

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-23-07

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 10th day of December 2007:

Present:	Vote:
Stran L. Trout	_____
W. R. Davis, Jr.	_____
Mark E. Hill	_____
James H. Burrell	_____
David M. Sparks	_____

Motion was made by Mr. _____, which carried failed
____:____:____, to adopt the following Ordinance:

**AN ORDINANCE AMENDING THE CHESAPEAKE
BAY PRESERVATION AREAS ORDINANCE OF
NEW KENT COUNTY TO CONFORM TO STATE
REGULATION AND FURTHER RESTRICT BUFFER
CLEARING**

WHEREAS, in order to protect more fully the Resource Protection Area (RPA) buffer established by the Chesapeake Bay Preservation Areas Ordinance in Chapter 94, Article II of the New Kent County Code an amendment to the Code is necessary; and

WHEREAS, the Chesapeake Bay Local Assistance Board has modified the Chesapeake Bay Preservations Areas Regulations (9 VAC 10-20) necessitating the County to modify the local ordinance in order to maintain the County's full compliance with the state program; and

WHEREAS, development and construction activities in New Kent County will increasingly encroach upon RPA buffer areas; and

WHEREAS, there have been documented cases of RPA buffer disturbance and destruction which perhaps could have been prevented had the Chesapeake Bay Preservation Areas Ordinance been clearer in the need to obtain permits for vegetation removal and ground disturbance within the RPA buffer; and

WHEREAS, it is important to balance the legitimate desires of residents and development interests for water views and access with the need to protect the environment and especially the open water resources of the County and the Commonwealth; and

WHEREAS, the New Kent County Board of Supervisors finds that the effort required to maintain the RPA buffer should be at least commensurate with the level of effort necessary in establishing the RPA buffer; and

WHEREAS, the adoption of these text amendments will support the public necessity, convenience, general welfare and good planning and zoning practices in the County of the New Kent;

NOW THEREFORE BE IT ORDAINED, by the New Kent County Board of Supervisors this 10th day of December 2007 that certain amendments to Chapters 94 related to further protecting the Resource Protection Area buffer are required and are hereby adopted.

BE IT FURTHER ORDAINED that the following text represents the amendments adopted:

Sec. 94-33. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words and terms not defined in this article but defined in the chapter 98, zoning, of this Code, shall be given the meanings set forth therein.

* * *

Noxious weeds is defined in § 3.1-296.12 of the Code of Virginia and means vegetation listed with the state of Virginia as noxious or listed as noxious in the Federal Noxious Weed list, to specifically include the species of grass Sorghum halepense, commonly known as Johnson grass, the woody shrub rosa multiflora, commonly known as multiflora rose, musk thistle and curled thistle ~~weeds that are difficult to control effectively, such as Johnson Grass, Kudzu and multiflora rose.~~

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Sec. 94-39. Development criteria.

The use, development or redevelopment of land in the Chesapeake Bay Preservation Areas must meet or exceed the following performance criteria:

* * *

(7) On site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall have pump-out accomplished for all such systems at least once every five years, however, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage treatment systems may

a. install and properly maintain a filter on the septic tank prior to the discharge of effluent from the septic tank; or

b. submit documentation every five years, certified by a sewage handler permitted by the state department of health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(8) Stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations 4 VAC 3-20-10 et seq. shall be satisfied. The following stormwater management options shall be considered to comply with this article:

a. Incorporation on-the-site of best management practices that meet the water quality protection requirements set forth in the regulations. For the purposes of this subsection, the "site" may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;

b. Compliance with any regional stormwater management program adopted by the county, which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the Virginia ~~e~~D~~e~~partment of ~~e~~E~~n~~vironmental ~~e~~Q~~u~~ality to the county for its municipally-owned separate storm sewer system discharges, that is reviewed and found by the board to achieve water quality protection equivalent to that required by the Chesapeake Bay Regulations; and

c. Compliance with a site-specific VPDES permit issued by the department of environmental quality, provided that the board specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by state law.

d. Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the county, may be exempted from the requirements of this subsection.

e. Stormwater management criteria for redevelopment shall apply to any and all redevelopment.

f. The procedure for calculating stormwater management pre- and post-development loads must be the same so that comparable numbers may be obtained.

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(10) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this article provided that the silvicultural operations adhere to all other applicable provisions of this Code and provided ~~that the~~ water quality protection procedures prescribed by the ~~state~~Virginia ~~Department of~~Forestry in the current edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide" are fully incorporated and maintained throughout the silvicultural operations and for sufficient time thereafter to ensure complete stabilization. The ~~state~~Virginia ~~Department of~~Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

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(11) Evidence of receipt of all wetlands permits required by law ~~are~~ is required before the director of planning will authorize grading or other on-site activities to begin.

Sec. 94-40. Additional development criteria for resource protection areas (RPA).

(a) Requirements in resource protection areas (RPA). In addition to the general performance criteria set forth in section 94-39 of this article, the criteria in this section are required in all resource protection areas.

* * *

(4) Redevelopment on isolated redevelopment sites shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover and no further encroachment within the resource protection area, and it shall conform to all applicable erosion and sediment control and stormwater management requirements set forth in this Code, and with all applicable stormwater management requirements of other state and federal agencies. Redevelopment efforts ~~should~~ shall include the establishment of buffers and other water quality measures to improve water quality whenever possible.

* * *

(c) *Buffer area requirements.*

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(5) Permitted modifications of the buffer area. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the director of planning in accordance with section 94-45(a), only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

- a. Trees and woody shrubs may be pruned ~~or removed as necessary~~ to provide for sight lines and vistas in accordance with the guidelines set out in the Riparian Buffers Modification & Mitigation Guidance Manual (Chesapeake Bay Local Assistance Department, 2003), as it may be amended from time to time. ~~provided that where removed, they shall be replaced on a two to one basis, with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff. The plant list as found in the Chesapeake Bay Local Assistance manual shall be used as a guide to choosing replacement vegetation.~~
- b. Any path shall be constructed and surfaced so as to effectively control erosion.
- c. Dead, diseased, or dying trees or shrubbery and noxious weeds may be removed and thinning of trees may be allowed, pursuant to sound horticultural practices. For trees that are proposed for removal based on being either diseased or dying, a professional horticulturalist or arborist shall certify that trees or woody vegetation are dying and if diseased, shall stipulate the type of disease and its impact on the survivability of the trees or woody vegetation. For trees proposed to be thinned, a professional horticulturalist or arborist shall certify that such thinning is in full accord with sound horticultural practices and shall specify the benefits to the growth habits and viability of the remaining trees or woody vegetation from such thinning.
- d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- e. Where trees or vegetation are to be removed for any reason, each tree and individual woody shrub proposed for removal shall be individually marked in the field prior to applying for approval to the

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director of planning; each such site shall be field-verified by the director of planning or his or her designee prior to granting or denying approval for the vegetation removal.

f. All trees and woody vegetation removed shall be replaced with native or indigenous vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff. For all vegetation removed for any reason, replacement is required in conformance with the Vegetative Replacement Standards in Appendix D of the Riparian Buffers Modification & Mitigation Guidance Manual (Chesapeake Bay Local Assistance Department, 2003), as it may be amended from time to time. For trees removed without approval from the director of planning, the replacement ratio shall be doubled. The plant list as found in the Appendix A of the Riparian Buffers Modification & Mitigation Guidance Manual (Chesapeake Bay Local Assistance Department, 2003), as it may be amended from time to time shall be used as a guide to choosing replacement vegetation.

(6) Agricultural lands. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area, so long as the activities are otherwise allowed by this Code, and as only as follows:

a. Bona fide agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Colonial Soil and Water Conservation District, addresses the more predominant water quality issues on the adjacent land (erosion control or nutrient management) is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the state department of conservation and recreation.

b. Bona fide agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on

the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations" (4 VAC 5-15-10) administered by the state department of conservation and recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot buffer area.

c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practice~~s~~, either erosion control or nutrient management, as considered by the Colonial Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land.

d. The agricultural buffer encroachments described above shall not be approved unless the landowner shall demonstrate that a significant hardship will accrue in the absence and that the encroachment sought is the least necessary to afford reasonable relief.

(7) To ensure a useable backyard, allow for accessory structures, etc., without the need for encroachment, all **principal** structures must be set-back at least 20 feet from the edge of all RPA buffer areas, provided, however, that where an encroachment into the RPA is allowed, as permitted by section 94-45 herein, the setback may be reduced or eliminated.

Sec. 94-42. Plan of development process.

(a) *Generally.* In addition to the information required for a plan of development or site plan under chapter 98, zoning, of this Code, and the site-specific RPA information required in section 94-35, the owner or developer of a project which constitutes development or redevelopment subject to the provisions of this article shall include the following information and studies in this section with the site plan. All of the information required in subsection (1) through (8) must be prepared by a professional acting within the scope of his or her professional capacity.

(1) Landscaping.

- a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees and woody shrubs in the open on the site ~~six inches or greater diameter at breast height (DBH)~~ shall be shown on the landscaping plan, or where there are groups of trees or woody shrubs, said stands may be outlined instead except that individual trees twenty-four inches (24") or greater in diameter at breast height (DBH) shall be individually identified. ~~The specific number of trees six inches (6") or greater DBH to be preserved outside of the building envelope shall be indicated on the plan.~~ Trees and other woody vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscaping plan.
- b. Any required RPA buffer areas shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this article shall be shown on the plan. Vegetation required by this part to replace any existing ~~trees~~ vegetation proposed to be removed within the buffer area shall also be shown.
- d. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this article shall be shown.
- e. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- f. The landscaping plan will include specifications for the protection of existing trees and other vegetation during clearing, grading and all phases of construction.
- g. If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.
- h. Permanent signage of a form approved by the county shall be placed along the RPA delineation where it is intersected by property lines and at 300-foot intervals between property lines. Signs shall be paid for by the owner or developer of the property however, signs shall be the property of the county and may not be altered or removed.

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(2) Environmental site assessment. The following site assessment shall be drawn to scale and clearly delineate the following environmental features:

- a. Tidal wetlands;
- b. Tidal shores;
- c. Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, including non-tidal wetlands associated with lakes, ponds and other impoundments with perennial streams flowing either into or out of them;
- d. Any other land specified as a RPA by the board;
- e. A 100-foot buffer located adjacent to and landward of the components listed in subsections a. through d. above, and along both sides of any water body with perennial flow;
- f. Other sensitive environmental features as determined by the board.

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(5) Plant specifications.

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to ~~standard planting practices and procedures~~ the Standardized Landscape Specifications for the Commonwealth of Virginia (Virginia Nursery and Landscape Association and Virginia Society of Landscape Designers), 2001 or as it may be amended from time to time).
 1. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required under this article.
 2. In buffer areas and outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials must be replaced during the next planting season.
- b. All supplementary or replacement plant materials shall be living and in a 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.
- c. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a rate double that required by the Vegetative Replacement Standards in Appendix D of the

Riparian Buffers Modification & Mitigation Guidance Manual (Chesapeake Bay Local Assistance Department, 2003), as it may be amended from time to time. Replacement vegetation shall consist of native or indigenous species and of a size meeting the criteria contained in the standards referenced above. ~~three planted trees to one removed ratio. Replacement trees shall be a minimum one and one half inches (1 1/2") DBH at the time of planting.~~

d. Native or indigenous plant species shall be preferred over non-native or non-indigenous species.

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(b) *Installation and bonding requirements.*

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(3) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the county. The county may collect from the property owner any amount by which the cost of required actions, including reasonable administrative fees, exceeds the surety amount. The health and viability of all required landscaping installed in buffer areas shall be guaranteed for a minimum period of two (2) years. The guarantee may be in the form of a surety or a warranty from an established plant nursery.

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Attest:

John A. Budesky
County Administrator

Stran L. Trout
Chairman