

07-14-118

*(Also see Subdivision Ordinance Amendment 03-14-101,
Erosion and Sedimentation Control Ordinance Amendment 04-14-104,
Pollution of State Waters Amendment 05-14-105,
Storm Drainage Amendment 06-14-106,
Zoning Ordinance Amendment ZO-14-443,
Stormwater Management Ordinance Amendment 08-14-124,
Land Development Fee Schedule Amendment 09-14-Q,
and Public Facilities Manual Amendments 116-14-PFM and 117-14-PFM,
adopted simultaneously on January 28, 2014.)*

***ADOPTION OF AN AMENDMENT TO
CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA***

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, January 28, 2014, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 118 (Chesapeake Bay Preservation Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

***BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY,
VIRGINIA:***

That the Code of the County of Fairfax, Virginia, Chapter 118 (Chesapeake Bay Preservation Ordinance), is amended, as follows:

Amend Article 1. General Provisions and Definitions, by revising Section 118-1-2 Authority, to read as follows:

Section 118-1-2. Authority.

This ordinance is enacted pursuant to the authority and mandates of the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 [formerly Article 1 (§ Sections 10.1-2100, et seq.) of Chapter 21 of Title 10.1], of the *Code of Virginia*.

Amend Article 1. General Provisions and Definitions, by revising Section 118-1-6, Definitions, paragraphs (f), (g), (k), and (v) to read as follows:

(f) "Chesapeake Bay Preservation Area" or "CBPA" means any land designated by the County pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:72 Section 10.1-2107 of the *Code of Virginia*. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

(g) "Development" means the construction, rehabilitation, rebuilding or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures ~~which results in a net increase in impervious area within an RPA and/or a net increase in impervious area within an RMA of greater than 20%, relative to conditions prior to development.~~

(k) "Impervious area" or "impervious surface" means 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, and concrete, asphalt, or compacted gravel surfaces. ~~"Impervious area" or "impervious surface" does not include the water surface area of a swimming pool.~~

(v) "Redevelopment" means the process of developing land that is or has been previously developed ~~substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.~~

Amend Article 2 Allowed Uses, Development and Redevelopment, by revising Section 118-2-1 Allowed Uses, Development and Redevelopment in Resource Protection Areas paragraphs (b) and (e) to read as follows:

(b) Redevelopment outside of IDAs only if there is no increase in the amount of impervious cover and no further encroachment within the RPA, including and all development or redevelopment within IDAs, subject to compliance with the performance criteria of Article 3 of this Chapter; and

(e) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided that:

(1) Such facilities are allowed and constructed in accordance with the Stormwater Management Act (§ 62.1-44.15:24 et seq.) of the Code of Virginia, the Virginia Stormwater

Management Program (VSMP) Permit Regulations (9 VAC 25-870-92 et seq.), and Chapter 124 of the Code;

(2) (4) The Director has conclusively established that location of the facility within the Resource Protection Area is the optimum location;

(3) (2) The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;

(4) (3) The facility must be consistent with ~~Fairfax County's stormwater management program as approved by the Chesapeake Bay Local Assistance Board~~ a comprehensive stormwater management plan approved in accordance with 9 VAC 25-870-92 of the VSMP Permit Regulations;

(5) (4) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; ~~and~~

(6) (5) Approval must be received from the Director prior to construction; and

(7) Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.

It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

Amend Article 3 Land Use and Development Performance Criteria, by revising Section 118-3-2. General Performance Criteria for Resource Management Areas and Resource Protection Areas to read as follows:

Section 118-3-2. General Performance Criteria for Resource Management Areas and Resource Protection Areas.

Unless ~~waived or modified by other~~ an exception is granted pursuant to provisions of this Chapter, it shall be demonstrated to the satisfaction of the Director that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

(a) No more land shall be disturbed than is necessary to provide for the proposed use, development, or redevelopment.

(b) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use, development, or redevelopment proposed.

~~(c) Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or through some other mechanism or agreement that achieves an equivalent objective.~~

~~(c)~~ (d) Impervious cover shall be minimized consistent with the use, development, or redevelopment proposed.

~~(d)~~ (e) Any land disturbing activity that exceeds an area of 2,500 square feet shall comply with the requirements of Chapter 104 of the Fairfax County Code. The construction of single family dwellings, septic tanks and drainfields shall not be exempt from this requirement. Enforcement

for noncompliance with the erosion and sediment control requirements referenced in this criteria shall be conducted under the provisions of Chapter 104 of the County Code.

(ef) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMPs) in accordance with the requirements of Chapter 124 of the County Code, as follows:

~~(1) For development, the projected total phosphorus runoff pollution load for the proposed development shall be reduced by no less than forty (40) percent compared to phosphorus loads projected for the development without BMPs. This requirement shall not apply to any development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance, that does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code, and that does not result in an impervious area of 18% or greater on the lot or parcel on which the development will occur.~~

~~—— (2) For development and redevelopment within the Water Supply Protection Overlay District, the phosphorus removal requirements for the overlay district shall apply if such requirements impose a higher standard than the requirements of this Chapter.~~

~~—— (3) For redevelopment of any property not currently served by one or more BMPs, the total phosphorus runoff pollution load from the property shall be reduced by at least ten (10) percent from the phosphorus runoff pollution load prior to redevelopment.~~

~~—— (4) For redevelopment of any property that is currently and adequately served by one or more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed the existing phosphorus runoff pollution load.~~

~~—— (5) Best management practices (BMPs) shall be reviewed, modified, waived and/or approved by the Director in accordance with Article 6 of the Public Facilities Manual. Waivers or modifications shall be subject to the following criteria:~~

~~(i) The requested waiver or modification to the criteria is the minimum necessary to afford relief;~~

~~(ii) Granting the waiver or modification will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;~~

~~(iii) The waiver or modification is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;~~

~~(iv) The waiver or modification request is not based upon conditions or circumstances that are self-created or self-imposed;~~

~~(v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and~~

~~(vi) Other findings, as appropriate and required herein, are met.~~

~~(6) The following options shall be considered to comply with paragraph (f) of this Section:~~

~~—— (i) Incorporation on the site of BMPs that achieve the required control as set forth in paragraphs (1) through (5) above. For the purposes of this subsection, the “site” may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single BMP or a system of BMPs will be utilized by those projects in common to satisfy water quality protection requirements;~~

~~—— (ii) Compliance with a locally adopted regional stormwater management program, which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the Department of Environmental Quality to a local government for its municipally owned separate storm sewer system discharges, that is reviewed and found by the Chesapeake Bay Local Assistance Board to achieve water quality protection equivalent to that required by this~~

subsection; or

~~(iii) Compliance with a site-specific VPDES permit issued by the Department of Environmental Quality, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.~~

~~(7) The requirements of paragraph (f) of this Section may be waived or modified for a property if the Director determines that the provision of BMPs is not practical or desirable due to constraints imposed by the dimensions or location of the property. Waivers or modifications shall be subject to the following criteria:~~

~~(i) The requested waiver or modification to the criteria is the minimum necessary to afford relief;~~

~~(ii) Granting the waiver or modification will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;~~

~~(iii) The waiver or modification is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;~~

~~(iv) The waiver or modification request is not based upon conditions or circumstances that are self-created or self-imposed;~~

~~(v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and~~

~~(vi) Other findings, as appropriate and required herein, are met.~~

~~(8) Any maintenance, alteration, use or improvement to an existing structure or use that does not degrade the quality of surface water discharge, as determined by the Director, may be exempted from the requirements of paragraph (f).~~

~~(fg) The Director shall require certification on all plans of development that all wetlands permits required by law will be obtained prior to commencement of land disturbing activities in any area subject to the plan of development review. No land disturbing activity on the land subject to the plan of development shall commence until all such permits have been obtained by the applicant and evidence of such permits has been provided to the Director.~~

~~(gh) All on-site sewage disposal systems requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be subject to the restrictions imposed by the State Water Control Board or the Virginia Department of Health. All on-site sewage disposal systems not requiring a VPDES permit shall be administered by the Director of the Department of Health and shall comply with the following provisions:~~

~~(1) Each disposal system shall be pumped out at least once every five years.~~

~~(2) For new development or redevelopment, each disposal system shall be provided with a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site.~~

~~(i) Compliance with Chapter 68 of the Fairfax County Code shall be deemed to constitute compliance with this requirement. This requirement shall not apply to any parcel of land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973, and approved by November 20, 1976, if the Director of the Department of Health determines the parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.~~

~~(ii) Building shall be prohibited on the area of all such sewage disposal sites,~~

including the reserve sewage disposal site, until the structure is connected to a public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board.

(h†) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot 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 Chesapeake Bay Preservation Act and this chapter.

(1) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(i) For erosion and sediment control recommendations, the goal shall be, where feasible, to 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 U.S. Department of Agriculture Natural Resources Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

(ii) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15).

(iii) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

(2) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

(3) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Northern Virginia Soil and Water Conservation District Board, which will be the plan-approving authority.

(i) Unless required by other provisions of the County Code, the Director may grant exceptions to the requirements of this Section subject to the following criteria:

- (1) The requested exception to the criteria is the minimum necessary to afford relief;
- (2) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners who are subject to its provisions and who are similarly situated;
- (3) The exception is in harmony with the purpose and intent of this article and is not of substantial detriment to water quality;
- (4) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
- (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
- (6) Other findings, as appropriate and required herein, are met.

Amend Article 3 Land Use and Development Performance Criteria, by revising Section 118-3-3 Additional Performance Criteria for Resource Protection Areas paragraph (c) to read as follows:

(c) Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the amount of impervious area within the RPA and no further encroachment within the RPA and shall conform to the criteria set forth in this Chapter all applicable erosion and sediment control and stormwater management criteria in Chapters 104 and 124 of the County Code as well as all applicable stormwater management requirements of Commonwealth of Virginia and federal agencies.

Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions paragraph (a) to read as follows:

(a) The construction, installation, operation and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with:

- (1) The Erosion and Sediment Control Law (§ 62.1-44.15:51 Section 10.1-560 et seq. of the Code of Virginia) and with Chapter 104 of the ~~Fairfax~~ County Code and with the Stormwater Management Act (§ 62.1-44.15:24 Section 10.1-603.1 et seq. of the Code of Virginia) and with Chapter 124 of the County Code;
- (2) An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation; or
- (3) Local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter.

The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the Resource Protection Area and adverse effects on water quality.

Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area paragraph (a) to read as follows:

(a) When the application of the RPA buffer area would result in the effective loss of a reasonable buildable area on a lot or parcel recorded prior to October 1, 1989, in accordance with all applicable provisions of the County Code in effect at the time of recordation, encroachments into the buffer area may be approved by the Director 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 principal structure and necessary utilities;
- (2) Where practicable, 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 the lot or parcel;
- (3) The encroachment may not extend into the seaward 50 feet of the buffer area;
- (4) The proposed development shall not exceed 10,000 square feet of land disturbance in the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);
- (5) The proposed development shall not create more than 5,000 square feet of impervious surface within the RPA buffer, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);
- (6) The lot or parcel must meet the minimum lot size specified for the zoning district in which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and any other applicable ordinances and laws;
- (7) The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section ~~118-3-2(f)~~(7) 118-3-2(i); and
- (8) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in this section to permit an encroachment into the RPA buffer area.

Amend Article 6 Exceptions, by revising Section 118-6-7 Exceptions for Loss of Buildable Area in a Resource Protection Area to read as follows:

Section 118-6-7. Exceptions for Loss of Buildable Area in a Resource Protection Area.

Where the application of the RPA criteria will result in the effective loss of a reasonable buildable area on a lot or parcel recorded prior to November 18, 2003, in accordance with all applicable provisions of the County Code in effect at the time of recordation and the proposed development does not satisfy the criteria for an administrative waiver by the Director under Section 118-5-4, exceptions may be approved in accordance with the following criteria:

- (a) The proposed development does not exceed 10,000 square feet of land disturbance, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);
- (b) The proposed development does not create more than 5,000 square feet of impervious surface within an RPA, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);
- (c) The lot or parcel must meet the minimum lot size specified for the zoning district in which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and

any other applicable ordinances and laws;

(d) Where practicable, 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 the lot or parcel;

(e) The requirements of Section 118-3-2 shall be satisfied or an exception granted ~~waived~~ pursuant to Section ~~118-3-2(f)(7)~~ 118-3-2(i); and

(f) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in this section to permit an encroachment into the RPA buffer area.

Amend Article 7 Exception Review Committee, by revising Section 118-7-2 Authority and Establishment to read as follows:

Section 118-7-2. Authority and Establishment.

The Exception Review Committee is established in accordance with the requirements of this Chapter and ~~9 VAC 10-20-140~~ 5 VAC 25-830-150. The official title of this body shall be the "Exception Review Committee".

This amendment shall become effective on July 1, 2014, at 12:01 a.m.

GIVEN under my hand this 28th day of January, 2014.

CATHERINE A. CHIANESE
Clerk to the Board of Supervisors