



CHESAPEAKE BAY PRESERVATION ORDINANCE PASSES

AMENDMENTS DRIVEN BY STATE

The Board of Supervisors passed the proposed amendments to the Chesapeake Bay Preservation Ordinance on July 7, 2003. The amendments were prepared

by the Department of Public Works and Environmental Services (DPWES) to implement amendments to the Virginia Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.), effective March 1, 2002.

Amendments will be reflected in Chapter 101 (Subdivision Ordinance), Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance) and Chapter 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia, and to the Public Facilities Manual: Implementation of Revisions to the Chesapeake Bay Preservation Designation and Management Regulations (9 VAC 10-20 et seq.).

THE BAD NEWS – LARGER RPAs AND MORE RED TAPE

The amendments will result in significant expansion of existing Resource Protection Areas and will subject affected properties to additional regulatory requirements which will limit development opportunities. Approval of exceptions and waivers under the new CBPO amendments will be more restrictive and will result in fewer waivers and exceptions. The requirement for a public hearing for certain types of exception requests to encroach into the Resource Protection Area (RPA) will increase the amount of time required to process such exception requests.

THE GOOD NEWS – ORDINANCE IMPROVED FROM RECENT DRAFTS

- Landowners will have a choice to use either top of bank or ordinary high water mark on a stream to establish the inner edge of the RPA buffer zone.
- Site plans and subdivision plans submitted by September 5, 2003, will be reviewed under the present ordinance; however, due diligence provisions apply.
- RPA delineations, based on previous RPA criteria, submitted prior to November 17 (or later effective date of the amendments) will remain in effect for one year after the effective date of the ordinance.
- At plan submission, an RPA delineation may be performed by the landowner which, if approved, will supersede the new County mapped RPA.

EXCEPTIONS – THE CRITERIA

Requests for exceptions to permit encroachment into RPAs and for waiver of the water quality control requirements will be subject to the following review:

- Exception to the criteria is the minimum necessary to afford relief.
- Granting of the exception will not confer upon the applicant any special privileges that are denied other property owners who are similarly situated.
- Exception is in harmony with the purpose and intent of the ordinance and is not of substantial detriment to water quality.
- Exception is not based on conditions that are self-created or self-imposed.
- Reasonable and appropriate conditions are imposed that will prevent the allowed activity from degrading water quality.

EXCEPTIONS – THE PROCESS

Requests for exceptions to encroach into the RPA, except as noted below, will require that adjoining property owners and the local civic association be notified and a public hearing be held. All requests for exceptions will require a water quality impact assessment.

- Exception requests for loss of buildable area for lots created under the Subdivision Ordinance prior to March 1, 2002, that do not encroach into the “seaward” 50 feet of the RPA buffer, will not require notification of adjoining property owners or a public hearing.
- Exception requests for minor additions to existing legal principal structures constructed prior to July 1, 1993, will not require notification of adjoining property owners or a public hearing. Minor additions include properly designed fences, decks and small sheds.
- Exception requests for minor additions to existing legal principal structures constructed between July 1, 1993, and March 1, 2003, on lots that will have new RPAs designated on them because of changes to the RPA designation criteria, will not require notification of adjoining property owners or a public hearing.
- Large sheds, garages or swimming pools do not qualify as minor additions and will require notification of adjacent property owners and a public hearing.

PUBLIC HEARINGS ON REQUESTS FOR EXCEPTIONS

The County will publish legal notices for the public hearing. An increase of \$250 in the fee for the processing of exception requests will cover costs for legal notices for the public hearings.

The public hearings will be held by a special committee composed of seven members appointed by the Board of Supervisors. The Board may hear appeals of decisions of the special committee.

APPROVED AND PENDING PLANS OR DEVELOPMENT

Plans of development that are approved as of the effective date of the amended ordinance or filed by September 5, 2003, demonstrate due diligence, and are subsequently approved and do not fully comply with the amended

ordinance, will not be subject to the exception review process but shall comply to the extent possible with the amended ordinance. DPWES policy will be very complex. Contact PSA for draft.

DRAFT MAPS OR NEW AND EXISTING RPAs AVAILABLE

Interim guidance maps showing RPAs are available on the County’s web site at www.fairfaxcounty.gov/gov/dpwes/homepage. The maps display existing RPAs adopted by the Board in 1993; new RPAs based on completed field studies and estimated RPAs for areas where field studies have not yet been completed. The maps will be updated every two months as field studies are completed.



The final maps are intended to display general locations of RPA boundaries for planning purposes. The actual limits may be further refined by detailed field studies and RPA delineations conducted at the time a plan is submitted to obtain a permit or develop a property.

WHAT TO DO NOW

- Submit plans of development by September 5, 2003.
- Submit RPA delineations by November 17, 2003.
- Consider effects of new regulations and draft RPA maps in feasibility studies.

CONTACT US

Contact Erv Bedker or Bill Kirby for further information or review of a particular property or project at 703.934.0900 or by e-mail at ebedker@psaltd.com or bkirby@psaltd.com.

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