

ORDINANCE NO. 1271

APPROVED BY THE BOARD OF SUPERVISORS: September 8, 2020

ORDINANCE – To Amend and Reordain Section 19-2 Titled “Definitions,” Section 19-89 Titled “Final plat required; construction plans,” Section 19-90 Titled “Form and contents,” Section 19-98 Titled “Family subdivision plat,” Section 24-3 Titled “Definitions,” and Section 24-106.3 Titled “Chesapeake Bay preservation,” All to Amend the County’s Chesapeake Bay Preservation Act Program

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

1. That Section 19-2 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 19-2. Definitions.

....

County engineer means the director of public works/county engineer or designee.

....

2. That Section 19-89 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 19-89. Final plat required; construction plans.

To obtain approval of the final subdivision plat, the subdivider shall file an application form, construction plans for improvements, and the final subdivision plat prepared by a professional engineer or registered land surveyor authorized to do business in the state. The construction plans and final subdivision plat shall meet all requirements of this chapter and this Code in effect at the time they are submitted. Construction plans shall contain the following information:

....

(4) Plans for storm sewers or other methods of handling stormwater in the format specified in subsection (3) of this section.

....

(8) A water quality impact assessment if required by article II of chapter 10 and section 24-106.3.

- (9) Location and dimensions of all easements, including details for the protection and restoration of disturbed areas in accordance with article II of chapter 10 and sections 24-106.2 and 24-106.3.
- (10) Delineation of Chesapeake Bay Preservation Areas.
- (11) Other information required by article II of chapter 10, chapter 18, chapter 23, and chapter 24.

3. That Section 19-90 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 19-90. Form and contents.

The final plat shall be on a sheet 16 inches by 24 inches in size with a margin of one-half inch outside ruled border lines at the bottom and right sides, and 1½ inches at the top and left side. The plat shall have a scale of 100 feet to the inch unless otherwise permitted by the director of planning. The final subdivision plat shall clearly show the following:

....

- (19) A notation stating "The 100-foot RPA buffer area consisting of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution is to be retained and remain undisturbed and protected from all construction or land disturbing activities."
- (20) For subdivisions that do not have public sewer, a notation stating "For new construction, any on-site sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit shall have a reserve sewage disposal site with a capacity at least equal to the primary sewage disposal site, on the same lot in accordance with requirements of section 23-60 of the Henrico County Code. Owners of all on-site sewage treatment systems not requiring a VPDES permit shall, at least once every five years, either pump out their septic tanks and submit documentation thereof, or submit documentation, certified by an operator or on-site soil evaluator licensed or certified under chapter 23 of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design on-site sewage systems, that the septic system has been inspected within the last five years, is functioning properly, and the tank does not need to have the effluent pumped out of it. All documentation shall be submitted to the county engineer. Building shall be prohibited on the area of all sewage disposal sites."

....

4. That Section 19-98 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 19-98. Family subdivision plat.

The family subdivision plat shall be prepared by a registered professional engineer or registered land surveyor authorized to do business in the state. The owner shall submit the number of copies required by the director of planning and an application for approval. The plat shall have a horizontal scale of 100 feet to the inch or other scale approved by the director of planning. The plat shall clearly show the following, as applicable:

....

- (o) For lots that are not served by public sewer, a notation stating “For new construction, any on-site sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit shall have a reserve sewage disposal site with a capacity at least equal to the primary sewage disposal site on the same lot in accordance with requirements of section 23-60 of the Henrico County Code. Owners of all on-site sewage treatment systems not requiring a VPDES permit shall, at least once every five years, either pump out their septic tanks and submit documentation thereof, or submit documentation, certified by an operator or on-site soil evaluator licensed or certified under chapter 23 of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design on-site sewage systems, that the septic system has been inspected within the last five years, is functioning properly, and the tank does not need to have the effluent pumped out of it. All documentation shall be submitted to the county engineer. Building shall be prohibited on the area of all sewage disposal sites.”

....

- (t) A notation stating, “The 100-foot RPA buffer area consisting of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution is to be retained and remain undisturbed and protected from all construction or land disturbing activities.”
- (u) A notation stating “Permitted activities in the RPA are restricted, and any development or disturbance in the RPA requires prior approval by the county engineer.”

....

5. That Section 24-3 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 24-3. Definitions.

For the purpose of interpreting and construing this chapter, certain words and terms used herein shall have the following meanings, unless the context requires otherwise.

....

Water-dependent facilities. Any use that cannot exist outside of the Resource Protection Area and must be located on the shoreline or within water because of the intrinsic nature of its operation. Such uses include, but are not limited to:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other water-oriented recreation areas; and
- (5) Fisheries or other marine resource facilities.

....

6. That Section 24-106.3 of the Code of the County of Henrico be amended and reordained as follows:

Sec. 24-106.3. Chesapeake Bay preservation.

....

(c) *Identification of Chesapeake Bay Preservation Areas.*

(1) The director of planning shall develop maps delineating Chesapeake Bay Preservation Areas. These maps are only intended as general guides to the location of Chesapeake Bay Preservation Areas in the county and are not conclusive evidence of inclusion or exclusion. Owners may demonstrate that their property is not within a Chesapeake Bay Preservation Area, even if mapped, by submission of an environmental site assessment containing the elements listed in section 10-33 of the County Code.

(2) Questions concerning boundaries of Chesapeake Bay Preservation Areas shall be resolved by the director of public works/county engineer based upon submission of an environmental site assessment.

(3) As part of the plan of development review process pursuant to section 24-106 of this chapter or during the review of a water quality impact assessment pursuant to section 10-39(b) of the County Code, the director of public works/county engineer shall ensure or confirm that (1) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow and (2) RPA boundaries on the site are adjusted, as necessary, based on this evaluation of the site. The director of public works/county engineer may conduct the site evaluation or require the applicant to conduct the evaluation and submit the required information for review.

(4) After approval of land development in Chesapeake Bay Preservation Areas is granted, prior to any land disturbing activity, all wetlands shall be conspicuously flagged or otherwise identified and not disturbed unless authorized by law.

(d) *Permitted development in RPAs.* There shall be no development in RPAs unless permitted by the zoning district(s) of the lot and unless development is limited to:

(1) New or expanded water-dependent facilities which satisfy the following conditions:

- a. The use does not conflict with the comprehensive plan; and
- b. The facility complies with the performance criteria set forth in subsection (g) of this section; and
- c. Any non-water-dependent components are located outside of RPAs; and
- d. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.

(2) Redevelopment on isolated redevelopment sites, but only if there is (a) no increase in the amount of impervious cover within the RPA, (b) no further encroachment within the RPA, and (c) compliance with the applicable erosion and sediment control criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, the erosion and sediment control requirements in chapter 10 of the County Code, and all applicable stormwater management requirements of state and federal agencies.

(3) Roads and driveways not exempted by subsection (k) of this section may be constructed within or across RPAs provided the following conditions are met:

- a. The director of public works/county engineer makes a finding that there are no reasonable alternatives for the proposed alignment within or across the RPA.
- b. The proposed alignment, design, and construction is optimized consistent with other applicable requirements to minimize (i) encroachment in the RPA and (ii) adverse effects on water quality.
- c. The design and construction is in accordance with the applicable criteria of this section, including submission of a water quality impact assessment; and,

- d. The plan for the road or driveway is reviewed and approved during the site plan, subdivision, or plan of development land development approval process.

(4) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in RPAs, provided that such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations and that:

- a. The director of public works/county engineer has conclusively established that location of the facility within the RPA is the optimum location and has given approval before construction;
- b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
- d. The facility is consistent with a comprehensive stormwater management plan that has been developed and approved with 9VAC25-870-92 of the Virginia Stormwater Management Program regulations;
- e. All applicable permits for construction in state or federal water have been obtained from the appropriate state and federal agencies;
- e. Maintenance agreements have been executed to allow the county to perform routine maintenance on such facilities to ensure that they continue to function as they were designed. It is not the intent of this subdivision 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 RPA.

(5) New uses established pursuant to section 24-106.3(f)(2)(b).

(6) For any proposed land disturbance in RPAs, a water quality impact assessment in accordance with section 10-39(b) of the County Code shall be submitted for approval by the director of public works/county engineer.

.....

(f) *Buffer requirements in RPAs.*

(1) The 100-foot wide buffer area shall be the landward component of the RPA. Notwithstanding permitted uses, encroachments, and vegetation clearing as set forth in this section and in accordance with the provisions of article II of chapter 10 of the County Code, the 100-foot wide buffer area shall not be reduced in width. To minimize the adverse effects of human activities on the

other components of the RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present or established where it does not exist.

- a. The 100-foot wide buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that accomplishes the buffer functions set forth in this section.

(2) The buffer shall be maintained as follows:

- a. In order to maintain the functional value of the buffer, indigenous vegetation may be removed with the approval of the director of public works/county engineer only to provide for reasonable sight lines, access paths, general woodlot management and BMPs, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

.....

- d. On agricultural lands the agricultural buffer shall be managed to prevent concentrated flows of surface water from breaching the buffer and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer as follows:

- 1. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural BMP which, in the opinion of the Henricopolis Soil and Water Conservation District Board, addresses the more predominant water quality issues 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 BMP 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 tests, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations" (4 VAC 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation.

.....

- 3. The buffer need not be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one

BMP considered by the Henricopolis Soil and Water Conservation District Board to address the more predominant water quality issue on the adjacent land (erosion control or nutrient management).

....

6. A water quality impact assessment shall be required for any proposed development within the RPA consistent with this section and for any other development in CBPAs that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.
 - a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the RPAs consistent with the goals and objectives of the Chesapeake Bay Preservation Act, this chapter and this section for mitigation of those impacts. The specific content and procedures for the water quality impact assessment have been established in section 10-39(b).
 - b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of this section.

(g) *Chesapeake Bay Preservation Area development standards and general performance criteria.* Any use, development or redevelopment of land in Chesapeake Bay Preservation Areas shall also satisfy the following criteria:

....

(3) Land development shall minimize impervious cover consistent with the proposed use or development.

(4) All development of 2,500 square feet or more of land disturbance shall obtain approval in accordance with section 24-106 of this chapter and section 10-34 of the County Code.

(5) Any land disturbing activity of 2,500 square feet or more (including construction of all one-family dwellings, septic tanks and drainfields) shall comply with article II of chapter 10 of the County Code. Enforcement for noncompliance with the erosion and sediment control requirements shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

(6) The director of public works/county engineer shall require evidence that all wetlands permits required by law are obtained prior to authorizing grading and other on-site activities to begin.

(7) For new construction, any on-site sewage treatment system not requiring a VPDES permit shall have a reserved sewage disposal site with a capacity at

least equal to the primary sewage disposal site on the same lot in accordance with the requirements of section 23-60 of the County Code. Owners of all on-site sewage treatment systems that do not require a VPDES permit shall, at least once every five years, either pump out their septic tanks and submit documentation thereof, or submit documentation, certified by an operator or on-site soil evaluator licensed or certified under chapter 23 of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design on-site sewage systems, that the septic system has been inspected within the last five years, is functioning properly, and the tank does not need to have the effluent pumped out of it. All documentation shall be submitted to the director of public works. Building shall be prohibited on the area of all sewage disposal sites.

(8) Land upon which agricultural activities are being conducted, including, but not limited to, crop production, pasture and dairy and feed lot operations, and land otherwise defined as agricultural land by the County shall have a soil and water quality conservation assessment that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides. Where necessary, there shall be a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with this section and the following provisions of subsection 8 of 9VAC25-830-130:

a. 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 Resource 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:

(1) 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 Resource 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 Resource Conservation Service.

(2) 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 (4VAC50-85).

(3) 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.

b. 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.

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

(9) Any man-made change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or excavation, shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103 unless the activity is exempted by Code of Virginia § 62.1-44.15:34(C).

(h) *Review and approval procedure.* Except as herein provided, the review and approval procedures for uses and development impacting on Chesapeake Bay Preservation Areas shall be as provided in this chapter, article II of chapter 10 (Stormwater Management), chapter 19 (Subdivisions) and chapter 23 (Water and Sewer).

....

(k) *Exemptions.* The following uses and development as regulated by this subsection shall be exempt from the provisions of this section but shall be subject to the other provisions of this chapter:

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

pursuant to the Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:51 et seq., as amended) and the Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq., as amended) and an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality.

Public roads shall be designed, approved and constructed to prevent or otherwise minimize encroachment in the RPA and adverse effects on water quality. For purposes of this subsection, "public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation (VDOT), including regulations promulgated pursuant to Code of Virginia, §§ 62.1-44.15:51 and 62.1-44.15:2 et seq., as amended. This definition includes those roads where VDOT exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the county in accordance with county standards. Appurtenant structures include, but are not limited to, bridges, culverts, guardrails, drainage facilities, lighting, traffic control devices, fences, and berms.

(2) Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned or permitted, or both, by the county provided:

- a. To the degree possible, the location of such utilities should be outside RPAs.
- b. No more land shall be disturbed than is necessary to provide for the proposed utility installation.
- c. All such construction, installation and maintenance of the utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality.
- d. Any land disturbance of 2,500 square feet or more shall comply with the applicable erosion and sediment control requirements of chapter 10 of the County Code.

(3) Water wells, passive recreation facilities, such as boardwalks, trails and pathways, and historic preservation activities and archaeological activities, provided any such activity disturbing 2,500 square feet or more of land shall comply with the applicable erosion and sediment control requirements of chapter 10 of the County Code and approval is obtained from the director of public works/county engineer.

(4) Silvicultural activities, provided such activities adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth edition (March 2011) of "Forestry Best Management Practices for Water Quality Technical Manual."

(l) *Exceptions.*

(1) *Exceptions to subsections (d) and (f).* A request for an exception to the requirements of subsections (d) and (f) of this section shall be made in writing to the planning commission. The request shall include a sketch or site plan providing the name of the applicant, a legal description of the property, a sketch location of all proposed improvements, the boundary of RPAs and RMAs, and the location of existing private water supply and existing or proposed on-site sewage systems and primary and reserve sewage drainfields. The request shall also identify the impacts of the proposed exception on water quality on lands within the RPA through a water quality impact assessment which complies with the provisions defined in article II of chapter 10 of the County Code. An environmental site assessment as described in section 10-33 and a water quality impact assessment as described in section 10-39 of chapter 10 of the County Code must be submitted.

The planning commission shall notify the affected public of such exception requests and shall consider these requests in a public hearing in accordance with Code of Virginia, § 15.2-2204.

The planning commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as it deems necessary only if the planning commission finds:

- a. Granting the exception will not confer upon the applicant any special privilege denied to similarly situated property owners;
- b. The exception request is not based on conditions or circumstances that are self-created or self-imposed, and the request does not arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
- c. The exception request is the minimum necessary to afford relief;
- d. The exception request is in harmony with the purpose and intent of the zoning ordinance and is not of substantial detriment to water quality; and
- e. Reasonable and appropriate conditions which will prevent the exception request from causing a degradation of water quality are imposed.

If the planning commission cannot make the required findings or refuses to grant the exception, the planning commission shall return the request for an exception and the water quality impact assessment to the applicant.

(2) *Exceptions to other subsections.* A request for an exception to provisions of this section other than subsections (d) and (f) shall be made in writing to the director of public works/county engineer with a sketch or site plan containing the name of the applicant, the legal description of the property, a sketch of the proposed improvement, the boundaries of the RPAs and RMAs, and the location of the existing private water supply and existing and proposed on-site sewage facilities and primary and reserve sewage drainfields. An environmental site assessment as described in section 10-33 and a water quality impact assessment as described in section 10-39 of chapter 10 of the County Code must be submitted. The director of public works/county engineer shall forward a copy of all exception requests submitted to him to the director of planning.

The director of public works/county engineer shall evaluate requests for exceptions on a case-by-case basis. Except for exceptions to subsection (g), the director of public works/county engineer may grant the exception request provided that exceptions to the requirements are the minimum necessary to afford relief and reasonable and appropriate conditions are imposed upon the exception to achieve the purpose and intent of this section.

For requests for an exception to subsection (g), the director of public works/county engineer shall review the request for an exception and the water quality impact assessment and may grant the exception with necessary conditions and safeguards if the director of public works/county engineer finds:

- a. Granting the exception will not confer upon the applicant any special privilege denied to similarly situated property owners;
- b. The exception request is not based on conditions or circumstances that are self-created or self-imposed, and the request does not arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
- c. The exception request is the minimum necessary to afford relief;
- d. The exception request is in harmony with the purpose and intent of the zoning ordinance and is not of substantial detriment to water quality; and
- e. Reasonable and appropriate conditions which will prevent the exception request from causing a degradation of water quality are imposed.

(3) *Exceptions for transitional cases.* Exceptions to the requirements of this section shall be granted in the following transitional cases, if the requirements of this subsection are satisfied and the director of public works/county engineer determines there is compliance with the requirements of this section to the maximum extent practicable:

- (a) Conditional subdivision approval granted to the owner or developer by the planning commission before November 15, 1991, provided application for final subdivision approval is made by November 15, 1992, and such application is complete and satisfies all requirements of the County Code in effect at the time of the application.
- (b) Final subdivision approval granted to the owner or developer by the director of planning or planning commission before November 15, 1991.
- (c) Approval of subdivision construction plans, utility plans, road construction plans or capital improvement construction plans of the owner or developer by the director of public utilities or the director of public works before November 15, 1991.
- (d) Approval of site plans, including grading and erosion and sediment control plans, of the owner or developer by the director of public utilities, the director of public works/county engineer or the director of planning before November 15, 1991.
- (e) Approval of a plan of development (POD) by the board of supervisors or the planning commission before November 15, 1991.
- (f) Granting of a conditional use permit to the owner or developer by the planning commission or the board of zoning appeals before November 15, 1991.
- (g) Granting of a provisional use permit to the owner or developer by the board of supervisors before November 15, 1991.
- (h) Approval of proffered rezoning by the board of supervisors before November 15, 1991, where full compliance with this section would conflict with the proffered conditions accepted by the board of supervisors.
- (i) Granting of a variance by the board of zoning appeals before November 15, 1991, provided application for all necessary permits is made by November 15, 1992.

- (j) Approval of a septic tank permit by the county department of health before November 15, 1991.
- (k) Filing on or before September 12, 1991, for any of the approvals listed in (a) through (j) above, provided that the application was complete and satisfied all requirements of the County Code in effect at the time of filing, subsequent approval is based upon the application filed and approval is obtained by March 12, 1992.
- (l) Filing for a building permit prior to November 15, 1991, provided that the application contains all the information required by the County Code in effect at the time of filing and construction is commenced within 12 months of approval and is diligently pursued to completion.

(4) *Uses as of November 15, 1991.* Existing uses rendered nonconforming on November 15, 1991, and uses vested by law as of November 15, 1991, shall not be subject to the requirements of this section in accordance with state law. In addition, this section shall not be applied so as to constitute an unconstitutional taking of property.

(m) *Nonconforming uses and noncomplying structures in RPAs.* The director of public works/county engineer may waive or modify the requirements of this section for remodeling, additions or alterations to principal structures on legal nonconforming lots that were legally in existence in RPAs on November 15, 1991, provided that:

- (1) There will be no net increase in nonpoint source pollutant loads;
- (2) Any development or land disturbance of 2,500 square feet or more complies with the erosion and sediment control requirements of chapter 10 of the County Code;
- (3) Additions shall be built outside RPAs where possible;
- (4) This provision shall not apply to accessory structures; and
- (5) Waiver requests must include a sketch or site plan with the name of the applicant, the legal description of the property, a sketch of the proposed improvement, the boundaries of the RPAs and RMAs, and the location of the existing private water supply and existing and proposed on-site sewage facilities and primary and reserve sewage drainfields. An environmental site assessment as defined in section 10-33 and a water quality impact assessment as defined in section 10-28 of chapter 10 of the County Code must be submitted.
- (6) An application for the expansion of a nonconforming structure may be approved by the director of public works/county engineer provided that the following findings are made:

- (a) The request for the waiver is the minimum necessary to afford relief;
- (b) Granting the waiver will not confer upon the applicant any privilege that is denied to property owners in similar situations;
- (c) The waiver is in harmony with the purpose and intent of this section and does not result in water quality degradation;
- (d) The waiver is not based on conditions or circumstances that are self-created or self-imposed; and
- (e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality.

(7) A nonconforming use development waiver shall become null and void 12 months from the date it is issued if substantial work has not commenced.

(8) This section shall not prohibit the reconstruction of preexisting structures within Chesapeake Bay Preservation Areas because of casualty loss.

7. That this ordinance shall be in full force and effect on and after its passage as provided by law.