Final Minutes

Meeting of the Chesapeake Bay Exception Review Committee
December 2, 2020, 2:00 PM
Cisco WebEx Event #1-844-621-3956, Access Code 173 999 7180

Present

Committee:
Ken Lanfear, Sue Kovach Shuman, Edward W. Monroe, Jr., Dr. David Schnare, Elizabeth Martin, Amy Gould, James Chesley, Ann Kanter, Som Govender, Alexis Dickerson.

County Staff:
Danielle Badra, Brandy Mueller, Camylyn Lewis, Matthew Hansen, Marc Gori, Keyona Green, Yosif Ibrahim, Durga Kharel, Shahab Baig, Prutha Rueangvivatanakij, Kinnari Radadiya, Mohan Bastakati.

Call to Order

Meeting called to order by Chair Elizabeth Martin at: 2:01 PM

ERC Business

1. **Review of the proposed Electronic Meeting Policy:**
    a. Roll call of all present members.
        i. Welcome new ERC member: Alexis Dickerson, representing Lee District.
    b. Martin moved to vote to establish every member can hear every other member. Motion was seconded (Schnare) and approved 10-0.
    c. Martin moved that the pandemic makes it unsafe to physically meet and must thereby be held electronically. Motion was seconded (Kanter) and approved 10-0.
    d. Martin moved to approve Electronic Meeting Policy, allowing the ERC to meet electronically going forward. Motion was seconded (Shuman) and approved 10-0.
2. **Review of the February 5, 2020 minutes:**
    a. Motion was made by Kanter to approve the minutes as submitted. The motion was seconded (Monroe) and approved 10-0.

3. **Update on Woodlark Case presented by Marc Gori, Assistant County Attorney:**
    a. Gori updated the committee on the status of the K2NC LLC, Woodlark case. Lawsuit based on denial of a waiver to encroach into the seaward 50 feet. ERC denied the request and the Board denied the request on the appeal. K2NC filed a lawsuit against the county and ERC members. The applicant has since proposed to modify their design to remove all encroachments outside of the seaward 50 feet, now allowing for administrative review. The trial was originally scheduled for May 2020 and has since been removed from the docket indefinitely while the applicant submits their plans and studies for review and approval. Since trial removal, the applicant has been going back and forth with county review staff regarding their floodplain use determination. Applicant is currently in process of putting together their final submission documents for the floodplain encroachment.
        i. Newest member Dickerson asked about any potential future liability of ERC members. Gori summarized his position that the ERC members were inaccurately cited in the original complaint, ERC members would be represented by county counsel, and have since been removed from the case.
4. **Summary of Ch.118, Articles 3, 5 & 6. Staff and ERC Review of Chesapeake Bay Exceptions (Attachment 1) presented by Camylyn Lewis**.
    a. Lewis included references to the DCR Exceptions Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations (Attachment 2), which was previously emailed out to the committee and posted on the county's ERC webpage.
    b. Committee discussion on required finding (b) not granting special privileges or setting precedence when reviewing cases.
    c. Schnare commented on required finding (c) harmony and intent, not detrimental to water quality and sought feedback from staff in how they evaluate against this finding.
        i. Shuman followed up in asking how to determine whether a proposed project is in harmony and meets the intent of the code.
        ii. Lewis confirmed staff is looking for RPA enhancements and best management practices that would enhance water quality.
        iii. Martin mentioned cumulative impacts and impacts to water quality and how the DCR guidance document does not adequately address this issue.
        iv. Schnare mentioned western concept of hierarchy of water use; first use may not cause significant detriment, but subsequent projects may. Even if two properties have identical characteristics, if the first project took up capacity, the second property should be evaluated differently based on the detriment created by the second use.
        v. Lanfear disagrees with this concept and explains the county's current approach regarding the evaluation of water quality of the bay.

vi. Lewis mentioned net balance of water quality – reduce lawn, additional plantings, inclusion of BMPs (view target improvement on each individual lot).
vii. Gori comments that the exception must 1) be in harmony with the purpose and intent of that section of the Ordinance, and 2) can't cause a detriment to water quality. It must meet both parts of the criteria.
viii. Martin mentions conflict with taking previous turf and constructing a new house in its place as not being in harmony with the intent of the Ordinance, which requires establishment of a buffer along the stream.
ix. Lanfear discusses research on non-point runoff and improvements in the science on the average of going from one use of land to another use of land and what will happen to water quality, instead of on a specific site.

d. Required finding (d) self-created or self-imposed discussion.
i. Kanter commented on challenges with evaluating required finding (d) self-created, self-imposed; evaluating the size of the proposed improvement.
ii. Martin mentions cases that either result in violation or had a previous RPA exception approval when the lot did not meet the required conditions associated with the previously granted exception.
iii. Lanfear mentioned previous pool case and how the committee required additional conditions to ensure the exception met the intent.
iv. Schnare mentions lack of current authority to address this issue. Recommends writing the Board to request additional authority.
v. Lewis mentions the idea of an applicant asking for something that we would have otherwise approved had they asked before they unknowingly created the violation.
vi. Gori reinforces staff's position that the property owner is entitled to submit a request for a waiver or exception, as necessary. Staff/ERC should treat the encroachment as if it were being requested up front, without having been implemented. The WQIA should be reviewed as if it were being proposed, in the absence of having already been constructed. The violation itself is not considered a self-created, self-imposed condition.
vii. Lanfear proposes a scenario where an applicant receives approval for a new home to be built immediately abutting the RPA and then later decides to build a pool, this would be considered a self-created, self-imposed condition.
viii. Govender mentions it is important to review the new application especially when it includes the old conditions.

e. Required finding (e) conditions are imposed, prevent degradation of water quality.
i. Lanfear mentions possible stream restoration requirements being imposed on certain applications, but cost considerations associated.

f. Kanter questions the origin of the coefficients. Additional discussion continues regarding the coefficients and how they are applied.

i. Lewis mentions the agreed upon equations reside in the Virginia Runoff Reduction Method which is the accepted methodology, a standard which has been adopted by the Department of Environmental Quality.

5. **LTI 20-02: New Application and Submittal Requirements for Water Quality Impact Assessments (WQIA) presented by Matthew Hansen (Attachment 3).**
   a. Martin questioned whether the minor WQIA would have to describe any fill that would be placed in the RPA.
   b. Hansen confirms the application would have to include fill as part of the request.
   c. Martin questions the allowance of septic drainfields in the RPA.
   d. Hansen explains they are not prohibited in the RPA, and if possible, it should be located outside of the RPA (all other options must be exhausted).

Next Meeting

No meeting date was set.

Adjournment

Motion from Martin to adjourn at 3:59 PM. The motion was seconded (Kanter) and approved 10-0.

Attachment 1 – Presentation on Chapter 118 and Articles 3, 5, and 6

Summary of Chapter 118, Articles 3, 5 & 6

Staff & Exception Review Committee (ERC) review
of
Chesapeake Bay Exceptions

Stormwater Staff

December 2, 2020

Article 5 (Staff) and Article 6 (ERC)

Article 5 (Staff)

- Section 118-5-1. Nonconforming Uses and Noncomplying Structures.
- Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions.
- Section 118-5-3. Additional Exemptions.
- **Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area.**
- Section 118-5-5 (Techs). Exceptions for Minor Additions.

Article 6 (ERC)

- Section 118-6-1. Granting of Exceptions.
- Section 118-6-2. Conduct of Public Hearings.
- Section 118-6-3. Required Notice for Public Hearings.
- Section 118-6-4. Withdrawal of Application.
- Section 118-6-5. Submission Requirements for Exception Requests.
- Section 118-6-6. Required Findings.
- **Section 118-6-7. Exceptions for loss of buildable area in a resource protection area (in the seaward 50 feet).**
- Section 118-6-8. Exceptions for Accessory Structures.
- Section 118-6-9. General Resource Protection Area Encroachment Request.

Articles 2, 3 & 5 (Staff)

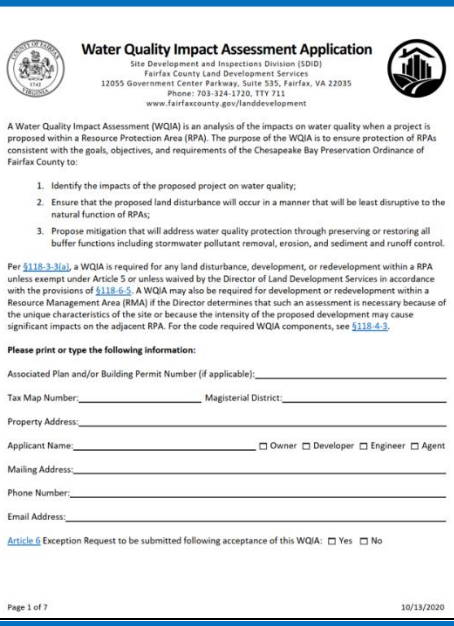
- Section 118-2-1 RPA
  - Allowed Uses Redevelopment
  - Performance Criteria 118-3-3
- Section 118-2-2 Resource Management Area (RMA) Performance Criteria
  - 118-3-2
- Stormwater Specialists Sections 118-5-1 through 118-5-4
- 118-5-5 – Minor Additions and the walkthrough process (Techs)
- When a Water Quality Impact Assessment (WQIA) is required

Section 118-2-1 (Staff)
Allowed Uses, Development and Redevelopment in Resource Protection Areas.

WQIA unless exempt

- Water-dependent development
- Redevelopment outside of Intensely Developed Areas (IDAs)
- Uses, exempted under Article 5
- Roads and driveways not exempted under Article 5
- "Regional" Flood control and stormwater management facilities
  - Not Best Management Practices (BMPs) for individual lots

New WQIA Form



Water Quality Impact Assessment Application

Site Development and Inspections Division (SDID)
Fairfax County Land Development Services
12055 Government Center Parkway, Suite 535, Fairfax, VA 22035
Phone: 703-324-1720, TTY 711
www.fairfaxcounty.gov/landdevelopment

A Water Quality Impact Assessment (WQIA) is an analysis of the impacts on water quality when a project is proposed within a Resource Protection Area (RPA). The purpose of the WQIA is to ensure protection of RPAs consistent with the goals, objectives, and requirements of the Chesapeake Bay Preservation Ordinance of Fairfax County to:

1. Identify the impacts of the proposed project on water quality;
2. Ensure that the proposed land disturbance will occur in a manner that will be least disruptive to the natural function of RPAs;
3. Propose mitigation that will address water quality protection through preserving or restoring all buffer functions including stormwater pollutant removal, erosion, and sediment and runoff control.

Per §118-3-3(a), a WQIA is required for any land disturbance, development, or redevelopment within a RPA unless exempt under Article 5 or unless waived by the Director of Land Development Services in accordance with the provisions of §118-6-5. A WQIA may also be required for development or redevelopment within a Resource Management Area (RMA) if the Director determines that such an assessment is necessary because of the unique characteristics of the site or because the intensity of the proposed development may cause significant impacts on the adjacent RPA. For the code required WQIA components, see §118-4-3.

Please print or type the following information:

Associated Plan and/or Building Permit Number (if applicable):_____

Tax Map Number:_____ Magisterial District:_____

Property Address:_____

Applicant Name:_____ ☐ Owner ☐ Developer ☐ Engineer ☐ Agent

Mailing Address:_____

Phone Number:_____

Email Address:_____

Article 6 Exception Request to be submitted following acceptance of this WQIA: ☐ Yes ☐ No

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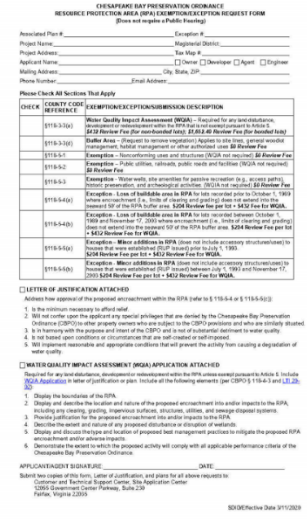
Review & Approval (Staff)



CHESAPEAKE BAY PRESERVATION ORDINANCE
RESOURCE PROTECTION AREA (RPA) EXEMPTION/EXCEPTION REQUEST FORM
(Does not require a Public Hearing)

Associated Plan #:_____ Exception #:_____
Project Name:_____ Magisterial District:_____
Project Address:_____ Tax Map #:_____
Applicant Name:_____ ☐ Owner ☐ Developer ☐ Agent ☐ Engineer
Mailing Address:_____ City, State, ZIP:_____
Phone Number:_____ Email Address:_____

Please Check All Sections That Apply

CHECK	COUNTY CODE REFERENCE	EXEMPTION/EXCEPTION/SUBMISSION DESCRIPTION
	§118-3-3(a)	**Water Quality Impact Assessment (WQIA)** – Required for any land disturbance, development or redevelopment within the RPA that is not exempt pursuant to Article 5. ***$432 Review Fee (for non-bonded lots); $1,652.40 Review Fee (for bonded lots)***
	§118-3-3(d)	**Buffer Area** – (Request to remove vegetation) Applies to site lines, general woodlot management, habitat management or other authorized uses ***$0 Review Fee***
	§118-5-1	**Exemption** – Nonconforming uses and structures (WQIA not required) ***$0 Review Fee***
	§118-5-2	**Exemption** – Public utilities, railroads, public roads and facilities (WQIA not required) ***$0 Review Fee***
	§118-5-3	**Exemption** - Water wells, site amenities for passive recreation (e.g., access paths), historic preservation, and archeological activities. (WQIA not required) ***$0 Review Fee***
	§118-5-4(a)	**Exception - Loss of buildable area in RPA** for lots recorded prior to October 1, 1989 where encroachment (i.e., limits of clearing and grading) does not extend into the seaward 50' of the RPA buffer area. **$204 Review Fee per lot + $432 Review Fee for WQIA.**
	§118-5-4(b)	**Exception - Loss of buildable area in RPA** for lots recorded between October 1, 1989 and November 17, 2003 where encroachment (i.e., limits of clearing and grading) does not extend into the seaward 50' of the RPA buffer area. **$204 Review Fee per lot + $432 Review Fee for WQIA.**
	§118-5-5(a)	**Exception – Minor additions in RPA** (does not include accessory structures/uses) to houses that were established (RUP issued) prior to July 1, 1993. **$204 Review Fee per lot + $432 Review Fee for WQIA.**
	§118-5-5(b)	**Exception - Minor additions in RPA** (does not include accessory structures/uses) to houses that were established (RUP issued) between July 1, 1993 and November 17, 2003 **$204 Review Fee per lot + $432 Review Fee for WQIA.**

https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/Assets/documents/forms/rpa-exemption-exception-no-public-hearing-required.pdf

Article 5 - Nonconformities, Waivers, Exceptions, and Exemptions (Staff)

Section 118-5-1. Nonconforming Uses and Noncomplying Structures

- Before November 18, 2003 – can continue to be maintained but not expanded
- Destroyed by casualty – can be reconstructed

Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions

- Electric, natural gas, fiber-optic and telephone transmission lines, railroads, and public roads with conditions

Section 118-5-3. Additional Exemptions

- Water wells, passive recreation, historic preservation, archaeological, land disturbance in RMAs < 2,500 square feet (sq. ft.), and Silvicultural with conditions

Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area

- Not in seaward 50 feet

Section 118-5-5. Exceptions for Minor Additions

- Techs/walk through - coming up next

Section 118-5-5. Exceptions for Minor Additions (Staff)

Principal Structure

- established as of July 1, 1993
- lot recorded prior to July 1, 1993
- Max additional 1,000 sq. ft. impervious (cumulative)
- Or max 2% of the lot area (max 2,500 sq. ft.)

Principal Structure

- July 1, 1993 - November 18, 2003
- Principal structure before resource protection area (RPA)
- Max additional 1,000 sq. ft. impervious (cumulative)
- Or 2% of the lot area (max 2,500 sq. ft.)

Section 118-5-5. Exceptions for Minor Additions (Staff) Cont'd

Conditions & findings:

- Minimum necessary to afford relief
- No special privileges
- Harmony & intent maintained no substantial detriment to water quality
- Not self-created or self-imposed
- Conditions imposed to prevent degradation of water quality; *provide a vegetated buffer to mitigate.*
- No net increase in nonpoint source pollutant load. Decks over existing maintained areas meet this finding.
- Erosion and sediment control requirements

http://www.fairfaxcounty.gov/dpwes/publications/stormwater/01_ps_qc_full_ada_v2.pdf

Section 118-5-4. Waivers for Loss of Buildable Area (Staff)

lot or parcel recorded prior to October 1, 1989

1. Minimum necessary for structure & utilities
2. Vegetated buffer
3. **Not in seaward 50 feet**
4. < 10,000 sq. ft. disturbance in RPA
5. < 5,000 sq. ft. impervious area in RPA
6. Minimum lot size (valid lot)
7. Performance criteria 118-3-2 & 118-3-3

lot or parcel recorded between October 1, 1989 and November 18, 2003

1. 1 through 7 above plus
2. Legal subdivision
3. Previous exception requirements met
4. Existing BMPs maintained

https://www.novaregion.org/DocumentCenter/View/10615

Article 6 – Three Types of Exception (ERC)

- 118-6-1. Granting of Exceptions.
- 118-6-2. Conduct of Public Hearings.
- 118-6-3. Required Notice for Public Hearings.
- 118-6-4. Withdrawal of Application.
- 118-6-5. Submission Requirements for Exception Requests.
- 118-6-6. Required Findings.
- 118-6-7. Exceptions for loss of buildable area in a resource protection area **– that encroach into the seaward 50 feet.**
- 118-6-8. Exceptions for Accessory Structures.
- 118-6-9. General Resource Protection Area Encroachment Request.

https://www.novaregion.org/DocumentCenter/View/10615

Section 118-6-6. - Required Findings (ERC)

Required findings:

a) Minimum necessary to afford relief
b) No special privileges
c) Harmony & intent - not detriment to water quality
d) Not self-created or self-imposed
e) Conditions are imposed, prevent degradation of water quality
f) Other findings

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

- **Not approvable by staff (in seaward 50 ft.)**
- Lot before Nov 18, 2003
- ≤ 10,000 sq. ft. of land disturbance (except septic field and access)
- ≤ 5,000 sq. ft. impervious (except access)
- Valid lot
- Vegetated buffer
- Performance requirements 118-3-2 (RMA) & 118-3-3 (RPA)
- Required findings 118-6-6 (minimum necessary, no special privileges, in harmony no substantial detriment to water quality, not self created, conditions to prevent degradation of water quality)

Section 118-6-8. - Exceptions for Accessory Structures (ERC)

Principal structures before July 1, 1993

- < 1,000 sq. ft. additional impervious or 2% up to 2,500 sq. ft. (cumulative)
- lot recorded prior to July 1, 1993
- additions allowed until maximum reached
- where practicable, a vegetated buffer

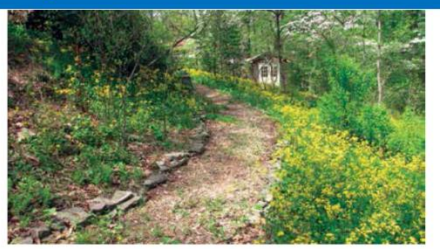
Principal structures July 1, 1993 - November 18, 2003

- ≤ 1000 sq. ft. additional impervious RPA or 2 % up to 2,500 sq. ft. (cumulative); added after November 18, 2003
- lot prior to November 18, 2003
- Additions to maximum impervious reached
- where practicable, a vegetated buffer

Required Findings 118-6-6

Section 118-6-9. - General Resource Protection Area Encroachment Request (ERC)

- Do not qualify under 118-6-7 or Section 118-6-8
- Meet the **required findings** listed in Section 118-6-6
- Meet additional finding that the water quality benefits resulting from the proposed facility or improvement exceed the associated water quality detriments
- Where practicable, a vegetated buffer



Section 118-6-9. - General Resource Protection Area Encroachment Request (ERC) Water quality benefits exceed the detriments – Simple Method

Total Phosphorous (TP) event mean concentration (EMC) of 0.26 mg/L

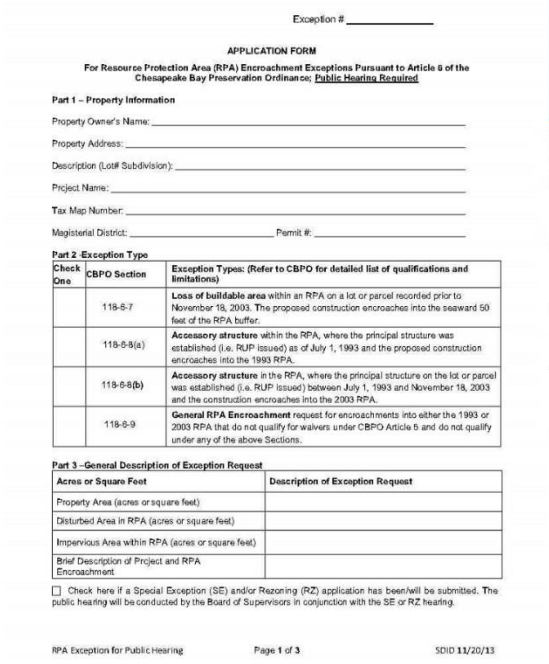
$L = 2.28072 * R_v * A$ lbs./ year

(R_v) that account for impervious areas, managed turf, and forest/open space is calculated as follows:

$$R_v(Composite) = R_v(I)\ X\ \%I + R_v(T)\ X\ \%T + R_v(F)\ X\ \%F$$

Where:

R_v(Composite) = Composite or weighted runoff coefficient
R_v(I) = Runoff Coefficient for Impervious Cover
R_v(T) = Runoff coefficient for Turf cover or disturbed soils
R_v(F) = Runoff coefficient for forest/open space
%I = Percentage of Site in Impervious cover (fraction)
%T = Percentage of Site in Turf cover (fraction)
%F = Percentage of Site in Forest/Open Space (fraction)



Exception # _____

APPLICATION FORM

For Resource Protection Area (RPA) Encroachment Exceptions Pursuant to Article 6 of the Chesapeake Bay Preservation Ordinance; Public Hearing Required

Part 1 – Property Information

Property Owner's Name: _____

Property Address: _____

Description (Lot# Subdivision): _____

Project Name: _____

Tax Map Number: _____

Magisterial District: _____ Permit #: _____

Part 2 -Exception Type

Check One	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
	118-6-7	**Loss of buildable area** within an RPA on a lot or parcel recorded prior to November 18, 2003. The proposed construction encroaches into the seaward 50 feet of the RPA buffer.
	118-6-8(a)	**Accessory structure** within the RPA, where the principal structure was established (i.e. RUP issued) as of July 1, 1993 and the proposed construction encroaches into the 1993 RPA.
	118-6-8(b)	**Accessory structure** in the RPA, where the principal structure on the lot or parcel was established (i.e. RUP issued) between July 1, 1993 and November 18, 2003 and the construction encroaches into the 2003 RPA.
	118-6-9	**General RPA Encroachment** request for encroachments into either the 1993 or 2003 RPA that do not qualify for waivers under CBPO Article 5 and do not qualify under any of the above Sections.

Part 3 –General Description of Exception Request

Acres or Square Feet	Description of Exception Request
Property Area (acres or square feet)	
Disturbed Area in RPA (acres or square feet)	
Impervious Area within RPA (acres or square feet)	
Brief Description of Project and RPA Encroachment	

☐ Check here if a Special Exception (SE) and/or Rezoning (RZ) application has been/will be submitted. The public hearing will be conducted by the Board of Supervisors in conjunction with the SE or RZ hearing.

RPA Exception for Public Hearing Page 1 of 3 SDID 11/20/13

Review & Approval (ERC)

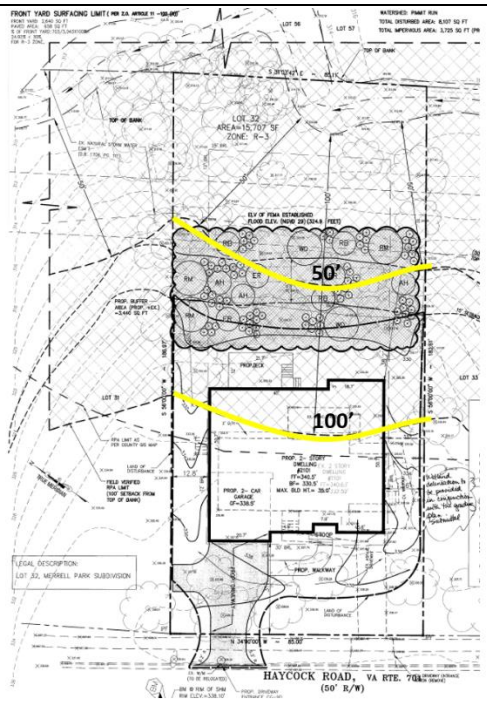
Part 2 -Exception Type

Check One	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
	118-6-7	**Loss of buildable area** within an RPA on a lot or parcel recorded prior to November 18, 2003. The proposed construction encroaches into the seaward 50 feet of the RPA buffer.
	118-6-8(a)	**Accessory structure** within the RPA, where the principal structure was established (i.e. RUP issued) as of July 1, 1993 and the proposed construction encroaches into the 1993 RPA.
	118-6-8(b)	**Accessory structure** in the RPA, where the principal structure on the lot or parcel was established (i.e. RUP issued) between July 1, 1993 and November 18, 2003 and the construction encroaches into the 2003 RPA.
	118-6-9	**General RPA Encroachment** request for encroachments into either the 1993 or 2003 RPA that do not qualify for waivers under CBPO Article 5 and do not qualify under any of the above Sections.

https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/forms/rpa-exceptions-public-hearing-required.pdf

Questions

Examples for Loss of Buildable Area



Example: 5770-WRPA-006-2

- ✓ The limits of clearing and grading were outside the 50 ft. seaward RPA
- ✓ A vegetated buffer area in the lower portion of the site was provided
- ✓ A portion of the RPA was re-established

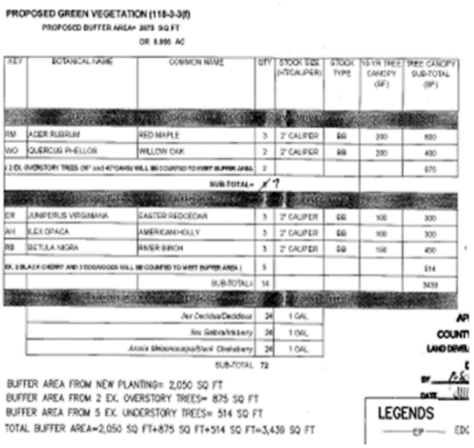
IMPERVIOUS AREA CALCULATION:

DESCRIPTION	PRE-DEV. REMOVAL	PROPOSED	POST-DEV TOTAL
BLD FOOTPRINT	1266	-1,266	2,893
WALK	64	-64	117
FRONT PORCH	41	-41	57
DRIVEWAY	413	-413	677
CONC. PATIO	211	-211	0
TOTAL	1,995	-1,995	3,744

TOTAL IMPERVIOUS AREA=3,725 / 15,707=23.71%

1 of 2

Example: 5770-WRPA-006-2
Addition Approval conditions



PROPOSED GREEN VEGETATION (118-3-3(f))
PROPOSED BUFFER AREA= 2875 SQ FT
OR 0.066 AC

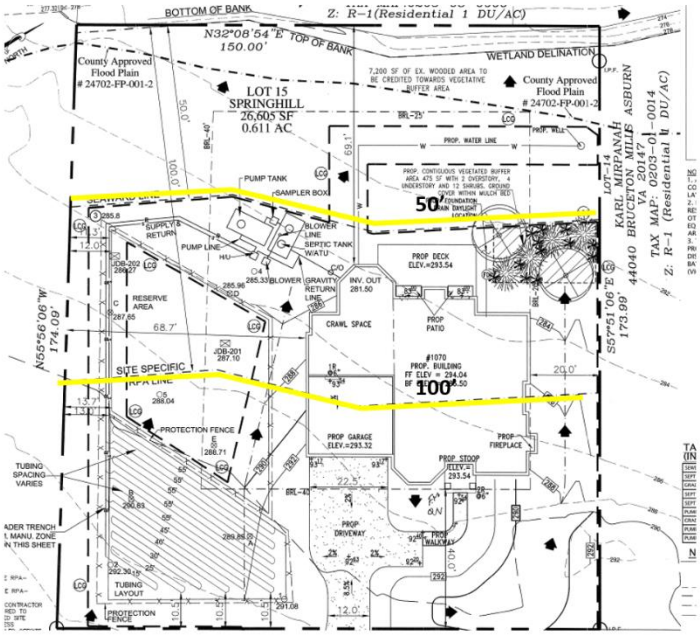
KEY	BOTANICAL NAME	COMMON NAME	QTY	STOCK SIZE (HT/CALIPER)	STOCK TYPE	NEW TREE CANOPY (SF)	TREE CANOPY SUB-TOTAL (SF)
RM	ACER RUBRUM	RED MAPLE	3	2" CALIPER	BB	200	600
WO	QUERCUS PHELLOS	WILLOW OAK	2	2" CALIPER	BB	200	400
2 EX. OVERSTORY TREES (36" and 40" DBH) WILL BE COUNTED TO MEET BUFFER AREA			2				875
		SUB-TOTAL=	7				
ER	JUNIPERUS VIRGINIANA	EASTER REDCEDAR	5	2" CALIPER	BB	100	300
AH	ILEX OPACA	AMERICAN HOLLY	3	2" CALIPER	BB	100	300
RB	BETULA NIGRA	RIVER BIRCH	3	2" CALIPER	BB	150	450
5 EX. 3 BLACK CHERRY AND 3 DOGWOOD WILL BE COUNTED TO MEET BUFFER AREA			5				514
		SUB-TOTAL=	14				3439
	Ilex Decidua/Deciduous		24	1 GAL			
	Ilex Glabra/Inkberry		24	1 GAL			
	Aronia Melanocarpa/Black Chokeberry		24	1 GAL			
		SUB-TOTAL	72				

BUFFER AREA FROM NEW PLANTING= 2,050 SQ FT
BUFFER AREA FROM 2 EX. OVERSTORY TREES= 875 SQ FT
BUFFER AREA FROM 5 EX. UNDERSTORY TREES= 514 SQ FT
TOTAL BUFFER AREA=2,050 SQ FT+875 SQ FT+514 SQ FT=3,439 SQ FT

LEGENDS

- ✓A wetland delineation shall be submitted with the grading plan
- ✓Vegetated buffer of 2,875 sq. ft.

2 of 2



Example:
24702-WRPA-001-1

- ✓ The limits of clearing and grading were outside the 50 ft. seaward RPA
- ✓ A vegetated buffer area in the lower portion of the site was provided
- ✓ A portion of the RPA was re-established

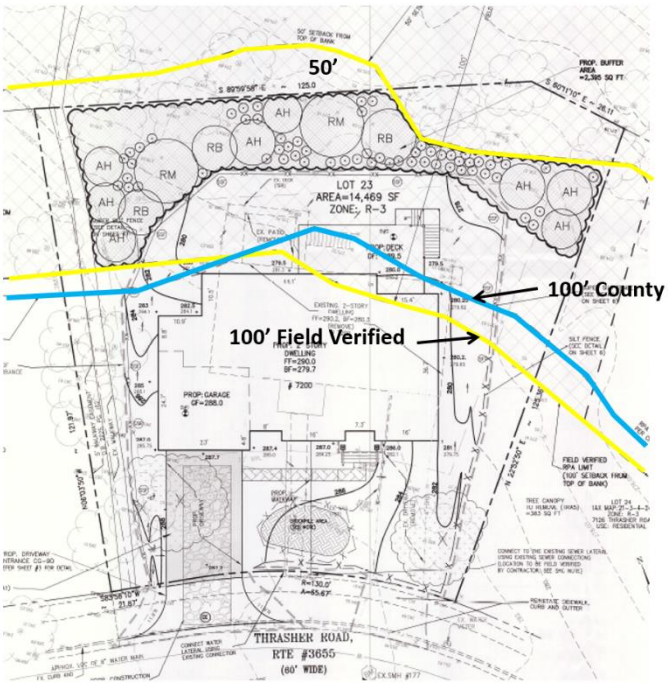
Vegetative Buffer Area Planting Schedule

VEGETATIVE BUFFER AREA PLANTING SCHEDULE
(PER BMP WAIVER APPROVAL)

	KEY	COMMON NAME	QTY.
OVER STOREY		ACER RUBRUM	1
		RED MAPLE	1
		TOTAL	2
UNDER STOREY		AMELANCHIER CANADENSIS	2
		SERVICEBERRY	2
		TOTAL	4
SHRUBS	*	ALNUS SERRULATA	4
		ARONIA	4
		ASIMINA TRILABA	4
		TOTAL	12
		GRAND TOTAL	18
GROUND COVER		CHRYSOGONUM VIRGINIANUM — GREEN & GOLD 475 SF OF GROUND COVER	

SPECIES OF TREES LISTED ABOVE MAY ONLY BE SUBSTITUTED WITH TREES AS APPROVED BY UFMD.

- ✓A wetland delineation shall be submitted with the grading plan
- ✓Vegetated buffer of 7,675 sq. ft. (7,200 sq. ft. was credited from existing vegetation inside RPA)



- ✓ The limits of clearing and grading were outside the 50 ft. seaward RPA
- ✓ A vegetated buffer area in the lower portion of the site was provided
- ✓ A portion of the RPA was re-established

Details of the RPA buffer re-establishment

PROPOSED GREEN VEGETATION (118-3-3(f)

PROPOSED BUFFER AREA= 2368 SQ FT

OR 0.054 AC

KEY	BOTANICAL NAME	COMMON NAME	QTY	STOCK SIZE (HT/CALIPER)	STOCK TYPE	10-YR TREE CANOPY (SF)	TREE CANOPY SUB-TOTAL (SF)
OVERSTORY TREE @ 100 COUNTS PER ACRE 118-3-3(f)= 6				**(MINIMUM REQUIRED)**			
RM	ACER RUBRUM	RED MAPLE	2	2" CALIPER	BB	200	400
(4 EX. OVERSTORY TREES (MAPLES, OAKS) WILL BE COUNTED TO MEET BUFFER			4				945
		SUB-TOTAL=	**6**				
UNDERSTORY TREE @ 200 COUNTS PER ACRE 118-3-3(f)= 11				**(MINIMUM REQUIRED)**			
AH	ILEX OPACA	AMERICAN HOLLY	8	6' HEIGHT	CONT.	75	600
RB	BETULA NIGRA	RIVER BIRCH	3	2" CALIPER	BB	150	450
		SUB-TOTAL=	11				2395
SHRUBS @ 1089 COUNTS PER ACRE 118-3-3(f)= 60				**(MINIMUM REQUIRED)**			
		Ilex Decidua/Decidious	20	1 GAL			
		Ilex Galbra/Inkberry	20	1 GAL			
		Aronia Melannocarpa/Black Chokeberry	20	1 GAL			
		SUB-TOTAL	**60**				

Waiver / Exception / Exemption

- Waiver – relinquishment/relaxation; 118-5-4 Staff approval for loss of buildable area
- Exception – does not conform to the general rule; 118-5-5 Staff approval of minor additions
- Exemption – immunity/not required to meet certain requirements; 118-5-2 Public Utilities, Railroads, Public Roads, and Facilities

118-6-6 Required Findings – applicant statements

Exception # _____

Part 5 Statement of Justification checklist

Check	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
	118-6-6(a)	The requested exception to the criteria is the minimum necessary to afford relief.
	118-6-6(b)	Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to it provisions and who are similarly situated.
	118-6-6(c)	The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality.
	118-6-6(d)	The exception request is not based upon conditions or circumstances that are self-created or self-imposed.
	118-6-6(e)	Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.
	118-6-6(f)	Other findings, as appropriate and required for the specific exception being applied for, are met. The additional criteria are listed in CBPO Sections 118-6-7(a) through (f), CBPO Section 118-6-8(a)(l) and (2), CBPO Section 118-6-8(b)(l) and (2), or CBPO Section 118-6-9.

DCR Guidance on the Required Findings

DCR
Virginia Department of Conservation & Recreation
State Parks • Soil & Water Conservation • Natural Heritage
Chesapeake Bay Local Assistance • Land Conservation
Outdoor Recreation Planning • Dam Safety & Floodplains

Exceptions

Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations

September 16, 2002, Revised June 15, 2009

Purpose:

This document provides local planners and officials with guidance when considering exceptions to requirements of the Chesapeake Bay Preservation Area Designation and Management Regulations as implemented at the local level.

The Regulations provide authority for local relief mechanisms in cases where a development proposal cannot meet the regulatory requirements due to a unique set of circumstances and conditions. The Regulations also outline a process by which adjacent property owners and other concerned citizens are to be included in the exception review and decision-making process.

Attachment 2 – DCR Guidance Document (see below)

Exceptions

Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations

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Regulations:

- Section 9 VAC 10-20-130 1 a requires a Water Quality Impact Assessment (WQIA) for any proposed land disturbance in a Resource Protection Area.

- Section 9 VAC 10-20-150 C 1 permits exceptions to the General Performance Criteria (9 VAC 10-20-120) and the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) and sets forth the findings that must be made in granting the exception request.

- Section 9 VAC 10-20-150 C 2 requires that local governments design and implement a process for considering exception requests and sets forth the public notice and public hearing requirements for considering certain exception requests.

- Section 9 VAC 10-20-150 C 3 permits exceptions to the other provisions of the Regulations and sets forth the requirements for granting such exception requests.

- Section 9 VAC 10-20-150 C 4 addresses the alteration or expansion of nonconforming principal structures. Such activity does not require a formal exception; however, it does require that the findings set forth in 9 VAC 10-20-150 C 1 are made through a local administrative review process.

Discussion:

Webster's Ninth New Collegiate Dictionary defines the term "exception" to mean "a case to which a rule does not apply," and it is in this manner that the term is used for purposes of this guidance. An analogous term familiar to many in the planning and land use profession is "variance." The Department recognizes that there are instances where the full measure of the Regulations can not be imposed, and where exceptions to the Regulations could be made.

The Regulations distinguish between exceptions for proposed development activities within Resource Protection Areas, those relating to the general performance criteria, and other requests

for exceptions not included in the first two situations. The Regulations differentiated between these types of exception requests in order to ensure that each was reviewed in the most appropriate forum. For instance, the requirement that any exception request relating to RPA issues be considered in a public forum was included because of complaints by citizens that they were afforded no notice or input on such requests. Other exception requests may be considered in a more administrative manner, in part because such requests do not have the same potential impact on adjacent properties.

Exceptions Generally

The exception process is intended to identify the minimum relief necessary to permit the proposed use. To assist in this determination, a Water Quality Impact Assessment (WQIA) is to be used in evaluating the site of the proposed exception, the potential effects of the exception, and for identifying mitigation measures that are appropriate to counteract those effects. The WQIA is to be reviewed **prior** to action on the exception request. Also, all land disturbances or development in the RPA require the preparation and consideration of a WQIA.

The approval of any exception must be based upon the making of certain findings. For exceptions dealing with the General Performance Criteria or for activity in the RPA, findings outlined in Section 9 VAC 10-20-150 C 1 must be addressed. For all other exception requests the findings must determine that it is the minimum necessary to afford relief and that reasonable and appropriate conditions are imposed, as necessary, so that the purpose and intent of the Act are preserved. These requirements are intended to relate not only to the potential water quality impact of the exception request, but are also intended to evaluate the request from an equity perspective and to ensure that exceptions are not arbitrary and capricious, but are decided on the specific facts related to the application. The following is a brief description and discussion of each of the required findings.

The requested exception to the criteria is the minimum necessary to afford relief.

Localities should use the requested exception as a starting point and work with the applicant to refine their proposal to meet the review standards. The terms "minimum necessary to afford relief" is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. When considering the minimum necessary to afford relief, things such as the size of the structure, the types of proposed structures, and the placement of the structures in relation to the size, layout and location of the lot or parcel are important considerations. Some examples of requests that would not be the minimum necessary to afford relief could include an application for an extremely large structure on a given lot or parcel, especially when compared to the size of the structures in the adjacent lots. Another example would be a request for a house that would be located outside of the RPA, but with a large attached deck with a pool that would be located within the RPA. In this instance, the sole reason for the exception request relates, not to a use of the property, but to the extent that the applicant wishes to use the property. In this example, consideration of relocation of the house on the lot or resizing the deck and pool are all potential solutions that may result in the property owner achieving their desired use without the need for an exception. Should alternative location, sizing, or orientation options to avoid the need for an exception be available, and the applicant chooses to continue with the exception request, then the finding of "minimum necessary to afford relief" would not be present.

Granting the exception will not confer upon the applicant any special privileges that are denied by this Part IV to other property owners who are subject to its provisions and who are similarly situated.

This finding is intended to make sure that an exception request would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. For instance, a property owner requests an exception to build a pool in the RPA and neighbors have applied for and been denied a similar request. In this instance, if the exception is approved, a special privilege has been permitted for one neighbor but not the others.

The exception request is in harmony with the purpose and intent of this Part IV and is not of substantial detriment to water quality.

As the purpose of the Regulations is to protect water quality, this is the finding that should focus on the protection of water quality. The appropriate vehicle for determining whether water quality will be adequately protected should a given request be approved, is the Water Quality Impact Assessment (WQIA).

The exception request is not based upon conditions or circumstances that are self-created or self-imposed.

This finding is somewhat related to the first finding, that the request is the minimum to afford relief, however it is different in that this finding focuses more on the actions of the property owner. For instance, if a lot area is 10,000 square feet, and encumbered by the RPA, then a property owner's desire to place a 7,000 square foot house on the lot would essentially be a self-imposed condition, in that a smaller house would be more suitable for the lot size. In general this finding relates, in most cases, to a property owner's failure to realize that their property is not suited for their intended use. When the circumstance for the request is "self-created", the request should be denied by the local body, board or commission.

Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

Conditions should be imposed to ensure, among other things, that water quality is protected, and that the function of the undisturbed RPA remains. Conditions should be based, in part, upon the findings of the WQIA, as well as the specific situation of the lot or parcel on which the exception request was permitted. In addition to possible stormwater management BMP requirements to help compensate for the loss of the pollutant removal aspect of the RPA, a locality should investigate opportunities to require additional vegetative plantings elsewhere on the lot or parcel, to boost the functions of the undisturbed RPA. Also, a locality could require additional vegetation to be installed in the remaining portion of the RPA (including the buffer component).

Process for Reviewing Exceptions

Exceptions to the Regulations, particularly those related to requests for uses and development within RPAs, should be considered in those situations where the property owner can show that the property was acquired in good faith and where, by reasons of the exceptional narrowness, shallowness, size or shape of the property, or where by reasons of exceptional topographic conditions or other extraordinary conditions associated with the owner's property or of immediately adjacent properties, the strict application of the requirements would prohibit or unreasonably restrict the use of the property.

The need for exceptions should be identified as early in the development review process as is possible. This will allow a project to proceed through the review, approval, and construction phases with a minimum of delays, saving both the locality and the applicant time and money. For example, while seeking a building permit to construct a home with a deck that encroaches into the RPA, the applicant states that he intends, in the future, to add a detached garage. Even though the building permit submission only addresses the construction of the primary structure and its deck, the applicant should be encouraged to incorporate the detached garage into the exception request in order to save the time, money, and debate associated with filing a separate exception request when the garage is desired. In this case, the discussion and analysis used in considering the exception for the potential garage may have a direct bearing on the location of the proposed deck, especially if the garage would not be accommodated as an accessory structure, but would be allowed if it were attached to the principal structure.

The exception-granting body is permitted to require reasonable and appropriate conditions in granting the exception request. Examples of reasonable and appropriate conditions that could be considered include re-vegetation to compensate for buffer encroachment or establishment of a buffer where one did not previously exist, requiring the use of porous pavement or other water permeable materials, and requiring the use of level spreaders and dry wells to increase stormwater infiltration. Other measures should also be considered, depending upon the circumstances of each case.

Other forms of regulatory relief should be considered before an exception is pursued. Variances from the side and/or front yard setbacks may be able to accommodate the proposed development and negate the need for the exception. For example, a front yard setback variance may be more appropriate than granting an encroachment into an RPA, depending upon the individual circumstances of the case.

Local Exception Review Body Options

The are several options for fulfilling the requirement of 9 VAC 10-20-150 C 2 a, which states that 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. For those localities that incorporate the Regulations into their local Zoning Ordinances, Chesapeake Bay Preservation Act program exceptions may be considered by the Board of Zoning Appeals in the same manner as a variance request; or, as allowed for under 9 VAC 10-20-150 C 2 b, they may be referred to a special board or commission which has been delegated the authority to act on exceptions. For those localities that enact their local Bay Program provisions through a separate, stand-alone ordinance or through multiple provisions throughout their code, exceptions may be acted upon by the governing body, the planning commission, or a special committee, board, or commission that is given that specific authority. A few localities use a special board. Localities may also use a special board or planning commission to consider the exception request as part of the plan of development review process.

Appeals of decisions related to exceptions granted by the Board of Zoning Appeals should be administered similarly to other appeals related to variance decisions. Where the exception authority is delegated to some other body (i.e., a special Chesapeake Bay Board or the local Planning Commission, for example), the appeal process may involve the local governing body, the Board of Zoning Appeals (if the local Chesapeake Bay Preservation Ordinance is contained within the Zoning Ordinance), or some other body appointed by the Board of Supervisors or Council. The decision as to how to best accommodate the review, action, and appeal of exceptions is truly dependent upon the unique circumstances of each locality, however, a 2008 revision to the Act requires a minimum 30 day period for an appeal when the appeal process is codified in a local ordinance.

Local governments should recognize that the body designated to consider exception requests might need to be trained in the particular requirements of the local Chesapeake Bay preservation ordinance. The DCBLA staff is available to assist in this effort. Additionally, careful consideration should be given to the makeup of any special board or commission created to consider exception requests. A balanced membership could include individuals with land use planning experience, engineers, real estate professionals, attorneys, and related professions along with citizen representation.

Exception Tracking

Localities should design and implement a tracking system for exceptions. The applicant's name, the property address, the tax parcel number, the case number, and a general statement of the type of request should be catalogued so that the locality and the Department can quickly analyze the location of requested encroachments, their disposition, and the types of development activities that are being reviewed. This tracking system can also be used to monitor "serial exceptions." These are properties that have a series of exception requests (i.e., a request for an encroachment for a deck or patio, then a separate request for an accessory building, etc.). The Department discourages "serial exceptions" because the criteria for granting an exception are based on the minimum necessary to provide for use of the property, not convenience or desire for a particular level of development.

Resource Protection Area (RPA) Exception Requests

The requirements for consideration of an exception to the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) require public notice, public hearing by a committee, board, commission or special body, and the review of the request according to very specific criteria resulting in findings.

The public must be notified of the hearing at which the exception will be considered as required by §15.2-2204 of the Code of Virginia, except that only one hearing is required and first-class mail may be used in notifying qualifying adjacent property owners. The exception may only be granted by the local legislative body, the local Planning Commission or such other board or commission established specifically for the purpose of reviewing and approving exceptions to the locally-adopted Chesapeake Bay Preservation Ordinance. For example, an exception application requesting permission to construct a detached garage within the landward 50' of the RPA buffer on a lot recorded after the date of the local program adoption could not be handled administratively, but rather must be heard by the body charged with granting exceptions. The case could only be heard after the required public notice and during the required public hearing.
Granting the exception must be based on the findings outlined in subdivision a-f of 9 VAC 10-20-150 C (these are listed previously). The findings must be made in writing and a record of

the hearing maintained. In deciding the matter, the board must consider a Water Quality Impact Assessment and may impose reasonable conditions upon the applicant. These conditions could include buffer restoration requirements, types of materials that may be used in the construction, maximum size of the structure, and the exact location of the structure. Other conditions may be warranted and will vary from case to case.

Exceptions for General Performance Criteria

Exceptions to the General Performance Criteria (9 VAC 10-20-120) may be granted through an administrative review process provided that the same findings required for use or development exceptions in RPAs are made in writing. As these exception requests are not likely to have the same potential impact on similarly situated or adjacent property owners, the Regulations do not require that such requests be considered through the public notice and special body hearing process as those requests relating to RPA issues. Exception requests from the full application of the general performance criteria can be diverse in nature. For example, the 100% reserve drainfield requirement may be set aside through an administrative exception process provided that the request is related to the unusual size, shape, or topography of the parcel and the locality requires conditions such as monitoring of the primary septic system to ensure function, or for a pressurized septic system to ensure more efficient use of the drainfield.

Other Exceptions

All other exception requests may be processed administratively but still require the minimal findings that it is the minimum necessary to afford relief and that reasonable and appropriate conditions are imposed, as necessary, so that the purpose and intent of the Act is preserved.

Conclusions:

Based on these factors, the Department provides the following guidance:

- The requirements for consideration of an exception to the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) require public notice, public hearing by a committee, board, commission or special body, and the review of the request according to very specific criteria resulting in findings.

- Exceptions to the General Performance Criteria (9 VAC 10-20-120) may be granted through an administrative review process provided that the same findings required for use or development exceptions in the Resource Protection Area are made in writing.

- Exceptions to the Regulations should be granted in those situations only where the property owner can show that the property was acquired in good faith and where, by reasons of the exceptional narrowness, shallowness, size or shape of the property, or where by reasons of exceptional topographic conditions or other extraordinary conditions associated with the owner's property or of immediately adjacent properties, the strict application of the

  requirements would prohibit or unreasonably restrict the use of the property in question.

- The Department recognizes that localities may have incorporated the Regulations into their local Zoning Ordinances. In those instances, Chesapeake Bay preservation provision exceptions may be considered by the Board of Zoning Appeals in the same manner as a variance request or they may be referred to a special board or commission to which the authority to review such requests has been delegated.

- Localities must review a Water Quality Impact Assessment (WQIA) prior to acting on an exception involving modification of or encroachment into an RPA.

- The need for exceptions should be identified as early in the development review process as is possible.

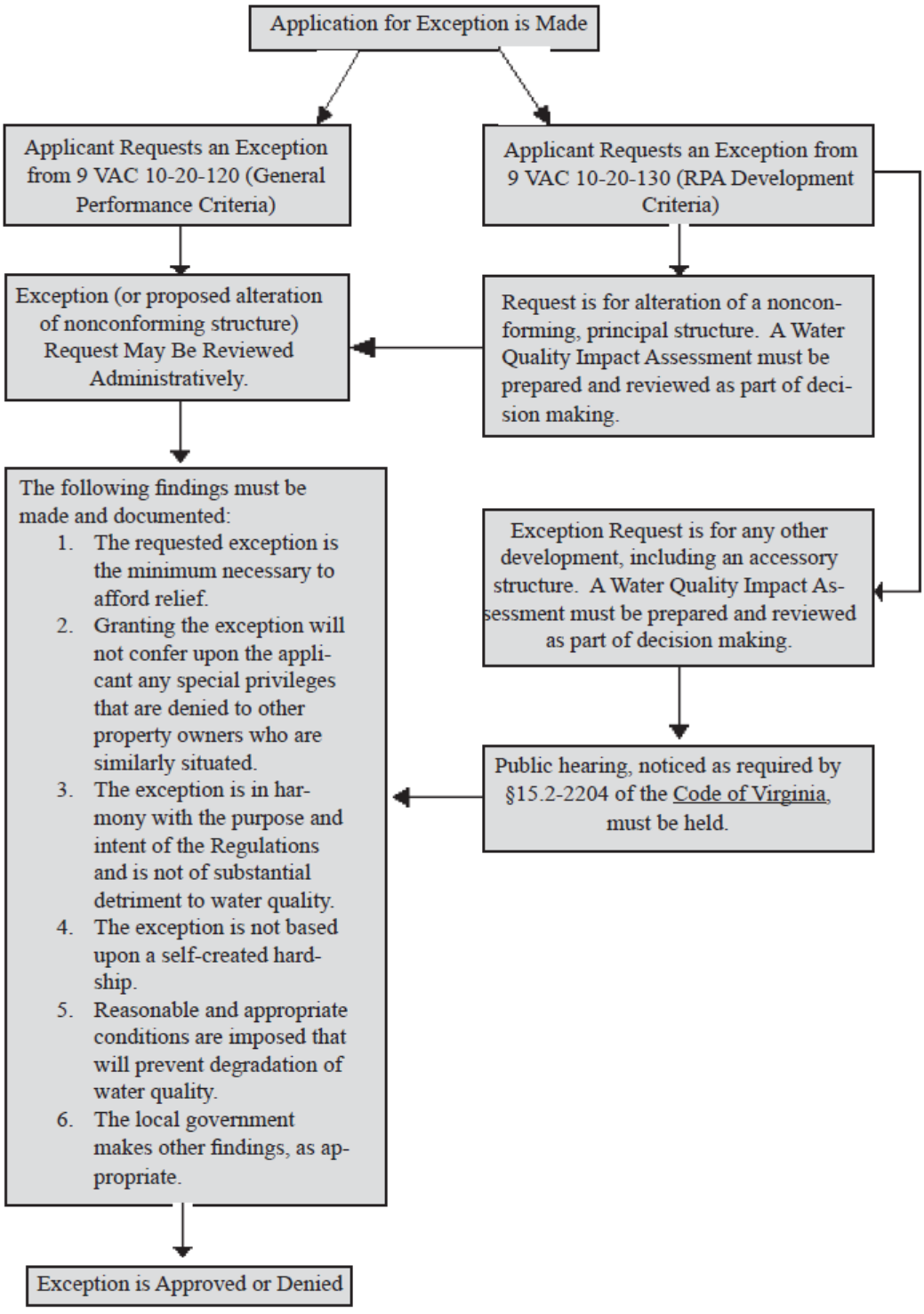
- Exceptions are to be the minimum necessary to afford relief.

- Other forms of regulatory relief should be considered before an exception is pursued.

- The exception-granting body is permitted to require reasonable and appropriate conditions in granting the exception request.

- Localities should design and implement a tracking system for exceptions.

Exception Review Process



Attachment 3 – Presentation on Water Quality Impact Assessment Applications (WQIA)

Water Quality Impact Assessment (WQIA) Applications

Process Update

Matthew Hansen, PE, CFM
Department of Land Development Services (LDS)

December 2, 2020

Process Summary

- Exception Review Committee (ERC) hears exceptions under Ch. 118-6
- Staff processes applications:

  "the Director shall, within 90 days of receipt of a complete application for an exception pursuant to this Article, unless an extended period is mutually agreed to by the applicant and the Director, forward such exception request to the Exception Review Committee for a public hearing."
- "Complete" Exception Applications include:
  - Application form
  - WQIA – Responsive to all requirements and reviewed by LDS-Site Development and Inspections Division (SDID)

WQIA Update

- Ch. 118-4 defines the WQIA
- Major and Minor WQIA categories established by Technical Bulletin 20-02
- Intent:
  - Clarify expectations for all WQIA
  - Simplify the easiest "minor" WQIA applications
- Does not apply to minor additions (118-5-5) or removal of invasive vegetation
- WQIA Application form is required for all applications

WQIA Criteria – Eligibility

- Minor WQIA – must meet all 3 criteria:
  - Less than 2,500 square feet of disturbance in Resource Protection Area (RPA)
  - Less than 256 square feet of impervious area proposed
  - No land disturbance in the 50 seaward feet of RPA buffer
- Major WQIA – All other WQIAs

WQIA Content

- Technical Bulletin 20-02 clarifies WQIA content requirements
- Minor WQIA
  - Requires only the application form and a site drawing
  - All required narrative is within the application form itself
  - Drawing may be a plat or survey – this is meant to simplify the preparation requirement for owners
- Major WQIA
  - Submit application and site drawing with required topographic survey
  - Separate narrative required to respond to all required information