

ADOPTED

MAR 13 2018

Board of Supervisors
James City County, VA

ORDINANCE NO. 65A-9

ORDINANCE TO AMEND AND REORDAIN CHAPTER 22, WETLANDS BY AMENDING ARTICLE I, IN GENERAL, SECTION 22-3, PERMITTED USES; ARTICLE II, USE PERMITS, SECTION 22-4, REQUIRED FOR CERTAIN ACTIVITIES; APPLICATION GENERALLY; FEE; ARTICLE II, USE PERMITS, SECTION 22-6, PUBLIC HEARING; ARTICLE II, USE PERMITS, SECTION 22-7, WETLANDS BOARD ACTION; ARTICLE II, USE PERMITS, SECTION 22-11, PERMIT TO BE IN WRITING; AND ARTICLE II, USE PERMITS, SECTION 22-13, NO EFFECT ON APPLICABLE ZONING AND LAND USE ORDINANCES.

WHEREAS, Section 28.2-1302 of the Code of Virginia, 1950, as amended, (the "Code of Virginia") authorizes a locality to adopt an Ordinance under which a Wetlands Board is permitted to operate; and

WHEREAS, the Board of Supervisors of James City County (the "Board") has adopted an Ordinance pursuant to Section 28.2-1302 of the Virginia Code as set forth in James City County Code (the "County Code") Chapter 22-Wetlands; and

WHEREAS, Section 28.2-1302 of the Code of Virginia requires specific language for a wetlands zoning Ordinance; and

WHEREAS, Section 28.2-1302 of the Code of Virginia was last amended in 2014 and Chapter 22 of the County Code was last amended in 2011; and

WHEREAS, six sections of Chapter 22 of the County Code, 22-3, 22-4, 22-6, 22-7, 22-11 and 22-13, do not align with Section 28.2-1302 of the Code of Virginia.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that Chapter 22, Wetlands, is hereby amended and reordained by amending Sections 22-3, Permitted uses; 22-4, Required for certain activities; application generally; fee; 22-6, Public Hearing; 22-7, Wetlands Board action; 22-11, Permit to be in writing; and 22-13, No effect on applicable zoning and land use Ordinances.

Chapter 22 - WETLANDS

ARTICLE I. IN GENERAL

Sec. 22-3. 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, footbridges, 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, and skeet and trap shooting and shooting on shooting preserves; provided, that no structure shall be constructed except as permitted in subsection (a) of this section;
- (d) Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
- (e) *Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;*
~~The Cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying;~~
- (f) Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other ~~related~~ *conservation-related* agencies;
- (g) The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (h) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (i) The normal maintenance ~~repair~~ *and repair of,* 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;
- (j) Governmental activity in wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof; ~~and,~~
- (k) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize construction of any drainage ditch; ~~and~~
- (l) *The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of Virginia Code § 28.2-104.1.*

ARTICLE II. USE PERMITS

Sec. 22-4. Required for certain activities; application generally; fee.

- (a) Any person who desires to use or develop any wetland within this county, other than for the purpose of conducting the activities specified in section 22-3 ~~above of this chapter,~~ shall first file an application for a permit *directly with the wetlands board or with* ~~through~~ the Commission.
- (b) The permit application shall include the following: The name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the

area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and other related appurtenances or facilities, including those on adjacent uplands; a description of 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 application has notice; an 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 off-site effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

- (c) A nonrefundable processing fee shall accompany each permit application to cover the cost of processing as follows:
- (1) For permits affecting 20,000 square feet or less of wetlands - \$100.00.
 - (2) For permits affecting more than 20,000 but not more than 40,000 square feet of wetlands - \$200.00.
 - (3) For permits affecting more than 40,000 square feet of wetlands - \$200.00 plus \$100.00 for each acre in excess of one acre of affected wetlands.
 - (4) Payment of any permit fees established in section 24-4 shall be waived for the county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.

Sec. 22-6. Public hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, the local governing body, Commissioner, 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, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this county. The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of such publication shall be paid by the applicant.

Sec. 22-7. Wetlands board action.

- (a) Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.
- (b) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify 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.

- (c) The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the Ceommissioner of its determination. If the board fails to make a determination within the 30-day period, it shall notify the applicant and the Ceommission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.
- (d) If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Ceommissioner. Upon a final determination by the Ceommission, the record shall be returned to the board. The record shall be open for public inspection at the engineering and resource protection division office of this county.

Sec. 22-11. Permit to be in writing.

The permit shall be in writing, signed by the chairman of the board *or his authorized representative*, and notarized. A copy of the permit shall be transmitted to the Ceommissioner.

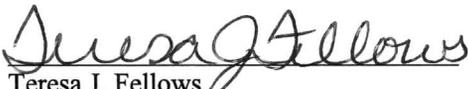
Sec. 22-13. No effect on applicable zoning and land use ordinances.

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinances of this county *or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.*



Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:


Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of March, 2018.