CITY OF POQUOSON

Office of the City Manager
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April 11, 2016

TO: City Council

FROM: City Manager

SUBJECT: **Zoning Ordinance Amendments (2nd Reading)**

At the last meeting public hearings were held to consider three ordinances amending various sections of the Zoning Ordinance. Each of these ordinances was unanimously adopted on first reading and are being presented at this meeting for a second reading and final adoption.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE BY CHANGING ARTICLE I - GENERAL PROVISIONS

BE IT ORDAINED by the City Council of the City of Poquoson, Virginia:

Section 1: That the Zoning Ordinance of the City of Poquoson, Virginia be amended by modifying Article I General Provisions:

Section 1-3 Definitions

Variance: A *reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.* ~~relaxation of the terms of this ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the ordinance will work undue hardship on the property owner. A variance is authorized only for height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or adjoining zoning districts.~~

Section 1-4 Board of zoning appeals

(a) There is hereby established a board of zoning appeals consisting of no more than seven and no less than five residents of the city, but shall always be an odd number, appointed and renewable, removable as provided by the city charter and Code of Virginia, § 15.2-2308, as amended. Three alternates shall be provided as set forth in Code of Virginia, § 15.2-230~~9~~*8*, as amended.

(b) (1) The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

(2) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under the Code of Virginia § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under the Code of Virginia § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to the Code of Virginia § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of Code of Virginia § 2.2-3707.

(3) For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or the board, or who is appointed by special law or pursuant to the Code of Virginia § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

(4) This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of the Code of Virginia § 15.2-2309.

~~(b)~~*(c)* The board of zoning appeals shall have the powers and duties and shall follow the procedures prescribed in Code of Virginia, § 15.2-2309, as amended and as follows:

(1) Hear and decide appeals from any order, requirements, decision, or determination made by an administrative official in enforcing or administering the zoning ordinance. *The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

(2) ~~Authorize,~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in the Code of Virginia §15.2-2201 provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Code of Virginia §15.2-.2201 and the criteria set out in this section.* ~~upon request in specific cases, such variances from the terms of the zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the zoning ordinance shall be observed and substantial justice be rendered. No variance shall be authorized by the board of zoning appeals unless:~~

~~(d)~~ No variance ~~or appeal will be heard or authorized~~ *shall be considered* except after notice and hearing as required by Code of Virginia, § 15.2-2204, ~~as amended~~. *However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.*

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. *To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.*

4. *To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.*

5. *No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.*

6. *To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.*

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and;

a. ~~The strict application of the ordinance would produce undue hardship~~ *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*

~~b. The hardship is not shared generally by other properties in the same zoning district and in the same vicinity;~~

~~c.~~ *b.* ~~That~~ ~~t~~*The* ~~authorization~~ *granting of the variance will not be of substantial detriment to adjacent property and* ~~the character of the district will not be adversely affected by the variance granted~~ *nearby properties in the proximity of that geographical area;*

c. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

d. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;

e. the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of the Code of Virginia §15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of the Code of Virginia §15.2-2286 at the time of the filing of the variance application;

~~d.~~ *f.* Exceptions to the Environmental Management Area Overlay District (EMAOD) Special Performance Standards (article XLIV, EMA Overlay District, section 11.4-6) or RPA Buffer Requirements (article XLIV, EMA Overlay District, section 11.4- 12) shall be the minimum necessary to afford relief; and

~~e.~~ *g.* Reasonable and appropriate conditions shall be imposed upon any exception to the EMAOD so that the purpose and intent of the Chesapeake Bay Preservation Act is preserved.

~~(e) The hardship is created by the physical character of the property, including dimensions and topography, or by other extraordinary situation or condition of such property, or by the use or development of property immediately adjacent thereto. Personal or self-inflicted hardships shall not be considered as grounds for the issuance of a variance.~~

~~(e)~~ Additional exception criteria are provided for in section 11.4-13 of article XLIV, EMA Overlay District.

~~(f)~~ Any request for a variance, exception or appeal shall be accompanied by a processing fee of $250.00. Beginning January 1, 2010 the application fee will be adjusted annually, if necessary, to reflect the consumer price index as determined by the Federal Government rounded to the next dollar.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. *To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.*

8. *The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.*

Section 2: That this ordinance shall be in effect on and after 30 days from its adoption.

ADOPTED: _____

TESTE: _____

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE BY CHANGING ARTICLE XI.IV ENVIRONMENTAL MANAGEMINT AREA (EMA) OVERLAY DISTRICT

BE IT ORDAINED by the City Council of the City of Poquoson, Virginia:

Section 1: That the Zoning Ordinance of the City of Poquoson, Virginia be amended by modifying Article XI.IV. Environmental Management Area (EMA) Overlay District:

Section 4-13 – Relief from Requirements

(d)

Exceptions. A request for an exception shall be made in writing and contain the information required in section 11.4-13(c)(2)a., b. and c. of this ordinance. Exceptions to performance standards [section] 11.4-6, use regulations [section] 11.4-9 buffer requirements [section] 11.4-12 and for expansions of existing non-conforming accessory structures or construction of new accessory structures in the RPA may be granted, provided that reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Chesapeake Bay Preservation Act is preserved. No exception shall be granted until after public notice is given and after a single hearing is conducted as required by Code of Virginia, § 15.2-2204. Notice to adjacent property owners may be given by first-class mail.

(1)

A request for an appeal to the requirements shall be made in writing to the board of zoning appeals within 15 days as provided for in article I, section 1-4 of the zoning ordinance. The board of zoning appeals shall identify the impacts of the proposed request on water quality and on lands within the RPA through the review of a natural resources inventory and a water quality impact assessment which complies with the provisions of section 11.4-5. The inventory assessment shall be submitted by the applicant at the time of application.

(2)

The board of zoning appeals shall review the application for an exception and/or an appeal with supporting documents and a ~~$200.00~~ *$250.00* application fee. *Beginning January 1, 2010, the application fee will be adjusted annually, if necessary, to reflect the consumer price index as determined by the Federal Government rounded to the next dollar*. ~~and~~ *The board of zoning appeals* may grant such relief as it deems consistent with the purpose and intent of the Chesapeake Bay Preservation Act provided that the board of zoning appeals finds

a.

The exception request is not based upon conditions or circumstances that are self-created or self-imposed. The exception must pertain to alleviating requirements imposed by the implementation of the ordinance and shall not afford a special privilege or mere convenience sought by the applicant.

b.

The physical characteristics of the property and/or existing development must be such that, in the opinion of the board, there exists no other reasonable option or location outside of the required buffer area.

c.

The exception request shall be the minimum necessary to afford relief.

d.

Reasonable and appropriate measures shall be proposed in order to maintain or reduce the predevelopment pollutant loading index of the property. The proposed development shall not effectively increase the pollutant loading index.

e.

The exception request shall be consistent with the purpose and intent of the overlay district, and not injurious to the neighborhood, detrimental to the public welfare, or of substantial detriment to water quality.

f.

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.

(3)

If the board of zoning appeals cannot make the required findings or refuses to grant the exception, the board of zoning appeals shall return the request for the exception together with the natural resources inventory and the written findings and rationale for the decisions to the applicant.

(4)

In granting an exception, the board of zoning appeals may impose reasonable and appropriate conditions, as the board deems necessary to further the purpose and intent of the section and the Chesapeake Bay Act.

(5)

Reviews of appeals may be taken from any decision of the board rendered under this article to the circuit court pursuant to established law.

Section 2: That this ordinance shall be in effect on and after 30 days from its adoption.

ADOPTED: _____

TESTE: _____

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE BY CHANGING ARTICLE XI.IV ENVIRONMENTAL MANAGEMINT AREA (EMA) OVERLAY DISTRICT

BE IT ORDAINED by the City Council of the City of Poquoson, Virginia:

Section 1: That the Zoning Ordinance of the City of Poquoson, Virginia be amended by modifying Article III. Nonconforming Uses and Structures to read as follows:

Section 4-6.l(2) – Special Performance Standards

All on-site sewage treatment systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years. However:

(1)

If deemed appropriate by the local health department and subject to conditions the local health department may set, the owners of such systems, as an alternative to the mandatory pump out, have the option of installing a plastic filter in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system.

(2)

In lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage treatment systems may submit documentation every five years, certified by ~~a sewage handler permitted by the Virginia Department of Health~~, *an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems,* that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

Section 2: That this ordinance shall be in effect on and after 30 days from its adoption.

ADOPTED: _____

TESTE: _____

City Clerk