

ADOPTED

MAY 11 2021

ORDINANCE NO. 183A-11

Board of Supervisors
James City County, VA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF COUNTY OF JAMES CITY, VIRGINIA, TO REGULATE THE USE OF RETAINING WALLS BY ADDING NEW SECTION 23-9.1, PERFORMANCE STANDARDS FOR RETAINING WALLS; AND BY AMENDING SECTION 23-10, PLAN OF DEVELOPMENT.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-9.1, Performance standards for retaining walls; and Section 23-10, Plan of development.

Chapter 23. Chesapeake Bay Preservation

Sec. 23-9.1 Performance standards for retaining walls.

Retaining walls constructed in the CPBA supporting three feet or more of ordinary unbalanced fill, or constructed for the purpose of impounding Class I, II, or III-A liquids, or supporting a surcharge other than ordinary unbalanced fill, or located in a flood zone, or that are part of a stormwater BMP shall require a building permit and shall be subject to the following:

- (1) Upon completion of the wall construction and prior to the issuance of any final inspections by the office of building safety and permits, certifications of the soil compaction and drainage system by an appropriate licensed design professional and a certification that an appropriate licensed design professional has overseen construction of the wall shall be provided to the director of stormwater and resource protection. In addition, in accordance with USBC Section 111.2 and when required by USBC Section 1704, a Statement of Special Inspections shall be provided by the registered design professional licensed in Virginia and shall be submitted to the office of building safety and permits within seven days of the inspections being performed.*
- (2) The materials used to construct the wall shall be masonry, stone, vinyl, aluminum, and/or steel. Marine-grade timber may only be used for retaining walls located on a single-family residential lot when the total wall height is less than six feet.*
- (3) Should the overall height of the wall exceed six feet of unbalanced fill (i.e., finished grade to finished grade):*
 - a. The wall shall be broken into multiple stepped walls with a maximum height of six feet for each wall segment, and a minimum horizontal separation between the wall segments of at least nine feet;*
 - b. Guards for fall protection (e.g., fencing) are required to be installed at the top of the wall;*
 - c. The total of all wall segments shall not exceed twenty-four feet in height;*
- (4) A minimum twelve-foot wide access easement shall be located along both the bottom of the wall and along the top of the wall. Such easement shall be able to support a tracked vehicle, shall*

not be located within any required landscape buffer, shall be exclusive of any public or private right-of-way, and shall be free of any structures or utilities; provided, however:

- a. no such access easement shall be required at the bottom of the wall when the function of the wall is to impound or retain standing water or liquids, or other similar environmental constraints exist as determined by the director of stormwater and resource protection;*
- b. landscaping may be permitted within the easements as approved by the director of stormwater and resource protection.*

(5) The design of the retaining wall system shall be such that its construction and removal of the entire wall shall be possible without impacting the foundations or proposed foundations for habitable structures.

(6) The design of the retaining wall system shall include a maintenance plan, which has been prepared by an appropriate licensed design professional. A copy of the retaining wall system maintenance plan shall be submitted to the office of building safety and permits prior to the issuance of any final inspections. The maintenance plan shall include the estimated life-cycle of the retaining wall system. Over the anticipated life span of the retaining wall system, the maintenance plan shall also include recommended maintenance at corresponding time intervals.

(7) At each time interval noted within the maintenance plan, an appropriate licensed professional shall complete the recommended maintenance. Within seven days of such maintenance being performed, the individual performing the maintenance shall submit a copy of their report to the office of building safety and permits.

(8) Prior to the issuance of any final inspection, the property owner shall record restrictive covenants noting that there is a retaining wall on the property, identifying the easement(s) required by subsection (4), and committing to maintaining the retaining wall in accordance with the maintenance plan provided by an appropriate licensed design professional, and providing evidence of such maintenance to the county in accordance with the requirements of this section. Such restrictive covenants shall be in a form acceptable to the county attorney.

(9) Exclusions.

- a. This section shall not apply to decorative walls or retaining walls less than three feet in height.*
- b. This section shall not apply to any dwelling foundation, crawl space, or in the building materials or finishes specific to the construction of a single-family dwelling unit.*
- c. This section shall not apply to bulkheads and seawalls that are used to separate the land from tidal waters.*
- d. Retaining walls for industrial uses, as enumerated in Chapter 24, Zoning, Article V, Districts, as amended, are not subject to subsection (3)a. above.*

(10) Exceptions.

- a. *For retaining walls located on a single family residential lot that do not cross a property line, the director of building safety and permits or designee may grant an administrative waiver to the height limit in subsection (3); however, each wall segment shall not exceed six feet and six inches.*
- b. *Unless otherwise permitted by (10)a. or (10)b, upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for a single wall taller than six feet in height or for a total wall height of greater than twenty-four feet, upon finding that:*
 1. *Such structure will not obstruct light from adjacent property;*
 2. *Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest;*
 3. *Such structure will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;*
 4. *Such structure will not impair property values in the surrounding area;*
 5. *The visual impact to adjoining properties and roadways is minimized;*
 6. *Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;*
 7. *The on-going costs of maintenance or repair of such structure would not unduly burden a property owner or homeowners association;*
 8. *Such structure would not be contrary to the public health, safety or general welfare; and*
 9. *Such structure is necessary due to unusual character of the property, including dimensions or other environmental considerations.*
- c. *Upon application and the payment of appropriate fees, the Board of Adjustments and Appeals may grant an exception for the use of a material other than listed in subsection (2), upon finding that:*
 1. *The use of the alternative material will not impair the enjoyment of historic attractions and areas of significant historic interest;*
 2. *The use of the alternative material will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;*
 3. *The use of the alternative material will not impair property values in the surrounding area;*

4. *The visual impact to adjoining properties and roadways is minimized as determined by the director of planning;*
5. *Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;*
6. *The on-going costs of maintenance or repair of such alternative material would not unduly burden a property owner or homeowners association;*
7. *Such alternative material would not be contrary to the public health, safety or general welfare; and*
8. *Such materials will not materially shorten the life span of the retaining wall system when compared to the full list of other materials permitted in subsection (2) so as to unduly burden a property owner or homeowners association.*

Sec. 23-10. Plan of development.

Any development or redevelopment exceeding 2,500 square feet of land disturbance in the CBPA shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this chapter and any applicable approved watershed management plans. Administration of the plan of development process shall be in accordance with chapter 24 of this Code for site plans and chapter 19 of this Code for subdivision plans. The following plans or studies shall be submitted, unless otherwise provided for:

- (1) *Site and subdivision plans.* Site plans in accordance with the provisions of chapter 24 of the county code or subdivision plans in accordance with chapter 19 of the county code. In the event that chapter 24 does not require the preparation of a site plan for a development activity that exceeds 2,500 square feet of land disturbance, a plan will still be required for the purposes of this chapter that complies with items 2, 3, and 5 of this subsection.
- (2) *Environmental inventory.* An environmental inventory shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval applications. Except for the perennial stream determination required in item d. of this subsection, this requirement may be waived by the manager when the proposed use or development would result in less than 5,000 square feet of disturbed area. For existing single-family lots in a RPA, showing items required by subsection a. on the plat plan normally required as part of the building permit application shall satisfy the requirements for an environmental inventory. An environmental inventory is not required for existing single-family lots in the RMA.
 - a. The environmental inventory shall be drawn to scale clearly delineating the following components:
 1. Tidal wetlands;
 2. Tidal shores;
 3. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow (i.e., RPA wetlands);

4. A 100-foot buffer area located adjacent to and landward of the components listed in items 1. through 3. above, and along both sides of any water body with perennial flow;
 5. Nontidal wetlands not included in item 3 (i.e., RMA wetlands);
 6. 100-year floodplains as designated by chapter 24 of the county code; and
 7. Slopes 25 percent or greater.
- b. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands currently approved for use by the Army Corps of Engineers.
 - c. The environmental inventory shall be drawn at the same scale as the preliminary site plan or subdivision plan and shall be certified as complete and accurate by a person or firm competent to make the inventory.
 - d. The environmental inventory shall include a reliable, site specific evaluation to determine whether water bodies on or adjacent to the development site have perennial flow. This evaluation shall be provided by the person applying to use or develop the site using one of the county or state approved methods of in-field indicators of perennial flow unless the county has already made a field determination of perennial flow for the site. These site-specific determinations shall be confirmed by the manager and shall be used to establish the boundaries of the RPA.
- (3) *Clearing plan.* A clearing plan shall be submitted in conjunction with site plan review or subdivision plan review. No clearing or grading of any lot or parcel shall be permitted without an approved clearing plan. For existing single-family lots, a clearing line shown on the plat plan normally submitted as part of the building permit application shall satisfy clearing plan requirements. No clearing or grading shall occur on existing single-family lots until a complete building permit application is submitted.

Clearing plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

- a. Contents of the plan:
 1. The clearing plan shall be drawn to scale and clearly delineate the location, size and description of existing and proposed plant material. All existing trees on the site 12 inches or greater diameter at breast height (DBH) shall be shown on the clearing plan, or where there are groups of trees, the woodlines of the group may be outlined instead. The specific number of trees 12 inches or greater DBH to be preserved outside of the impervious cover and outside the groups shall be indicated on the plan. Trees to be removed and woodlines to be changed to create desired impervious cover shall be clearly delineated on the clearing plan.
 2. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this chapter, shall be shown on the clearing plan.
 3. Within the RPA buffer area, trees to be removed for sight lines, vistas, access paths, and BMPs, as provided for in this chapter, shall be shown on the plan. Vegetation

required by this chapter to replace any existing trees within the buffer area shall also be shown on the clearing plan.

4. Erosion and sediment controls shall be provided as necessary and in accordance with chapter 8 of the County Code.
5. *The clearing plan shall clearly delineate the location, size, and description of existing and proposed retaining walls subject to the performance standards found in section 23-9.1.*

b. Plant specifications:

1. All plant materials necessary to supplement the buffer area or vegetated areas outside the impervious cover shall be installed according to standard planting practices and procedures.
2. All supplementary or replacement plant materials shall be living and in healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
3. Where areas to be preserved, as designated on an approved clearing plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum 1-½ inches caliper at the time of planting.


c. Maintenance:

1. The applicant shall be responsible for the maintenance, repair and replacement of all vegetation as may be required by the provisions of this chapter.
2. In buffer areas and areas outside the impervious cover, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying or dead plant materials shall be replaced during the next planting season, as required by the provisions of this chapter.

d. Installation and bonding requirements:


1. Where buffer areas are required, no certificate of occupancy shall be issued until the installation of required plant material to establish or supplement the buffer is completed, in accordance with the approved clearing plan.
2. When the occupancy of a structure is desired prior to the completion of the plan, a certificate of occupancy may be issued only if the applicant provides a form of surety satisfactory to the county attorney in an amount equal to the costs of the remaining plant materials, related materials and installation costs.
3. All required plant material shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited.

- (4) *Stormwater management plan.* A stormwater management plan shall be submitted as part of the plan of development process required by chapter 8 of the county code and in conjunction with site plan or subdivision plan preliminary approval. A stormwater management plan is not required for individual single-family detached residential structures that utilize an agreement in lieu of a stormwater management plan in accordance with section 8-25(a) of the county code. Performance assurances shall be provided that all stormwater management and/or BMP facilities required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the county attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the manager or his authorized designee.
 - a. Contents of the plan must meet the requirements of section 8-25 of the county code.
 - b. Plan must be submitted and reviewed in accordance with 9VAC25-870-108 and section 8-27(a) of the county code;
 - c. Prior to land disturbance, the stormwater management plan must be approved by the VSMP authority;
 - d. Exceptions to technical criteria for regulated land-disturbing activities (Part IIB or Part IIC) may be requested in accordance with 9VAC25-870-57 and section 8-28(g) of the county code; and
 - e. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58 and section 8-29 of the county code.
- (5) *Erosion and sediment-control plan.* An erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Law and regulations and chapter 8 of the county code must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by the VESCP authority.
- (6) *Landscaping plan.* Landscaping plan in accordance with chapter 24 of the county code.
- (7) *Final plan.* Final site plans or final subdivision plans for all lands within CBPAs shall include the following information:
 - a. Delineation of the RPA boundary;
 - b. Delineation of required buffer areas;
 - c. Delineation of RMA wetlands;
 - d. All wetlands permits required by law;
 - e. Delineation of slopes 25 percent or greater; and
 - f. BMP maintenance agreement to ensure proper maintenance of BMPs in order to continue their functions.



Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:



Teresa J. Fellows
Deputy Clerk to the Board

| | VOTES | | |
|-----------|--------|-----|---------|
| | AYE | NAY | ABSTAIN |
| SADLER | Absent | --- | --- |
| ICENHOUR | ✓ | --- | --- |
| LARSON | ✓ | --- | --- |
| MCGLENNON | ✓ | --- | --- |
| HIPPLE | ✓ | --- | --- |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of May, 2021.

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