

ORDINANCE NO. 65A-2

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19A, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, ARTICLE I, IN GENERAL, SECTION 19A-2, DEFINITIONS, BY AMENDING THE DEFINITIONS OF GOVERNMENTAL SERVICES AND WETLANDS, AND BY ADDING A DEFINITION FOR VEGETATED WETLANDS AND FOR NONVEGETATED WETLANDS, IN SECTION 19A-3, PERMITTED USES, BY AMENDING SUBSECTIONS (a), (d) and (e) AND ADDING SUBSECTION (j); AND ARTICLE II, USE PERMITS, SECTION 19A-4, SUBSECTION (a), PERMITS REQUIRED FOR CERTAIN ACTIVITIES; SECTION 19A-6, PUBLIC HEARING; SECTION 19A-7, WETLANDS BOARD ACTION; SECTION 19A-8, BOND REQUIRED, SECTION 19A-9, SUBSECTION (b), STANDARDS FOR PERMIT APPROVAL, SECTION 19A-II, EXPIRATION DATE, AND ADDING SECTION 19A-12, NO EFFECT ON APPLICABLE ZONING AND LAND USE ORDINANCES.

BE IT ORDAINED by the Board of Supervisors of the County of James City that Chapter 19A, Wetlands, of the Code of the County of James City be, and the same is hereby, amended and reordained as follows: Article I. In General, Section 19A-2, Definitions of Governmental Services, Wetlands are amended, a Definition for Vegetated Wetlands and "Nonvegetated Wetlands" is added, and Section 19A-3, Permitted Uses, Subsections (a), (d), and (e) are amended and a Subsection (j) is added; and Article II, Use Permits, Section 19A-4, Subsection (a), Permits Required for Certain Activities; Section 19A-6, Public Hearing; Section 19A-7, Wetlands Board Action, Section 19A-8, Bond Required; Section 19A-9, Subsection (b), Standards for Permit Approval is amended; and Section 19A-11, Expiration date, and Applicable Zoning and Land Use Ordinances is added.

CHAPTER 19A

Wetlands

ARTICLE I, IN GENERAL

Section 19A-1, Purpose of chapter.

The governing body of the county acting pursuant to chapter 2.1 of title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such

chapter, adopts this chapter regulating the use and development of wetlands. (9-11-72, Sec. 1.)

Section 19A-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Commission. The state marine resources commission.

Commissioner. The commissioner of marine resources.

Governmental activity. Any or all of the services provided by this county to its citizens for the purpose of maintaining this county and shall include, but shall not be limited to, such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

Person. Any corporation, association or partnership, one or more individuals or any unit of government or agency thereof.

Vegetated Wetlands. All that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this county; and upon which is growing on the effective date of this act or grown thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* sp.), sea lavender (*Limonium* sp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Sprius validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), Black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* sp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

Wetlands board or board. A board created as provided in section 62.1-13.6 of the Code of Virginia (9-11-72, Sec. 2.)

Nonvegetated wetlands. All that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein.

Wetlands. All vegetated and nonvegetated wetlands.

Section 19A-3. Permitted uses.

The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

(a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, foot-bridges, observation decks and shelters and other similar structures; provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

(b) The cultivation and harvesting of shellfish and worms for bait;

(c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting and shooting preserves; provided, that no structure shall be constructed except as permitted in subsection (a) of this section;

(d) The cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying;

(e) Conservation, repletion and research activities of Virginia Marine Resources Commission, Virginia Institute of Marine Science, Commission of Game and Inland Fisheries and other related conservation agencies;

(f) The construction or maintenance of aids to navigation which are authorized by governmental authority;

(g) Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;

(h) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city or town abutting on or crossing wetlands; provided, that no waterway is altered and no additional wetlands are covered;

(i) Governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof; and

(j) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered; and provided further, that this paragraph shall not be deemed to authorize construction of any drainage ditch.

ARTICLE II. USE PERMITS

Section 19 -4. Required for certain activities; application generally; fee.

(a) Any person who desires to use or develop any wetland within this county, other than for those activities specified in section 19A-3 above, shall first file an application for a permit with the wetlands board directly or through the Commission.

(b) An application shall include the following: The name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installation, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment

to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project or structure and such additional materials and documentation as the Wetlands Board may deem necessary.

(c) A nonrefundable processing fee of one hundred dollars to cover the cost of processing shall accompany each application. (9-11-73, Sec. 4; 2-11-74.)

Section 19A-6. Public hearing.

Not later than sixty (60) days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the commissioner the owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, water control board, the Department of Highways and Transportation and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty (20) days prior the date for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two (2) weeks prior to such hearing in the newspaper having a general circulation in this county. The costs of such publication shall be paid by the applicant.

Section 19A-7. Wetlands board action.

In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members. The chairman of the board or his absence the acting chairman may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board and the rationale for the decision. The board shall make its determination within thirty (30) days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight (48) hours of its determination, the Board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the commission the record shall be returned to the Board. The record shall be open for public inspection at the office of the recording officer of this County. (9-11-73, Sec. 7.)

Section 19-81. Bond required; Suspension or revocation of permit.

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth

compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Section 19A-9. Standards for approval; granting or denying permit.

(a) In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:

(1) Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

(2) Impact of the development on the public health and welfare as expressed by the policy and standards of chapter 2.1 of title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

(b) If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate the purposes and intent of chapter 2.1 of title 62.1 of the Code of Virginia and of this chapter, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this county to provide governmental services and on the rights of any other person and to carry out the public policy set forth in chapter 2.1 of title 62.1 of the Code of Virginia and in this chapter. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of chapter 2.1 of title 62.1 of the Code of Virginia and of this chapter, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

Section 19A-10. Permit to be in writing.

The permit shall be in writing, signed by the chairman of the board and notarized. (9-11-73, Sec. 10).


Section 19A-11. Expiration date.

No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may grant, upon proper application therefor, extensions. (9-11-73, Sec. 11.)

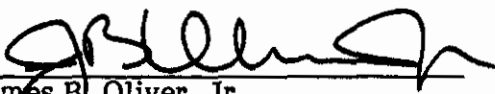
Section 19A-12. No Effect on Applicable Zoning and Land Use Ordinances.

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinances of this county.

Ordinance No. 65A-2


Abram Frink, Jr., Chairman
Board of Supervisors

ATTEST:


James B. Oliver, Jr.,
Clerk to the Board

Adopted by the Board of Supervisors, James City County, Virginia
this 13th day of December, 1982.

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