



City of Hampton, Virginia

Ordinance - Zoning Text

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 13-0209

Enactment Number: Z13-21

Ordinance to Amend and Re-enact Chapter 17.3 Special Public Interest, Article X of the Zoning Ordinance of the City of Hampton, Virginia, Entitled “SPI-CBPD-Chesapeake Bay Preservation District” by Amending Section 17.3-64 Pertaining to Regulations for Development and Redevelopment and Section 17.3-65 Pertaining to Plan of Development.

Whereas, the public necessity, convenience, general welfare and good zoning practice so require;

BE IT ORDAINED by the Council of the City of Hampton, Virginia, that chapter 17.3, article X of the Zoning Ordinance of the City of Hampton, Virginia, be amended and re-enacted as follows:

Sec. 17.3-64. - Regulations for development and redevelopment.

1.

Permitted uses include all uses permitted in the underlying zone.

2.

Restrictions on permitted uses:

a.

General performance criteria for development and redevelopment within resource management areas, resource protection areas and intensely developed areas:

(i)

Land disturbance shall be limited to the area necessary to provide for the proposed use or development. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be clearly shown on submitted plans and physically marked on the development site.

(ii)

Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the proposed use or

development, and in accordance with the Virginia Erosion and Sediment Control Handbook.

(1)

Existing healthy trees exhibiting a minimum trunk diameter of six (6) inches, measured four and one-half (4½) feet from the ground, shall be preserved outside the limits of clearing.

(2)

Clearing shall be allowed only to provide a building site, necessary parking, necessary access, positive site drainage, stormwater BMPs, and the installation of utilities, as approved by the zoning administrator or the director of public works, as appropriate.

(3)

Prior to clearing or grading, suitable protection measures for undisturbed areas, as outlined in chapters 13.1 and 33.1 of the city code and the "City of Hampton Landscape Guidelines" shall be followed.

(iii)

Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.

(1)

Grid and modular pavements which promote infiltration are encouraged for any required parking area, alley, or other low traffic driveway.

(2)

For nonresidential uses, the number of parking spaces shall not exceed 120 % of the minimum required by chapter 19 of the zoning ordinance, and their size shall not exceed the minimum required by chapter 19 of the zoning ordinance.

(3)

In the IDA, automobile parking lots shall be of pervious surfaces, where feasible, and be designed, constructed, and maintained consistent with the most current version of the Virginia Stormwater BMP Clearinghouse, Virginia DCR design specification no. 7, permeable pavement.

(iv)

Notwithstanding any other provisions of this article or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, or less than 2,500 square feet and part of a common plan of development, including construction of all single-family houses, septic tanks, drainfields, and accessory structures and improvements shall comply with the requirements of chapters 13.1 and 33.1 of the city code.

(v)

All on-site sewage disposal systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least every five (5) years, in accordance with section 30-69 of the city code.

(vi)

A reserve sewage disposal site with a capacity equal to or greater than that of the primary sewage disposal site shall be provided, in accordance with section 30-69 of the city code. Any lot or parcel recorded prior to October 1, 1989 shall not be required to provide such reserve disposal site if the size of such lot or parcel, as determined by the health department, is not sufficient in capacity to accommodate a reserve sewage disposal site. Construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or over an on-site sewage treatment system which operates under a permit issued by the state water control board, until the property is served by public sewer and the site is no longer needed for this purpose.

(vii)

Prior to the issuance of a zoning, building or land disturbing permit for any development or redevelopment located within SPI-CBPD where alteration or filling of wetlands is proposed, the developer shall provide copies of all wetlands permits that are required by local, state, and federal law. Issuance of a zoning, building or local VSMP permit shall not absolve the developer from obtaining all necessary federal, state and local permits.

(viii)

Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, dairy and feedlot operations, or lands otherwise

defined as agricultural land by the city assessor, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended and pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations 9 VAC 10-20-10 et seq.

(ix)

On parcels and lots designated as IDA, all proposed land uses, development, and redevelopment shall be sited outside of the IDA to the greatest extent possible. The following guidelines shall be used to review and permit land use, development, and redevelopment within the IDA:

(1)

Main buildings and required impervious pavement surface improvements may encroach into the IDA when a reasonable buildable area cannot be provided outside of the IDA and encroachment is the minimum relief necessary to enable a reasonable buildable area. Required green areas shall be located to maximize protection of the RPA and water quality.

(2)

Accessory structures, decks, and discretionary pavement surface improvements may encroach into the IDA provided that:

(a)

The encroachment is the minimum necessary to afford relief while adhering to required yard setbacks; and

(b)

Preference shall be given to previously disturbed areas, poor quality green areas, or existing impervious area; and

(c)

Applicant shall demonstrate there is no feasible location outside of the IDA while adhering to required yard setbacks.

(3)

No structure or impervious area, other than those exempt pursuant to subsections 17.3-67(2) and 17.3-67(3) shall be built within ten (10) feet of an RPA feature.

(x)

A structure encroachment permit as described in chapter 33.1 of the city code is required for any structure or impervious area in the IDA or RPA buffer area.

b.

Other restrictions applicable to the RPA (RPA Regulations):

(i)

In addition to satisfying the general performance criteria set forth in part (2)(a) of this section, development within resource protection areas may be allowed if it satisfies one (1) of the following:

(1)

Is a new or expanding water-dependent use that satisfies the following criteria:

(a)

It does not conflict with the comprehensive plan;

(b)

Any non-water dependent component is located outside of the RPA; and,

(c)

Access to the water dependent facility is provided with minimum disturbance to the site; and where practicable, a single point of access is provided.

(2)

Constitutes redevelopment;

(3)

Constitutes development or redevelopment within a designated intensely developed area;

(4)

Is a permitted development, activity or improvement established pursuant to section 17.3-67 or part (2)(b)(iv) of this section.

(ii)

Redevelopment within RPAs and outside of designated IDAs shall:

- (1) Not increase the amount of impervious cover on the site;
- (2) Not result in further encroachment within the RPA; and,
- (3) Comply with all provisions of chapters 13.1 and 33.1 of the city code.

(iii)

Buffer area requirements for RPAs:

- (1) A minimum of a one hundred-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff shall be retained if present and established where it does not exist in order to minimize the adverse effects of human activities on the other components of the RPAs, state waters, and aquatic life unless the site/parcel is a designated IDA.
- (2) Development and redevelopment within IDAs shall retain and establish vegetation in the buffer area to the maximum extent practicable.
- (3) The buffer shall be located adjacent to, landward of and along both sides of any tidal wetlands, any non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, any tidal shore, or any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA. Notwithstanding permitted uses, encroachments and vegetation clearing as set forth in this ordinance, the width of the buffer area remains a minimum of 100 feet.
- (4)

A 100 foot buffer shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

(5)

When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the entire buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

(6)

On agricultural lands the buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area.

(7)

In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(a)

Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that if removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff.

(b)

Any path shall be constructed and surfaced so as to effectively control erosion.

(c)

Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be

removed and thinning of trees allowed as permitted by the zoning administrator or his designee pursuant to sound horticultural practices.

(d)

For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

(8)

Establishing or re-establishing vegetation within the buffer area and/or within an IDA, when required, shall be in general accordance with the most recent version of the Riparian Buffers Modification and Mitigation Guidance Manual issued by the Virginia department of conservation and recreation.

(iv)

Permitted encroachments into the buffer.

(1)

Agricultural activities may encroach into the buffer area if one (1) of the two (2) following criteria is met:

(a)

Agricultural activities may encroach into the landward 50 feet of the 100 foot wide buffer area when at least one (1) agricultural best management practice, which, in the opinion of the Colonial Soil and Water Conservation District, addresses the more predominant water quality issue 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 best management practice achieves water quality protection, pollution 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 test, 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.

(b)

Agricultural activities may encroach within the landward 75 feet of the 100 foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must 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. A nutrient management plan, including soil test, 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. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100 foot wide buffer area.

(2)

Roads and driveways not exempt and which, therefore, must comply with the provisions of this

article, may be constructed in or across RPAs if each of the following criteria are met:

(a)

The review committee makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA; and,

(b)

The alignment and design of the road or driveway is optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality; and,

(c)

The design and construction of the road or driveway satisfy all applicable criteria of this article; and,

(d)

The review committee reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development pursuant to section 17.3-65.

(3)

Development on a lot or parcel recorded prior to October 1, 1989 when application of the buffer area results in the loss of a buildable area, the review committee may permit encroachments into the buffer area in accordance with section 17.3-65 of this article and the following criteria.

(a)

Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

(b)

Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and,

(c)

The encroachment may not extend into the waterward 50 feet of the buffer area.

(4)

Development on a lot or parcel recorded between October 1, 1989 and May 12, 2004 when application of the buffer area results in the loss of a buildable area, the review committee may permit encroachments into the buffer area in accordance with section 17.3-65 , the criteria in part (2)(b)(iv)(3) of this section, and the following criteria:

(a)

The lot or parcel was created as a result of a legal process conducted in conformity with chapter 35 of the city code;

(b)

Conditions or mitigation measures imposed through a previously authorized RPA encroachment shall be met; and,

(c)

If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required.

Sec. 17.3-65. - Plan of development

1.

All development, improvements and redevelopment in the RPA and any development, improvements and redevelopment exceeding 2,500 square feet of land disturbance in the RMA shall be subject to a plan of development process prior to any on-site development preparation activities or issuance of any zoning, building or land disturbing permit. This process shall consist of submission and review of the plans and studies identified herein. Such plans and studies may be coordinated or combined as deemed appropriate by the director of the department of community development and public works director, who may also reserve the right to determine that some of the information normally required is unnecessary due to the specific scope and nature of the proposed development.

2.

Unless deemed to be unnecessary by the director of the department of community development and the director of public works, except as may be otherwise regulated or

prohibited by any city zoning ordinance or city code provision, developments that are regulated by chapter 35.1 or chapter 35 of the Hampton city code shall submit an environmental site assessment and all plans and studies pursuant to all applicable provisions of the city code, including but not limited to a stormwater management plan as required by chapter 33.1 of the city code and the “City of Hampton Landscape Guidelines”.

3.

All proposed use, development or redevelopment projects that are within the RPA and not requiring site plan or subdivision review and any proposed use, development, or redevelopment within the RMA proposing more than 2,500 square feet of disturbance shall submit an environmental site assessment and other information as follows:

a.

A construction plan prepared and stamped by a certified land surveyor or professional engineer, drawn to scale, showing property lines and dimensions. Such plan shall also show in addition to information required pursuant section 25-2 of the zoning ordinance:

- (i) Boundaries of any RPA , RMA or IDA on or adjacent to the development site;
- (ii) Limits of proposed land disturbance;
- (iii) Existing and proposed impervious surface, such as buildings and driveways;
- (iv) Existing and proposed general drainage patterns on the site;
- (v) Delineation of buildable area on the lot based on all required setbacks and any other relevant easements or limitations regarding lot coverage and all other applicable city requirements to permit development of the site; and
- (vi) A method of sewage disposal.

b.

An erosion and sediment control plan which conforms to the provisions of the chapter 13.1 of the city code.

c.

A stormwater management plan as outlined in chapter 33.1 of the city code.

4.

The director of the department of community development shall review the environmental site assessment to ensure or confirm that a reliable, site specific evaluation is the basis for determining whether water bodies on or adjacent to the development site have perennial flow and that RPA,RMA and IDA boundaries are approved based on a site specific evaluation.

5.

The public works director and director of the department of community development shall review the construction plan and stormwater management plan to ensure that the impact of the proposed use and development is consistent with the intent of this section and adequately provides for water quality protection. Approval may be unconditional or with conditions, or the plans may be denied based on nonconformance with these regulations.

6.

Disturbances for home gardens or home landscaping outside the RPA shall not be required to meet the provisions of this section.

7.

Projects that are limited to removal of indigenous RPA buffer vegetation shall submit a copy of a plat or physical survey of the property showing the general location and brief description of the existing indigenous vegetation to be removed including but not limited to the type, size and quantity of plants to be removed. The zoning administrator shall review the information for compliance with the requirements of section 17.3-64, part (2)(b)(iii)(7) of this article and the most recent version of the Riparian Buffers Modification and Mitigation Guidance Manual issued by the Virginia department of conservation and recreation. Approval may be unconditional or with conditions or the plans may be denied based on nonconformance with the requirements of section 17.3-64, part (2)(b)(iii)(7) of this article.

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on June 12, 2013.

Signed by _____
Molly Joseph Ward, Mayor

Date _____

Attested by _____

Katherine K. Glass, CMC
Clerk of the Council

Date _____