understanding the Chesapeake Bay Preservation Ordinance Amendments

important information for Fairfax County Homeowners

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In 1988, the commonwealth of Virginia enacted the Chesapeake Bay Preservation Act (Bay Act). The Bay Act required the 84 Virginia communities, including Fairfax County, which border on the tidal portions of rivers that drain into the Chesapeake Bay (Tidewater jurisdictions) to institute water quality protection measures to improve the declining health of this unique national resource and its tributaries. The goal was to plan for and manage the adverse environmental impacts of growth and development in a manner that balances the objectives of improved water quality and continued growth. The criteria for implementation of the Bay Act are contained in the state’s Chesapeake Bay Preservation Area Designation and Management Regulations originally adopted in 1989.

Here in Fairfax County, we have tried to do our fair share in combating the problem of pollution in the bay. Ten years ago, the Board of Supervisors enacted a Chesapeake Bay Preservation Ordinance which regulates the kinds of development that can occur in sensitive areas along streams that drain into the Potomac River and eventually the bay. These are known as Resource Protection Areas or RPA’s. The remainder of the land in Fairfax County has been designated as a Resource Management Area or RMA. RMAs are comprised of lands that, if improperly used or developed, have the potential for causing significant harm to the water quality or for diminishing the functional value of the RPA. Collectively, Rpas and RMAs are known as Chesapeake Bay Preservation Areas.

In December 2001, the Chesapeake Bay Local Assistance Board, a state entity, mandated additional measures that must be enacted by all Tidewater jurisdictions. In order to comply with the state’s new directives, the Fairfax County Board of Supervisors approved amendments to its Chesapeake Bay Preservation Ordinance that became effective on Nov. 18, 2003. The following information is provided to help Fairfax County property owners understand the amendments adopted by the Board of Supervisors. The amendments will not only help the health of the Chesapeake Bay, but will also safeguard the quality of our own rivers and streams.

“We do not inherit the earth from our ancestors; we borrow it from our children.”

— Ancient Indian Proverb

Why were the amendments adopted?
The Chesapeake Bay Local Assistance Board, a state entity, adopted amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations on Dec. 10, 2001, with an effective date of March 1, 2002. The state mandated that Fairfax County and other Tidewater jurisdictions implement these changes to the regulations by Dec. 31, 2003. Fairfax County began considering the amendments in January 2003, when the Planning Commission held a public hearing. Since that time, meetings were held with the Planning Commission Environmental Committee and the Environmental Quality Advisory Council and a second public hearing was held in April 2003. On May 7, 2003, the Planning Commission recommended that the Board of Supervisors adopt the proposed amendments to the Chesapeake Bay Preservation Ordinance. The Board of Supervisors held a public hearing on May 19, 2003, and adopted the amendments during their regularly scheduled Board meeting on July 7, 2003.

What amendments were adopted?
The Board of Supervisors adopted amendments to Chapter 101 (Subdivision Ordinance), Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance) and Chapter 118 (Chesapeake Bay Preservation Ordinance) in accordance with county guidelines. The amendments were designed to expand the types of activities that can occur in sensitive areas along streams that drain into the Potomac River and eventually the bay. These are known as Resource Protection Areas or RPA’s. The remainder of the land in Fairfax County has been designated as a Resource Management Area or RMA. RMAs are comprised of lands that, if improperly used or developed, have the potential for causing significant harm to the water quality or for diminishing the functional value of the RPA. Collectively, Rpas and RMAs are known as Chesapeake Bay Preservation Areas.

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Are there penalties for violating the RPA restrictions?
Non-compliance with the RPA restrictions is a violation of the county’s Chesapeake Bay Preservation Ordinance and can result in penalties. Violators will be required to restore the RPA in accordance with county guidelines. An RPA Restoration Plan must be developed and submitted to the Department of Public Works and Environmental Services for review and approval. The objective of the plan is to restore the RPAs primary functions so it can again remove pollutants from stormwater runoff.

How can I get more information?
A video program about the amendments is available for loan at all Fairfax County public libraries. In addition, programming schedules for dates and times or visit www.fairfaxcounty.gov/living/cable for a program listing. A video program about the amendments is available for loan at all Fairfax County public libraries. In addition, programming schedules for dates and times or visit www.fairfaxcounty.gov/living/cable for a program listing.

Additional background information on the state’s laws and regulations is available from the Chesapeake Bay Preservation Ordinance. Please call the Office of Public Affairs at 703-324-3187, TTY 703-324-2935. If you have questions about the Chesapeake Bay Preservation Ordinance, please call the Environmental and Site Review Division, a division of the Department of Public Works and Environmental Services at 703-324-1720, TTY 711. If you have questions about the mapping of perennial streams, please contact the Stormwater Planning Division, a division of the Department of Public Works and Environmental Services, at 703-324-5500, TTY 711.

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What are the provisions for construction of minor additions?

For those lots that have areas of RPA on them, the ordinance provides relief from the full effects of the RPA restrictions through the administrative waiver provisions. The provisions allow minor additions of up to 1,000 sq. ft. or 2 percent of the lot area up to a maximum of 2,500 sq. ft. of new impervious area in the RPA for homes constructed prior to the original effective date of the ordinance, July 1, 1993, with respect to both the old and new RPA areas. For homes that were constructed between July 1, 1993, and the effective date of the 2003 amendments, Nov. 18, 2003, minor additions are only allowed to encroach into the new RPA areas created by the amendments. This relief is provided to the current owners of these homes because the regulations were not in effect at the time the homes were built and the original builders did not have the opportunity to plan the location of these homes to avoid future conflicts with the RPA.

The state regulations on which the county’s ordinance is based do not permit detached structures to be treated as minor additions. The construction of detached structures and larger additions in the RPA are still possible, but would be subject to an exception process requiring a public hearing.

Are fences allowed within an RPA?

Fences are permitted in the RPA without an exception or waiver subject to compliance with certain design requirements that collectively maintain the functional value of the RPA buffer. Fences such as those that do not inhibit or alter surface flow (i.e., water must be able to flow under and through the fence unimpeded so that sheet flow conditions are maintained) and vegetation may only be removed to provide for the actual placement of the fence. Where vegetation is removed it must be replaced with other native vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollutants from runoff. The removal of indigenous vegetation to create lawns is not allowed.

The county’s ordinance includes some additional protections both for existing lots that were created prior to the effective date of the amendment and for lots that are developed with existing homes. These protections allow a new home or an addition to be constructed on such lots through an administrative waiver or an exception.

What are the provisions for construction of minor additions?

In order to maintain the functional value of the RPA buffer, indigenous vegetation may be removed, subject to approval by the county, from a buffer area only to provide for reasonable sight lines, access paths, general woodland management and habitat management. Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed, subject to approval by the county, from a buffer area only to provide for reasonable sight lines, access paths, general woodland management and habitat management. Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed, subject to approval by the county, from a buffer area only to provide for reasonable sight lines, access paths, general woodland management and habitat management.