

WETLANDS ZONING ORDINANCE

of

King George County, Virginia

Adoption/Amendments

Adopted - Emergency Legislation 7/28/83

Adopted - After public hearing 8/18/83

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WETLANDS ZONING ORDINANCE
OF
KING GEORGE COUNTY, VIRGINIA

1. The governing body of King George County, Virginia, acting pursuant of 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 ordinance regulating the use and development of wetlands.

2. As used in this ordinance, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following as shown on the U. S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and natural waterways adjacent to or connecting to or connecting with the above named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any or all of the services provided by King George 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.

"Nonvegetated wetlands" means 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 and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to following by tides including wind tides but not including hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following as based on the U.S. Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: The North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named as unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

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

"Vegetated wetlands" means 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: salt-marsh 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 (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-squares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Hyssa 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 (*Sagittaris* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattails (*Typha* spp.), three squares (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.) yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaris* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to 28.2-1303 of the Code of Virginia.

3. The following uses of and activities on wetlands are permitted, if otherwise permitted by law:
 1. 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;
 2. The cultivation and harvesting of shellfish, and worms for bait;
 3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, and skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subdivision 1 of this section;
 4. Outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
 5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
 6. Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, Commission of Game and Inland Fisheries, and other related conservation agencies;
 7. The construction or maintenance of aides to navigation which are authorized by governmental authority;
 8. Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;
 9. 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;
 10. Governmental activity on wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof; and,
 11. 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.

4.
 - A. Any person who desires to use or develop any wetland within King George County other than for those activities specified in 3 of this ordinance, shall first file an application for a permit directly with wetlands board or with the Commission.
 - B. The permit 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, 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 name 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; and estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; and 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 offside effects; and 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. The fee shall be set by the governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.
5. All applications, maps and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under 6 of this ordinance.
6. Not later than sixty 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 days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in King George County,. The costs of such publication shall be paid by the applicant.

7.
 - A. Approval of a permit application shall require the affirmation 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 statement of all witnesses, the findings and decision of the board, and the rationale for the decision.
 - C. The Board shall make its determination within thirty days of the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination. If the board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the Commission 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 application is reviewed or appealed, then the board shall transmit the record of it 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 as was designated under 5 of this ordinance.
8. 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 there terms and conditions set forth in the application.
9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.
10.
 - A. In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:
 1. The testimony of any person in support of or in opposition to the permit application;

2. The impact of the proposed development on the public health, safety, and welfare; and
 3. The proposed development's conformance with standards prescribed in 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to 28.2-1301 of Code of Virginia.
- B. The board shall grant the permit if all of the following criteria are met:
1. The anticipated public and private benefit of the proposed activity exceed its anticipated public and private detriment.
 2. The proposed development conforms with the standards prescribed in 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to 28.2-1301 of the Code of Virginia.
 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (28.2-1300 et. seq.) of Title 28.2 of the Code of Virginia.
- C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.
11. The permit shall be in writing, signed by the chairman of the board and notarized. A copy of the permit shall be transmitted to the Commissioner.
 12. No permit shall be granted without the expiration date established by the board. Upon proper application, the board may extend the permit expiration date.
 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use ordinances of King George County or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

THAT THE PROVISIONS OF THIS ORDINANCE SHALL BE IN EFFECT AT 12:01 A.M., ON

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ATTEST:

County Administrator

Date