

1 **Ordinance to Amend and Re-enact Chapter 17.3 Special Public Interest,**
2 **Article X of the Zoning Ordinance of the City of Hampton, Virginia, Entitled**
3 **“SPI-CBPD-Chesapeake Bay Preservation District” by Amending Section**
4 **17.3-64 Pertaining to Regulations for Development and Redevelopment and**
5 **Section 17.3-65 Pertaining to Plan of Development.**
6

7 **Whereas**, the public necessity, convenience, general welfare and good zoning
8 practice so require;
9

10 **BE IT ORDAINED** by the Council of the City of Hampton, Virginia, that chapter
11 17.3, article X of the Zoning Ordinance of the City of Hampton, Virginia, be
12 amended and re-enacted as follows:

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

14 1.

15 Permitted uses include all uses permitted in the underlying zone.

16 2.

17 Restrictions on permitted uses:

18 a.

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

22 (i)

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

29 (ii)

30 Indigenous vegetation shall be preserved to the maximum
31 extent practicable, consistent with the proposed use or
32 development, and in accordance with the Virginia Erosion
33 and Sediment Control Handbook.

34 (1)

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

39 (2)

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Clearing shall be allowed only to provide a building site, necessary parking, necessary access, positive site drainage, *stormwater* water quality 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"* ~~the erosion and sediment control, site plan and subdivision ordinances,~~ 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 ~~one hundred twenty~~ (120 ~~%)~~ percent of the minimum required by chapter 19 of ~~this~~ *the zoning* ordinance, and their size shall not exceed the minimum required by chapter 19 of ~~this~~ *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 Management Handbook minimum standard 3.10, Porous Pavement.*

(iv)

Notwithstanding any other provisions of this article or exceptions or exemptions thereto, any land disturbing

80 activity exceeding ~~twenty-five hundred (2,500)~~ square feet,
81 *or less than 2,500 square feet and part of a common plan of*
82 *development*, including construction of all single-family
83 houses, septic tanks, drainfields, and accessory structures
84 and improvements shall comply with the requirements of
85 chapters 13.1 *and 33.1* of the *city code* ~~Hampton City~~
86 ~~Code (Erosion and Sediment Control)~~.

87 (v)

88 All on-site sewage disposal systems not requiring a
89 Virginia Pollution Discharge Elimination System (VPDES)
90 permit shall be pumped out at least every five (5) years, in
91 accordance with section 30-69 of the *city code* ~~Hampton~~
92 ~~City Code (Maintenance and repair of on-site sewage~~
93 ~~treatment systems)~~.

94 (vi)

95 A reserve sewage disposal site with a capacity equal to or
96 greater than that of the primary sewage disposal site shall
97 be provided, in accordance with section 30-69 of the *city*
98 *code* ~~Hampton City Code (Maintenance and repair of on-~~
99 ~~site sewage treatment systems)~~. Any lot or parcel recorded
100 prior to October 1, 1989 shall not be required to provide
101 such reserve disposal site if the size of such lot or parcel,
102 as determined by the health department, is not sufficient in
103 capacity to accommodate a reserve sewage disposal site.
104 Construction of any impervious surface shall be prohibited
105 on the area of all sewage disposal sites or over an on-site
106 sewage treatment system which operates under a permit
107 issued by the state water control board, until the property is
108 served by public sewer and the site is no longer needed for
109 this purpose.

110 (vii)

111 ~~For any development or redevelopment, stormwater~~
112 ~~management criteria consistent with the water quality~~
113 ~~protection provisions (4 VAC 3-20-71 et seq.) of the~~
114 ~~Virginia Stormwater Management Regulations (4 VAC 3-~~
115 ~~20) shall be satisfied. Stormwater runoff shall be controlled~~
116 ~~by the use of best management practices that achieve the~~
117 ~~following:~~

118 (1)

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For new development, the post-development non-point source pollution runoff load shall not exceed the predevelopment load. Pre-development load shall be the average phosphorus loading of Hampton's Chesapeake Bay Watershed, 0.85 pounds per acre per year, based on an average impervious land cover of thirty-four (34) percent.

~~(2)~~

For sites within IDAs or other redevelopment sites, the predevelopment non-point source pollution load shall be reduced by at least ten (10) percent. The director of public works may waive or modify this requirement for sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

~~(a)~~

In no case may the post-development non-point source pollution runoff load exceed the predevelopment load;

~~(b)~~

Runoff pollution loads must have been calculated and the best management practices selected for the expressed purpose of controlling non-point source pollution; and

~~(c)~~

If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The director of public works may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this article.

~~(3)~~

For redevelopment, both the pre- and post-development loadings shall be calculated by the

159 same procedures. Pre-development loadings shall
160 be calculated using existing land coverage.
161 However, where the design data is available, the
162 original post-development non-point source
163 pollution loadings can be substituted for the existing
164 development loadings.

165 ~~(viii)~~

166 Maintenance of best management practices that are
167 implemented to control stormwater runoff pursuant to this
168 section shall be in accordance with the maintenance
169 requirements and procedures outlined in the manual of
170 stormwater management practices described in section
171 33.1-10 of the Hampton City Code.

172 ~~(ix)~~ *(vii)*

173 Prior to the issuance of a zoning, building or land
174 disturbing permit for any development or redevelopment
175 located within *SPI-CBPD* a Chesapeake Bay Preservation
176 District where alteration or filling of wetlands is proposed,
177 the developer shall provide copies of all wetlands permits
178 that are required by local, state, and federal law. Issuance
179 of a zoning, building or *local VSMP* land disturbing permit
180 shall not absolve the developer from obtaining all
181 necessary federal, state and local permits.

182 ~~(x)~~ *(viii)*

183 Land upon which agricultural activities are being
184 conducted, including but not limited to crop production,
185 pasture, dairy and feedlot operations, or lands otherwise
186 defined as agricultural land by the city assessor, shall have
187 a soil and water quality conservation assessment
188 conducted that evaluates the effectiveness of existing
189 practices pertaining to soil erosion and sediment control,
190 nutrient management and management of pesticides, and
191 where necessary, results in a plan that outlines additional
192 practices needed to ensure that water quality protection is
193 accomplished consistent with section 10.1-2100 et seq. of
194 the Code of Virginia, 1950, as amended and pursuant to
195 the Chesapeake Bay Preservation Area Designation and
196 Management Regulations 9 VAC 10-20-10 et seq.

197 ~~(xi)~~ *(ix)*

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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.

(xii)

A structure encroachment permit as described in *chapter section 33.1-8.1* of the *city code stormwater management ordinance* is required for any structure or impervious area in the IDA or RPA buffer area.

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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,

277 (3)
278 Comply with all provisions of chapters 13.1,
279 ~~(Erosion and Sediment Control)~~ and chapter 33.1 of
280 the ~~city code~~ Hampton City Code.
281 (iii)
282 Buffer area requirements for RPAs:
283 (1)
284 A minimum of a one hundred-foot buffer area of
285 vegetation that is effective in retarding runoff,
286 preventing erosion, and filtering non-point source
287 pollution from runoff shall be retained if present and
288 established where it does not exist in order to
289 minimize the adverse effects of human activities on
290 the other components of the RPAs, state waters,
291 and aquatic life unless the site/parcel is a
292 designated IDA.
293 (2)
294 Development and redevelopment within IDAs shall
295 retain and establish vegetation in the buffer area to
296 the maximum extent practicable.
297 (3)
298 The buffer shall be located adjacent to, landward of
299 and along both sides of any tidal wetlands, any
300 non-tidal wetlands connected by surface flow and
301 contiguous to tidal wetlands or water bodies with
302 perennial flow, any tidal shore, ~~or~~ any water body
303 with perennial flow, ~~and include any lands~~
304 ~~designated as part of the Coastal Barrier~~
305 ~~Resources System, where present.~~ The full buffer
306 area shall be designated as the landward
307 component of the RPA. Notwithstanding permitted
308 uses, encroachments and vegetation clearing as
309 set forth in this ordinance, the width of the buffer
310 area remains a minimum of ~~one hundred (100)~~ feet.
311 (4)
312 A ~~100 one hundred-foot~~ buffer shall be deemed to
313 achieve a ~~seventy-five (75%)~~ percent reduction of
314 sediments and a ~~forty (40%)~~ percent reduction of
315 nutrients.
316 (5)

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

(6)

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

(7)

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

(a)

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

(b)

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

(c)

350 Dead, diseased or dying trees or shrubbery
351 and noxious weeds (such as Johnson
352 grass, kudzu and multiflora rose) may be
353 removed and thinning of trees allowed as
354 permitted by the zoning administrator or his
355 designee pursuant to sound horticultural
356 practices.

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(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 ~~Chesapeake Bay Local Assistance~~ *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 ~~fifty (50)~~ feet of the ~~one hundred-~~ *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 ~~one hundred-~~ *100* foot wide buffer area. If

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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 ~~seventy-five (75)~~ feet of the ~~one hundred~~ **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 ~~one hundred~~ **100**-foot wide buffer area.

(2)

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

437 article, may be constructed in or across RPAs if
438 each of the following criteria are met:
439 (a)
440 The review committee makes a finding that
441 there are no reasonable alternatives to
442 aligning the road or drive in or across the
443 RPA; and,
444 (b)
445 The alignment and design of the road or
446 driveway is optimized, consistent with other
447 applicable requirements, to minimize
448 encroachment in the RPA and minimize
449 adverse effects on water quality; and,
450 (c)
451 The design and construction of the road or
452 driveway satisfy all applicable criteria of this
453 article; and,
454 (d)
455 The review committee reviews the plan for
456 the road or driveway proposed in or across
457 the RPA in coordination with the plan of
458 development pursuant to section 17.3-65
459 (3)
460 Development on a lot or parcel recorded prior to
461 October 1, 1989 when application of the buffer area
462 results in the loss of a buildable area, the review
463 committee may permit encroachments into the
464 buffer area in accordance with section 17.3-65
465 (~~Plan of Development~~) of this article and the
466 following criteria.
467 (a)
468 Encroachments into the buffer area shall be
469 the minimum necessary to achieve a
470 reasonable buildable area for a principal
471 structure and necessary utilities;
472 (b)
473 Where practicable, a vegetated area that
474 will maximize water quality protection,
475 mitigate the effects of the buffer
476 encroachment, and is equal to the area of

477 encroachment into the buffer area shall be
478 established elsewhere on the lot or parcel;
479 and,

480 (c)
481 The encroachment may not extend into the
482 waterward ~~fifty (50)~~ feet of the buffer area.

483 (4)
484 Development on a lot or parcel recorded between
485 October 1, 1989 and May 12, 2004 when
486 application of the buffer area results in the loss of a
487 buildable area, the review committee may permit
488 encroachments into the buffer area in accordance
489 with section 17.3-65 (~~Plan of Development~~), the
490 criteria in part (2)(b)(iv)(3) of this section, and the
491 following criteria:

492 (a)
493 The lot or parcel was created as a result of
494 a legal process conducted in conformity with
495 chapter 35 of the city code (~~subdivision~~
496 ~~regulations~~);

497 (b)
498 Conditions or mitigation measures imposed
499 through a previously authorized RPA
500 encroachment shall be met; and,

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

509 Sec. 17.3-65. - Plan of development

510 1.

511 All development, improvements and redevelopment in the RPA
512 and any development, improvements and redevelopment
513 exceeding ~~twenty-five hundred (2,500)~~ square feet of land
514 disturbance in the RMA shall be subject to a plan of development
515 process prior to any on-site development preparation activities or
516 issuance of any zoning, building or land disturbing permit. This

517 process shall consist of submission and review of the plans and
518 studies identified herein. Such plans and studies may be
519 coordinated or combined as deemed appropriate by the planning
520 director *of the department of community development* and public
521 works director, who may also reserve the right to determine that
522 some of the information normally required is unnecessary due to
523 the specific scope and nature of the proposed development.

524
525 2.

*Unless deemed to be unnecessary by the director of the
526 department of community development and the director of
527 public works, except as may be otherwise regulated or
528 prohibited by any city zoning ordinance or city code
529 provision, c*Developments that are regulated by *chapter*
530 *35.1* ~~chapter 9, article IV (Site Plans)~~ or chapter 35
531 ~~(Subdivisions)~~ of the Hampton ~~c~~City ~~c~~Code shall submit an
532 environmental site assessment and all plans and studies
533 pursuant to all applicable provisions of the city code,
534 *including but not limited to a stormwater management plan*
535 *as required by chapter 33.1 of the city code and the "City*
536 *of Hampton Landscape Guidelines".*

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538
539 ~~unless ruled unnecessary by the planning director and public~~
540 ~~works director.~~

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542 3.

543 All proposed use, development or redevelopment projects that are
544 within the RPA and not requiring site plan or subdivision review
545 and any proposed use, development, or redevelopment within the
546 RMA proposing more than ~~twenty-five hundred (2,500)~~ square feet
547 of disturbance shall submit an environmental site assessment and
548 other information as follows:

549 a.

550 A construction plan prepared and stamped by a certified
551 land surveyor or professional engineer, drawn to scale,
552 showing property lines and dimensions. Such plan shall
553 also show in addition to information required pursuant
554 sections 25-2 or ~~25-2.04~~ of this *the zoning* ordinance:

555 (i)

556 Boundaries of any RPA , *RMA or IDA* on or
557 adjacent to the development site;
558 (ii)
559 Limits of proposed land disturbance;
560 (iii)
561 Existing and proposed impervious surface, such as
562 buildings and driveways;
563 (iv)
564 Existing and proposed general drainage patterns
565 on the site;
566 (v) Delineation of buildable area on the lot based on all
567 required setbacks and any other relevant
568 easements or limitations regarding lot coverage
569 *and all other applicable city requirements to permit*
570 *development of the site*; and
571
572 (vi) *A method of sewage disposal*.
573
574 ~~Notation regarding the inclusion of the property in an RMA.~~
575 b.
576 An erosion and sediment control plan which conforms to
577 the provisions of the *chapter 13.1 of the city code* ~~erosion~~
578 ~~and sediment control ordinance.~~
579 c.
580 A *stormwater management plan* ~~water quality impact~~
581 ~~assessment~~ as outlined in chapter 33.1 of *the Hampton*
582 ~~City Code, Stormwater Management Ordinance~~.
583
584 4.
585 The ~~planning~~ director *of the department of community*
586 *development* shall review the environmental site assessment to
587 ensure or confirm that a reliable, site specific evaluation is the
588 basis for determining whether water bodies on or adjacent to the
589 development site have perennial flow and that RPA, *RMA and IDA*
590 boundaries are approved based on a site specific evaluation.
591
592 5.
593 The public works director and ~~planning~~ director *of the department*
594 *of community development* shall review the construction plan and
595 ~~water impact information~~ *stormwater management plan* to ensure

596 that the impact of the proposed use and development is consistent
597 with the intent of this section and adequately provides for water
598 quality protection. Approval may be unconditional or with
599 conditions, or the plans may be denied based on nonconformance
600 with these regulations.

601 6.

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

604 7.

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

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