



**The Town of Irvington Planning Commission  
Special Called Meeting November 10, 2020, 6:30 PM  
Irvington Baptist Church**

- 1. Call to order** - Julie Harris, Chair
- 2. Roll Call and Determination of Quorum**- Julie Harris, Chair
- 3. Approve Minutes of the September 8, 2020 Special Called Meeting**
- 4. Report from Chair** – Julie Harris
- 5. Report from Zoning Administrator** – Lara Brown
- 6. Old Business** - None
- 7. New Business**
  1. Next Planning Commission Meeting Date, December 8, 2020 at 6:30, Irvington Baptist Church
- 8. Adjourn**

The Town of Irvington, Virginia - Planning Commission  
Special Called Meeting September 8, 2020 6:30pm  
Irvington Baptist Church

Draft Minutes of September 8, 2020 Meeting

- A. Call to Order - 6:30pm Julie Harris - Chair
- B. Roll Call and Determination of a Quorum  
Harris - Present  
Chapman - Present  
Kimmeth - Present  
Capps - Present  
Robinson - Present  
Braly - Present  
Forrester - Present  
Total - Present - 7. Absent - 0.  
Determination that there was a Quorum by Chairwoman Harris.
- C. Swearing In of Planning Commission Members - Mayor Tripp Bugg  
The Code of Virginia 15.2 - 1410, Allows a Mayor to Swear In New Members.  
1. J. Chris Braly - The Swearing In Certificate is attached and incorporated within.  
2. R. Brian Forrester - The Swearing In Certificate is attached and incorporated within.
- D. Approve Minutes  
1. August 11, 2020 Special Called Meeting  
Motion to approve - Chapman  
Second - Capps  
Vote - Harris - Yes  
Chapman - Yes  
Kimmeth - Yes  
Capps - Yes  
Robinson - Yes  
Braly - Yes  
Forrester - Yes  
Total : Yes - 7. No - 0. Motion Approved.
2. August 11, 2020 Joint Public Hearing  
Motion to approve - Chapman  
Second - Capps  
Vote - Harris - Yes  
Chapman - Yes

Kimmeth - Yes  
Capps - Yes  
Robinson - Yes  
Braly - Yes  
Forrester - Yes  
Total: Yes - 7. No - 0. Motion Approved.

E. Report from the Chair

No report from The Chair at this meeting.

F. Report from The Zoning Administrator - Lara Brown

The Zoning Administrators Report is attached and incorporated within.

G. Old Business

1. Second Reading of Resolution 2020-06, PC, Conditional Use Permit for mixed use, one office and two apartments. Read by Zoning Administrator, Lara Brown. Staff Report was also presented and is attached and incorporated within.

- a. Motion to Adopt Resolution 2020-06.PC

Motion to Adopt - Capps

Second - Robinson

Vote - Harris - Yes

Chapman - Yes

Kimmeth - Yes

Capps - Yes

Robinson - Yes

Braly - Yes

Forrester - Yes

Total: Yes - 7. No - 0. Motion Approved.

- b. Motion to Recommend CUP-2020.06\_Pollard for mixed use, one office and 2 apartments, M-1, Tax Map 33 379.

Motion to Recommend - Capps

Second - Robinson

Vote - Harris - Yes

Chapman - Yes

Kimmeth - Yes

Capps - Yes

Robinson - Yes

Braly - Yes

Forrester - Yes

Total: Yes - 7. No - 0. Motion Approved.

2. Second Reading of 2020-05. PC, Conditional Use Permit for new dock R-1, Tax Map 34 20.

A Recusal Statement was read by Planning Commissioner R. Brian Forrester. The Recusal Statement is attached and incorporated within.

Second Reading by Zoning Administrator, Lara Brown. Staff report was also presented and is attached and incorporated within.

a. Motion to Adopt Resolution 2020-05.PC

Motion to Adopt - Chapman

Second - Capps

Vote - Harris - Yes

Chapman - Yes

Kimmeth - Yes

Capps - Yes

Robinson - Yes

Braly - Yes

Forrester - Abstain

Total: Yes - 6. No - 0. Abstain - 1. Motion Approved.

b. Motion to Recommend CUP-2020.5\_Forrester for new dock, R-1, Tax Map 34 20

Motion to Recommend - Capps

Second - Robinson

Vote - Harris - Yes

Chapman - Yes

Kimmeth - Yes

Capps - Yes

Robinson - Yes

Braly - Yes

Forrester - Abstain

Total: Yes - 6. No - 0 Abstain - 1. Motion Approved.

H. New Business

Chairwoman Harris announced that the next Planning Commission meeting date would be October 13, 2020 at 6:30pm at Irvington Baptist Church.

I. Adjournment

Motion to Adjourn - Kimmeth



Second - Capps

Vote - Harris - Yes

Chapman - Yes

Kimmeth - Yes

Capps - Yes

Robinson - Yes

Braly - Yes

Forrester - Yes

Total: Yes - 7 No - 0 Motion Approved

Meeting Adjourned at 6:48pm.

Respectfully submitted: Charles Steven Kimmeth, Secretary



**Town of Irvington**  
**Zoning Administrator Report for the Town Council**  
**Prepared For: August 11, 2020 Meeting**  
**Staff Contact: Lara M. Brown, Zoning Administrator**

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Floodplain Training – Completed DCR’s Floodplain Program which included:

- 1) Substantial Damage Estimator Tool
- 2) Flood Risks Products
- 3) Virginia Flood Risk Information System
- 4) Community Rating System
- 5) Floodplain Management Ordinance

Responded/Communicated to 16 residents regarding noise ordinance, burn law, sign & fence ordinance, tree removal within RPA, constructing pools within RPA, deck removal and replacement options within RPA, tall grass on neighbor’s property, bushes encroaching on roads, construction/farm equipment on residential property, and dock/piling concerns on Carter’s Creek, missing street signs in Vineyard Grove, and individual zoning questions.

Continued to provide assistance to applicants and prepare staff reports for CUP5 and CUP6. Specifically, post notices in Rappahannock Record; provide list of adjacent land owners within 300’; answer calls regarding notifications; assure timelines are met with CUP schedule and gather data pertinent to the applications for my staff report.

Met with PC Chairperson to review recommended revisions to CUP application.

Provided assistance to PC Chair in preparation for August PC meeting.

Two site-visits with Lancaster County official regarding ZA concerns of land disturbance with-in RPA. Landscape mitigation meeting will occur with land owner(s).

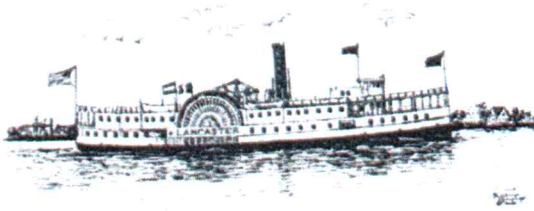
Responded and provided technical assistance to 2 residents regarding request to remove trees within RPA. Educated land-owner(s) of CBPA performance standards. Received follow-up call from Tree Removal Company inquiring about our tree removal regulations. Provided technical assistance to business owner.

Follow-up regarding the removal of abandoned structures on Tax Map 34I 1 9 & 34 I 1 8. I spoke to the land owner and as of today, she has received 1 of 2 estimates to remedy the situation. Due to the nature of the storm clean up after last week’s tornadoes’, the first estimator stated he could not complete the job for 2-3 months. She is still waiting on the 2<sup>nd</sup> estimate, and if she does not hear back by the end of next week, she will move forward with the estimate she has received and notify the Town to the completion date. I believe we are looking at a completion date around October/November.

Upcoming - I will place an add in the newspaper Noticing the Town of Irvington of the current and existing rules because there is confusion regarding what you can and cannot do with docks. If anyone is going to repair, do work, install new pilings, expand the use, etc. on their dock, they need to come to the office and get the appropriate permits. The Notice in the paper will represent existing law.

TOWN OFFICIALS  
Albert D. "Tripp" Bugg, III  
Mayor  
Nancyellen Keane, Esq.  
Town Attorney  
Lara M. Brown  
Zoning Administrator  
Sharon L. Phillips  
Town Clerk  
Treasurer  
FOIA Officer

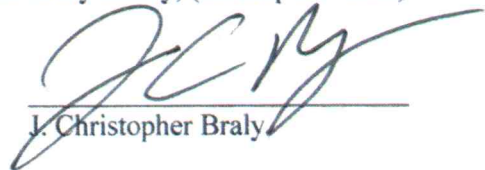
# Town of Irvington



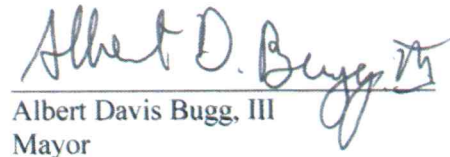
TOWN COUNCIL  
Frances Westbrook  
Vice Mayor  
Jackie Brown  
Bonnie Schaschek  
R. Wayne Nunnally  
Anthony Marchetti  
Dudley Pattenon

September 8, 2020

I, **J. Christopher Braly** do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me a **Member of the Irvington Planning Commission for an unexpired term ending October 31, 2020** according to the best of my ability, (So help me God.)

  
\_\_\_\_\_  
J. Christopher Braly

I, Albert D. Bugg, III, Mayor of the Town of Irvington in and for the County of Lancaster, in the Commonwealth of Virginia, do certify that **J. Christopher Braly** this **8<sup>th</sup>** day of **September**, 2020 personally appeared before me in my Town aforesaid and took and subscribed the above oath.

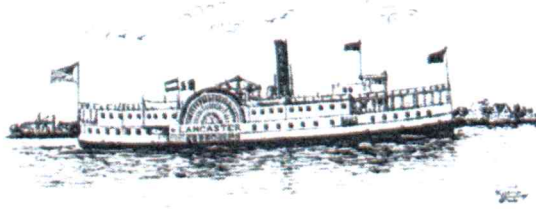
  
\_\_\_\_\_  
Albert Davis Bugg, III  
Mayor

*\*Pursuant to Virginia Code §15.2-1410*



TOWN OFFICIALS  
Albert D. "Tripp" Bugg, III  
Mayor  
Nancyellen Keane, Esq.  
Town Attorney  
Lara M. Brown  
Zoning Administrator  
Sharon L. Phillips  
Town Clerk  
Treasurer  
FOIA Officer

# Town of Irvington



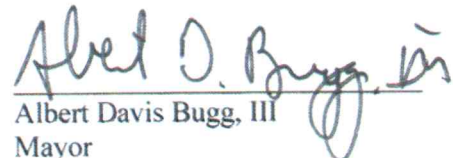
TOWN COUNCIL  
Frances Westbrook  
Vice Mayor  
Jackie Brown  
Bonnie Schaschek  
R. Wayne Nunnally  
Anthony Marchetti  
Dudley Patteson

September 8, 2020

I, **R. Brian Forrester** do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as a **Member of the Irvington Planning Commission for a term ending June 30, 2024** according to the best of my ability, (So help me God.)

  
\_\_\_\_\_  
R. Brian Forrester

I, Albert D. Bugg, III, Mayor of the Town of Irvington in and for the County of Lancaster, in the Commonwealth of Virginia, do certify that **R. Brian Forrester** this **8<sup>th</sup>** day of **September**, 2020 personally appeared before me in my Town aforesaid and took and subscribed the above oath.

  
\_\_\_\_\_  
Albert Davis Bugg, III  
Mayor

*\*Pursuant to Virginia Code §15.2-1410*



## RESOLUTION 2020-05.PC

Recommendation Regarding Conditional Use Permit Application – Dock , R-1, Tax Map 34 20

**WHEREAS**, the Irvington Planning Commission was asked to review and make a recommendation to Town Council on Proposed Conditional Use Permit (“CUP”) Application TOI# CUP – 2020.5\_Forrester to build a new private dock at residence in R-1 zoning district; Tax map # 34 20, \_\_\_ The Lane (“Application”); and

**WHEREAS**, a joint public hearing on the Application was advertised in the Rappahannock Record on July 30, 2020 and August 6, 2020; and

**WHEREAS**, the Planning Commission and Town Council held a joint public hearing on August 11, 2020 to hear public views on the Application; and

**WHEREAS**, the Planning Commission considered the Application at its meetings held on August 11, 2020 and September 8, 2020.

**NOW THEREFORE, BE IT RESOLVED** that the Irvington Planning Commission hereby recommends **approval** of the Application to Town Council.

Reasons given, if any: None

I, Steve Kimmeth, Secretary of the Planning Commission, do hereby certify that the above is a true copy of Resolution 2020-05.PC adopted at a special meeting of the Planning Commission of Irvington, Virginia held on September 8, 2020, at which a quorum was present and voting. The vote was:

	In favor	Opposed	Abstain
Julie Harris	yea		
Tom Chapman	yea		
Steve Kimmeth	yea		
Lee Capps	yea		
Phil Robinson	yea		
Chris Braly	yea		
Brian Forrester			ABSTAIN

IRVINGTON PLANNING COMMISSION

  
Steve Kimmeth, Secretary







## **Town of Irvington**

### **Zoning Administrator Report for Planning Commission**

**Prepared For: November 10, 2020, Planning Commission Meeting**

**Staff Contact: Lara M. Brown, Zoning Administrator**

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### **Zoning Permits**

Two zoning permits

Two CUPs

2 JPAs (Review process only at this time)

### **Site Visits**

ZA conducted 4 site visits for shoreline erosion, pool location, tree in the RPA, and dock replacement.

### **North Commons**

At the 10/15/2020 Special Called TC Meeting, two motions were passed “**FOR THE DESIGNATION OF THE NORTH COMMONS AS THE LOCATION FOR THE NEW TOWN OFFICE** and “**THE MOTION TO AUTHORIZE TOWN STAFF TO PROCEED WITH GETTING PROPOSALS RELATED TO ITEMS DISCUSSED CONCERNING A NEW TOWN OFFICE SUCH AS A PROPOSAL FROM CHESAPEAKE HOMES OR A SIMILAR CONTRACTOR; A PROPOSAL FOR A SURVEY; A PROPOSAL FOR A SITE PLAN FROM BAY DESIGN OR SIMILAR CONTRACTOR.**” At their request, the ZA requested pricing/estimate for the construction of a Town Office and Meeting Hall from a local vendor and has received a request from a second vendor to provide a proposal, but as of this date, second proposal has not been received. Estimates have been received for a Master Site Plan and a Land Development & Engineering Plan. A Septic Engineering Plan is pending.

### **Zoning Department Housekeeping Items**

The Conditional Use Permit application has been updated, reviewed by legal and will take effect immediately.

The Subdivision Application was not in compliance with the most current Town Code. A revised subdivision application has been updated, reviewed by legal and will take effect immediately.

The Joint Permit Application Process has been reviewed by the ZA in partnership with VMRC and Lancaster County. During the review, it is clear that the Town of Irvington has shared responsibility with Lancaster County Wetlands Board when waterfront property owners are proposing work within the CBPA. The Town of Irvington has jurisdiction over the Bay Act and when the County receives future JPAs, they will begin forwarding the applications to Irvington. The ZA has worked closely with the County and appreciates the time and effort shown from County staff.

§ 154.157 and §154.158 Exemption and Exceptions – What are they and what role does Planning Commission have regarding Exemptions and Exceptions in our Chesapeake Bay Preservation Overlay District?

(3) Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform.

(4) Other lands have severe development constraints from flooding, erosion and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline and shoreline erosion control.

(5) These lands together, designated by the Town Council as Chesapeake Bay Preservation Areas ("CBPAs"), shall be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in the town and the state.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.147 PURPOSE AND INTENT.**

(A) (1) This subchapter is enacted to implement the requirements of VA Code §§ 62.1-44.15:67 et seq. (the Chesapeake Bay Preservation Act: sometimes hereinafter referred to as the "Act").

(2) The intent of Town Council and the purpose of the Overlay District is to support the goals of the Act and the town's Comprehensive Plan by protecting and improving the quality of the Chesapeake's Bay's waters, its tributaries, buffer areas and other sensitive environmental lands by minimizing the potential adverse effects of human activity upon these areas by:

- (a) Protecting existing high quality state waters;
- (b) Restoring all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- (c) Safeguarding the clean waters of the state from pollution;
- (d) Preventing any increase in pollution;
- (e) Reducing existing pollution; and
- (f) Promoting water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the town.

(B) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the zoning regulations. Unless otherwise stated in the Overlay District, the review and approval procedures provided for, hereinafter shall be followed in reviewing and approving development, redevelopment and uses governed by the subchapter.



(C) This subchapter is enacted under the authority of VA Code §§ 62.1-44.15:52 et seq. (the Chesapeake Bay Preservation Act) and VA Code § 15.2-2283. VA Code § 15.2-2283 states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in VA Code § 62.1-255.”

(D) The following definitions are supplementary to those set forth in § 154.004. For the purpose of this subchapter, certain words and terms are defined as follows. Words used in the present tense include the future. Words in the singular include plural, and the plural includes the singular.

**ACCESSORY USE OR STRUCTURE.** A subordinate use or structure customarily incidental to and located upon the same or adjacent lot occupied by the main use or building, including private water and sewage facilities.

**BEST MANAGEMENT PRACTICES (BMPS).** A practice, or combination of practices, that is determined by a state or designated areawide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

**BUFFER AREA.** An area of natural or established vegetation managed to protect other components of the resource protection area and state waters from significant degradation due to land disturbance.

**BUILDING.** Any combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by person, or property. The word **BUILDING** shall be construed as though followed by the words “or part thereof.”

**BUILDING ACCESSORY.** A subordinated structure customarily incidental to and located upon the same lot occupied by the main structure.

**CALIPER.** The diameter in inches of a tree trunk measured six inches above ground level.

**CHESAPEAKE BAY PRESERVATION AREA (CBPA).** Any land designate by town pursuant to §§ 154.145 through 154.158, (9 VAC §§ 10-20-70 et seq.) of this chapter and VA Code § 62.1-44.15:72 of the Act. A **CHESAPEAKE BAY PRESERVATION AREA** shall consist of a resource protection area and a resource management area.

**CONSTRUCTION FOOTPRINT.** The area of all impervious surface, including, but not limited to, buildings, roads and drives, parking areas, sidewalks and the area necessary for construction of such improvements.

**DEVELOPMENT.** The construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportational or utility facilities or structure.

**DIAMETER AT BREAST HEIGHT (DBH).** The diameter of a tree measured outside the bark at a point four and one-half feet above the ground.

**DRIPLINE.** A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

**GOVERNING BODY.** The Town Council of Irvington, Virginia.

**HEALTH OFFICIAL.** The legally designated health authority of the State Board of Health for Lancaster County or its authorized representative.

**HIGHLY ERODIBLE SOILS.** Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The **ERODIBILITY INDEX** for any soil is defined as the product of the formula  $RKLS/T$ , where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effect of slope length and steepness; and T is the soil loss tolerance.

**HIGHLY PERMEABLE SOILS.** Soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid" as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service).

**HYDRIC SOILS.** Soils that are saturated, flooded or ponded long enough during the growing seasons to develop anaerobic conditions in the upper part, which are saturated for usually one week or more in the growing period and have the capacity to support hydrophytic vegetation.

**IMPERVIOUS COVER.** A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas and any concrete, asphalt or compacted gravel surface.

**LAND DISTURBANCE/LAND DISTURBING ACTIVITY.** Any activity as described in Part III, § 10-3 of the Lancaster County erosion and sediment control ordinance.

**LOT.** A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, lot width and lot areas as are required by this subchapter, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

**MITIGATION.** Refers to activities that lessen the potential for future damage.

**NON-POINT SOURCE POLLUTION.** Pollution consisting of constituents such as sediment, nutrients and organic and toxic substance from diffuse sources such as runoff from agriculture and urban land development and use.



**NON-TIDAL WETLANDS.** Those wetlands other than tidal wetland that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adopted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to § 404 of the Federal Clean Water Act, in 33 C.F.R. § 32.3b.

**OVERLAY ZONES.** Zoning requirements that are described in the ordinance text and related maps and imposed in addition to those of an underlying district. Developments within the **OVERLAY ZONE** must conform to the requirements of both zones or the more restrictive of the two.

**PUBLIC ROAD.** A publicly owned road designed and constructed in accordance with water quality protection criteria at least stringent as requirements applicable to the State Department of Transportation, including regulations promulgated pursuant to the Erosion and Sediment Control Law (VA Code §§ 62.1-44.15:52 et seq.). This definition includes those roads where the State Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the town, in accordance with its ordinance and standards.

**REDEVELOPMENT.** The process of developing land that is or has been previously developed.

**RESOURCE MANAGEMENT AREA (RMA).** 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 the resource protection area.

**RESOURCE PROTECTION AREA (RPA).** At a minimum, resource protection (a 100-foot wide vegetated area) shall consist 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 that may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potential harmful toxic substances in runoff entering the Bay and its tributaries and minimize the adverse effects of human activities on state waters and aquatic resources. The Zoning Administrator will not issue a permit for any land disturbance in the **RPA**.

**RESOURCE PROTECTION AREA BUFFER.** An area of existing or established vegetation within the RPA that protects other components of the RPA and state waters from significant degradation associated with land disturbance.

**RESOURCE PROTECTION AREA DELINEATOR.** A person trained in wetland ecology, botany, agronomy, hydrology and/or other related fields with experience delineating tidal and non-tidal wetlands.

**REVIEWING AUTHORITY.** The Town Planning Commission.



**SETBACK, WATERSIDE.** The minimum distance by which any building or structure must be separated from any tidal shore, tidal wetlands or non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow. This does not apply to any boat dock, launch ramp or shoreline erosion control device.

**SILVICULTURAL ACTIVITIES.** Forest management activities, including, but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to VA Code § 10.1-1126.1 and are located on property defined as real estate devoted to forest use under VA Code § 58.1-3230.

**SITE PLAN.** A plan delineating the overall scheme of development of a tract of land, including, but not limited to, grading, engineering design, improvement details, erosion and sediment control measures and survey data.

**STRUCTURE.** Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, except utility poles.

**SUBSTANTIAL ALTERATION.** Expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource management area only.

**TIDAL SHORE or SHORE.** Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

**TIDAL WETLANDS.** Vegetated and non-vegetated wetlands as defined in VA Code § 28.2-1300.

**WATER-DEPENDENT FACILITY.** A development of land that cannot exist outside of the RPA and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, port; intake and outfall structures of power plants, water treatment plants, sewage treatment plants, storm sewers; marinas and other boat docking structures, beaches and other public water-oriented recreation areas; and fisheries or other marine resource facilities.

**WETLANDS, NON-TIDAL WETLANDS.** Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and, that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**ZONING ADMINISTRATOR.** The designated reviewing agent of the governing body and the Planning Commission charged with the enforcement of this chapter, consistent with his or her authority as set forth in § 154.004.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.148 AREAS OF APPLICABILITY.**

(A) (1) The Chesapeake Bay Preservation Area (CBPA) Overlay District shall apply to all lands identified as CBPAs as designated by the town and as shown on the adopted CBPA map.

(2) The CBPA map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this subchapter.

(a) The resource protection area includes:

1. Tidal wetlands;
2. Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
3. Tidal shores; and
4. A 100-foot wide vegetated buffer area measured from mean high water (MHW) and located adjacent to and landward of the components listed in divisions (A)(2)(a)1. through (A)(2)(a)3. above, and along both sides of any water body with perennial flow.

(b) The resource management area (RMA) consists of all lands within the town that are not classified as resource protection area.

(B) The CBPA map show the general location of CBPAs and should be consulted by persons contemplating activities within the town prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under § 154.152 through the review and approval of the plan of development process or a required under § 154.154 through the review and approval of a water quality impact assessment.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.149 USE REGULATION.**

Permitted uses, special permit uses, accessory uses and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.150 CONFLICT WITH OTHER REGULATIONS.**

In any case where the requirements of this subchapter conflict with any other provisions of the town code of ordinances, or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)



**§ 154.151 REQUIRED CONDITIONS.**

(A) Land development in RPAs is limited to new water dependent facilities; expansion of existing water dependent facilities; or redevelopment within a designated intensely developed area; or a road or driveway crossing satisfying the conditions set forth in division (A)(3) below.

(1) A new or expanded water dependent facility may be allowed provided that the following criteria are met:

- (a) It does not conflict with the Comprehensive Plan;
- (b) It complies with the performance criteria set forth in § 154.154(C);
- (c) Any nonwater-dependent component is located outside of the RPAs; and
- (d) Access to a water-dependent facility including utility service and all necessary land disturbance, shall be kept to minimum with a single point of access where practical.

(2) Redevelopment outside locally designated intensely developed areas shall be permitted in the RPAs only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA, and it shall conform to applicable erosion and sediment control requirements outlined under § 154.153(B)(4) herein and to the stormwater management requirements outlined in § 154.153(B)(7).

(3) Roads and driveways not exempt under § 154.157 may be constructed in or across resource protection areas if each of the following conditions is met:

- (a) The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the resource protection area;
- (b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize:
  - 1. Encroachment in the resource protection area; and
  - 2. Adverse effects on water quality.
- (c) The design and construction of the road or driveway satisfy all applicable criteria of this subchapter, including submission of a water quality impact assessment; and
- (d) The Zoning Administrator reviews the plans for the road or driveway proposed in or across the resource protection area in coordination with site plan, subdivision and plan of development approvals.

(B) A water quality impact assessment shall be required for any proposed land disturbance or development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of § 154.154.

(C) Lot size shall be subject to the requirements of the underlying zoning district(s); provided that any such lot shall have sufficient area outside the resource protection area to accommodate the intended development and it is in accordance with the performance standards in § 154.153, when such development is not otherwise allowed in the resource protection area.

(D) Silvicultural activities are exempt from the requirements of this subchapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the State Department of Forestry in the most recent edition of "Virginia's Forestry Best Management Practices for Water Quality."

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.152 INTERPRETATION OF RESOURCE PROTECTION AREA BOUNDARIES.**

*(A) Delineation by the applicant.*

(1) The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment, conducted by an RPA delineator.

(2) The RPA delineator shall use an accurate plat or site map as a guide to the general locations of the RPA.

(3) The RPA delineator shall examine lands adjacent to the subject property to the extent necessary to determine if any part of the full 100 feet landward vegetated buffer must be delineated on the subject property.

*(B) Delineation by the Zoning Administrator.*

(1) The Zoning Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirements for an environmental site assessment and for a fee, perform the RPA delineation.

(2) The Zoning Administrator may use remote sensing, hydrology, soils, plant species and other data, and consult other appropriate resources as needed to perform the delineation.

*(C) Where conflict arises over delineation.*

(1) Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation.



(2) In determining the site specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation, in accordance with § 154.155, site plans and the town subdivision ordinance.

(3) In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of § 154.155(H).

(D) *Resource protection area signs.*

(1) When development occurs adjacent to an RPA boundary, the applicant shall install or mount signs indicating the location of the RPA limits.

(2) Signs, which are available from the Zoning Administrator, shall be positioned within 300 feet of each other and/or where a RPA boundary line crosses a property line.

(3) A minimum of two signs shall be posted per lot where applicable.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.153 PERFORMANCE STANDARDS.**

(A) *Purpose and intent.*

(1) The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

(2) The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in non-point source pollution from new development; achieve a 10% reduction in non-point source pollution from redevelopment; and achieve a 40% reduction in non-point source pollution from agricultural uses.

(B) *General performance standards for development and redevelopment.* All development and redevelopment in the CBPAs exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process in accordance with the requirements of § 154.155 and shall also be subject to the applicable provisions of the town subdivision ordinance and its zoning regulations, the erosion and sediment control ordinance of the county and the county wetlands ordinance.

(1) Land disturbance shall be limited to the area necessary to provide for proposed use or development.

(a) In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.

(b) No more land shall be disturbed than is necessary to provide for proposed use or development. The construction footprint shall not exceed the limits for such as designated by the zoning district of the lot or parcel.

(c) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Zoning Administrator.

(2) Indigenous vegetation shall be preserved to the maximum extent practical consistent with the use or development proposed and in accordance with the *Virginia Erosion and Sediment Control Handbook*.

(a) Existing trees over six inches in diameter at breast height (DBH) shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed when approved by the Zoning Administrator.

(b) Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs and the installation of utilities, as approved by the Zoning Administrator.

(c) Prior to cleaning or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the area protected by the barrier.

(3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.

(a) Gravel, stone, grid or modular pavements or other surfaces as approved by the Zoning Administrator that promote infiltration, shall be used for any required parking area, alley or other low traffic driveway, unless otherwise approved by the Zoning Administrator.

(b) Parking space size shall be 162 square feet. Parking space width shall be nine feet; parking space length shall be 18 feet. Two-way drives shall be a minimum of 22 feet in width.

(4) Notwithstanding any other provisions of this subchapter or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of any single-family houses, septic tanks and drainfields, shall comply with the requirements of the county erosion and sediment control ordinance.

(5) (a) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out a least once every five years, in accordance with the provisions of the County Health Code.



(b) In lieu of pump-out, one of the following alternatives way be used:

1. In the outflow of the pipe a plastic filter may be installed on the septic tank as long as the filter satisfies the standards established in the sewage handling and disposal regulations under 12 VAC §§ 5-610 et seq. as administered by the State Department of Health; or

2. An owner of on-site sewage treatment system may submit, every five years, documentation that the system has been inspected by a certified sewage handler permitted by the State Department of Health and that such system is functioning properly and does not need to be pumped out.

(6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the County Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by the public sewer.

(7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that are consistent with the water quality provisions of the Virginia Stormwater Management Regulations (4 VAC §§ 62.1-44.15:24 et seq.) and that achieve the following:

(a) For development, the post-development non-point source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover for Virginia Chesapeake Bay watershed;

(b) Best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development non-point source pollution runoff load exceed the pre-development load;

2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution;

3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this subchapter; and

4. For redevelopment, both the pre-and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.

(c) For single-family dwellings on lots of one acre or greater in size, stormwater runoff calculations are not required, provided the post development impervious coverage for all structures, buildings and other impervious surfaces does not exceed 16% of the area.

(8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with § 154.149, site plans and the town subdivision ordinance.

(9) Land upon which agricultural activities are being conducted, including, but not limited to, crop production, pasture and dairy and feed operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this subchapter.

(C) *Buffer area requirements.*

(1) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff shall be retained if present and established where it does not exist.

(2) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any with perennial flow. The full 100-foot wide buffer area shall be designated as the landward component of the RPA.

(3) The 100-foot wide buffer area shall be the landward component of the resource protection area as set forth in 9 VAC § 25-830-80(B)(5). Notwithstanding permitted uses, encroachments and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

(4) The buffer area shall be maintained to meet the following additional performance standards.

(a) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management and best management practices, including those that prevent upland erosion when authorized by the Zoning Administrator, on a case-by-case basis, upon presentation of documentation that the RPA buffer will continue to function in a manner that protects water quality. Such vegetation shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff. The following guidelines shall be observed:



1. Trees may be pruned only as necessary to provide for sight lines and vistas;
2. Any path shall be constructed and surfaced so as to effectively control erosion;
3. Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practices incorporated into the town's regulations and in accordance with adopted standards and approved practices; and
4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and subject to the issuance of all required permits.

(b) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process before the Town Planning Commission, in accordance with the following criteria:

1. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principle structure and necessary utilities;
2. Where practical, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on a lot or parcel; and
3. In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

(c) On agricultural lands, the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer areas as follows.

1. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Northern Neck Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land (erosion control or nutrient management) is being implemented on the adjacent land; provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC §§ 50-85 et seq.) administered by the State Department of Conservation and Recreation.

2. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the United States Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulation (4 VAC §§ 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

3. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices, at least one best management practice as considered by the Northern Neck Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land, i.e., either erosion control or nutrient management.

(d) When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.154 WATER QUALITY IMPACT ASSESSMENT.**

(A) *Purpose and intent.* The purpose of the water quality impact assessment is to:

(1) Identify the impacts of proposed land disturbance, development or redevelopment on water quality and land within RPAs and other environmentally-sensitive lands;

(2) Ensure that, where land disturbance, development or redevelopment does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;

(3) To protect individuals from investing funds for improvements proposed for a location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and

(4) Specify mitigation which will address water quality protection.

(B) *Water quality impact assessment required.*

(1) A water quality impact assessment is required for:



(a) Any proposed land disturbance, development or redevelopment within a RPA including any buffer area encroachment as provided for in § 154.153; and

(b) Any proposed land disturbance, development, or redevelopment in an RMA deemed necessary by the Zoning Administrator due to the unique characteristics of the site (such as the topography, soils, ground cover, location of wetlands and tidal shores) or the intensity of the proposed use.

(2) There shall be two levels of water quality impact assessments; a minor assessment and a major assessment.

*(C) Minor water quality impact assessment.*

(1) A minor water quality impact assessment pertains only to land disturbance, development or redevelopment within the CBPAs that causes no more than 5,000 square feet of land disturbance and proposes to encroach into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate through acceptable calculations that the undisturbed buffer area together with necessary best management practices will result in removal of no less than 75% of sediments and 40% of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion and filter non-point source pollution and so achieve the equivalent of the full undisturbed 100-foot wide buffer area.

(2) A minor assessment shall include a site drawing to scale that shows the following:

(a) Location of the components of the RPA, on site or within a 100-foot wide area abutting the site, including the 100-foot wide buffer area and any water body with perennial flow:

(b) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;

(c) Type and location of proposed best management practices to mitigate the proposed encroachment; and

(d) Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification and a revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

*(D) Major water quality impact assessment.*

(1) A major water quality impact assessment shall be required for any land disturbance development, or redevelopment that:

(a) Exceeds 5,000 square feet of land disturbance within the CBPAs and proposes to encroach into the landward 50 feet of the 100-foot wide buffer area;

(b) Proposes to disturb any portion of the seaward 50 feet of the 100-foot wide buffer area or any other component of an RPA; or

(c) Is located solely in an RMA and is deemed necessary by the Zoning Administrator.

(2) The information required in this section shall be considered a minimum, unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

(3) The following elements shall be included in the preparation and submission of a major water quality assessment that accompanies a site plan or subdivision application:

(a) All of the information required in a minor water quality impact assessment, as specified in division (C) above;

(b) A hydrogeological element that:

1. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands;
2. Describes the impact and evaluates the proposed development on topography, soils, hydrology and geology on the site and adjacent lands;
3. Indicates the following:
  - a. Disturbance or destruction of wetlands and justification for such action;
  - b. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
  - c. Disruptions to existing hydrology including wetlands and stream circulation patterns;
  - d. Source location and description of proposed fill material;
  - e. Location of dredge material and location of dumping area for such material;
  - f. Location of and impacts on shellfish beds, submerged aquatic vegetation and fish spawning areas;
  - g. Estimation of pre- and post-development pollutant loads in runoff;
  - h. Estimation of percent increase in impervious surface on site and types of surfacing materials used;



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- i. Percent of site to be cleared for project;
  - j. Anticipated duration and phasing schedule of construction project; and
  - k. Listing of all requisite permits from all applicable agencies necessary to develop project.
4. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
- a. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
  - b. Proposed stormwater management system;
  - c. Creation of wetlands to replace those lost; and
  - d. Minimizing cut and fill.
- (c) A landscape element that:
1. Identifies and delineates the location of all significant plant material, including all trees on site six inches or greater in diameter at breast height. Where there are groups of trees, stands may be outlined;
  2. Describes the impact the development or use will have on the existing vegetation. Information should include:
    - a. General limits of clearing, based on all anticipated improvements, including buildings, drives and utilities;
    - b. Clear delineation of all trees and other woody vegetation that will be removed;  
and
    - c. Description of plant species to be disturbed or removed.
  3. Describes the potential measures for mitigation. Possible mitigation measures include:
    - a. Replanting schedule for trees and other significant vegetation removed for construction, including a list of proposed plants and trees to be used;

b. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation;

c. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control; and

d. Demonstration that indigenous plants are to be used to the greatest extent possible.

(E) *Submission and review requirements.*

(1) Three copies of all site drawings and other applicable information as required by divisions (C) and (D) above shall be submitted to the Zoning Administrator.

(2) All information required in this section shall be certified as completed and accurate by a professional engineer or a certified land surveyor.

(3) A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in the conjunction with § 154.155.

(4) A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, conditional use permit or in conjunction with § 154.155, as deemed necessary by the Zoning Administrator.

(5) As part of any major water quality impact assessment submittal, the Zoning Administrator can require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator determines if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by CBLAD within 90 days of the request.

(F) *Evaluation procedure.*

(1) Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this subchapter and make a finding based upon the following criteria in conjunction with § 154.155:

(a) The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;

(b) Impervious surface is minimized;

(c) Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

(d) The development, as proposed, meets the purpose and intent of this subchapter; and

(e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(2) Upon the completed review of a major water quality assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this subchapter and make a finding based upon the following criteria in conjunction with § 154.155:

(a) Within any RPA, the proposed development is water-dependent or constitutes redevelopment of is a road or driveway that satisfies the criteria in § 154.151;

(b) The disturbance of wetlands will be minimized;

(c) The development will not result in significant disruption of they hydrology of the site;

(d) The development will not result in significant degradation to aquatic vegetation or life;

(e) The development will not result in unnecessary destruction of plant materials on site;

(f) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;

(g) Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;

(h) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits as well as runoff control and pollutant removal equivalent of the full 100-foot wide undisturbed buffer;

(i) The design and location of any proposed drainfield will be in accordance with the requirements of § 154.153;

(j) The development, as proposed, is consistent with the purpose and intent of the Overlay District; and

(k) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.



(3) The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on water quality.

(4) The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this subchapter when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria herein.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

### § 154.155 PLAN OF DEVELOPMENT PROCESS.

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any zoning permit, to assure compliance with all applicable requirements of this subchapter.

#### (A) *Required information.*

(1) In addition to the requirements of the site plan section of this subchapter or the requirements of the subdivision ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

(2) The following plans or studies shall be submitted, unless otherwise provided for:

(a) A site plan in accordance with the provisions of this subchapter; or a subdivision plat in accordance with the provisions of the subdivision ordinance;

(b) An environmental site assessment;

(c) A landscape plan;

(d) A stormwater management plan; and

(e) An erosion and sediment control plan in accordance with the provisions of the county erosion and sediment control ordinance.

(B) *Environmental site assessment.* An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

(1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:



- (a) Tidal wetlands;
  - (b) Tidal shores;
  - (c) Non-tidal wetlands in the RPA connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
  - (d) A 100-foot wide buffer area located adjacent to and landward of the components listed in subsections a. through c. above, and along both sides of any body with perennial flow;
  - (e) Non-tidal wetlands in the RMA;
  - (f) Hydric soils; and
  - (g) Other sensitive environmental features as determined by the Zoning Administrator.
- (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 RPA.
- (4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plan/plot, and shall be certified as complete and accurate by a RPA delineator competent to make the inventory. This certification requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.

(C) *Landscape plan.*

(1) *Generally.* A landscape plan shall be submitted in conjunction with a site plan or preliminary subdivision plan/plot approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscape plan. Landscape plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

(2) *Contents of the plan.*

(a) The landscape 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 six inches or greater in diameter at breast height (DBH) shall be shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees six inches or greater DBH to be preserved outside of the construction footprint and outside the groups of trees shall be indicated on the plan. Trees and other woody vegetation to be removed and woodlines to be changed to create a necessary construction footprint shall be clearly delineated on the landscape plan.

(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 subchapter, shall be shown on the landscape plan.

(c) Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths and best management practices, as provided for in this subchapter, shall be shown on the plan. Vegetation required by this subchapter to replace any existing trees within the buffer area shall also be shown on the landscape plan.

(d) Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this subchapter shall be shown on the landscape 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 landscape plan will include specifications for the protection of existing trees during clearing, grading and all phases of construction.

(g) If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.

(3) *Plant specifications.*

(a) All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.

(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) Where areas to be preserved, as designated on an approved landscape plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum two and one-half inches DBH at the time of planting.

(4) *Maintenance.*

(a) The applicant shall be responsible for the maintenance, repair and replacement of all vegetation as may be required by the provisions of this subchapter.

(b) In buffer areas and areas outside the construction footprint, plant material shall be ended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying



or dead plant materials shall be replaced during the next planting season, as required by the provisions in this subchapter.

(D) *Stormwater management plan.*

(1) *Generally.* A stormwater management plan shall be submitted as part of the plan of development process required by this subchapter and in conjunction with site plan or subdivision plan approval. When site impervious cover is 16% or less of total site area, no stormwater management plan is required.

(2) *Contents of the plan.*

(a) The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations and citations to supporting references as appropriate to communicate the information required by this subchapter.

(b) At a minimum, the stormwater management plan must contain the following:

1. Location and design of all planned stormwater control devices and BMPs;
2. Procedures for implementing non-structural stormwater control practices and techniques;
3. Pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and
4. For facilities, verification of structural soundness, including a professional engineer or Class III B surveyor certification.

(3) *Site specific facilities.* Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans or other similar planning documents.

(4) *Schedule.* The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the town, than a maintenance agreement shall be executed between the responsible party and the town.

(E) *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted that satisfies the requirements of this subchapter and in accordance with county erosion and sediment control ordinance.

(F) *Final plan.* Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required by this subchapter.



(1) *Contents.* Final plans for all lands within CBPAs shall include the following additional information:

(a) The delineation of the resource protection area boundary;

(b) The delineation of required buffer areas;

(c) All wetlands permits required by law;

(d) A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure maintenance of best management practices in order to continue their functions; and

(e) Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the Zoning Administrator.

(2) *Installation and bonding requirements.*

(a) Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.

(b) When the occupancy of a structure is desired prior to completion of the required landscaping, stormwater management facilities or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the town a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials and installation costs for any of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.

(c) 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 town.

(d) All required stormwater management facilities or other specifications shall be installed and approved within 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 the town. The town may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

(e) After all required actions of the approved site 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 Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of

the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer of Class III B surveyor before making a final inspection.

*(G) Administrative responsibility.*

(1) Administrative responsibility of the plan of development process shall be in accordance with this subchapter and/or the subdivision ordinance.

(2) The Zoning Administrator shall approve, approve subject to conditions or disapprove the plans in accordance with the reviewing authorities' recommendations.

(3) The Zoning Administrator shall return notification of plan review results to the applicant, including recommended conditions, or modifications.

(4) In the event that the results and/or recommended conditions or modifications are acceptable to the applicant, the plan shall be modifications are acceptable to the applicant; the plan shall be modified, if required, and approved.

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

(1) In the event that 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 Board of Zoning Appeals.

(2) In granting an appeal, the Board of Zoning Appeals must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this subchapter.

(3) If the Board of Zoning Appeals finds that the applicant's plan does not meet the above stated criteria, it shall deny approval of the plan.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.156 NONCONFORMING USES AND NONCOMPLYING STRUCTURES.**

(A) (1) The lawful use of a building or structure that existed on the date of adoption of this subchapter may continue as a permitted use.

(2) The Planning Commission in accordance with this subchapter, may review the criteria of this section and waive or modify the regulation for structures on legal nonconforming lots or parcels provided that:



(a) There will no net increase in non-point source pollutant load; and

(b) Any development or land disturbance exceeding an area of 2, 500 square feet complies with all erosion and sediment control requirements of this subchapter.

(3) This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by this subchapter.

(B) Notwithstanding the provisions of this subchapter, additions or expansions to existing legal principal structures may be processed through an administrative review process before the Planning Commission, provided that the following findings are met:

(1) The request for the waiver is the minimum necessary to afford relief;

(2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this subchapter to other property owners who are subject to its provisions in similar situations;

(3) The waiver is in harmony with the purpose and intent of this subchapter and does not result in substantial water quality degradation;

(4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;

(5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

(6) Other findings, as appropriate and required by the town are met; and

(7) In no case shall this provision apply to necessary structures.

(C) A nonconforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced, or if there is no progress towards completion. (Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.157 EXEMPTIONS.**

(A) *Public utilities, public roads, railroads and facilities.*

(1) Construction, installation, operation and maintenance of electric, natural gas and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with:



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(a) Regulations promulgated pursuant to the Erosion and Sediment Control Law (VA Code §§ 62.1-44.15:52 et seq.) and the Stormwater Management Act (VA Code §§ 62.1-44.15:27 et seq.);

(b) An erosion and sediment control plan and a stormwater management plan approved by the State Department of Conservation and Recreation; or

(c) 1. Town water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter.

2. The exemption of public roads is further conditional on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize:

i. Encroachment in the resource protection area; and

ii. Adverse effects on water quality.

b. The town may choose to exempt:

i. All public roads as defined in 9 VAC § 25-130-700.5; or

ii. Only those public roads constructed by the State Department of Transportation.

(2) Construction, installation and maintenance of water, underground telecommunications, cable television lines and sewer lines owned, permitted or authorized by the town or regional service authority, shall be exempt from this chapter, provided that:

(a) To the degree possible, the location of such utilities and facilities should be outside resource protection areas;

(b) No more shall be disturbed than is necessary to provide for the proposed utility installation;

(c) All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state, federal and local permits and designed and constructed in a manner that protects water quality; and

(d) Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control ordinance of the county.

(B) *Exemptions in resource protection area.* The following land disturbances in resource protection areas may be exempted from the criteria of this subchapter provided that there is compliance with the below requirements pertaining to:

- (1) Water wells;
- (2) Passive recreation facilities such as boardwalks, trails and pathways; and
- (3) Historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
  - (a) The Town Planning Commission shall review all exemptions as set forth in this subchapter; and
  - (b) Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control ordinance of the county.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.158 EXCEPTIONS.**

- (A) A request for an exception to the requirements of §§154.151 and 154.153 of this Overlay District shall be made in writing to the Town Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the resource protection area through the performance of a water quality impact assessment which complies with the provisions of § 154.154.
- (B) The town shall notify the affected public of any such exception request and shall consider the request in a public hearing in accordance with VA Code § 15.2-2204, except that only one hearing is required.
- (C) The Planning Commission shall review the request for an exception request and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this subchapter if the Planning Commission finds:
- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this subchapter to other property owners who are subject to its provisions and who are similarly situated;
  - (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
  - (3) The exception request is the minimum necessary to afford relief;
  - (4) The exception request will be consistent with the purpose and intent of the Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare; and is not of substantial detriment to water quality; and

(5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality, i.e., there can be no increase in non-point source pollutant load.

(D) If the Planning Commission cannot make the required finding or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning Appeals. The applicant may then apply to the Board of Zoning Appeals for a variance as provided in §§ 154.170 through 154.176.

(E) The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Planning Commission in determining consistency with the purpose and intent of this subchapter.

(F) (1) A request for an exception to the requirements of provisions of this subchapter other than §§154.151 and 154.153 shall be made in writing to the Zoning Administrator.

(2) The Zoning Administrator may grant these exceptions provided that:

(a) Exceptions to the requirements are the minimum necessary to afford relief; and

(b) Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this subchapter is preserved.

(3) Exceptions to § 154.153(B) may be made provided that the findings noted in division (C) above are made.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

### *NONCONFORMING USES*

#### **§ 154.170 CONTINUATION OF.**

(A) If at the time of enactment of this chapter, any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this chapter, such manner of use or purpose may be continued as herein provided, except that advertising structures that become nonconforming because of a rezoning have six months within which to relocate in a permitted area.

(B) If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.