



News Release

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Fairfax County Board of Supervisors Adopts Amendments to Chesapeake Bay Preservation Ordinance

The Fairfax County Board of Supervisors adopted proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations during their regularly scheduled meeting today. The original Chesapeake Bay Preservation Ordinance was adopted 10 years ago and the amendments to the ordinance are now being mandated by revisions to the state's Chesapeake Bay Preservation Area Designation and Management Regulations.

Background

The Chesapeake Bay Local Assistance Board adopted amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations on Dec. 10, 2001, with an effective date of March 1, 2002. Some local jurisdictions were given a March 1, 2003, deadline to implement the amendments as directed by the state. The deadline was later extended to Dec. 31, 2003, by the Chesapeake Bay Local Assistance Board. Fairfax County has been considering the amendments since January 2003. The Planning Commission held a public hearing on Jan. 15. Since that time, meetings were held with the Planning Commission Environment Committee and the Environmental Quality Advisory Council and a second public hearing was held on April 30. On May 7 the Planning Commission recommended that the Board of Supervisors adopt the proposed amendments to the Chesapeake Bay Preservation Ordinance.

Amendments

The Board of Supervisors adopted amendments to 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 amendments adopted today will become effective later this year upon adoption by the Board of Supervisors of an amended Chesapeake Bay Preservation Area map (currently scheduled for Nov. 17, 2003), showing the location of Resource Protection Areas (RPAs) as defined under the amended code. The maps are not required, but are provided by the county as a benefit to homeowners and other interested citizens.

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Interim guidance maps showing the locations of RPAs are available on the county's Web site at www.fairfaxcounty.gov/gov/dpwes/homepage. The maps display the boundaries of the existing Resource Protection Areas adopted by the Board in 1993, the boundaries of RPAs based on the completed field studies to identify perennial streams and the estimated boundaries of RPAs for areas where field studies will be conducted this summer and fall. The online maps will be updated every two months until all the field studies are complete.

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

A Policy for Treatment of Approved and Pending Plans of Development was also adopted and provides that plans of development that are approved as of the effective date of the amended ordinance or filed within 60 days of adoption, demonstrate due diligence, and are subsequently approved and do not fully comply with the amended ordinance will not be subject to the exceptions review process but shall comply to the extent possible with the amended ordinance. The Fairfax County Department of Public Works and Environmental Services will determine during the plan review process that such plans meet the requirements of the adopted policy.

Frequently Asked Questions

To assist homeowners and others interested in the impact of the ordinance amendments, the following information is provided.

What is the Chesapeake Bay Preservation Ordinance?

The Virginia General Assembly enacted the Chesapeake Bay Preservation Act in 1988. The Act requires local governments to include water quality protection measures in their zoning and subdivision ordinances and in their comprehensive plans. In 1993, Fairfax County adopted the Chesapeake Bay Preservation Ordinance to protect environmentally sensitive lands known as Chesapeake Bay Preservation Areas. The most sensitive of these are called Resource Protection Areas (RPAs). Fairfax County has adopted amendments to the Chesapeake Bay Preservation Ordinance to comply with recent changes to the state's Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et. seq.).

What are Resource Protection Areas and buffers?

Resource Protection Areas (RPAs) are the corridors of environmentally sensitive land that lie alongside or near the shorelines of streams, rivers and other waterways. In their natural condition, RPAs protect water quality. RPAs filter pollutants out of stormwater runoff, reduce the volume of stormwater runoff, prevent erosion and perform other important biological and ecological functions.

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Fairfax County Board of Supervisors Adopts Amendments to Chesapeake Bay Preservation Ordinance (cont.)

RPAs shall include any land characterized by one or more of the following features:

- (1) a tidal wetland;
- (2) a tidal shore;
- (3) a water body with perennial flow;
- (4) a nontidal wetland connected by surface flow and contiguous to a tidal wetland or water body with perennial flow;
- (5) a buffer area that includes any land within a major floodplain or any land within 100 feet of a feature listed in (1)-(4).

The difference between the current language and the amended language is the replacement of "tributary streams" with "water bodies with perennial flow." This change was mandated by the state and is responsible for the expansion of the RPAs.

How will RPAs be measured?

In adopting the amendments to the ordinance, the Board of Supervisors has allowed two different methods of measurement of the width of perennial streams which provides flexibility to the homeowners or developer in determining the extent of RPAs. The width of a perennial stream can be determined either by measuring from bank to bank or from ordinary high water mark to ordinary high water mark. Also, homeowners and developers can use one method for one set of site plans submitted and another method for another set for the same property.

How will this affect my property?

RPAs generally are areas into which development may not encroach. In order to maintain the functional value of the RPA buffer, indigenous vegetation may be removed, subject to approval by the county, from a buffer area only to provide for reasonable sight lines, access paths, general woodlot management and habitat management. Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed provided that where they are removed, they are replaced with other native vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff. The removal of indigenous vegetation to create lawns is not allowed.

However, the county's ordinance includes protections both for existing vacant lots that were created prior to the effective date of the ordinance (July 1, 1993) or the amendments as applicable and for lots that are developed with existing homes. These protections allow a new home or an addition to be constructed on such lots through an administrative waiver.

For those lots that have areas of RPA on them, the ordinance provides relief from the full effects of the RPA restrictions through the administrative waiver provisions that allow minor additions of up to 1,000 sq. ft. of new impervious area in the RPA for homes constructed prior to the effective date of the ordinance. The state regulations on which the county's ordinance is based do not permit detached structures to be treated as minor additions. The construction of detached structures in the RPA is still possible, but would be subject to an exception process requiring a public hearing. The ordinance also

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protects existing structures and uses in the RPA. Such structures and uses (including lawns and gardens and other maintained landscaping) can continue and be maintained but may not be expanded unless a waiver or exception is granted. Also, if a home were to be destroyed by fire or other casualty loss, it could be rebuilt.

Are fences allowed within an RPA?

Fences are permitted in the RPA without an exception or waiver subject to compliance with certain design requirements that collectively maintain the functional value of the buffer. Fences should be designed so that they do not inhibit or alter surface flow (i.e. water must be able to flow under and through the fence unimpeded so that sheet flow conditions are maintained) and vegetation may only be removed to provide for the actual placement of the fence. Where vegetation is removed it must be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Fences should be located to avoid the removal of trees. Obviously if the fence were to be placed in an area that was an existing maintained lawn, the revegetation requirement would not be applicable.

Are sheds allowed within an RPA?

The administrative waiver available for minor additions is not available for construction of accessory structures. Accessory structures are specifically prohibited in the state regulations from consideration as minor additions. However, the construction of small sheds that do not require a building permit (currently 150 sq. ft. under VUSBC) over maintained grass lawns are an inconsequential modification to an existing use and may be permitted. However, the ability to locate a shed in an undisturbed RPA area is more problematic because there would normally be at least some other place on the lot that it could be located without encroaching into the RPA and should be discussed with county staff.

Are decks allowed within an RPA?

Decks are treated as minor additions under the ordinance and therefore are permitted subject to an administrative waiver process. The administrative waiver process is only available for additions to homes constructed prior to the effective date of the ordinance for existing RPAs and homes constructed prior to the effective date of the amendments for newly designated RPAs.

What are loss of buildable area provisions?

An administrative waiver process is available for construction of new homes on lots platted prior to the effective date of the ordinance for existing RPAs and lots platted prior to the effective date of the amendments for newly designated RPAs. The loss of buildable area provisions allow for construction of 5,000 sq. ft. of impervious area in the RPA exclusive of the driveway and 10,000 sq. ft. of disturbed area in the RPA exclusive of the driveway and septic field.

For more information, call the Office of Public Affairs at 703-324-3187; TTY 703-324-2935.

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