Chesapeake Bay Exceptions Review Committee (ERC) Update

Board of Supervisors Environmental Committee
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Department of Public Works and Environmental Services
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ERC Background

- 2003 - ERC was established with the adoption of amendments to the CBPO (Chapter 118)
- “Perennial Stream” criteria changed at the state level
- “Exceptions” are for proposed disturbances in Resource Protection Areas (RPAs)
- Public hearing requirement was added for certain exceptions
  - Various options were considered including Planning Commission and existing committees/boards
  - ERC created as a new committee

ERC Background

- RPA Exception approval authority
  - LDS staff - for those requests meeting administrative review criteria
  - ERC - for requests not meeting the administrative criteria, typically:
    - Greater than 5000 SF of impervious area in the RPA, or
    - Greater than 10,000 SF of disturbance in the RPA, or
    - Encroachment into the “seaward” 50 foot buffer area
  - Board of Supervisors - when in conjunction with a RZ or SE

ERC Background

- ERC exception requests:
  - Never reached the estimates projected in 2003, and
  - Have declined over the past 10 years
- Meeting attendance had declined in recent years
- In 2013, the Stormwater Management Ordinance (SWMO) code package proposed:
  - Elimination of the ERC, and
  - Replacement with Board of Supervisors approval to meet the public hearing requirement

ERC Background

- Stormwater Ordinance Process
  - ERC supported continuation of the committee
  - Planning Commission recommended
    - A one year evaluation period
    - Reporting back to the Board
  - Board
    - Approved the SWMO with the Planning Commission recommendations for the ERC evaluation and reporting

Staff Monitoring and Reporting

- Started compiling data in 2015
- ERC Coordination
  - Started a dialogue in 2015
  - Staff conveyed findings to the ERC in February 2016
- Board Environmental Committee – briefing on findings

2013-2015 Findings

- 7 ERC hearings/3 years = 2.3 hearings per year
- Meeting attendance ranged from 6 to 8 members out of 11 total
- One meeting cancelled due to not meeting the quorum requirement of 6 members
- Overall success of the hearing requirement: many requests have been reduced in scope to avoid hearings

2013-2015 Findings

Year	Total Meetings	Public Hearings	Business/ Other Meetings	Comments
2004	8	2	6	
2005	6	4	3	2 hearings were deferred to later in the same year. One meeting included 2 hearings.
2006	6	1	5	deferred meeting from 2005
2007	2	1	1	
2008	3	2	1	same hearing deferred both times. One meeting discussion only, lack of quorum
2009	5	5	1	2 hearing in one meeting one of them deferred to later same year
2010	5	5	0	one hearing deferred twice, one hearing deferred once both to same year
2011	4	4	1	1 deferred hearing heard later same year, 2 hearing in one day
2012	3	3	0	1 hearing deferred to later in the same year
2013	5	3	2	1 meeting cancelled due to lack of quorum
2014	0	0	0	No meetings or hearings
2015	5	4	1	1 hearing deferred to later in the same year

2013-2015 Findings

Meeting Date	Meeting Purpose	Meeting Outcome
2/6/2013	General Business Meeting	Adjourned due to lack of quorum present
4/3/2013	WRPA Hearing for 6451 7th Street	Approved 6-1
6/12/2013	WRPA Hearing for 1166 Orlo Drive	Approved with conditions 7-3
11/6/2013	Discussed proposed amendments to Ch.118	Recommended that revisions to Ch.118, Article 6, 7 & 8 not be adopted - Approved 7-0
12/4/2013	WRPA Hearing for 5016 Ridgewood Road	Approved with conditions 5-1
2014	No Meetings	N/A
2/4/2015	Presentation of Permit Process for Additions in the RPA	N/A
5/6/2015	WRPA Hearing 1090 Cedrus Lane	Deferral of the application 6-0
6/3/2015	WRPA Hearing for 706 Potomac Knolls Drive	Approved 8-0
	WRPA Hearing for 1090 Cedrus Lane	Approved 8-0
10/7/2015	WRPA Hearing for 1055 Dead Run Drive	Approved 7-0
12/2/2015	WRPA Hearing for 6364 Lakeview Drive	Approved 7-0

Key Factors to Consider for Options

- Meeting the public hearing requirement
- 9 VAC 25-830-150
  - An exception may be considered and acted upon only by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government to implement the provisions of this Act and this chapter.
  - In 2013, staff proposed that the Board serve as the approval entity (consistent with RPA appeals)
- Maintain the RPA review integrity

Primary Exception Review Criteria

- Size of the structure
- Placement of the structure on the lot
- Impact of impervious area on the RPA
- Minimizing existing tree loss
- Not conferring special privileges
- Consistent with the purpose and intent of Chapter 118

Main Options

1) Maintain ERC approval “as is”
2) Maintain ERC approval and reduce the quorum
3) Abolish the ERC and process code amendments consistent with SWO package from 2014
   - Board approval
   - Staff review consistent with current ERC process review
   - Maintain environmental review integrity
4) Abolish the ERC and designate another existing board/commission

Questions and Comments