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DIVISION 11. FO FLOODPLAIN OVERLAY DISTRICT <sup>[6]</sup>

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**Sec. 4-56. General provisions.**

- (a) *Purpose.* The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
- (1) Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
  - (2) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
  - (3) Requiring all those uses, activities, and developments that do occur in floodprone districts to be protected and/or floodproofed against flooding and flood damage; and
  - (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
- (b) *Applicability and administration.*
- (1) These provisions shall apply to all lands within the jurisdiction of the town and identified as being within a floodplain by the Federal Insurance Administration, as stipulated in this division.
  - (2) These provisions shall supersede any regulations currently in effect in floodplain areas. Where conflict exists between these provisions and those of any underlying zoning districts, the more restrictive provisions shall apply.
  - (3) In the event any provision concerning a floodplain area is declared inapplicable as a result of any legislative or administrative actions or judicial discretion, the basic underlying zoning district provisions shall remain applicable.
- (c) *Compliance and liability.*
- (1) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this division and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this division.
  - (2) The degree of flood protection sought by the provisions of this division is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This division does not imply that areas outside the floodplain areas or that land uses permitted within such areas will be free from flooding or flood damages.

- (3) Records of actions associated with administering this division will be kept on file and maintained by the administrator.
  - (4) This division shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.
- (d) *Severability.* If any section, subsection, paragraph, sentence, clause, or phrase of this division shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this division. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this division are hereby declared to be severable.

(Ord. No. 854, 9-4-2007)

#### Sec. 4-57. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Base flood.* The flood having a one percent chance of being equaled or exceeded in any given year.

*Base flood elevation (BFE).* The 100-year water-surface elevation of the one percent annual chance flood designated by the Federal Emergency Management Agency.

*Basement.* Any area of the building having its floor subgrade (below ground level) on all sides.

*Board of zoning appeals.* The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this division.

*Development.* Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*Elevated building.* A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

*Encroachment.* The advance or infringement of uses, plant growth, fills, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*Flood or flooding.* A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters; or the unusual and rapid accumulation or runoff of surface waters from any source; or the collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

*Floodplain or floodprone area.* Any land area susceptible to being inundated by water from any source.

*Floodway.* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Freeboard.* A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

*Historic structure.* Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior; or
  - b. Directly by the Secretary of the Interior in states without approved programs.

*Lowest floor.* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Federal Code 44CFR §60.3.

*Recreational vehicle.* A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

*Shallow flooding area.* A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Special flood hazard area.* The area in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in section 4.58 of this division.

*Start of construction.* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Substantial damage.* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement.* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Watercourse.* A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 854, 9-4-2007)

#### **Sec. 4-58. Delineation of areas.**

- (a) *Basis of areas.* The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The basis for the delineation of these districts shall be the flood insurance study for the town prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 28, 2007. These areas are more specifically defined as follows:
  - (1) The floodway area is delineated for purposes of this division, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the 100-year flood without increasing the water surface elevation of that flood more than one foot at any point. The areas included in this district are specifically defined and shown on the flood boundary and floodway map accompanying the flood insurance study.
  - (2) The flood-fringe area shall be those areas of the 100-year floodplain not included in the floodway; identified as an AE zone on the maps accompanying the flood insurance study that are not included in the floodway area.
- (b) *Creation of overlay concept.*
  - (1) The floodplain areas described above shall be an overlay to the existing underlying zoning districts as shown on the official zoning map, and, as such, the provisions for the floodplain areas shall serve as a supplement to the underlying zoning district provision.
  - (2) Any conflict between the provisions or requirements of the floodplain areas and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain areas shall apply.
  - (3) In the event any provision concerning a floodplain area is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.
  - (4) The boundaries of the floodplain areas are established as shown on the flood insurance rate map which is declared to be part of this division and which shall be kept on file in the office of the administrator.
- (c) *Floodplain boundary changes and interpretation.*
  - (1) The delineation of any of the floodplain areas may be revised by the town council where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change.  
However, prior to any such change, approval must be obtained from the Federal Insurance Administration.
  - (2) Initial interpretations of the boundaries of the floodplain areas shall be made by the administrator. Should a dispute arise concerning the boundaries of any of the areas, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the floodplain area boundary shall be given an opportunity to present his case to the board and to submit his/her own technical evidence. Procedures for such appeals shall be as outlined in article IX, division 2, section 9-11 of the zoning ordinance.

(Ord. No. 854, 9-4-2007)

## Sec. 4-59. Area provisions.

### (a) *Floodplain Area General Provisions.*

- (1) *Permit requirement.* All uses, activities, and development occurring within any floodplain area shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this division and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the town subdivision regulations. Prior to the issuance of any such permit, the administrator shall require all applications to include compliance with all federal and state laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways or any watercourse, drainage ditch, or any other drainage facility or system.
- (2) *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within the town, a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality (DEQ), and the Virginia Marine Resources Commission (a joint permit application is available for any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, Division of Dam Safety and Floodplain Management, and the Federal Emergency Management Agency.
- (3) The lowest floor elevation of any new residential structures constructed within a floodplain area shall be at least two feet above flood elevation. The lowest floor elevation of any new nonresidential structure constructed within a floodplain area shall be at least one foot above base flood elevation, unless such structure is floodproofed. In addition, no existing structure shall be modified, expanded or enlarged unless the new construction complies with this standard.
- (4) *Site plans and permit applications.* All applications for development in the floodplain area and all building permits issued for the floodplain shall incorporate the following information:
  - a. For structures to be elevated, the elevation of the lowest floor, including basement.
  - b. For structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.
  - c. The elevation of the 100-year flood.
  - d. Topographic information showing existing and proposed ground elevations.
- (5) For all new subdivisions which adjoin or include floodplain areas identified in the flood insurance study, the base flood elevation shall be shown on the final record plat.
- (6) *Recreational vehicles.* All recreational vehicles located in a Federal Emergency Management Agency designated floodplain shall either:
  - a. Be on the site for fewer than 180 consecutive days, be fully licensed and inspected, and ready for highway use; or
  - b. Meet the minimum permit requirements for placement and the elevation and anchoring requirements for manufactured homes as contained in the Virginia Uniform Statewide Building Code.
  - c. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

### (b) *Floodway area.*

- (1) In the floodway, no development shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate authorities as required above.
- (2) The placement of any manufactured home, except in an existing manufactured home park within the floodway is specifically prohibited.
- (3)

In the floodway, the following uses, types, and activities are permitted, provided that they are in compliance with the provisions of the underlying zoning district and are not prohibited by any other ordinance and provided that no specific land use requires any type of structure, fill, or storage of materials and equipment:

- a. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- b. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
- c. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.
- d. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, airport landing strips, etc.
- e. Mobile homes are permitted only in an existing mobile home park.

(4) The following uses and activities may be permitted by special use pursuant to article VII, division 4 of the town zoning ordinance provided that they are in compliance with the provisions of the underlying zoning district and are not prohibited by this or any other ordinance:

- a. Structures (except for manufactured homes) accessory to the uses and activities by right, above.
- b. Certain utilities and public utilities and improvements such as pipelines, water and sewage treatment plants, and other similar or related uses.
- c. Water-related uses and activities such as marinas, docks, wharves, piers, etc.
- d. Extraction of sand, gravel and other materials (where no increase in level of flooding or velocity is caused thereby).
- e. Storage of materials and equipment provided that they are not buoyant, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is firmly anchored to prevent floatation or movement, and/or can be readily removed from the area within the time available after flood warning.
- f. Other similar uses and activities provided they cause no increase in flood heights and/or velocities. All uses, activities, and structural development, shall be undertaken in strict compliance with the floodproofing provisions contained in all other applicable codes and ordinances.

(c) *Flood-fringe, special floodplain, and approximated floodplain areas.*

- (1) In the flood-fringe, special floodplain, and approximated floodplain areas, the development and/or use of land shall be permitted in accordance with the regulations of the underlying zoning district, provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances.
- (2) However, in the special floodplain and the approximated floodplain areas, the applicant and/or developer shall evaluate the effects of the proposed development and/or use of land on the floodplain with current hydrologic and hydraulic engineering techniques. The applicant and/or developer shall submit studies, analysis, computations, etc. to show the delineation of a floodway based on the requirement that all existing and future development not increase the 100-year flood elevation more than one foot at any one point. The engineering principle, equal reduction of conveyance, shall be used to make the determination of increased flood heights.

(d) *Procedures for special uses in floodways.*

- (1) Any use listed as permitted with special use in a floodway shall be allowed only after application to the town council. All such applications shall be reviewed pursuant to the procedures outlined in article

VII, division 4 of the town zoning ordinance. In addition to information required by article VII, division 4, all application shall include the following:

- a. Plans in triplicate drawn to scale of not less than one inch to 100 feet horizontally showing the location, dimension, and contours (at five-foot intervals) of the lot, existing and proposed structures, fill, storage areas, water supply, sanitary facilities, and relationship of the floodway to the proposal.
- b. A typical valley cross-section as necessary to adequately show the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and 100-year flood elevation.
- c. A profile showing the slope of the bottom of the channel or flow line of the stream.
- d. A summary report, prepared by professional engineers or others of demonstrated qualifications, evaluating the proposed project in relation to flood heights and velocities; the seriousness of flood damage to the use; and other pertinent technical matters.
- e. A list of names and addresses of adjoining property owners.

(2) In acting upon such applications, the planning commission and the town council shall consider all relevant factors specified in other sections of this article and:

- a. The danger to life and property due to increased flood heights or velocities caused by encroachments. No special use shall be granted for any proposed use, development, or activity within the floodway that will cause any increase in flood levels during the 100-year flood.
- b. The danger that materials may be swept on to other lands or downstream to the injury of others.
- c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- e. The importance of the services provided by the proposed facility to the town.
- f. The requirements of the facility for a waterfront location.
- g. The availability of alternative locations not subject to flooding for the proposed use.
- h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the town.
- j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- k. Such other factors which are relevant to the purpose of this division.

(e) *Design criteria for utilities and facilities.*

- (1) *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into the floodwaters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- (2) *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of floodwaters into the system and be located and constructed to minimize or eliminate flood damages.
- (3) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. The town may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

- (4) *Utilities.* All utilities, such as gas lines, electrical and telephone systems being placed in floodprone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- (5) *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

(Ord. No. 854, 9-4-2007)

#### **Sec. 4-60. Variances.**

- (a) The board of zoning appeals may consider variances to the requirements of this section, under the following guidelines and conditions and shall satisfy relevant factors and procedures specified in other sections of this appendix:
  - (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. Variances may not be considered within any floodway area if any increase in flood levels during the 100-year flood would result.
  - (2) Variance requests may be granted for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places without regard to the procedures set forth in this section.
  - (3) Variances may be considered for new construction and substantial improvements to be erected on a lot contiguous and surrounded by lots with existing structures constructed below the 100-year flood level using the guidelines set forth in subsection 4-59(d)(2)b. above.
- (b) The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters. Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in:
  - (1) Unacceptable or prohibited increases in flood heights;
  - (2) Additional threats to public safety;
  - (3) Extraordinary public expense;
  - (4) Creation of nuisances;
  - (5) Fraud on or victimization of the public; or
  - (6) Conflict with local laws or ordinances.
- (c) Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief from any hardship to the applicant. The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administration.

(Ord. No. 854, 9-4-2007)

#### **Sec. 4-61. Existing structures in floodplain areas.**

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- (a) Existing structures and/or uses located in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements.
- (b)

Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than 50 percent of its market value shall be elevated and/or floodproofed to the greatest extent possible.

- (c) Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with the provisions of this division and the Virginia Uniform Statewide Building Code.

(Ord. No. 854, 9-4-2007)

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FOOTNOTE(S):

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**Cross reference**— *Floods. ch. 42. [\(Back\)](#)*