Water Quality Impact Assessment if under 10,000 square feet of land disturbance. | Major Water Quality Impact Assessment if more than 10,000 square feet of land disturbance occurs in the RPA; or if any portion of the seaward fifty-feet of the RPA is disturbed. A Minor Water Quality Impact Assessment if under 10,000 square feet of land disturbance. | A Minor Water Quality Impact Assessment, if under 10,000 square feet of land disturbance. |
| Photographs of property | Photographs of property | Photographs of property |

The illustrations on this page depict three scenarios that allow administrative review of a project in the Resource Protection Area. This process requires approval by both the Director of Planning and the Director of Engineering before a building permit can be issued. If an administrative review results in a denial or a modification unacceptable to the applicant, an appeal to the city manager can be filed within ten business days. Should the city manager not provide the desired relief, the applicant may appeal to the Circuit Court of Newport News within sixty days of the date of denial.

In cases where a site plan does not meet the guidelines allowing an administrative review, such as accessory structures or an encroachment greater than 50 feet, an application must be made to the Newport News Board of Zoning Appeals. The next section discusses in greater detail the necessary steps for this application.



APPLICATIONS TO THE BOARD OF ZONING APPEALS

Encroachments into the seaward fifty feet of the 100' RPA buffer, as well as all accessory structures, require approval of an exception to the RPA buffer by the Newport News Board of Zoning Appeals (BZA). The application, accompanied by a \$100 nonrefundable filing fee, must be submitted to City's Planning Department.

The BZA may approve the application if all of the following criteria are met:

- The requested exception is the minimum necessary to afford relief.
- Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners who are subject to its provisions and who are similarly situated.
- The exception is in harmony with the purpose and intent of the ordinance and is not of substantial detriment to water quality.
- The exception request is not based upon conditions or circumstances that are self-created or self-imposed.
- Reasonable and appropriate conditions are imposed as warranted that will prevent the activity from causing a degradation of water quality.
- Any other conditions required by the Board.

An applicant may appeal a decision of the Board of Zoning Appeals to the Newport News Circuit Court.

At the end of this brochure Figure 1 and 2 illustrate and compare all of the application processes. To expedite the review process, a pre-application meeting with Planning and Stormwater Management staff is recommended.

Encroachments into the RPA Buffer

Encroachments for new development on lots recorded prior to 10/01/1989 are administratively permitted provided they are the minimum necessary to afford relief for the principal structure and necessary utilities and that the encroachment is not greater than 50 feet

The expansion of a non-conforming structure may also be permitted by administrative review provided the six findings of exceptions noted to the right are satisfied

Accessory structures and uses such as but not limited to detached decks or garages; pools, gazebos, patios, sheds, etc. must be reviewed and approved by the Board of Zoning Appeals

Figure 1 - New Development in the Resource Protection Area

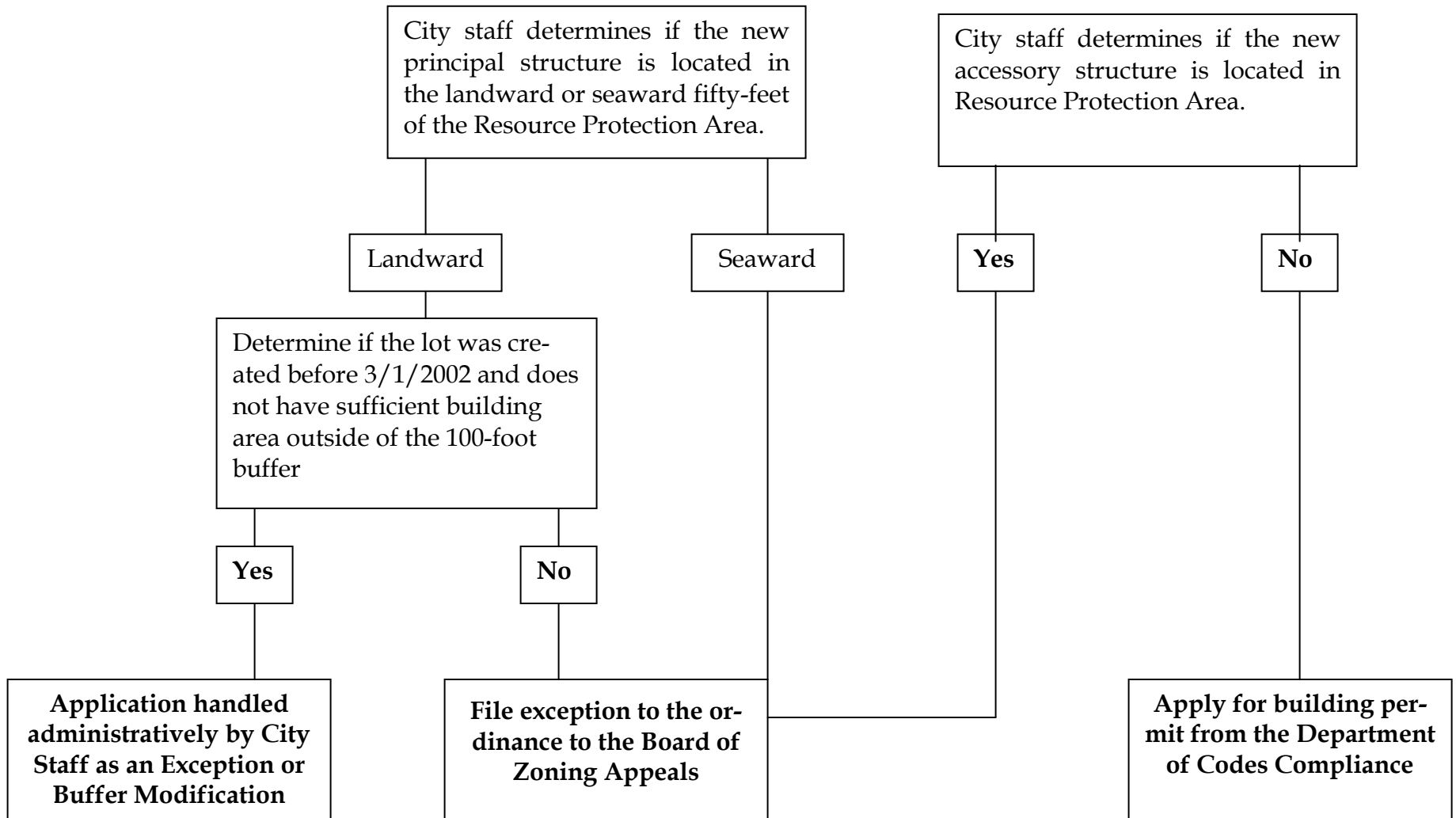


Figure 2 - Redevelopment in the Resource Protection Area outside of the Industrial Waterfront Intensely Developed Area

