27 September 2023

MEMORANDUM FOR: Planning Commission Environment Committee

From: Betsy Martin (Chair, Chesapeake Bay Exception Review Committee)

Subject: Proposed Process for ERC to Review and Advise on Certain Planning Commission
Cases Involving RPA Encroachments

Background

Last February, two members of the ERC (David Schnare and I) wrote a memorandum for Board of Supervisors Chairman McKay raising issues and concerns about (among other things) the consistency of application of the Chesapeake Bay Preservation Ordinance. He directed committee members and staff to discuss how to better ensure that the county units approving exceptions under the CBPO apply the law consistently, to improve compliance with the law, and to suggest ways to track the cumulative impact of exceptions.

We asked to meet with the Planning Commission Environment Committee to discuss ways to ensure the CBPO is applied consistently. The need for the ERC to communicate with the Planning Commission is anticipated in our bylaws, which state: "As necessary to facilitate consistency in decision-making, the Committee may correspond or meet with the Planning Commission to discuss specific applications or general matters associated with implementation of the Chesapeake Bay Preservation Ordinance, such correspondence or meetings to be between designated representatives of each body or the bodies as a whole. All such correspondence or meetings are subject to the requirements of VFOIA." (From ERC Bylaws, Article 3, section 3-c)

Proposed process for the ERC to review and provide input to staff and the PC on certain cases involving RPA encroachments

Based on discussions with staff, the following process is offered for consideration. (This draft may still need further discussion and revision by the Department of Planning and Development and others.)

1.   DPD receives submission and forwards it to ERC for review if the application is accompanied by an RPA Exception request under 118-6 to be heard by the Board of Supervisors.   ERC chair appoints a reviewing committee of two members (preferably the chair + the district rep).
    a. The reviewing committee reviews the application and WQIA and drafts an advisory memo to be voted on by the ERC. The memo would focus entirely on evaluating whether the submission meets the six findings required under the CBPO, and making recommendations for how a noncompliant submission might be improved.
    b. The reviewing committee is responsible for following the submission through the process to learn of any revisions made in response to staff feedback.
2. The ERC conducts a public meeting (not a public hearing) to discuss the reviewing committee's recommendations (and the application and WQIA as needed), and review and vote on the draft advisory memo.
    a. If the meeting is held at the ERC's regular monthly meeting time (first Wednesday at 2 pm), then the agenda must "be published on a website dedicated to ERC proceedings in

a manner sufficiently timely as to permit participation at public hearings by interested members of the public."

b. The chair could call a special meeting for the purpose of discussing the reviewing committee's recommendations, provided "at least 5 days' notice of such meeting is delivered in writing" to each member and to staff.

3. If a majority of the ERC votes in support of the advisory memo, then it is sent to staff, the PC, and the BOS on behalf of the ERC.
4. As appropriate, the chair or other representative designated by the ERC may address public hearings before the PC and the BOS to present the ERC's advice and recommendations.

Questions:

1. What subset of PC cases would be forwarded for review by ERC? Only cases requiring BOS approval for exceptions under 118-6, or all cases involving RPA encroachments, including those that will require administrative RPA approvals (e.g., accessory structures, such as parking)?
2. Should the applicant be given some opportunity to review the draft advisory memo and prepare a response, or participate in the ERC's public meeting held to discuss its recommendations?