



## City of Hampton

### MEMORANDUM

**TO:** Planning Commission

**FROM:** James Freas,  
Senior City Planner

**DATE:** April 9, 2007

**SUBJECT:** SPI-CBPD Zoning Ordinance Amendment

The purpose of the proposed zoning ordinance amendment to the Special Public Interest – Chesapeake Bay Preservation District (SPI-CBPD) is to create a district that combines a degree of environmental benefit while at the same time recognizing Hampton’s urban character and providing the flexibility that will allow waterfront property owners to make improvements to their properties. The amendment proposes both text and map changes to the SPI-CBPD that will provide for the protection and creation of riparian buffers even as development and redevelopment occurs along Hampton’s urbanized waterfront. These proposed amendments are one part of a package of proposals that was submitted to the Chesapeake Bay Local Assistance Board (CBLAB) in December, 2006 and found acceptable towards the City’s goal of achieving a consistency finding from the Board on our local Chesapeake Bay Preservation program.

#### Background

In December, 2001 the CBLAB amended the state regulations governing development within the Chesapeake Bay Preservation District and on May 12, 2004 the Hampton City Council adopted these amendments into Hampton’s zoning ordinance in order to be consistent with those state regulations as required. These changes served to make development activity within the Resource Protection Area (RPA) 100 foot buffer area of the CBPD more difficult. In Hampton, where much of the City was developed before the Chesapeake Bay Act, the result of this regulatory change was to limit the ability of waterfront homeowners to make improvements to their property. With Hampton’s flat coastal geography, homes were frequently built within, or close to, 100 feet of the water or wetlands edge making any modern improvements to these properties directly in conflict with these development regulations.

The Chesapeake Bay Act and regulations do contain provisions to address urban environments where this conflict might exist. Intensely Developed Areas are included as a designation for such areas where certain criteria addressing the density of development and level of imperviousness, can be met. These urbanized areas are not required to provide a 100 foot buffer and are instead required to meet stormwater reduction criteria through Best Management Practices (BMPs). In September, 2004 Hampton City Council passed a resolution expanding the area designated IDA in the City to include all of those areas meeting that criteria and for the most part encompassing the southern two thirds of the City, where the majority of Hampton’s older neighborhoods are located.

The CBLAB found Hampton's expanded IDA inconsistent with State regulations in June, 2005, though in the same meeting Norfolk's expanded IDA, though substantially similar to Hampton's, was found consistent. Hampton staff began working with Division of Chesapeake Bay Local Assistance staff to develop an IDA that would be agreeable to the board while still meeting the needs of Hampton property owners for flexibility in the use of their waterfront properties. A proposal was developed that finally received approval from the CBLAB on December 11, 2006.

#### Riparian Buffers and the Urban Environment

The original intent of the Chesapeake Bay Act was to protect and create 100 foot vegetative buffers on most waterways and wetlands in the tidewater portion of Virginia. A high quality vegetative buffer consists of a natural mix of trees, shrubs, and other plants such as might be found on an undeveloped waterfront. These plants serve to absorb nutrients carried by stormwater as it flows through the buffer area, reducing the amount of pollution reaching the water body. Such a buffer rarely exists though in an urban environment like Hampton's. In addition, there are many conditions in urban areas that serve to lessen the value of buffers so that other means of reducing the pollutant load carried by stormwater become more practical and desirable.

In urban areas, the buffer area, as regulated by the Chesapeake Bay Act, often consists of impervious surfaces, like buildings and pavement, or manicured turf grass. Both of these surface types generally serve to increase the flow of pollutants into the waterbody. In addition, most stormwater entering the waterbody flows through pipes or ditches, rather than as sheet flow through the buffer area, eliminating the ability of a vegetated buffer to absorb pollutants. To change these conditions in order to allow for the creation of a quality vegetated buffer would require extensive changes to waterfront properties, in many cases requiring that homes be removed as the entire parcel is inside the 100 foot area.

There are many different ways of addressing stormwater management so as to reduce pollutant loading to waterways that are more compatible with an urbanized environment. Engineered BMPs, including vegetated filter strips, permeable paving, stormwater ponds, green roofs and many other methods, can easily be incorporated into urban areas. Vegetated buffers can even be used in appropriate locations, such as in parks. Addressing water quality in an urbanized area presents numerous challenges requiring flexibility and a degree of creativity. Overall, with regard to the goal of cleaning up the Chesapeake Bay, encouraging development and redevelopment in existing urbanized areas like Hampton is a benefit as new population growth is accommodated without increasing the amount of developed land in the region, so that where high quality vegetated buffers exist outside of the urbanized area, they can be preserved.

#### Hampton's Enhanced IDA Proposal

The enhanced IDA proposal that was accepted by the CBLAB has three primary components; changes to the IDA map, changes to the Chesapeake Bay Preservation District zoning ordinance text, and an education and outreach component. The first two components are under your review for potential adoption. The IDA has always included a provision that buffer area be protected or created to the extent practicable, the purpose of these amendments is to clarify and expand on that idea so that Hampton's enhanced IDA protects buffer areas to the maximum extent practicable. At the same time, these

amendments preserve the flexibility and predictability that we originally sought in expanding the IDA designation.

The goals of this zoning ordinance amendment are primarily met in proposed section 17.3-64 2 a (xi). The language in this section is intended to minimize encroachment to the greatest extent possible, so that new buildings, accessory structures, and impervious surfaces are as far from the water and wetland as is possible given the lot size and other zoning setback requirements. In addition, the last ten feet is completely protected from encroachment. Section 17.3-64 2 a (xii) describes a permit fee that is assessed for any impervious area (other than those exempt under the ordinance) added into the IDA. The description of that fee can be found in the proposed section 33.1.8.1 of the Stormwater Management Ordinance and amounts to \$1.00 per square foot of encroachment with a minimum fee of \$100 and a maximum fee of \$400 for accessory structures and \$1000 for primary buildings. The language being added to the zoning ordinance is provided below and is attached in the context of the entire chapter.

The changes to the IDA map reflect a fine tuning of our assessment of lands within the CBPD and negotiations with state staff. We have agreed to remove from the IDA, and restore to RPA, public parks and schools, cemeteries, large parcels that could conceivably be subdivided and developed so as to accommodate a buffer, and a central area of Newmarket Creek where the proposed Newmarket Creek Greenway is planned as part of the Coliseum Central Master Plan.

## **Zoning Ordinance**

Article X. SPI-CBPD: Chesapeake Bay Preservation District (Chapter 17)

Sec. 17.3-64. Regulations for Development and Redevelopment.

2. Restrictions on permitted uses:

a. General Performance Criteria for Development and Redevelopment within Resource Management Areas, Resource Protection Areas and Intensely Developed Areas

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

(3) In the IDA, automobile parking lots shall be of pervious surfaces, where feasible, and be designed, constructed, and maintained consistent with the Virginia Stormwater Management Handbook minimum standard 3.10, Porous Pavement.

(xi) 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 can not 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 section 17.3-67 2 and section 17.3-67 3 shall be built within ten feet of an RPA feature.
- (xii) A Structure Encroachment Permit as described in section 33.1-8.1. of the Stormwater Management Ordinance is required for any structure or impervious area in the IDA or RPA buffer area.
- b. Other Restrictions Applicable to the RPA (RPA Regulations):
- (iii) Buffer Area Requirements for RPAs:
    - (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 & Mitigation Guidance Manual issues by the Chesapeake Bay Local Assistance Department.

#### Sec. 17.3-62 Definitions

For the purpose of this Article, the following terms shall have these specific meanings:

Buildable area means the portion of the lot remaining after required yard setbacks, buffer areas, and BMP areas have been provided but in no event shall the buildable area be less than 1,500 square feet for lots equal to or greater than 6,000 square feet. For lots under 6,000 square feet, the minimum buildable area shall be as determined by the zoning administrator.

*Buffer area* is an area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances and consists of the landward component of the Resource Protection Area (RPA).

“Resource Protection Area (RPA) Feature” means that portion of the RPA that is not in the buffer area and includes tidal wetlands, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or waterbodies with perennial flow, and tidal shores.

#### Recommendation

Based on the policies articulated in Hampton’s Community Plan of encouraging redevelopment and protecting sensitive natural resources, the Planning Department recommends approval of the proposed Zoning Ordinance amendment to the Chesapeake Bay Preservation District. We recommend that the new ordinance be effective the latter of July 1, 2007 or upon approval by the Chesapeake Bay Local Assistance Board.