ONANCOCK 1680
VIRGINIA'S EASTERN SHORE

Town of Onancock

Planning Commission Meeting

August 17, 2021 at 5:30 p.m.

Agenda

1. Call to order and roll call
2. Consideration and approval of meeting minute from:
    a. July 20, 2021 meeting
3. Commissioner Business:
    a. Joint Public Hearing – Onancock Planning Commission and Town Council to hear public comment regarding the FY 2022 Comprehensive Plan
    b. Review draft Homestay ordinance
    c. Review ordinances for proposed new construction
4. Adjourn

Town of Onancock
Planning Commission Meeting
July 20, 2021
5:30 p.m.

Call to Order and Roll Call:
Chairwoman Grier called the meeting to order at 5:30 p.m. and roll was called. Chairwoman Judith Grier and Commissioners Robert Bloxom, Bill Bagwell, Brandon Brockmeier, Larry Frey, Scott Schreiber, T. Lee Byrd, Carol Tunstall and Honorary Commissioner Ridgway Dunton were present. All members were present, and a quorum was established.

Consideration and Approval of the Meeting Minutes from the Previous Meeting:
No minutes due to a lack of quorum.

Planning Commission Discussion:

a. Update on Comprehensive Plan: Mr. Spuck shared with the Commissioner the timeline for the joint public hearing with Town Council to review the Comprehensive Plan rewrite. Planning Commission will ask Town Council to consider the rewrite at its September Town Council Meeting.

    a. Joint Public Hearing at the August 23, 2021 Town Council Meeting, Vote for Adoption at the September 27, 2021 Town Council Meeting.

b. Discussion of Town Code §38-77 – Special Exemptions: Mr. Spuck explained that he has received a lot of applications for homestays in Town over the past several months and that those that attended the June Planning Commission meeting had some lengthy dialogue about possibly reviewing the Town's current Code. Some Commissioners were wanting to take a more proactive role in managing this type of use. Mr. Spuck shared that Town Council heard two applications at their June meeting. Both the Council and the public had a lengthy conversation about the applications as well as the future of the short-term rental use in the residential districts. While both applications were approved, Town Council agreed to place a moratorium on those special use applications until Planning Commission had an opportunity to review and rewrite the policy as needed.

    Mr. Spuck shared with the Commission the three options for this policy review.
    1. Do nothing – keep the policy as is.
    2. Only make changes to the current Code to remove ambiguity (ex: specify who can apply)
    3. Reshape some of the rules and guidelines for that use in Town. This could include limiting the number of allowable homestays in Town, limit the number of allowable homestays by neighborhood or district, not allow contiguous properties to operate as homestays, and to not allow special use permit holders to retain permits for inactive homestays.

    Mr. Spuck explained that no decisions would be made this evening, that this meeting was purely conversational. Mr. Spuck estimates about two-months' worth of discussion before putting language before Council. Mr. Spuck urged the Commissioners to not let the conversation go on too long since he already has two applications on his desk waiting to be heard.

Mr. Spuck shared his concern about the transient occupancy tax (TOT) collection, stating that on their honor may not be the best practice. Currently, there are ten active homestays in Town and two nonactive. Policing who is active and who should be remitting the tax gets complicated and the Town needs to get better at this task. Another thing to consider is that currently only one person can have a special use permit for this use but what happens if the same person is also a member of an LLC, is the LLC another "person" and therefore eligible for another special use permit? What about the members of the LLC are they also eligible for additional permits? We may want to also require that someone local be the property manager.

Chairwoman Grier expressed concern over the lack of affordable housing and that people are more interested in short rentals than offering long-term affordable housing. Chairwoman Grier also felt that having boundaries in place is important.

Commissioner Bloxom stated that he likes the idea of setting a period of time on the permit approval, if they do not report sales, they lose their special use permit.

Commissioner Schreiber shared that when Town Council approved the initial homestay language it was against the wishes of the Planning Commission. Commissioner Schreiber asked if the Town was receiving complaints about the current homestays in Town. Mr. Spuck shared that the Town was not receiving complaints. Commissioner Schreiber shared that he likes the Airbnb's, they bring visitors to our Town and the Town does not have enough overnight accommodations for everyone. Airbnb's serve a slice of the population that does not want to stay in hotels. Commissioner Schreiber stated that as long as they are not causing issues, he would like to see the Town welcome these visitors. Commissioner Schreiber did feel that the ownership should be better defined, and that the TOT collection should be better.

Commissioner Bloxom shared that he agrees with Commissioner Schreiber. Commissioner Bloxom stated that the divide on this issue is large, some do not want any homestays and other do not want to impose any limit on the number of homestays in Town. Commissioner Bloxom stated that the Commission should consider a sunset clause on each permit and a potential limit of the total number of housing units. Commissioner Bloxom stated that the Code can always be changed as needed.

Commissioner Byrd stated that the Planning Commission needs to determine how many are allowed along with where they are allowed, stating that he realizes the Town does need places to stay but that he also does not want to see the residential lifestyle disrupted.

Commissioner Bagwell stated that while he appreciated Commissioner Schreiber's talking points, he feels that the Planning Commission should put the Town residents first. Airbnb's are businesses in residential areas. Commissioner Bagwell cited an article where a locality only allows Airbnb's if 75% of the neighborhood's residents approve of the use. That would take the resident's feelings and concerns into consideration.

Commissioner Tunstall shared that there is a balance between preserving the neighborhoods and supporting local businesses. Commissioner Tunstall shared the results of an Onancock Main Street study which stated that there were more untapped opportunities for homestays in Town. The study was primarily focused on business opportunities. Commissioner Tunstall shared that maybe it would be helpful to encourage this use in particular zones in Town.

Commissioner Brockmeier shared that he moved into the Town to be a part of the community otherwise he would have moved out of Town. Commissioner Brockmeier shared that he would have been heartbroken if he had been outbid by someone who did not actually want to live here full time. Commissioner Brockmeier stated that he likes the idea of limiting the number within a radius and allowing permit approval to lapse due to nonuse. He also stated that he feels that the lack of complaints is important for renewal purposes. Commissioner Brockmeier suggested that the police department be notified with renters are expected that way the Town will know who is coming and going.

Chairwoman Grier stated that she feels that they should hold a public hearing to really allow the residents to share their views on this issue. She also suggested including local realtors in the conversation.

Mrs. Janet Fosque, Market Street, asked if the Bed and Breakfasts have to be owner occupied. Mr. Spuck confirmed that statement.

Councilmember Joy Marino shared that the Town Code did not mention that stipulation. Councilmember Oswald state that the Bed and Breakfast Association requires that the owner live at the facility.

Ms. Mariellen Mearsheimer, Mt. Prospect Avenue, shared that everyone moves here because of the small community feeling which includes knowing your neighbors. Ms. Mearsheimer stated that it would be upsetting if Onancock turned in Cape Charles. Ms. Mearsheimer further stated that she no longer knows everyone who is walking down her street. She also stated that she feels very few home purchases lately have been for those wanting to move here full time. Ms. Mearsheimer also expressed concern about the gold cart rentals at the Marina. Ms. Mearsheimer closed by stating that she does not want a lot of Airbnb's.

Councilmember Joy Marino shared that she is thrilled at how many children are living on her block. She shared that has a member of Council all she has to go by when making rulings on these permits is what is outlined in Code. She shared that she stays in Airbnb's when she travels and loves them. Councilmember Marino went on to share a story of a friend of hers in Town that was unable to sell her home, so they turned it into an Airbnb. Even they stressed that the historical district should not be open to this type of use and that the Town should not let homes next to each other have the same use. Councilmember Marino read a section of the residential code aloud which mentions single-family homes in a quiet low-density area which helps to protect the neighborhood characteristic. Town Council will have to change that language if they allow Airbnb's to proliferate. Councilmember Marino closed by stating that she has heard some good suggestions about Code changes at this meeting and that she particularly likes the need for neighborhood feedback before an application can be approved.

Councilmember Sarah Nock asked how long the special use permits are active. Mr. Spuck stated that they are active until the property changes hands or the permit is revoked. Councilmember Nock stated that she would be interested to see if other localities have put sunset clauses in their approvals. Councilmember Nock also stated that she feels that neighbor feedback is crucial to these approvals. Councilmember Nock shared that she was not even given notice of the applicant's intent until two weeks prior to the meeting. Mr. Spuck explained the process of the adjacent property owner notices. Councilmember Nock suggested that the Town broaden the notice requirement to include more neighbors. Councilmember Nock shared that she would like to see the following in the Code change,

distance between properties with this use, a sunset clause for these permits, and more neighbor input and notification.

Mrs. Fosque shared that the argument that "we will never be Cape Charles" does not mean that the Town should not be wary of approving homes for this use. Town Council should have to answer to the property owners and residents of this Town. Finding the formula to live with this type of use discounts the need to serve those that already live and make their homes here. Mrs. Fosque suggested that Town Council looking into incentivizing short-term rentals in certain zones, rather than have them all over the residential districts.

Councilmember Maphis Oswald stated that the Town needs places for people to stay while visiting. How can you encourage people to visit but not offer them accommodations?

Commissioner Tunstall shared that friendly people visit the Town and often its at that time when they fall in love with Onancock want to purchase a home here. Ideally, we want people to come and live here but they also need the opportunity to fall in love with the Town.

Councilmember Marino asked how long the moratorium would be in effect. Mr. Spuck stated until Town Council told him otherwise. Mr. Spuck shared that he would be taking tonight's comments, the minutes, and current Code into consideration when preparing for the next Planning Commission meeting. Mr. Spuck shared that he feels that this process should take about three months.

Public Comment:
No additional comments were heard.

Adjourn:
Commissioner Bagwell made a motion to adjourn. Commissioner Schreiber seconded the motion. The motion passed by unanimous voice vote.

The meeting adjourned at 6:54 p.m.

Judith Grier, Chairwoman

Lisa Fiege, Deputy Clerk

Sec. 38-77. Special exceptions.

The following uses shall be permitted in the Single-Family Residential District (R-1), subject to all the other requirements of this chapter, only upon the obtaining of a special use permit, as defined in article XV of this chapter, from the town council:

(1) Each dwelling unit shall be permitted not more than one apartment, which shall be contained within the dwelling unit itself. It shall be a condition of issuance of a special use permit that the owner of the dwelling within which the apartment is located ~~actually~~ reside within the dwelling itself.

(2) Bed and breakfast houses. Each dwelling unit may be permitted not more than five guestrooms in which overnight accommodations may be offered to transients and operators must live on site.

(3) Homestay. ~~For the purpose of~~For this subsection, the term "homestay" means a home occupation in which an individual owns a dwelling ~~and also~~and provides lodging in all or any~~a~~ portion thereof for temporary periods of times not to exceed three weeks. Other terms used for this type of business include "Short-term Rental," and "STR. Examples of these include but are not limited to AirBnB, VRBO, or any other online or private travel agent or agency.

a. Every short-term rental must obtain and maintain a Special Use Permit from the Town of Onancock. Special Use Permits for STR expire 3 years from the date of issuance and must be reconsidered by Town Council following the application process in place at the time of the renewal request.

b. Every Homestay is required to submit Transient Occupancy Tax (TOT) as per Chapter 16, Article IV herein. If any Homestay is idle for twelve consecutive months or does not submit TOT as defined, the Special Use Permit is rescinded, and the owner must reapply using the process in place at the time of the reapplication.

c. The current owner must apply for the Special Use Permit. In the situation of a property sale contingent on securing the Special Use Permit (SUP), both the current owner and the purchaser may jointly apply~~An owner of a homestay residence must apply for a business license and is subject to the transient occupancy tax.~~

~~b~~d. The owner shall only be permitted one homestay in the town. Any ownership by a partnership or corporation must disclose all individuals included in the ownership of the purchasing entities. No individual may own any portion of more than one homestay in Onancock.

~~c~~e. The applicant must provide local contact information for a responsible party, if the owner is not the responsible party, the owner must identify a responsible party who will be available 24 hours a day, seven days a week, to respond to, and resolve issues and complaints that arise during a period in which the dwelling is being used for transient occupancy. This contact information will be made available to all adjoining property owners and to the Onancock Police Department.

f. There must be a minimum of two tax parcels as defined by Accomack County between properties allowed for use as Homestay properties. This includes all contiguous parcels in front, behind, and on both sides.

~~d~~g. The number of overnight guests will be determined by the zoning administrator in consultation with the homeowner. Properties will allow no more than 2 guests per bedroom and no more than 4 persons for each full bathroom. The property must provide off-street parking for one vehicle for every four guests. ~~based on the number of bedrooms, size of the house and size of the lot subject to approval of the town council.~~

h. The owner of the property must annually provide the Town of Onancock with proof of insurance for property damage and liability in an amount no less than the full replacement value of the structure as it exists at the time of application and an amount of liability coverage no less than $1,000,000 per incident.

ei. The homestay shall comply with all applicable town, county, state and federal statutes, regulations and ordinances.

fj. The town reserves the right to inspect the residence based on complaints to verify that the homestay is being operated in accordance with the regulations set forth within this section.

gk. The special use permit ~~may~~ will be revoked by the zoning administrator in the event that three or more substantiated complaints are received by the town in a calendar year, or failure to maintain compliance with any of the regulations set forth ~~in this subsection (3).~~ herein.

(Code 1989, § 24-16; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 7-27-1998; Ord. of 2-27-2017, § 24-16(c))

ARTICLE III. SINGLE-FAMILY RESIDENTIAL DISTRICTS (R-1A, R-1B, R-1C)

Sec. 38-75. Statement of intent.

(a) The Single-Family Residential District (R-1A through R-1C and R-2) are composed of certain quiet, low-density residential areas plus certain open areas where similar residential development is recommended to occur by the town plan. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, and to promote and encourage a suitable environment for family life where there are children and to prohibit all activities of a commercial nature. To these ends, development is limited to a relatively low concentration, and permitted uses are basically limited to single-unit dwellings providing homes for the residents, plus certain additional uses, such as municipal parks, churches and certain public facilities that serve the residents of the district. It shall be a condition of issuance of a special use permit that the owner of the dwelling within which the apartment is located actually reside within the dwelling itself.

(b) In recognition of the fact that the town contains a large variety of lot sizes in the Single-Family Residential District (R-1A through R-1C), and to provide a zone in which manufactured housing is a use by right, three separate zones have been created.

(c) In order to minimize non-conformance, where significant clusters of small lots exist in a neighborhood, they have been designated as R-1B Districts. Front setback lines, street frontages, yard regulations and lot depths in R-1A and R-1B Districts differ for these reasons. All other regulations in these two zones are the same.

(d) The R-1C District has been created, at the request of the residents in these neighborhoods, in order to provide areas in the town where manufactured homes are permitted. All other regulations in R-1C Districts are the same as R-1B Districts.

(e) R-1A, R-1B and R-1C Districts designations appear on the official zoning map for the town.

(Code 1989, § 24-14; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Sec. 38-76. Principal permitted uses and structures.

The following uses shall be permitted subject to all the other requirements of this chapter as a matter of right in the Single-Family Residential District (R-1):

(1) Single-family dwellings, excluding manufactured homes, in R-1A and R-1B Districts.

(2) Single-family dwellings, to include manufactured homes of 28 feet wide and 24 feet in length or larger, in R-1C Districts.

(3) Accessory buildings permitted as defined in section 38-1.

(4) Public utilities. Poles, distribution lines, distribution transformers, pipes, meters and other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities. Transmission lines, transmission towers, and electrical substations are not deemed necessary facilities under this section.

(5) Home occupations, provided that:

a. No person other than members of the family residing on the premises shall be engaged in such occupation.

b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit or 25 percent of said floor area if conducted in an accessory building, shall be used in the conduct of the home occupation.

c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding four square feet in area, non-illuminated.

d. There shall be no sales to the general public other than items handcrafted or improved on the premises. Items purchased for resale on the premises are considered retail business and not allowed as a home occupation.

e. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in the front yard.

f. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling. In the case of the electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or televisions receivers off the premises, or causes fluctuations in line voltage off the premises.

(Code 1989, § 24-15; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Sec. 38-77. Special exceptions.

The following uses shall be permitted in the Single-Family Residential District (R-1), subject to all the other requirements of this chapter, only upon the obtaining of a special use permit, as defined in article XV of this chapter, from the town council:

(1) Each dwelling unit shall be permitted not more than one apartment, which shall be contained within the dwelling unit itself. It shall be a condition of issuance of a special use permit that the owner of the dwelling within which the apartment is located actually reside within the dwelling itself.

(2) Bed and breakfast houses. Each dwelling unit may be permitted not more than five guestrooms in which overnight accommodations may be offered to transients.

(3) Homestay. For the purpose of this subsection, the term "homestay" means a home occupation in which an individual owns a dwelling and also provides lodging in a portion thereof for temporary periods of times not to exceed three weeks.

a. An owner of a homestay residence must apply for a business license and is subject to the transient occupancy tax.

b. The owner shall only be permitted one homestay in the town.

c. The applicant must provide contact information for a responsible party, if the owner is not the responsible party, the owner must identify a responsible party who will be available 24 hours a day, seven days a week, to respond to, and resolve issues and complaints that arise during a period in which the dwelling is being used for transient occupancy.

d. The number of overnight guests will be determined by the zoning administrator in consultation with the homeowner based on the number of bedrooms, size of the house and size of the lot subject to approval of the town council.

e. The homestay shall comply with all applicable town, county, state and federal statutes, regulations and ordinances.

f. The town reserves the right to inspect the residence based on complaints to verify that the homestay is being operated in accordance with the regulations set forth within this section.

g. The special use permit may be revoked by the zoning administrator in the event that three or more substantiated complaints are received by the town in a calendar year, or failure to maintain compliance with any of the regulations set forth in this subsection (3).

(Code 1989, § 24-16; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 7-27-1998; Ord. of 2-27-2017, § 24-16(c))

Sec. 38-78. Minimum lot dimensions.

The following area regulations shall apply in the Single-Family Residential District (R-1):

(1) For residential lots containing or intending to contain a single-family dwelling, the minimum lot area shall be 10,000 square feet.

(2) For lots wider than 75 feet the minimum depth of the lot shall be 100 feet.

(Code 1989, § 24-17; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Sec. 38-79. Setback regulations.

The following setback regulations shall apply in the Single-Family Residential District (R-1):

(1) Buildings in R-1A Districts shall be located 35 feet or more from any street right-of-way. When a structure is to be built in an area where there are existing structures, the minimum setback may be waived by the zoning administrator to allow the setback line to be the average setback of the structures fronting on either side.

(2) Main buildings should be set back 35 feet from the street.

(3) Accessory buildings in R-1A Districts shall be located 35 feet or more from any street right-of-way. No accessory building shall be located closer to the front than the main dwelling. When a structure is to be built in an area where there are existing structures, the minimum setback may be waived by the zoning administrator to allow the setback line to be the average setback of the structures fronting on either side.

(4) Buildings in R-1B and R-1C Districts shall be located ten feet or more from any street right-of-way. When a structure is to be built in an area where there are existing structures, the minimum setback may be waived to allow the setback line to be the average setback of the structures fronting on either side.

(5) Main buildings in R-1B and R-1C Districts should be set back ten feet from the street.

(6) Accessory buildings in R-1B and R-1C Districts shall be located ten feet or more from any street right-of-way. No accessory building shall be located closer to the front than the main dwelling. When a structure is to be built in an area where there are existing structures, the minimum setback may be waived by the zoning administrator to allow the setback line to be the average setback of the structures fronting on either side.

(Code 1989, § 24-18; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Amd. of 1-10-2000)

Sec. 38-80. Frontage regulations.

The following frontage regulations shall apply in the Single-Family Residential District (R-1):

(1) For single-family dwellings and all other permitted uses in the R-1A District, there shall be a minimum lot width at the setback line of 75 feet and a minimum frontage on a public street of 75 feet. All lots shall front on a public street to be used for any uses permitted in this district.

(2) For single-family dwellings and all other permitted uses in the R-1B and R-1C Districts, there shall be a minimum lot width at the setback line of 50 feet and a minimum frontage on a public street of 50 feet. All lots shall front on a public street to be used for any uses permitted in this district.

(Code 1989, § 24-19; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Sec. 38-81. Yard regulations.

The following yard regulations shall apply in the Single-Family Residential District (R-1):

(1) *Main buildings in the R-1A District.*

a. *Side.* The minimum side yard shall be ten feet and the total width of the two required side yards shall be 25 feet or more.

b. *Rear.* Each main building shall have a rear yard of 25 feet or more.

c. *Buildings.* Each building shall have a 35-foot setback from the street.

(2) *Accessory buildings in the R-1A District.*

a. *Street setback.* Each accessory building shall have a street setback of 35 feet.

b. *Side.* The minimum side yard shall be three feet.

c. *Rear.* Each accessory building shall have a rear yard of three feet or more.

(3) *Main buildings in the R-1B and R-1C Districts.*

a. *Side.* The minimum side yard shall be five feet and the total width of the two required side yards shall be 15 feet or more.

b. *Rear.* Each main building shall have a rear yard of 25 feet or more.

(4) *Accessory buildings in the R-1B and R-1C Districts.*

a. *Side.* The minimum side yard shall be three feet.

b. *Rear.* Each accessory building shall have a rear yard of three feet or more.

(5) *Fence regulations in the R1-A, R1-B and R1-C Districts.*

a. All fences may be erected to within one inch of the property line except that a fence or wall must be two feet from any sidewalk, alley or public right-of-way.

b. All fences closer to the front lot line than a point even with the front of the main structure shall have a maximum height of four feet.

c. All fences closer to the front lot line than a point even with the front of the main structure shall be at least 30 percent open space.

(Code 1989, § 24-20; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Amd. of 1-10-2000; Amd. of 5-22-2000)

Sec. 38-82. Height regulations.

Buildings in the Single-Family Residential District (R-1) may be erected up to 2 ½ stories and 35 feet in height, except that:

(1) Public utility structures, church spires, belfries, cupolas, water towers, chimneys, flues, television antennas and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.

(2) No accessory building which is within ten feet of any part of a lot line shall be more than one story high. All accessory buildings shall be less than the main buildings in height.

(Code 1989, § 24-21; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Sec. 38-83. Special provisions for corner lots.

The following provisions shall apply to corner lots in the Single-Family Residential District (R-1):

(1) Of the two sides of a corner lot the front shall be deemed to be the shortest of the two sides fronting on streets with frontage setback line, side yard and rear yard requirements to be determined accordingly.

(2) The side yard on the side facing the side street shall be ten feet or more for both main and accessory building. Television antennas, including satellite dish antennas, and other types of communications antennas and/or towers and similar structures shall not be closer to the side street than the minimum side yard line or the portion of the main structure, not including porches, nearest to the side street, whichever is the greatest distance.

(3) All fences in side yard exceeding four feet in height closer to the side street than the main structure shall require a special use permit, as set out in article XV of this chapter, from the town council. All property owners contiguous to the applicant's property or immediately across any street abutting the applicant's property shall be notified of the public hearing by certified mail mailed at least ten days prior to the public hearing to the last known address as shown on the town's real estate tax records.

(Code 1989, § 24-22; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Amd. of 5-22-2000)

Secs. 38-84—38-109. Reserved.

DIVISION 2. AREAS OF APPLICATION

Sec. 38-308. Application of CBPA District.

The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the town council and as shown on the town zoning map as the Chesapeake Bay Preservation Area Overlay District. The Chesapeake Bay Preservation Area Overlay District is composed of a resource protection area, a resource management area and an intensely developed area. Resource protection areas include the following land categories, the protection of which is necessary to protect the quality of state waters:

(1) Tidal wetlands.

(2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.

(3) Tidal shores.

(4) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (1) through (3) of this section, and along both sides of any water bodies with perennial flow.

(4) The town zoning map shows the general location of CBPAs and should be consulted by persons contemplating activities within the town prior to engaging in a regulated activity.

(5) Portions of resource protection areas and resource management areas designated by the town council as intensely developed areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards in section 38-312.

(Code 1989, § 24-62; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003)

Sec. 38-309. Interpretation of resource protection area boundaries.

(a) Delineation by the applicant. The site specific boundaries of the resource protection area shall be determined by the applicant through the plan of development process as outlined under division 4 of this article or through a water quality impact assessment as required under section 38-313, and subject to approval by the zoning administrator.

(b) Any site-specific RPA boundary delineation is to be based on field conditions as required by the planning commission. The zoning administrator, when requested by an applicant wishing to construct a single-family residence or other structure permitted as a matter of right in an R-1 District, may perform the delineation. The zoning administrator may use hydrology, soils, plant species and other data, and consult other appropriate resources as needed to perform the delineation.

(c) Where conflict arises over delineation. Where the applicant has provided a site-specific delineation of the RPA, the zoning administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the zoning administrator may render adjustments to the applicant's boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of article XVI of this chapter.

(Code 1989, § 24-63; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003)

Sec. 38-310. Use regulations.

Permitted uses, special permit uses, accessory uses and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

(Code 1989, § 24-64; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003)

Sec. 38-311. Required conditions.

Development in RPAs may be allowed only if it is water-dependent, or it constitutes redevelopment; or it constitutes development or redevelopment within the intensely developed area.

(1) A new or expanded water-dependent facility may be allowed, provided that:

a. It complies with the performance criteria set forth in section 38-312.

b. Any non-water-dependent component is located outside of resource protection areas.

c. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.

d. It does not conflict with the comprehensive plan.

(2) Redevelopment outside of the town's designated IDA shall be permitted within the RPA only if there is no increase in the amount of impervious cover, no further encroachment into the RPA and it conforms to the performance criteria set forth in section 38-312.

a. A water quality impact assessment shall be required for any proposed development, redevelopment or land disturbance within RPAs and for any development within RMAs when required by the zoning administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of section 38-313.

b. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process in accordance with plan of development requirements of this article, including the approval of a site plan in accordance with the provisions of the site plan requirements, or a subdivision plat in accordance with chapter 32. Through the aforesaid plan of development process, delineation of buildable areas allowed on each lot shall be shown on such site plans or subdivision plats, as well as the depiction of RPA boundaries, as that term is defined in section 38-286.

(Code 1989, § 24-65; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003; Ord. of 6-24-2013, § 24-69(c))

Sec. 38-312. Performance standards.

(a) *Purpose and intent.*

(1) The performance standards establish the means to minimize erosion and sedimentation potential reduce land application of nutrients and toxins and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

(2) The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a ten percent reduction in nonpoint source pollution from redevelopment; and achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

(b) *General performance standards for development and redevelopment.*

(1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.

a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.

b. Impervious cover shall be minimized consistent with the proposed use or type of development.

c. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the zoning administrator.

(2) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development allowed and in accordance with the Virginia Erosion and Sediment Control Handbook.

a. Existing trees over six inches in diameter at breast height (DBH) shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed.

b. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs and the installation of utilities, as approved by the zoning administrator.

c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip-line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the area protected by the barrier.

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

(4) Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process, as set forth in plan of development requirements of this article, prior to any clearing or grading of the site or the issuance of any building permit, to ensure compliance with all applicable requirements of this article.

(5) Notwithstanding any other provisions of this article or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks and drain fields, shall comply with the requirements of the local erosion and sediment control ordinance.

(6) All onsite sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years, in accordance with the provisions of the county health code.

(7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality provisions of the state stormwater management regulations (4 VAC 3-20-10 et seq.) that achieve the following:

a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the calculated average impervious cover of 34 percent.

b. For sites within IDAs or other isolated redevelopment sites, the nonpoint source pollution load shall be reduced by at least ten percent. The zoning administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load.

2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution.

3. 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 zoning administrator 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.

c. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post development nonpoint source pollution loadings can be substituted for the existing development loadings.

(8) Prior to initiating grading or other onsite activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator, in accordance with plan of development requirements of this article.

(c) *Buffer area requirements.*

(1) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters and aquatic life, a 100-foot 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.

(2) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA.

(3) The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

(4) The buffer area shall be maintained to meet the following additional performance standards:

a. In order to maintain the functional value of the buffer area, indigenous 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 preventing upland erosion and concentrated flows of stormwater, as follows:

1. 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.

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

3. Dead, diseased or dying trees or shrubbery and noxious weeds such as Johnson grass, kudzu, and multiflora rose and thinning of trees may be allowed pursuant to sound horticultural practices incorporated into standards adopted by the town.

4. 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. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the buffer area in accordance with plan of development requirements of this article and the following criteria:

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

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

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

c. Redevelopment within IDAs will be exempt from the buffer area.

(Code 1989, § 24-66; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003)

Sec. 38-313. Water quality impact assessment (WQIA).

(a) The purpose of a water quality impact assessment is to:

(1) Identify the potentially adverse impacts of proposed development on water quality and lands within Chesapeake Bay Preservation Areas.

(2) Ensure that, where development takes place within Chesapeake Bay Preservation Areas, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of resource protection areas and other sensitive lands.

(3) Specify means to avoid, minimize or mitigate the impacts of development for water quality protection.

(b) A water quality impact assessment shall be required:

(1) For any land disturbance within a resource protection area.

(2) For any buffer area encroachment.

(3) For any variance or exception provided for in section 38-347.

(4) The zoning administrator may waive the requirement for a water quality impact assessment (WQIA) only for projects located outside of the RPA, as the regulations clearly require a WQIA for any land disturbance within a RPA.

(5) Where a water quality impact statement is deemed necessary by the zoning administrator to evaluate the potential impacts of the development upon water quality or a resource protection area by reason of the unique characteristics of the site or the intensity of the proposed use or development.

(c) Contents of a water quality impact assessment. The following elements shall be included in a water quality assessment unless one or more such elements shall, in the judgment of the zoning administrator, not be reasonably necessary in determining the impact of the proposed development:

(1) Location of the components of the RPA, including the 100-foot RPA buffer.

(2) Location and nature of any proposed encroachments into the RPA buffer area, including the type of paving material; areas of clearing or grading and the location of any structures, driveways and other impervious cover.

(3) Type and location of proposed stormwater management facilities and best management practices necessary to comply with performance standards for stormwater management contained in section 38-312(b)(8).

(4) Calculation of pre- and post-development pollutant loading in accordance with section 38-312(b)(8).

(5) Identification and status of any required wetlands permits from federal, state or local agencies.

(6) An erosion and sediment control plan in accordance with the requirements of the local erosion and sediment control ordinance.

(7) A narrative describing the site; the impacts of the proposed development on topography, soils, hydrology and geology; and the measures taken to mitigate nonpoint source pollution.

(d) *Evaluation procedure.*

(1) Upon the completed review of a water quality impact assessment, the zoning administrator will determine if any proposed modification or reduction to the buffer area is consistent with the purpose and intent of this article or if the proposed development is consistent with the purpose and intent of this article. The zoning administrator will make a finding based on the following criteria in conjunction with plan of development requirements:

a. The necessity of the proposed encroachment into the buffer area and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area.

b. Within any RPA, denial of the proposed development would result in the loss of use of a lot or parcel of record as of October 1, 1989.

c. The disturbance of wetlands will be minimized.

d. Impervious surface is minimized.

e. The development as proposed meets the purpose and intent of this article.

f. Proposed erosion and sediment control devices are adequate to achieve the reductions in runoff and prevent offsite sedimentation.

g. Proposed stormwater management facilities and practices are adequate to control the stormwater runoff to achieve the required standard for pollutant control.

h. The development will not result in unnecessary destruction of plant materials on site.

i. The cumulative impact of the proposed development when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(2) The zoning administrator may request review of the water quality impact assessment by the Chesapeake Bay Local Assistance Department (CBLAD). Any comments by CBLAB will be considered by the planning commission provided that such comments are provided by CBLAB within 30 days of the request.

(Code 1989, § 24-67; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997; Ord. of 6-23-2003)

Secs. 38-314—38-344. Reserved.

Sec. 34-4. Required water connections.

(a) Any property having a private primary water supply at present will be permitted to maintain the existing primary water supply but not to replace the same if town water is available or will be made available to the property line by the town at the town's expense. When replacement becomes necessary, such property must connect to the town water system, if available.

(b) If town water is available at the property line or will be made available by the town at the town's expense, each new primary supply must be connected to the town water system, provided that all required governmental permits must be obtained prior to making any such connection.

(Code 1989, § 21-4; Ord. eff. 2-9-1981)

Sec. 38-607. Improvements and standards.

The following improvements and minimum standards, as applicable, shall be required and provided for in a site development plan:

(1) All street and highway construction standards and geometric design standards shall be in accord with those specified by the state department of highways and transportation.

(2) The pavement of vehicular travel lanes, driveways, or alleys designed to permit vehicular travel on the site and to and from adjacent property and parking areas shall be not less than 20 feet in width for two-way traffic and ten feet for one-way traffic.

(3) Cul-de-sacs shall be designed and constructed in accordance with the street standards specified by the Virginia Department of Transportation (VDOT), and may not be construed or employed as parking areas.

(4) Minimum utility easement width shall be 20 feet unless specifically reduced as specified by the administrator. Where multiple structures or pipes are installed, the edge of the easement shall be five feet clear of the outside pipes. Where easements do not follow the established lot lines, the nearest edge of any easement shall be a minimum of five feet from any building.

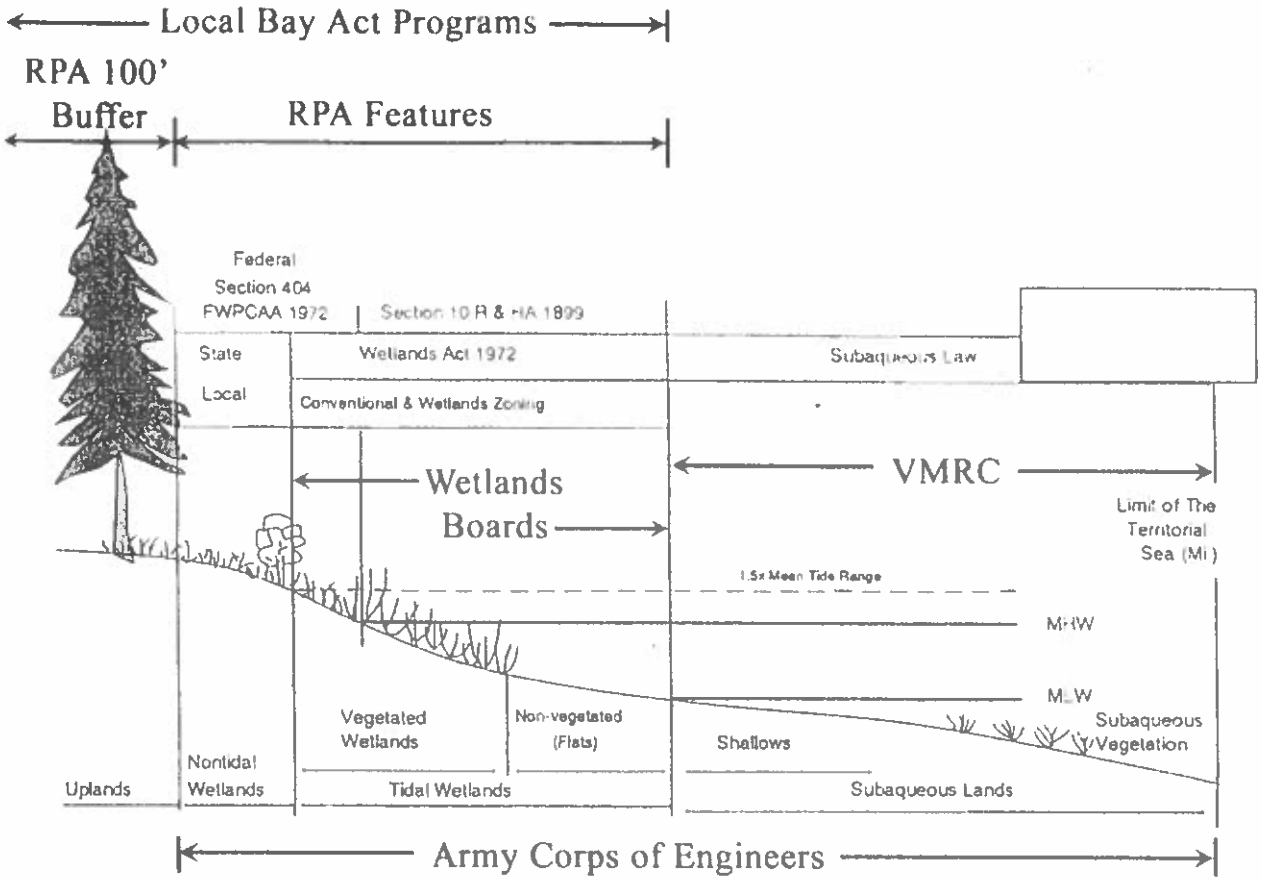
(5) Sidewalks and pedestrian walkways shall be designed to enable patrons and tenants to walk safely and conveniently from one building to another within the site and adjacent sites.

(6) All required screening shall be sufficiently dense or opaque to screen development effectively from the adjacent properties.

(7) In order to preserve the character and natural environment and to provide visual and noise buffering, the administrator may refuse to approve any site plan which proposed unnecessary destruction of trees and other natural features and unnecessary land disturbances. The town council may require assurance that the developer has made reasonable effort in light of the proposed development to preserve, replenish, and protect trees of six-inch diameter or larger at the DBH, ornamental trees of any size; trees within required setbacks or along boundaries unless necessary to remove for access, grading, circulation, utilities, or drainage; and streams in their natural condition and limits to the amount of impervious cover to the extent practicable.

(Code 1989, § 24-115; Ord. eff. 6-5-1962; Ord. of 3-24-1997; Amd. of 7-14-1997)

Jurisdictional Boundaries



and DEQ (including isolated wetlands)