

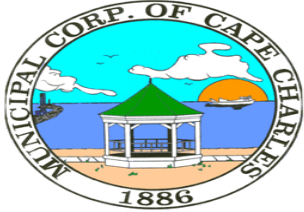
# **Harbor Area Review Board**

## **Special Meeting Agenda**

**Cape Charles Civic Center**

**April 10, 2023 at 5:30 P.M.**

1. Call to Order; Roll Call
2. Invocation and Pledge of Allegiance
3. Public Comments
4. Consent Agenda:
  - A. Acceptance of Agenda as presented
  - B. Approval of Minutes: None
5. New Business:
  - A. Application for a Harbor Development Certificate from Cape Marine Services LLC to lease 40 ft. x 16 ft (640 square feet) in the northeast corner fronting Mason Avenue at 6 Mason Avenue to Posh, Inc. dba Moke America Virginia Beach for a Bicycle, Moped and Street Legal Golf Cart Sales and Rentals Retail Service Establishment, pursuant to Cape Charles Zoning Ordinance Section 3.9 (D) (7) (b)
6. Adjourn



## HARBOR AREA REVIEW BOARD STAFF REPORT

Meeting Date: April 10, 2023

Item #: 5A – Cape Marine Services, LLC – 40 ft x 16 ft. for Golf Cart Rentals & Sales

Prepared by: Katie H. Nunez, Planning/Zoning Administrator

Date: April 4, 2023

**APPLICANT:** Cape Marine Services, LLC (property owner)  
Posh, Inc. dba Moke America Virginia Beach (tenant)

**SITE ADDRESS:** 6 Mason Avenue

**TAX MAP:** 83A3-A-5A

**LOT SIZE:** 43,522 square feet

(Adjacent Lot owned by same party – that lot is 7.4 acres)

**DATE APPLICATION RECEIVED:** March 29, 2023

**HARB APPLICATION MTG:** April 10, 2023

**TOWN COUNCIL MTG:** April 20, 2023

**TYPE OF APPLICATION:** Harbor Development Certificate

**WORK TO BE PERFORMED:** Use existing 16 x 16 concrete pad in northeast corner of property and cover with tent for total coverage of 40 ft. x 16 ft (640 sq. ft)

**CURRENT ZONING:** Harbor District

**PROPOSED ZONING USES:** CCZO Section 3.9 (D) (7) (b) - By-Right Use for Bicycle, Moped and Street Legal Golf Cart Sales and Rentals Retail Service Establishment under 2,500 square feet

**Proposed Development:** William S. Dize, Jr. is representing John Kemp & Cape Marine Services, LLC and has applied for a Harbor Development Certificate for 640 square feet in the northeast corner of 6 Mason Avenue, Tax Map #83A3-A-5A. Said parcel is owned by Cape Marine Services, LLC. They are seeking to lease the area shown on map below beneath the yellow area to Posh, Inc. dba Moke America Virginia Beach to operate a Bicycle, Moped and Street Legal Golf Cart Sales and Rentals Retail Service Establishment under 2,500 square feet pursuant to Cape Charles Zoning Ordinance Section 3.9 (D) (7) (b)

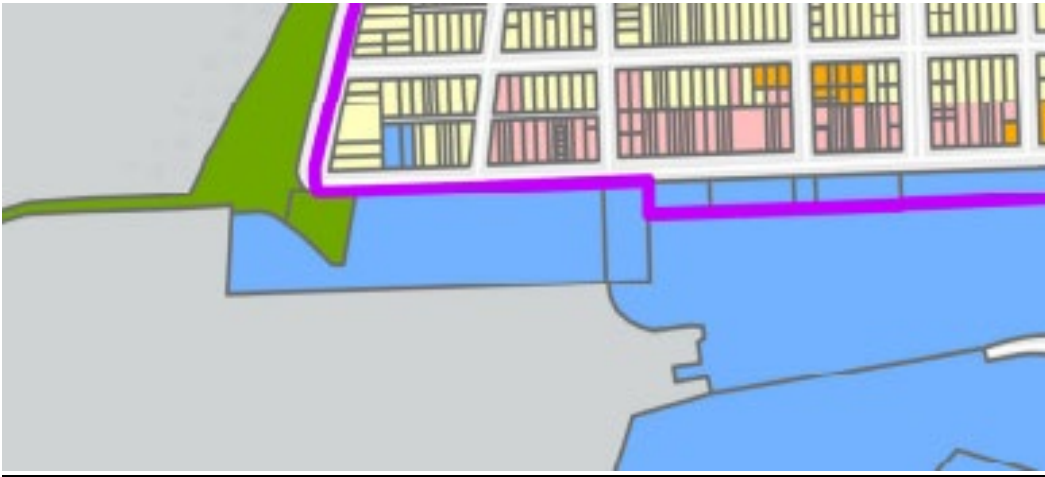
### AERIAL VIEW OF TOTAL MAP



## **ZONING DISTRICT:**

This parcel is zoned Harbor District and is in the Chesapeake Bay Preservation Act Overlay District.

### **Excerpt of Town Zoning Map**



## **SITE CONSIDERATION:**

Cape Services Marine owns both parcels outlined in the map above and is continuing to evaluate and determine best uses for this property; however, while that work is underway, they are also still welcoming and working on short-term business opportunities, such as this one. A small, 16 ft. x 16 ft. concrete pad was placed in the northeast corner of the property sometime in the last 2 years (without zoning clearance) and has a tent that is slightly larger covering it (40 ft. x 16 ft.). This is a low-impact proposed use on a fractional portion of the property. There will be a limited number of golf carts stored since the assigned lease space is 640 sq. ft., no additional lighting being proposed, no signage relative to this business, and no additional security or fencing requirements. The applicant is indicating that no electricity will be needed to support this leased space and there will be no staffing at this location but rather it will serve as a staging area/pick-up location area for the company.

## **STAFF ANALYSIS**

### **ZONING COMPLIANCE**

The proposed use is a use allowed by right and is being proposed fully as an outdoor retail service establishment, limited to 640 square feet and covered by a canvas tent that must be secured and anchored to the ground, it is within the height requirements and meets the frontage, lot depth and lot area requirements of the zoning district and meets the 25% Open Space requirement.

If any utilities are required to service this leased space, then they will need to be included in a modification application to the Town and will need to be installed underground, pursuant to CCZO Section 3.9 (H).

The Planning and Zoning Office last approved a Site Plan for this property on February 9, 2022 with the addition of concrete pad and ramp at the southeast corner of the property to support a clam loading and unloading operation. As part of that review, the property owner was informed that all land disturbance on the property was being calculated and would be cumulatively considered as property development and usage occurs and as long as that land disturbance total remains below 2,500 square feet then they will be exempt from addressing stormwater compliance. However, once that cumulative disturbance is greater than 2,500 square

feet then the property owner will be required to fully address and implement stormwater measures in compliance with Cape Charles Zoning Ordinance Section 4.6.

So, from the 2/9/2022 Site Plan approval, there was 1,600 square feet of land disturbance. At that time, there was no 16 x 16 square foot concrete pad in the northeast corner of the property so that square footage (256 sq. ft) will be added to the running cumulative total of land disturbance which now totals 1,856 sq. ft which is still below the 2,500 sq. ft. threshold before stormwater compliance will be required.

This lot is also included within the Chesapeake Bay Preservation Act (CBPA) Overlay District (CC Zoning Ordinance Article VII) but have been mapped and identified as an Intensely Developed Area (IDA). Regarding this application, they are in conformance with the requirements of CCZO Article VII and the state requirements regarding IDAs of the CBPA. However, I have included some information on these components of the local and state law as information since the property owner is approaching the threshold where they will need to comply with all requirements re land disturbance, activities allowed on a property that is identified as an IDA but sits within the Resource Protection Area (RPA) of the CBPA.

**Any property within the Harbor District is required to submit a Harbor Development Certificate application that requires review and recommendation from the Harbor Area Review Board based upon the criteria for review contained in CCZO Section 3.9 (1) (3). Said criteria is fully listed and contained below.**

Criteria for review. In reviewing the Harbor Development Certificate Application, the Zoning Administrator, the Harbor Area Review Board, and the Town Council shall consider the following criteria:

- a. Use characteristics of the proposed development.
- b. Preservation of historic structures; preservation of significant features of existing buildings when such buildings are to be renovated; relation to nearby historic structures or districts including a need for height limits.
- c. Location and adequacy of off-street parking and loading provisions, including the desirability of bicycle parking.
- d. Vehicular circulation within the development and its relation to other existing and proposed transportation facilities.
- e. Inclusion of alleys to enhance vehicular transportation within the development.
- f. Provision of concealed commercial loading and unloading areas adjacent to alleys to prevent loading, unloading, and trash collection along public rights of way.
- g. Traffic generation characteristics of the proposed development in relation to street capacity.
- h. Provision of open space to meet the requirements of the district; the location, design, landscaping and other significant characteristics of this public open space, and its relation to existing and planned public and private open space.
- i. Multi-modal transportation facilities within the proposed development and their relation to public open space and pedestrian circulation patterns.
- j. Architectural relationships, both formal and functional, of the proposed development to surrounding buildings, including building siting, massing, proportion, and scale.
- k. Use of architectural details, storefront design, window openings, roof shapes, porches, and columns to balance the proportions of facades into pleasant and cohesive compositions.
- l. Microclimate effects of proposed development, including effects on wind velocities, sun reflectance, and sun access to streets and/or existing buildings and/or public open space.
- m. Protection of significant views and view corridors, particularly views of the Cape Charles Harbor from existing road intersections.
- n. Relationship of on-site lighting and landscaping to other surrounding lighting and landscaping designs both public and private.
- o. Relationship of on-site signage to architectural elements of the proposed development and relationships to nearby development.
- p. Adherence to policies included in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.
- q. Adherence to the intent and requirements of the Harbor District

*Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor. The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.*

The applicant has included within their application a response for each criteria requirement and the HARB is requested to review the responses submitted to determine if you find them sufficient to pass all of the criteria to achieve favorable approval by the Harbor Area Review Board to recommend a Harbor Development Certificate and Certificate of Approval to Town Council.

**STAFF RECOMMENDATION:**

Staff is requesting the HARB to review the application material submitted by the applicant and determine if this is in compliance and consistent with the intent of the Harbor District. *Staff is recommending waiver of the second review meeting as outlined in the Ordinance and is recommending to the HARB to determine that the application is sufficient, complete, and compliant with the Harbor District regulations and that the HARB would recommend favorable consideration of this application to the Town Council for the issuance of a Harbor Development Certificate.*

**Attachments:**

Attachment 1: Harbor Development Certificate Application

Attachment 2: Owner Affidavit

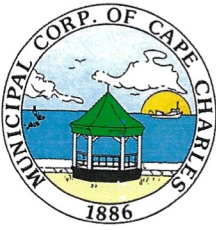
Attachment 3: Letter of Site Plan Approval 2022-02-09

Attachment 4: CBPA Map for Town of Cape Charles

Attachment 5: CBPA: Intensely Developed Areas – Designation

Attachment 6: CBPA: Intensely Developed Areas – Performance Criteria

Attachment 7: CBPA: Resource Protection Area Development Activities Guidance Sheet



## HARBOR DEVELOPMENT CERTIFICATE APPLICATION

Town of Cape Charles  
2 Plum Street  
Cape Charles, VA 23310  
757-331-2036 Fax: 757-331-4820  
[planner@capecharles.org](mailto:planner@capecharles.org)

### PERMIT CHECKLIST - all documents can be emailed to the above email

- |                                                                                  |                                                                  |
|----------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Completed application                        | <input type="checkbox"/> Photos/elevations of existing structure |
| <input checked="" type="checkbox"/> Letter of intent clearly explaining project  | <input type="checkbox"/> Photos/elevations of proposed project   |
| <input checked="" type="checkbox"/> Existing site plan or survey                 | <input type="checkbox"/> Proposed materials list                 |
| <input checked="" type="checkbox"/> Proposed site plan or survey (if applicable) | <input type="checkbox"/> Payment of fees (\$300 + \$70/acre)     |

### PROPERTY INFORMATION

Name of Project: Golf Cart Sales & Rentals  
Property Address: Tax Map 83A3-A-5, Cape Charles, VA 23310  
Brief Description of Project: Golf Carts Rentals  
Zoning District: Hwh Current Use: None Proposed Use: Golf Cart Rentals

### OWNER INFORMATION

Name and Company: John Kemp / Cape Marine Services LLC  
Mailing Address: 3611 Roland Ave Baltimore, MD 21211  
Phone Number: \_\_\_\_\_ Email: JohnKemp@RoyalParks.com

### APPLICANT INFORMATION

☐ check here if applicant is owner

Name: William S. Dize JR.  
Mailing Address: 1011 Buystore Rd, Cape Charles, VA 23310  
Phone Number: 757-693-0098 Email: wdize@oasismarinas.com

\*\*\*\*\*

### CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Applicant: [Signature] Date: 3-29-23



## Cape Charles Yacht Center

### Application for Harbor Certificate for Golf carts on Tax map # 83A3-A-5

**Purpose:**

Allow for use of a 40x16 portion of the Northeast corner for parking golf carts. Posh Inc. DBA as Moke America Virginia Beach, has a business license with the town to rent carts. (See attached map)

**Criteria from Article III Section 3:**

- a. Use 40 x 16 (460 Sq/ft) of the northeast property to rent and/or sell golf carts. No actual business will be taking place on the property and no signage will be erected. This is solely for the convenience of Posh Inc. and the customer.
- b. NA
- c. Loading and unloading of golf carts from a flatbed will be done on the property so no street area will be required.
- d. Golf carts will be moved in and out from the opening on the east side of the property that accesses the easement road to the rail yard.
- e. NA
- f. See item "C"
- g. NA
- h. No building will be constructed so the property will remain open space.
- i. NA
- j. NA
- k. NA
- l. NA
- m. NA
- n. NA
- o. NA
- p. NA
- q. NA

We thank you for your time and would like to request that Town Council consider reducing the \$750 application fee as there are no detailed building or construction plans to review.

A handwritten signature in black ink, appearing to read 'WDize Jr.', with a stylized flourish at the end.

William S. Dize Jr.

General Manager

Cape Charles Yacht Center

757-693-0098

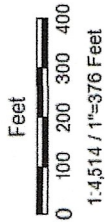
[wdize@oasismarinas.com](mailto:wdize@oasismarinas.com)

# Northampton County, Virginia

## Legend

-  County Boundaries
-  Town Names
-  Route Numbers
-  Road Labels
-  Parcels
-  Driveways

Map Printed from Northampton  
<https://parcelviewer.geodecisions.com/Northampton/>



**Title: Proposed Golf Cart area**

**Date: 3/29/2023**

*DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Northampton County is not responsible for its accuracy or how current it may be.*



# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24

[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

Revised 9/2022

Taxes

Violations

Fee

Decision

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: 0 Mason Ave

Subject Property Tax Map #: 83A3-A-5

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

State of \_\_\_\_\_, County of \_\_\_\_\_

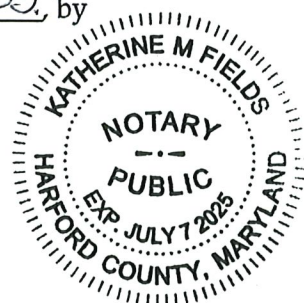
The foregoing instrument was acknowledged before me this 10 day of JANUARY, 20 23, by Katherine M. Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/7/2025

Seal





# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24

[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

Revised 9/2022

|            |  |
|------------|--|
| Taxes      |  |
| Violations |  |
| Fee        |  |
| Decision   |  |

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: \_\_\_\_\_

Subject Property Tax Map #: 90-8-1A2

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

State of \_\_\_\_\_, County of \_\_\_\_\_

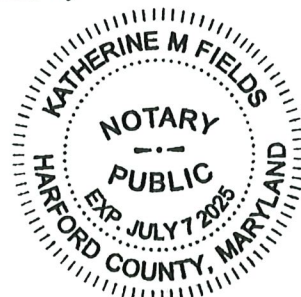
The foregoing instrument was acknowledged before me this 10 day of JANUARY, 2023, by Katherine Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/7/2026

Seal





# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24  
[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

Revised 9/2022

|            |  |
|------------|--|
| Taxes      |  |
| Violations |  |
| Fee        |  |
| Decision   |  |

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: 1011B Bayshore Rd

Subject Property Tax Map #: 83A3- A-20

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

State of \_\_\_\_\_, County of \_\_\_\_\_

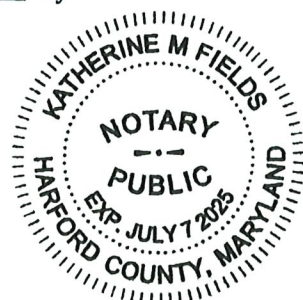
The foregoing instrument was acknowledged before me this 10 day of January, 2023, by Katherine Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/7/2025

Seal





# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24

[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

Revised 9/2022

|            |  |
|------------|--|
| Taxes      |  |
| Violations |  |
| Fee        |  |
| Decision   |  |

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: 1011B Bayshore Rd

Subject Property Tax Map #: 83A3- A-19

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

State of \_\_\_\_\_, County of \_\_\_\_\_

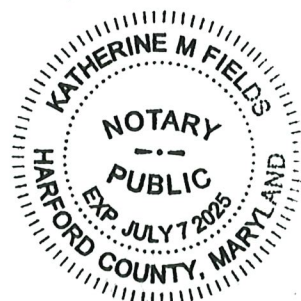
The foregoing instrument was acknowledged before me this 10 day of January, 2023, by Katherine Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/7/2025

Seal





# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24  
[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

Revised 9/2022

|            |  |
|------------|--|
| Taxes      |  |
| Violations |  |
| Fee        |  |
| Decision   |  |

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: 1011 Bayshore Rd

Subject Property Tax Map #: 83A3- A-12

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

State of \_\_\_\_\_, County of \_\_\_\_\_

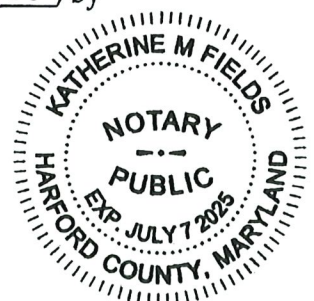
The foregoing instrument was acknowledged before me this 10 day of JANUARY, 2023, by Katherine Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/1/2025

Seal





# Owner Affidavit for Permission to Represent

Planning & Zoning Department  
757-331-3259 x24  
[planningtech@capecharles.org](mailto:planningtech@capecharles.org)

| Revised 9/2022 |  |
|----------------|--|
| Taxes          |  |
| Violations     |  |
| Fee            |  |
| Decision       |  |

Use this form to give permission for a contractor, architect or other individual to represent the owner of a property in matters within the Town of Cape Charles.

## Property Information

Subject Property Street Address: 1270 Bayshore Rd

Subject Property Tax Map #: 83A3- A-17

## Owner Information

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

I hereby give authority to the following representatives to act on my behalf on the following matter:

## Representative Information

Name: William S. Dize Jr

Mailing address: 1011 Bayshore Rd. Cape Charles, VA 23310

Phone number: 757-693-0098 Email: wdize@oasismarinas.com

☒ to file documents on my behalf ☒ to represent me in meetings with Town officials

## Representative Information

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

☐ to file documents on my behalf ☐ to represent me in meetings with Town officials

Signature of owner: [Signature] Date: 1/10/23

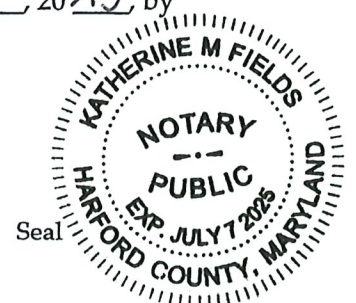
State of \_\_\_\_\_, County of \_\_\_\_\_

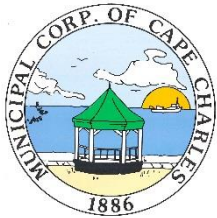
The foregoing instrument was acknowledged before me this 10 day of JANUARY, 2023, by  
Katherine Fields (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: \_\_\_\_\_

My commission expires: 7/7/2025





***Municipal Corp. of  
Cape Charles***

February 9, 2022

Cape Charles RF, LLC and Cape Marine Services, LLC  
c/o Mr. John Kemp  
3611 Roland Avenue  
Baltimore, MD 21211

**RE: SITE PLAN dated 12/9/2021 to construct an offloading ramp @ 6 Mason Avenue  
(Tax Map #83A3-A-5 and 83A3-A-5A)**

Dear Mr. Kemp:

The Planning & Zoning Department has received an application dated 12/9/2021, submitted on your behalf by Mr. R. Neville Reynolds, for a seafood offloading ramp on a portion of the property located at 6 Mason Avenue.

This site plan application, as submitted and dated 12/9/2021, is approved administratively pursuant to Cape Charles Zoning Ordinance Section 9.16 (7) and does not require Harbor Area Review Board approval; this zoning ordinance section states that "Certain Minor Actions are Exempted from Review by the Harbor Area Review Board" and specifically Item # 7 includes the Construction of Off-street Loading area and off-street parking areas containing five spaces or less in a commercial or industrial district. Additional required submittals were provided to my office by e-mail on 2/9/2022 to complete the application submittal – these submittals provided the response plan for any spills of contaminants, specifically oil spills, since it was indicated that supplying of fuel would occur by fuel truck and this lot is located in the Chesapeake Bay Preservation Act (CBPA) Resource Protection Area (RPA) as an Intensely Developed Area (IDA) and these plans are essential to ensuring that you have developed a plan to limit and remedy any environmental impacts to the Chesapeake Bay. This letter, including all referenced application components, along with the Certificate of Appropriateness – Administrative Approval, comprise the full approval record.

Said site plan approval is based upon the following understanding and accompanying documentation which comprise the elements of the site plan:

- 1) Construct an elevated loading platform over an existing concrete or gravel area and you have supplied historic photos and affirmation by your engineer regarding the existing concrete or gravel in this area of the parcel on the eastern side of the lot adjacent to the harbor; said new elevated loading platform is to allow for the relocation of where offloading of clam boats had been occurring on the property (in the center of the property adjacent to the existing concrete platform) to this new

location on the far east portion of the property adjacent to the harbor bulkhead area;  
and

- 2) To expand the existing gravel drive on the east side of the property to serve as the primary access ingress/egress to the new elevated loading platform which will require adding approximately 1,600 sq. ft. of gravel to widen this drive; and
- 3) Install down-lighting as shown on the plan.

Since the proposed land disturbance will not exceed 2,500 square feet, a land disturbance permit is not required for this work.

However, it is noted that any further development or modification to the site will require the submission of a site plan and will require the inclusion of this initial 1,600 sq. ft as "Disturbed Land" in any calculations to determine the thresholds associated with full site plan review and any Storm Water Management and Land Disturbance permits to be required.

As indicated in our conversations concerning this application, the current location of clam offloading on the property (near the center of the property where the existing concrete pad is located) will no longer occur at this location on the property, including the trucks parking and facing directly onto Mason Avenue and idling with lights on. All of this use will be relocated to the far east side of the property as depicted on this approved site plan.

Additionally, it is our understanding that you will continue conversations with the owners of the former railroad property to see if the trucks receiving and carrying the clam loads can be redirected off of Mason Avenue and possibly utilize railroad property that is more advantageous and adjacent/in close proximity to your property to give a different travel route other than Mason Avenue and you will apprise Town Manager John Hozey regarding the results of these conversations.

You have the right to appeal this decision of the Zoning Administrator to the Harbor Area Review Board, pursuant to Cape Charles Zoning Ordinance Section 9.15 within 30 days of the date of this decision. The application to appeal is included as an attachment and the fee to file said appeal is \$750.00

Please let me know if you have any questions.

Sincerely,

*Katie H. Nunez*

Katie H. Nunez  
Interim Planning/Zoning Administrator

Cc: R. Neville Reynolds, Senior Principal at VHB  
Jeb Brady, Code Official  
John Hozey, Town Manager  
Harbor Area Review Board

Municipal Building · 2 Plum Street · Cape Charles, Virginia 23310

(757) 331-3259

Fax (757) 331-4820

Attachments:

Certificate of Appropriateness – Administrative Approval

Application dated 12/9/2021, including Site Plan and old Plat Exhibit

Supplemental Information re: Spill Plan from Pep-Up re: Fuel Deliveries

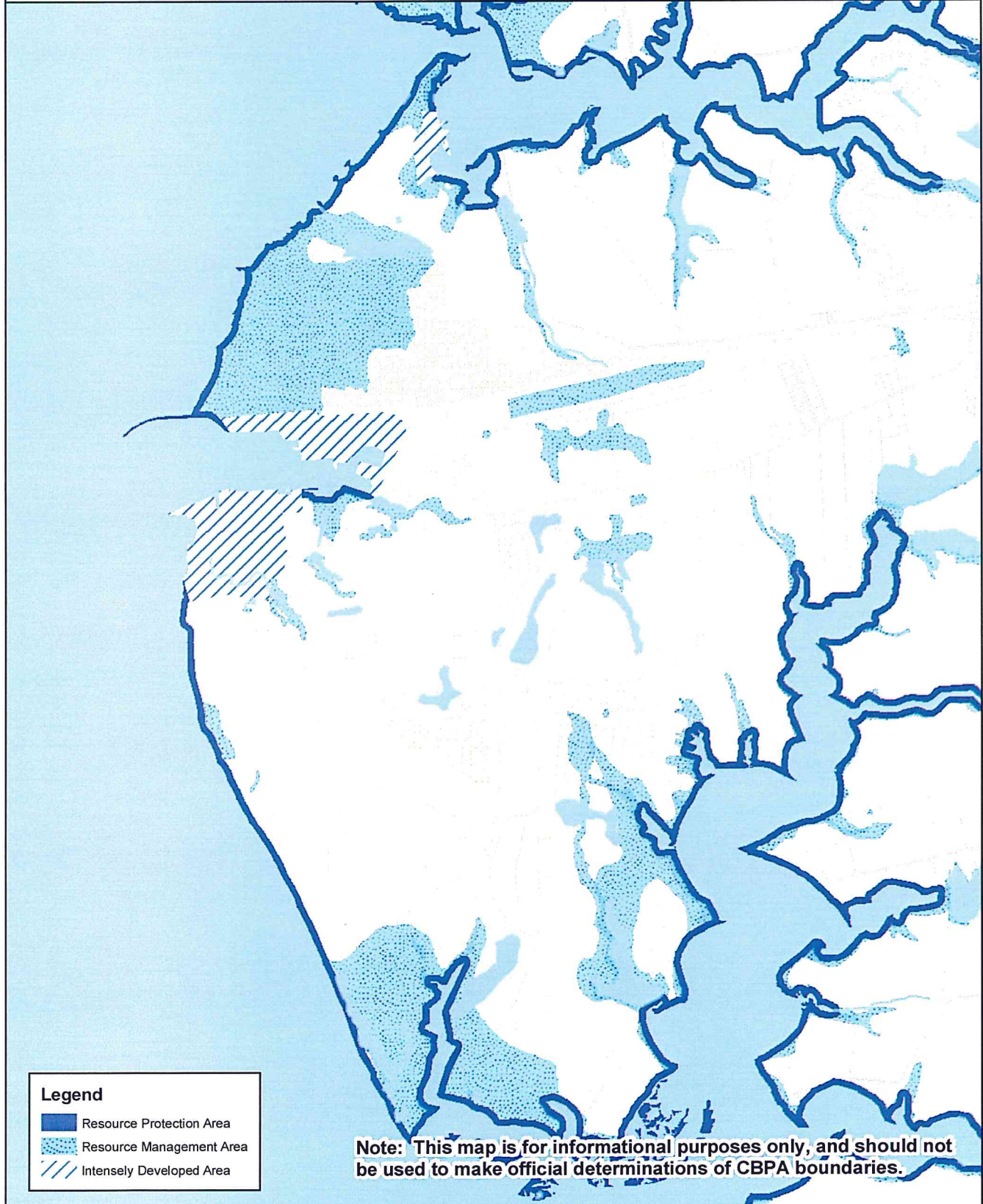
3 Historic Photos of Property

Cape Charles Zoning Ordinance Article IX, Section 9.14

Appeal of Zoning Administrator Decision Application

## Map 8 - Chesapeake Bay Preservation Areas

0 0.1 0.2 0.4 Miles



## Part IV. Land Use and Development Performance Criteria

### 9VAC25-830-120. Purpose.

A. The purpose of this part is to achieve the goals of the Act and 9VAC25-830-50 by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice, achieve a 10% reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices, and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

B. In order to achieve these goals and objectives, the criteria in this part establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.

C. The criteria in this part become mandatory upon the local program adoption date. They are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

D. Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances and subdivision ordinances, and may incorporate the criteria in this part into such other ordinances and regulations as may be appropriate, in accordance with §§ 62.1-44.15:74 and 62.1-44.15:76 of the Act and Parts V (9VAC25-830-160 et seq.), VI (9VAC25-830-180 et seq.), and VII (9VAC25-830-200 et seq.) of this chapter. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

#### **Statutory Authority**

§§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

#### **Historical Notes**

Former 4VAC50-90-120 and 9VAC10-20-110 derived from VR173-02-01 § 4.1, eff. September 1, 1989; amended, Virginia Register Volume 6, Issue 1, eff. October 1, 1989; Volume 7, Issue 5, eff. December 9, 1991; Volume 7, Issue 24, eff. October 1, 1991; Volume 18, Issue 9, eff. March 1, 2002; amended and renumbered, Virginia Register Volume 29, Issue 4, eff. November 21, 2012; amended and renumbered, Virginia Register Volume 30, Issue 2, eff. October 23, 2013.

### Part III. Chesapeake Bay Preservation Area Designation Criteria

#### 9VAC25-830-100. Intensely Developed Areas.

A. At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of this chapter, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV (9VAC25-830-120 et seq.) of this chapter.

B. Local governments exercising this option shall examine the pattern of residential, commercial, industrial and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions existed at the time the local program was originally adopted:

1. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;
2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original local program adoption date. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems; or
3. Housing density is equal to or greater than four dwelling units per acre.

#### **Statutory Authority**

§§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

#### **Historical Notes**

Former 4VAC50-90-100 and 9VAC10-20-100 derived from VR173-02-01 § 3.4, eff. September 1, 1989; amended, Virginia Register Volume 6, Issue 1, eff. October 1, 1989; Volume 7, Issue 5, eff. December 9, 1991; Volume 7, Issue 24, eff. October 1, 1991; Volume 18, Issue 9, eff. March 1, 2002; amended and renumbered, Virginia Register Volume 29, Issue 4, eff. November 21, 2012; amended and renumbered, Virginia Register Volume 30, Issue 2, eff. October 23, 2013.



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Andrew R. Wheeler  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**Guidance Memorandum**

**Subject:** GM22-2007 Board Guidance Document: Resource Protection Area- Onsite Buffer Area Delineation

**To:** DEQ Division of Water Planning Staff

**From:** Jutta Schneider, Water Planning Division Director *Jutta Schneider*

**Date:** February 3, 2022

**Copies:** Director of Central Operations, Director of Regional Operations, Water Permitting Division Director, Enforcement Division Director, Regional Directors, Deputy Regional Directors

---

**Summary:** As a result of actions by the 2013 General Assembly, certain water quality programs previously administered by the Virginia Department of Conservation and Recreation (DCR) are now administered by the Department of Environmental Quality (DEQ). The following guidance document associated with the implementation of the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations has been updated solely to correct typographical errors and update website links, to reflect the change in program administration from DCR to DEQ, and to reflect current regulatory and statutory authorities (Va. Code §62.1-44.15:67 et seq. and 9VAC25-830 et seq.), and does not include substantive updates or revisions.

| New Guidance Number and Title                                                                        | Replaces Previous Guidance Number and Title                                                              |
|------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| GM22-2007 Board Guidance Document:<br>Resource Protection Areas: Permitted<br>Development Activities | DCR-CBLAB-020 Board Guidance Document:<br>Resource Protection Areas: Permitted<br>Development Activities |

**Electronic Copy:**

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality ( <https://townhall.virginia.gov/l/gdocs.cfm?agencynumber=440>);
- The Department's website at: <https://www.deq.virginia.gov/water/chesapeake-bay/chesapeake-bay-preservation-act/local-program-regulations-guidance>

**Contact Information:**

Please contact Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs, (804) 659-1125, [Justin.Williams@deq.virginia.gov](mailto:Justin.Williams@deq.virginia.gov) with any questions regarding the application of this guidance.

**Certification:**

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

**Disclaimer:**

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

**Effective Date:** 3-31-2022

**Initials:** JW



# Resource Protection Areas: Permitted Development Activities

## Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations

*Revised September 19, 2005, June 15, 2009; June 21, 2010, February 2022*

### **Purpose:**

This document provides guidance on those sections of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) related to development and redevelopment activities permitted within Resource Protection Areas (RPAs) and those activities that are otherwise exempt from the Regulations.

### **Regulations:**

- Section 9 VAC 25-830-140 sets out the performance criteria for Resource Protection Areas (RPAs), and permits the following uses by right: water dependent uses; redevelopment as defined by the Regulations; development or redevelopment within a designated Intensely Developed Area (IDA); a new use established on a nonconforming lot; a street or driveway crossing approved by the locality pursuant to the Regulations; or a flood control or stormwater management facility serving multiple development projects or a significant portion of a watershed, consistent with certain conditions.
- Section 9 VAC 25-830-140(1)(a) requires a Water Quality Impact Assessment to be submitted for any land disturbing activity within an RPA, including the buffer component.
- Section 9 VAC 25-830-140(1)(b) sets out the criteria that must be met for new or expanded water dependent facilities to be allowed in the RPA. These criteria include the following: that it does not conflict with the local comprehensive plan; that it complies with all performance criteria; that any non-water dependent component is located outside of the RPA; and; that access is provided with the minimum disturbance necessary.
- Section 9 VAC 25-830-140(1)(c) requires stormwater management and erosion and sediment control requirements to be applied for redevelopment activities both within and outside of IDAs, and also contains criteria for no net increase of imperviousness and no further encroachment into the RPA.
- Section 9 VAC 25-830-150 (B) exempts the construction of public utilities, railroads, public roads and appurtenant facilities from the Regulations, consistent with certain conditions.

### **Discussion:**

#### Water Dependent Facilities

Certain uses are permitted by-right within the RPA. Water dependent facilities, i.e., facilities that by their very nature require that they be located adjacent to the water, are among these facilities. Some examples of water dependent facilities that are permitted to be located within the RPA include the water dependent portion of marinas, aquacultural facilities that require fresh flows of water, beaches, docks and piers as well as stream and wetland restoration projects that have been permitted by state and federal agencies such as DEQ and USCOE.

Development of these facilities requires that a Water Quality Impact Assessment (WQIA) be submitted for review and approval prior to beginning construction activity and that the conditions in 9 VAC 25-830-140(1)(b) be satisfied.

#### Redevelopment Within RPAs That Are Not IDAs

Redevelopment activities are also permitted to occur within the RPA. **A Water Quality Impact Assessment must be reviewed and approved before development activities may begin.** The *Chesapeake Bay Preservation Area Designation and Management Regulations* define **redevelopment** to mean “the process of developing land that has previously been developed.” Under the traditional view of redevelopment, old, dilapidated, or outdated structures and impervious areas are demolished or removed and reconstructed.

The intent of the Regulations is to allow redevelopment within RPAs so that areas where existing development is concentrated may be renovated while improving the quality of stormwater runoff. If redevelopment increases the amount of impervious surface in the RPA, or reduces the width of an existing buffer area, water quality degradation may occur. The definition of redevelopment, then, generally dictates that redevelopment occur in approximately the same physical location as the previous development. This is a particularly important point when considering sites where the previous development occurred only on a portion of a site. Placing structures outside of the RPA, even on redevelopment sites, should be encouraged. For the purposes of the Bay Act program, the following conditions must be present in order for a project to be considered “redevelopment:”

- The lot or parcel has been previously developed;
- The new structures and/or impervious areas are approximately in the same physical location as the previously existing structures and/or impervious areas;
- The proposed amount of impervious surface is no greater than the original development;
- RPA features are not further encroached upon.

For the purposes of the Bay Act program, redevelopment is ~~not~~ **defined as follows:**

**Figure 1 - No Further Expansion into RPA**

---

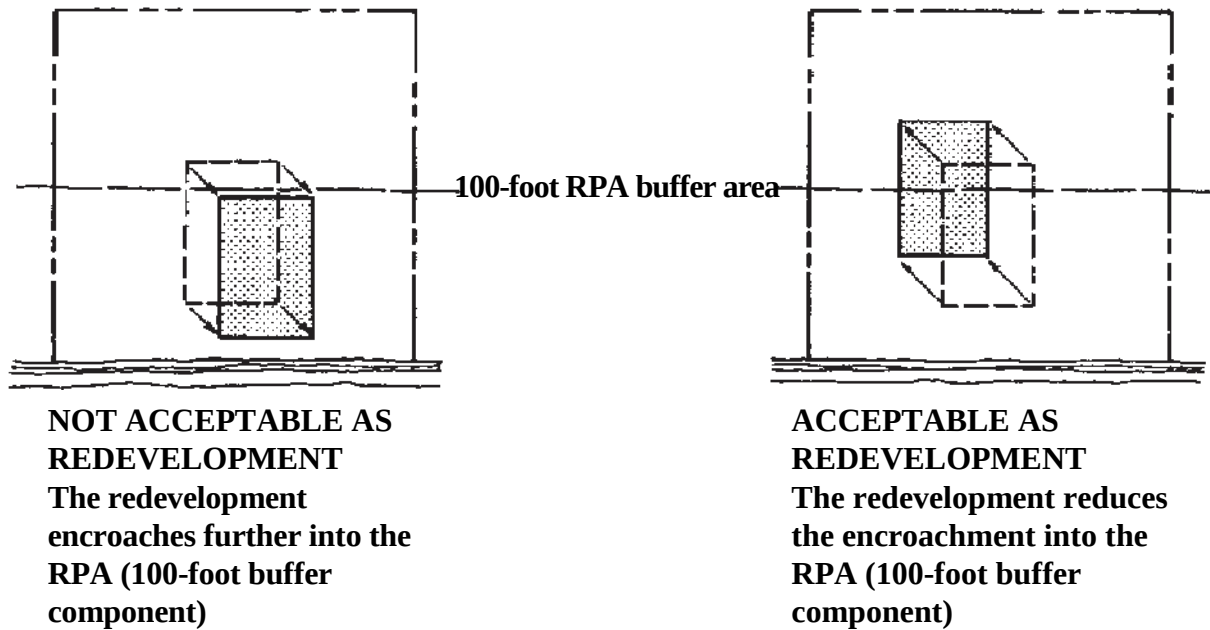


**Figure 2 - No-Increase of Impervious Surface in RPA**

---

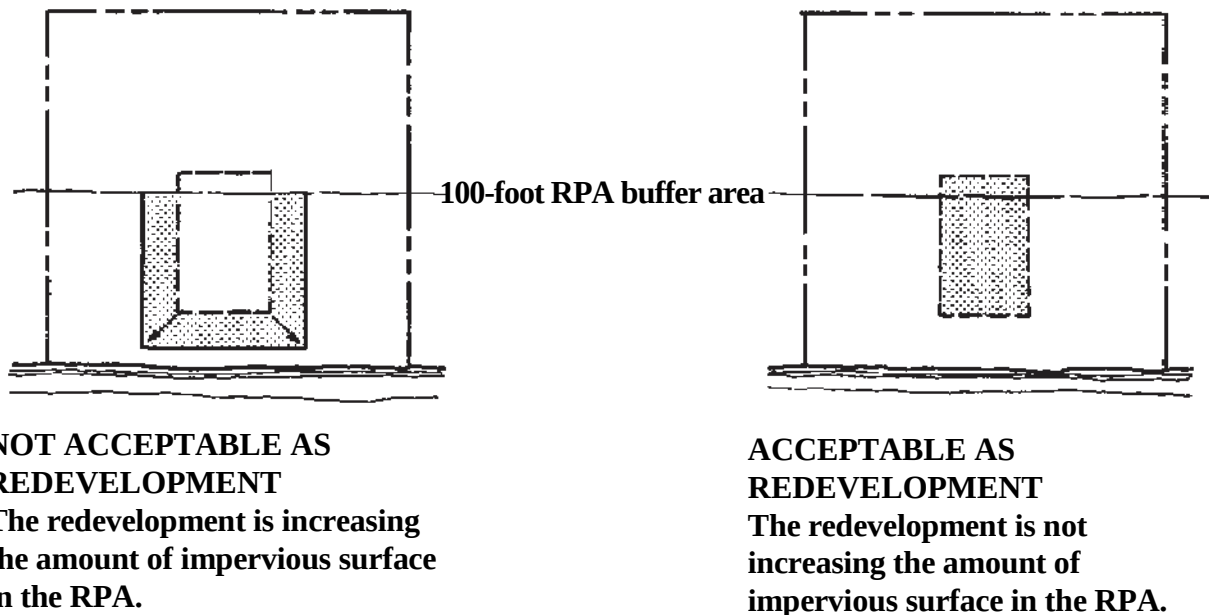
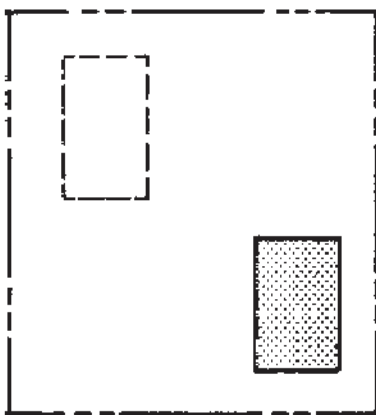
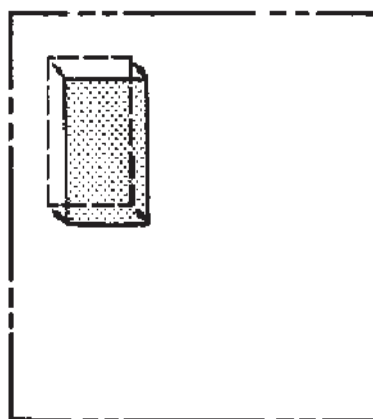


**Figure 3 - Redevelopment in Same General Location**

---



**NOT ACCEPTABLE AS  
REDEVELOPMENT**  
The redevelopment is not in the  
same general location as the  
existing development



**ACCEPTABLE AS  
REDEVELOPMENT**  
The redevelopment is in the same  
general location as the existing  
development

- **New construction** on a previously undeveloped parcel;
- **Additions or expansions** to existing structures
- **Replacement** of a structure lost by casualty. (However, it is possible that other local ordinances may allow the replacement of such structures.)
- **Relocation** of an existing structure to a previously undeveloped portion of a site.

#### Development or Redevelopment within an Intensely Developed Area

Intensely Developed Areas (IDAs) are redevelopment areas, identified by a local government and approved by the Chesapeake Bay Local Assistance Board, that meet the criteria found in 9 VAC 25-830-100(B). Development or redevelopment within IDAs is permitted provided that it conforms to applicable erosion and sediment control and stormwater management requirements. A WQIA must be submitted for land disturbance within the RPA portion of an IDA overlay.

#### Development on a Nonconforming Lot of Record

Nonconforming lots [i.e., lots that either (1) were approved by the locality and recorded before October 1, 1989 and that do not have sufficient land outside of the RPA on which to construct a principal dwelling, or (2) lots with insufficient land area outside the full 100 foot RPA that were recorded between October 1, 1989 and March 1, 2002 in those localities that had buffer equivalency language written into their local Chesapeake Bay Preservation Ordinances] may be improved with a principal structure and necessary utilities within the landward 50 feet of the RPA buffer provided that certain requirements are met. For guidance on development on nonconforming lots of record, please refer to the guidance entitled *Nonconforming Structures and Uses* and *Resource Protection Area: Buffer Area Encroachments*, posted on the Department's web site.

#### Stormwater or Flood Control Facilities

Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that certain criteria are met. Consistent with 9 VAC 25-830 140(1)(e)(iii) of the Regulations, the local government must first develop a regional stormwater management program that is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (9 VAC 25-870 *et seq.*) This local program must then be reviewed and approved as a Phase I program modification by the Department. The local government must establish through an analysis of a Water Quality Impact Assessment that the location of the facility within the RPA is the optimum location and that the size of the facility is the minimum necessary to provide flood control, stormwater treatment, or both. 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 Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission), and continued maintenance of the facility is required to assure that the facility continues to function as designed. For a more detailed discussion of the stormwater management requirements contained within the Chesapeake Bay Designation and Management Regulations, please refer to the *Stormwater Management Requirements* guidance, posted on the Department's web site.

#### Exemptions

Water wells, passive recreation sites (e.g., trails, paths, and other linear, minimally intrusive uses, but not ball fields and similar facilities), and historic or archeological sites are all permitted within the Resource Protection Area provided that the development of such sites is reviewed and approved by the local government, and any land disturbance in excess of 2,500 square feet complies with the erosion and sediment control requirements. Public utilities (including electric lines, natural gas lines, fiber-optic cables, and telephone transmission lines), public roads, railroads, and structures customarily accessory to these uses are permitted within the RPA provided that minimal criteria are met. These exemptions are based on

the premise that the agencies responsible for their construction have water quality protection requirements equal in effectiveness to the Chesapeake Bay Preservation Act Regulations. The installation of these facilities must conform to both the Erosion and Sediment Control Law (§62.1-44.15:51 *et seq.* of the Code of Virginia) and the Stormwater

Management Act (§62.1-44.15.15:68 *et seq.* of the Code of Virginia) and must be constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Environmental Quality. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.

The construction, installation, and maintenance of water, sewer, natural gas, underground telecommunication and cable television lines owned or permitted by a local government or regional service authority is permitted within the RPA provided that the encroachment is the minimum necessary, no more land is disturbed than is necessary to accommodate the installation, all applicable state and federal permits for the installation are obtained, the installation takes place in a manner that protects water quality, and any land disturbance exceeding an area of 2,500 square feet complies with the erosion and sediment control requirements contained in the Regulations.

## Conclusions:

- Water dependent facilities are permitted by right within the RPA. They must conform to erosion and sediment control requirements, must (1) be constructed according to an approved Plan of development, (2) be justified through a Water Quality Impact Assessment, and (3) meet other conditions of 9 VAC 25-830-140(1)(b).
- Redevelopment activities are permitted within the RPA, provided that a Water Quality Impact Assessment (WQIA) is reviewed and approved, a Plan of Development is followed and the project complies with applicable erosion and sediment control and stormwater management requirements.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded prior to October 1, 1989 **only when there is not sufficient land area outside the buffer for the principal structure and the required utilities.** A Water Quality Impact Assessment must show that the encroachment is the minimum necessary to afford relief, and, where practicable, a vegetated area equal in size to the encroachment and equal in ability to provide water quality benefits must be established elsewhere on the site.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded between October 1, 1989 and March 1, 2002 **in those localities whose Chesapeake Bay Preservation Ordinances contained buffer equivalency language**, provided that the lot was legally created, that any conditions or mitigation required by a previous exception are met, and that any previously required Best Management Practices (BMPs) are functioning effectively (and will be reestablished or repaired if required). These criteria are in addition to the two criteria required for pre-1989 lots described above.

- Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that they are part of a local regional stormwater management program that has been reviewed and approved as a Phase 1 program modification by the ~~Chesapeake Bay Local Assistance Board~~ Department and is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (9 VAC 25-870 *et seq.*). Public utilities, public roads, railroads, and structures accessory to these uses are permitted within the RPA provided that the installation conforms to both the Erosion and Sediment Control Law (§62.1-44.15:51 *et seq.* of the Code of Virginia) and the Stormwater Management Act (§62.1-44.14:68 *et seq.* of the Code of Virginia) and the facilities are constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Conservation and Recreation. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.
- Certain public utilities may be located within the RPA provided that specific conditions are met.
- The General Performance Criteria apply to **any** development occurring within a Chesapeake Bay Preservation Area, including exempted activities and uses that are permitted by right. Localities are to insure compliance with the criteria through a review of a Water Quality Impact Assessment, which are is required for **all** development activities (excluding exempted uses ) within a RPA