



Legislation Text

File #: 17-0249, **Version:** 1

Ordinance to Amend and Re-Enact Chapter 9 of the Zoning Ordinance of the City of Hampton, Virginia Entitled “Overlay Districts” by Amending Article 2, Entitled “O-CBP District - Chesapeake Bay Preservation Overlay”

Background Statement:

The Chesapeake Bay Preservation Act was enacted by the Virginia General Assembly in 1988 as an element of Virginia’s effort to manage water pollution. The purpose of the Bay Act is to improve water quality through land use planning practices that balance economic development and water quality protection. Each Tidewater locality must develop a water quality preservation program that meets the requirements of the Act and associated regulations. In 2016, Hampton’s program was reviewed by the Virginia Department of Environmental Quality (DEQ) and determined to be in compliance with the Bay Act. Out of the review process and in pursuit of a longer-term goal to update aspects of the O-CBP District, staff has drafted a proposal to reorganize and “streamline” the ordinance to make the program more effective and easier to use for both staff and the public.

The three most prominent proposed changes to the ordinance are (1) transferring responsibility for review of exceptions to the ordinance requirements from the existing Chesapeake Bay Review Committee to the Board of Zoning Appeals; (2) creating a new requirement to provide a “special green area” to be located between primary structures and the Resource Protection Area (RPA) buffer or Intensely Developed Area (IDA); and (3) maximizing the number of decisions that can be made administratively by staff, including review of “permitted encroachments” into the RPA buffer.

The shift in responsibility for exception reviews from the Chesapeake Bay Review Committee (largely made up of city staff) to the Board of Zoning Appeals (a citizen appointed body) is intended to eliminate conflicts in the existing review process, and place this duty with an existing board that is already structured to deal with quasi-judicial decisions regarding zoning provisions. The “special green area” requirement is a proactive measure to ensure that homes have usable yards outside the protected RPA buffer. Broader authority for administrative decision-making is driven by a desire to simplify and expedite applications for “permitted encroachments” into the buffer, which will reduce the number of public hearings required and associated delay for applicants. Since these encroachments are considered “permitted” as long as they meet specified criteria, a lengthy public hearing process was considered to be unnecessary. The proposed changes to the ordinance have been reviewed and accepted by Virginia DEQ.

As part of the overall effort to update zoning regulations related to Hampton’s Bay Act program, staff is also proposing to amend definitions in Chapter 2 of the Zoning Ordinance pertaining to the O-CBP District.

Recommendations:

Staff Recommendation:
Approve

Planning Commission Recommendation:
Approve

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

BE IT ORDAINED by the City Council of the City of Hampton, Virginia, that Article 2 of Chapter 9 of the Zoning Ordinance of the City of Hampton, Virginia be amended to read as follows:

CHAPTER 9 - OVERLAY DISTRICTS

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ARTICLE II. - O-CBP DISTRICT - CHESAPEAKE BAY PRESERVATION OVERLAY

Sec. 9-11. - Purpose and Intent.

The health of the Chesapeake Bay is vital to the economy of the City of Hampton and the State of Virginia. Degradation of the bay from both point and non-point source pollution must be curtailed if the city and state are to continue to benefit, both socially and economically, from their close association with the bay. The purpose of this article is to implement the Chesapeake Bay Preservation Act at the local level, and to protect the quality of state waters pursuant to 9 VAC 10-20-10 et seq. and as authorized under section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended; specifically:

- (1) To protect existing high quality state waters;
- (2) To restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- (3) To safeguard the clean waters of the Commonwealth from pollution;
- (4) To prevent any increase in pollution;
- (5) To reduce existing pollution; and
- (6) To promote water resource conservation in order to protect the quality of life of the present and future citizens of Hampton.

It is not the intent of this article to impair the vested rights of property owners in Hampton. To the extent possible, and without violating the intent of the Chesapeake Bay Preservation Act, development within the O-CBP should be permitted at the same density, although not necessarily in the same manner, as was permitted prior to the adoption of the district.

Sec. 9-12. - Components and boundaries.

- (1) The Chesapeake Bay Preservation Overlay District (O-CBP) shall be composed of three (3) subdistricts: the Resource Protection Area (RPA), the Intensely Developed Area (IDA), and the Resource Management Area (RMA).
 - (a) IDA shall consist of lands designated by the city that are within portions of the landward component of the RPA where little of the natural environment remains and at least one (1) of

the following conditions existed on or before October 1, 1989:

- (i) Impervious surface exceeding fifty (50) percent of the area;
 - (ii) Constructed and functioning public sewer and water systems, or a constructed stormwater drainage system, or both, serving the area; or
 - (iii) Housing density equal to or greater than four (4) dwelling units per acre.
- (2) The general boundaries of such subdistricts are shown on the Chesapeake Bay Preservation Overlay District map, which shall act as a supplement to the city's zoning map. Site-specific boundaries shall be confirmed by the submittal of a resource delineation, subject to the confirmation and approval of such resource delineation by the zoning administrator by means including, but not limited to, the following:
- (a) Verification of information by site visit.
 - (b) Requests for additional information necessary to verify such boundaries.
- (3) The regulations of this article shall augment those of the underlying zoning districts. In cases where the regulations stated herein conflict with those of the underlying zoning district, the more stringent regulations shall apply.

Sec. 9-13. - General regulations for development, redevelopment, and land disturbing in all subdistricts.

All development, redevelopment, and land disturbing within all O-CBP subdistricts shall be governed by the following general requirements:

- (1) No more land shall be disturbed than is necessary. Such land disturbance shall be allowed only to provide a building site, necessary parking, necessary access, positive site drainage, stormwater best management practices (BMPs), and the installation of utilities, as approved by the zoning administrator or the director of public works, as appropriate. Any land disturbance exceeding 2,500 square feet:
 - (a) Shall comply with the requirements of the land disturbance ordinance as set forth in chapter 13.1 of the city code.
 - (b) Shall comply with the requirements of the erosion and sediment control ordinance as set forth in chapter 13.1 of the city code.
 - (c) Shall comply with the requirements of the stormwater ordinance as set forth in chapter 33.2 of the city code.
 - (d) Shall comply with the requirements of the site plan ordinance as set forth in chapter 35.1 of the city code.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable.
- (3) Impervious cover shall be minimized to the maximum extent practicable.
- (4) The developer shall provide copies of all wetlands permits that are required by local, state, and federal law prior to the issuance of a zoning, building or land disturbing permit where alteration or filling of wetlands is proposed.
- (5) Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be in accordance with section 30-69 of the city code. 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.
- (6) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, 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 being accomplished consistent with the Act and this chapter.

Sec. 9-14. - Specific regulations for development, redevelopment, and land disturbing in the RPA.

All development, redevelopment, and land disturbing within the RPA shall be governed by the following:

- (1) RPA Buffer Requirement.
The 100-foot wide RPA buffer area shall be the landward component of the RPA as defined in Chapter 2 of the Zoning Ordinance and as identified by a site-specific Resource Delineation. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not to be reduced in width. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients. To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. To the greatest extent possible, the 100-foot wide buffer area of vegetation shall be reestablished in the following circumstances in accordance with the Virginia Department of Environmental Quality Riparian Buffers Modification and Mitigation Guidance Manual:
- (a) New subdivisions or changes of use requiring a site plan in accordance with Chapter 35.1 of the City Code.
- (b) Where agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions as set forth in this chapter.
- (2) Permitted Encroachments in the RPA.
Land development, redevelopment, and land disturbing may be allowed in the RPA only if it is one or more of the following permitted encroachments. If all applicable requirements set forth in this subsection are not satisfied, an exception request in accordance with subsection 9-19 (1) shall be required. Such permitted encroachments include:
- (a) A water-dependent facility that satisfies the following:
- (i) It does not conflict with the comprehensive plan;
 - (ii) It complies with the general performance criteria set forth in section 9-13;
 - (iii) Any non-water-dependent component is located outside the RPA; and
 - (iv) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- (b) Redevelopment that satisfies the following:
- (i) There is no increase in the amount of impervious cover in the RPA and there is no further encroachment in the RPA; or

- (ii) The proposal is an expansion to a structure that was in existence prior to November 14, 1990 that satisfies the provisions of Sec. 9-19(3).
 - (c) A new use on a lot recorded prior to October 1, 1989 that satisfies the following:
 - (i) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (ii) 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
 - (iii) The encroachment may not extend into the seaward 50 feet of the buffer area.
 - (d) A new use on a lot recorded between October 1, 1989 and March 1, 2002 that satisfies the following:
 - (i) The requirements of subsections 9-14(2)(c)(i) through 9-14(2)(c)(iii) above;
 - (ii) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
 - (iii) Conditions or mitigation measures imposed through a previously approved exception shall be met; and
 - (iv) 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.
 - (e) A road or driveway crossing that satisfies the following:
 - (i) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - (ii) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the RPA and (ii) adverse effects on water quality;
 - (f) Flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in RPAs provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and that satisfy the following:
 - (i) The local government has conclusively established that location of the facility within the RPA is the optimum location;
 - (ii) The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
 - (iii) The facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with Chapter 33.2 of the City Code;
 - (iv) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission;
 - (v) Approval must be received from the local government prior to construction; and
 - (vi) Routine maintenance is allowed to be performed on existing facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a BMP that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.
- (3) Required Mitigation in the RPA.
All permitted development, redevelopment, and land disturbing in the RPA that results in new

impervious area or removal of indigenous vegetation shall provide mitigation consistent with the requirements of a Minor Water Quality Impact Assessment unless a Major Water Quality Impact Assessment is required by Sec 9-19(1).

(a) A structure encroachment permit as described in chapter 33.1 of the City Code is required for any structure or impervious area in the RPA buffer area.

- (4) Subdivisions, Boundary Line Adjustments, and Property Line Vacations in the RPA. Parcels proposed as part of a new subdivision shall provide for sufficient buildable area outside of the RPA and Special Green Area. Vacant parcels proposed to be altered through a boundary line adjustment or property line vacation shall provide for sufficient buildable area outside of the RPA and Special Green Area or, on existing parcels lacking such sufficient area, the proposed parcels shall maintain the same or greater square footage of existing area outside of the RPA and Special Green Area.

- (5) Removal of Vegetation in the RPA.

(a) In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by 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:

- (i) A plan and additional materials as required by the Zoning Administrator must be submitted for review prior to removal of existing vegetation.
- (ii) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
- (iii) Any path shall be constructed and surfaced so as to effectively control erosion.
- (iv) 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 may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.
- (v) 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.

(b) On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

- (i) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, 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, pollutant 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 tests, must be developed consistent with the

- Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.
- (ii) 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 tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) 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.
 - (iii) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land-either erosion control or nutrient management-is being implemented on the adjacent land.
 - (iv) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
 - (v) In cases where the landowner or his agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

Sec. 9-15. - Specific regulations for development, redevelopment, and land disturbing in the IDA.

All development, redevelopment, and land disturbing within the IDA shall be governed by the following:

- (1) Vegetation in the IDA that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present to the maximum extent

practicable.

(2) Development and Redevelopment in the IDA.

On existing parcels designated as IDA, 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 development and redevelopment within the IDA:

- (a) 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 IDA and water quality.
- (b) Accessory structures, decks, and discretionary pavement surface improvements may encroach into the IDA provided that:
 - (i) The encroachment is the minimum necessary to afford relief while adhering to required yard setbacks; and
 - (ii) Preference shall be given to previously disturbed areas, poor quality green areas, or existing impervious area; and
 - (iii) The applicant shall demonstrate there is no feasible location outside of the IDA while adhering to required yard setbacks.
- (c) Stormwater BMPs may be located in the landward 50 feet of the IDA provided that existing vegetation that is effective at preventing runoff, preventing erosion, and filtering nonpoint source pollution is not removed from the IDA and that the impact to water quality from the proposed development is demonstrated through a Major Water Quality Impact Assessment.
- (d) No structure or impervious area, other than those exempt pursuant to subsection 9-19(2) shall be built within ten (10) feet of an RPA feature.

(3) Required Mitigation in the IDA.

All permitted development and redevelopment within the IDA that results in new impervious area or removal of indigenous vegetation shall provide mitigation consistent with the requirements of a Minor Water Quality Impact Assessment unless a Major Water Quality Impact Assessment is required by Sec 9-19(1).

(a) 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.

(4) Subdivisions, Boundary Line Adjustments, and Property Line Vacations in the IDA.

Parcels proposed as part of a new subdivision shall provide for sufficient buildable area outside of the IDA and Special Green Area. Vacant parcels proposed to be altered through a boundary line adjustment or property line vacation shall provide for sufficient buildable area outside of the IDA and Special Green Area or, on existing parcels lacking such sufficient area, the proposed parcels shall maintain the same or greater square footage of existing area outside of the IDA and Special Green Area.

(5) Removal of vegetation in the IDA.

(a) In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by 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:

- (i) A plan and additional materials as required by the Zoning Administrator must be submitted for review prior to removal of existing vegetation.
- (ii) Trees may be pruned or removed as necessary to provide for sight lines and

- vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
- (iii) Any path shall be constructed and surfaced so as to effectively control erosion.
 - (iv) 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 may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.
 - (v) 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.
- (b) On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
- (i) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, 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, pollutant 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 tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.
 - (ii) 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 tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) 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.
 - (iii) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land-either erosion control or nutrient management-is being implemented on the adjacent land.

- (iv) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
- (v) In cases where the landowner or his agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

Sec. 9-16. - Specific regulations for development, redevelopment, and land disturbing in the RMA.

- (1) The general performance criteria set forth in Section 9-13 shall apply to all development, redevelopment, and land disturbing in the RMA.

Sec. 9-17. - Special Green Area requirements.

- (1) All one- and two-family, duplex, townhouse, and multifamily developments or additions thereto, which are located on lots wholly or partially in the RPA buffer or IDA, shall have the following required Special Green Areas extending outward from the primary structure:
 - (a) In the front:
 - (i) For all one- and two-family and duplex developments: 30'
 - (ii) For all townhouse and multifamily developments: 20'
 - (b) In the sides: 5'
 - (c) In the rear: 20'
- (2) Special Green Area shall not be required where the natural riparian buffer has been cleared in accordance with provisions of this article or was cleared prior to November 14, 1990, per city records.
- (3) Special Green Area shall not be located in the 100-foot RPA buffer or IDA.
- (4) Accessory structures are permitted in required Special Green Area in accordance with regulations in underlying zoning districts.

Sec. 9-18. - Plan requirements.

- (1) Required submittals for development and redevelopment in all O-CBP subdistricts:
 - (a) A plan of development consistent with Ch. 1, Sec. 1-7 or Sec. 1-8 of the zoning ordinance, supplemented with a Resource Delineation. The Resource Delineation shall be submitted to the city for review, which may include physical verification of such

- findings on the site.
- (b) Other plans as may be required by Ch. 13.1, Ch. 33.2, or other applicable sections of the city code.
- (2) Additional required submittals for development and redevelopment in the RPA.
 - (a) A Minor Water Quality Impact Assessment for permitted encroachments as defined in Sec. 9-14(2) unless such development or redevelopment requires a site plan in accordance with Ch. 35.1 of the city code, which shall require a Major Water Quality Impact Assessment.
 - (b) A Major Water Quality Impact Assessment for exceptions as defined in Sec. 9-19(1).
- (3) Additional required submittals for development and redevelopment in the IDA.
 - (a) A Minor Water Quality Impact Assessment for development and redevelopment as defined in Sec. 9-15 unless such development or redevelopment requires a site plan in accordance with Ch. 35.1 of the City Code, which shall require a Major Water Quality Impact Assessment.
 - (b) A Major Water Quality Impact Assessment for exceptions as defined in Sec. 9-19(1).

Sec. 9-19. - Exceptions, exemptions, and nonconformities.

- (1) Exceptions.
 - (a) Exceptions to the requirements of Sec. 9-13, Sec. 9-14, Sec. 9-15, and Sec. 9-16 may be granted, provided that all of the following findings are made:
 - (i) The requested exception to the criteria is the minimum necessary to afford relief;
 - (ii) 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 its provisions and who are similarly situated;
 - (iii) The exception is in harmony with the purpose and intent of the district and is not of substantial detriment to water quality;
 - (iv) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
 - (v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
 - (vi) A Major Water Quality Impact Assessment has been reviewed and approved by city staff.
 - (b) Exceptions from the requirements of Sec. 9-13 and Sec 9-16 shall be reviewed under the criteria of Sec. 9-19(1)(a) and may be granted by the Zoning Administrator.
 - (c) Exceptions from the requirements of Sec. 9-14, and Sec. 9-15 shall be reviewed under the criteria of Sec. 9-19(1)(a) and shall be heard by the Board of Zoning Appeals in accordance with the procedures for a variance request in Ch. 13, Sec. 13-11 of the zoning ordinance.
 - (d) Exceptions from the requirements of Sec. 9-17 shall be heard by the Board of Zoning Appeals in accordance with the procedures for a variance request in Ch. 13, Sec. 13-11 of the zoning ordinance.
- (2) Exemptions.

The following types of development are exempt from the requirements of this Chapter:

 - (a) Public roads, railroads, and public facilities provided that:
 - (i) Construction, installation, operation and maintenance of public roads, railroads, and public facilities and their appurtenant structures are in accordance with the following:
 - (aa) Public roads shall be optimally designed and aligned, consistent with all

applicable requirements, to prevent or otherwise minimize the encroachment in the resource protection area and to minimize the adverse effects on water quality.

- (b) City of Hampton or regional service authority or public utility including electric, natural gas, fiber-optic, telephone transmission lines, water, sewer, and underground telecommunications and cable television lines provided that:
 - (i) To the degree possible, the location of such utilities and facilities are sited outside of resource protection areas;
 - (ii) No more land shall be disturbed than is necessary to provide for installation of the proposed utility;
 - (iii) All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable local, state and federal permits and designed and conducted in a manner that protects water quality; and,
 - (iv) Any land disturbance exceeding an area of twenty-five hundred (2,500) square feet complies with all erosion and sediment control requirements in accordance with chapter 13.1 of the Hampton City Code.
 - (c) Silvicultural activities, provided that such operations adhere to the water quality protection procedures prescribed by the Virginia Department of Forestry in "Virginia's Forestry Best Management Practices for Water Quality."
 - (d) Home gardens under 2,500 square feet in areas where the natural riparian buffer has been cleared in accordance with provisions of this article or was cleared prior to November 14, 1990, per city records.
- (3) Nonconformities.
- (a) The lawful use of buildings or structures which existed in the O-CBP district prior to November 14, 1990, or which exists in an O-CBP district at the time of any amendment to this article, and which is on a legal nonconforming lot and not in conformity with the provisions of the district may be continued; however, any alteration, replacement or expansion of a nonconforming building or structure in the RPA shall require a development waiver. This provision shall not be construed to prevent the reconstruction of pre-existing structures within the O-CBP district occurring as a result of casualty loss.
 - (b) Such development waiver may be issued by the zoning administrator provided that:
 - (i) The pre-existing structure is the main building;
 - (ii) A minor water quality impact assessment is submitted;
 - (iii) Any development or land disturbance exceeding twenty-five hundred (2,500) square feet in area shall comply with the provisions of the erosion and sediment control ordinance;
 - (iv) Relief from the requirements of section 9-13 are the minimum necessary to afford relief;
 - (v) Granting the waiver does not confer upon the applicant any special privileges that are denied by this article to similarly situated property owners in the district;
 - (vi) The approval is consistent with the purpose and intent of the district and is not of substantial detriment to water quality;
 - (vii) The request is not based upon conditions or circumstances that are self-created or self-imposed;
 - (viii) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing degradation of water quality; and,
 - (ix) Other findings, as appropriate and required by the zoning administrator, are met.
 - (c) Such application for a development waiver shall be made to the zoning administrator

and shall include the following:

- (i) Name and address of applicant and property owner;
 - (ii) Legal description of the property;
 - (iii) Proposed use;
 - (iv) Minor water quality impact assessment;
 - (v) Sketch of property, including location of buildings and proposed additions, and RPA boundaries; and
 - (vi) Location and description of any existing private water supply or sewage system.
- (d) Any development waiver shall become null and void twelve (12) months from the date of issue if no substantial work has commenced.

Sec. 9-20 - Reserved.