

VESTING POLICY FOR APPROVED AND PENDING PLANS OF DEVELOPMENT

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 have been adopted by the Board of Supervisors (the Board). These amendments implement revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations (the Regulations).

The Chesapeake Bay Preservation Act, Sections 10.1-2100 through -2115, of the Code of Virginia (the Act), the enabling legislation for the Regulations, does not provide for the grandfathering of approved and/or pending plans. However, Section 10.1-2115 of the Act does provide for the protection of vested rights. In adopting the Chesapeake Bay Preservation Ordinance (the Ordinance) in 1993, the Board addressed grandfathering/vesting issues by incorporating administrative exceptions for approved and pending plans of development in the Ordinance. In order to address vesting issues for the current amendments, the vesting language from the Act has been incorporated as new Section 118-1-12 of the Ordinance, the exceptions provisions for approved and pending plans of development have been removed from the Ordinance, and the following policy for the treatment of approved and pending plans of development has been adopted by the Board.

Treatment of Approved and Pending Plans of Development

This policy shall be administered by the Director of the Department of Public Works and Environmental Services (DPWES).

Plans of development which are approved or pending as of the effective date of the amended Ordinance and which do not fully comply with the amended Ordinance will not be subject to the exceptions review process. In administering the amended Ordinance, such plans will be treated as follows:

- Construction may proceed for all work shown on construction plans approved prior to [insert effective date of amendments] without further action by the permittee so long as the plan remains valid. Revisions to such plans may be approved provided they do not aggravate conflicts with the amended Ordinance. Construction plan types are subdivision construction plans (SD plans), site plans (SP plans), minor site plans (MSP plans), public improvement plans (PI plans), lot grading plans for nonbonded lots (INF plans), lot grading plans for bonded lots, and rough grading plans (RGP plans).
- Construction may proceed for all structures for which Building Permits have been approved prior to [insert effective date of amendments] without further action by the permittee, provided the structure is constructed under the approved Building Permit. New Building Permits for replacement house types or minor changes to building footprints for previously approved Building Permits may be approved provided they do not aggravate conflicts with the amended Ordinance.
- All previously approved exception requests shall remain valid for the period indicated in the letter approving the exception or for the life of the associated plan if the plan has been approved. Extensions of previously approved exception requests may be granted by the Director on a case-by-case basis.

- To “Aggravate conflicts” shall mean to create any new or additional noncompliance with the amended Ordinance such as increasing the impervious area or disturbance in the RPA.
- As determined by the Director, all plans that qualify as pending plans of development except for approved construction plans and Building Permits noted above shall comply with the provisions of the amended Ordinance as follows:

(A) All developments shall comply with the provisions of the amended Ordinance to the extent possible, provided such compliance does not preclude fulfillment of any proffered condition, conditions of a P District rezoning or any condition of a special permit, special exception or variance, in which case such condition shall supersede the provisions of the Ordinance only insofar as it conflicts with the amended Ordinance.

(B) All development shall comply with the provisions of the amended Ordinance to the extent possible, provided such compliance does not result in the reduction of density, floor area ratio, or the relocation of structures or facilities all as shown on the plan of development.

(C) Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

(D) All plans that are not approved as of the effective date shall show the Resource Protection Area (RPA) boundary in accordance with the requirements of the amended Ordinance regardless of whether or not an encroachment into the RPA has been authorized by an exception or through application of (A) and/or (B). The location of RPA boundaries shown on the plan may be based on the interim guidance map until the final RPA map is adopted by the Board. RPA boundary delineation studies not approved as of the effective date shall comply fully with the amended Ordinance.

(E) All plans that are not approved as of the effective date shall include a statement saying that the plan complies fully with the amended Ordinance; or, that the plan qualifies as a pending plan of development, stating the basis for that determination, identifying any conflicts with the amended Ordinance, and stating how the requirements of (A) through (C) have been met.

Pending Plans of Development are designated as follows:

(1) (a) Any plat, plan, or Building Permit submitted pursuant to a proffered rezoning application or P district rezoning application approved prior to July 1, 1993. Proffered condition amendments and amendments to approved P district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(b) Any plat, plan, or Building Permit submitted pursuant to a proffered rezoning application or P district rezoning application approved between July 1, 1993 and [insert effective date of amendments]. Plats and plans shall comply fully with the provisions of the Ordinance in effect on the date the rezoning application was approved unless an exception is approved. Proffered condition amendments and amendments to approved P district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(2) (a) Any plat, plan, or Building Permit submitted pursuant to a special permit, special exception or variance application approved prior to July 1, 1993, provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Amendments to such special permit, special exception and variance

applications may be approved so long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(b) Any plat, plan, or Building Permit submitted pursuant to a special permit, special exception or variance application approved between July 1, 1993 and [insert effective date of amendments] provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Plats and plans shall comply fully with the provisions of the Ordinance in effect on the date the special permit, special exception or variance application was approved unless an exception is approved. Amendments to such special permit, special exception and variance applications may be approved so long as the amendment does not aggravate conflicts with the provisions of amended Ordinance.

(3) Lot grading plans for nonbonded lots and Building Permit applications, accepted for review as containing all the required information, filed with DPWES prior to [insert effective date of amendments], so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted lot grading plan or Building Permit application are deemed necessary by the reviewing authority, a plan or application containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans and applications may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) The Building Permit must be approved within six (6) months of [insert effective date of amendments].

(4) Structures and other impervious surfaces shown on PRC plans, as required in the PRC District, site plans, and minor site plans filed with DPWES prior to [insert effective date of amendments], accepted for review as containing all required information as set forth in Sect. 17-106, or Sect. 16-303 of the Zoning Ordinance, as applicable, so long as due diligence is maintained and the properly submitted and accepted plan is approved within twenty-four (24) months of [insert effective date of amendments]. For the purposes of this paragraph, due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not aggravate conflicts with the provisions of the amended Ordinance.

(ii) In the case of the PRC plans as required in the PRC District, a site plan shall be submitted in accordance with Sect. 16-204 of the Zoning Ordinance and shall obtain approval within twelve (12) months of approval of the PRC plan by DPWES.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package by DPWES, or within twelve (12) months of [insert effective date of amendments], whichever is later.

(iv) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of DPWES

in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.

(5) Plats and plans filed pursuant to PRC plans, as required in the PRC District, approved prior to [insert effective date of amendments] provided a Building Permit(s) for the structure(s) shown on the approved plan is issued in accordance with Par. 1 of Sect. 17-110 of the Zoning Ordinance and provided further that the structure(s) is in fact constructed in accordance with such Building Permit(s). Revisions to such approved PRC plans may be approved so long as such revision does not aggravate conflicts with the provisions of the amended Ordinance.

(6) Subdivision construction plans, rough grading plans, lot grading plans, final subdivision plats, and Building Permits, accepted for review as containing all the required information, filed pursuant to a preliminary or final subdivision plat approved prior to [insert effective date of amendments], so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted subdivision construction plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) If corrections to a properly submitted rough grading plan, lot grading plan, final subdivision plat, or Building Permit are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package by DPWES, within six (6) months of the date the construction plan is marked recommended for approval, or within twelve (12) months of [insert effective date of amendments], whichever is later.

(iv) Rough grading plans, lot grading plans, and Building Permits filed pursuant to a preliminary or final subdivision plat must be filed within two (2) years of the recordation of the final subdivision plat.

(v) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of DPWES in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.