

Article XI. Floodplain Conservation, District FC

Section 70- 88 Statement of Purpose and Intent

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:

- (a.) 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.
- (b.) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- (c.) Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
- (d.) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

Section 70- 89 Applicability

These provisions shall apply to all lands within the jurisdiction of the Town of New Market and identified as being in the 100-year floodplain by the Federal Insurance Administration.

Section 70- 90 Compliance and Liability

- (a.) 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 ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
- (b.) The degree of flood protection sought by the provisions of this ordinance 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 man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.
- (c.) This ordinance shall not create liability on the part of the Town of New Market or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 70- 91 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

Section 70- 92 Severability and Penalties

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

Any person who fails to comply with any of the requirements or provisions of this Article or directions of the zoning administrator or any other authorized employee of the town shall be guilty of a misdemeanor of the first class and subject to the penalties thereof.

In addition to the above penalties, all other actions hereby reserved, including an action in equity for the proper enforcement of the Article. The imposition of a fine or penalty for any violation of, or noncompliance with, this Article shall not excuse the violation or noncompliance to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this Article may be declared by the town council to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this Article.

Section 70- 93 Definitions for the Purposes of this Article

As used in this Article, the following terms or words shall have the meanings given below, unless the context clearly requires otherwise:

(a.) Base Flood/One-Hundred Year Flood – A flood that, on the average, is likely to occur once every 100 years (i.e., that has one (1) percent chance of occurring each year, although the flood may occur in any year).

(b.) Base Flood Elevation (BFE) – The Federal Emergency Management Agency designated 100-year water surface elevation of one or more feet.

(c.) Basement – Any area of the building having its floor sub-grade (below ground level) on all sides.

(d.) 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 ordinance.

(e.) Development – Any man-made 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.

(f.) Flood – 1. A general and temporary condition of partial or complete inundation of normally dry land areas from: (a.) The overflow of inland or tidal waters; (b.) The unusual and rapid accumulation or runoff of surface waters from any source; (c.) Mudslides (i.e.

mudflows) which are approximately caused by flooding as defined in part (b.) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when the earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence 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 a flash flood or by some similarly unusual and unforeseeable event which results in flooding as defined in part 1. (a.) of this definition.

(g.) Floodplain – Any land area susceptible to being inundated by water from any source.

(h.) 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.

(i.) Freeboard – A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

(j.) Historic Structure – Any structure that is:

1. Listed individually in the National Registrar of Historic Places (a listing maintained by the Department of the Interior), or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing in the National Registrar;

2. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district primarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in communities 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 by an approved state program as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs.

(k.) Lowest Floor – The lowest floor of the lowest enclosed area (including basement).

(l.) Manufactured Home – A structure subject to federal regulations, which is transportable in one or more sections; is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is 320 or more in square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without permanent foundation when connected to the required facilities; and includes the plumbing, heating, air conditioning and electrical systems contained in the structure.

(m.) Manufactured Home Park/Subdivision – A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.

(n.) New Construction – For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after the effective date of the adoption of this chapter and amendments thereto, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which “start of construction” commenced on or after the effective date of floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

(o.) Recreational Vehicle – A vehicle which is:

1. built on a single chassis;
2. 400 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.

(p.) Start of Construction – The date the zoning permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement 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 pipes, 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 of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary 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 construction means the first alternation on any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

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

(r.) 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 structures continued designation as a “historic structure”.

(a.) Basis of District

1. The floodplain district shall include areas subject to inundation by waters of the one hundred (100)-year flood. The basis for the delineation of the district shall be the one hundred (100)-year flood elevations or profiles contained in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) for the Town of New Market prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated July 16, 2003, as amended.

2. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Town of New Market.

(b.) Overlay Concept

1. The Floodplain District described above shall be overlays to the existing underlying area as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain district shall serve as a supplement to the underlying district provisions.

2. Any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

3. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

Section 70- 95 Official Zoning Map

The boundaries of the Floodplain District are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the New Market Town Office.

Section 70- 96 District Boundary Changes

The delineation of any of the Floodplain District may be revised by the New Market Town Council where natural or man-made 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 need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

Section 70- 97 Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain District shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

Section 70- 98 General Provisions

A. Permit Requirements

All uses, activities, and development occurring within any Floodplain District shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the Town of New Market Subdivision Regulations. Prior to the issuance of any such permit, the Zoning Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch or any other drainage facility or system. The Zoning Administrator shall maintain a separate file for all zoning permits in areas subject to this Article.

B. Alteration or Relocation of Watercourse

Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.

C. Site Plans and Permit Applications

All applications for development in the Floodplain Conservation District and all zoning permits issued for the Floodplain Conservation District shall be accompanied by a site plan. In addition to the information required by Article XVII of this chapter, such site plans shall incorporate the following information:

1. For structures to be elevated, the elevation of the lowest floor (including basement).

2. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
3. The elevation of the 100-year flood.
4. Topographic information showing existing and proposed ground elevations.
5. The zoning approval for the use.

Section 70-98A Approximated Floodplain District

In the Approximated Floodplain District, the development and/or use of the land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances. All new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, include within such proposals base flood elevation data. The applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the one hundred (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.

Within the floodway area delineated by the applicant, no development shall be permitted that will cause any increase in the one hundred (100)-year flood elevation.

Section 70- 99 Permitted Uses

No development and/or use of land shall be permitted in the Floodplain Conservation District except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate authorities. Any such development, use or activity in the Floodplain District must also comply with the regulations of the underlying district. The placement of any mobile (manufactured) home or recreational vehicle within the Floodplain Conservation District is specifically prohibited.

The following uses, and no others, are permitted in the Floodplain Conservation District, provided that they are not prohibited by this chapter or by any other applicable ordinance, and provided that they do not require enclosed structures, fill or storage materials and equipment:

- (a.) Agricultural uses, such as general farming, pasturing, grazing, outdoor plant nurseries, horticulture, orchards, truck farming, forestry, sod farming, and wild crop harvesting. These uses shall be allowed only in accordance with recognized soil conservation practices and natural resource conservation practices.
- (b.) Wildlife sanctuaries, nature preserves and arboretums.
- (c.) Game farms, fish hatcheries and fishing areas (but permitting no structures).
- (d.) Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching, swimming areas, fishing, sport or boating clubs, and hiking and horseback trails.

(e.) Accessory residential uses, such as yard areas, home gardens, play areas, and pervious loading areas.

(f.) Normal accessory uses, including signs, that are permitted under the usual zoning in the appropriate underlying district; except that no enclosed structures shall be permitted.

Section 70- 100 Permitted Uses with a Conditional Use Permit

The following uses may be permitted in the Floodplain Conservation District, subject to the procedures and criteria established in this chapter; provided that they are in compliance with the provisions of the underlying district and that they are not prohibited by this chapter or by any other ordinance:

(a.) Enclosed structures, except for mobile (manufactured) homes and recreational vehicles, accessory to the uses and activities listed in Sec. 70- 99 of this Article; provided that adequate building methods are used to eliminate the dangers of flooding. A statement by a registered architect or engineer will be required to explain the building methods to be used to overcome flooding. All such structures must be connected to public water and sewer systems, where water and sewer uses are necessary.

(b.) Outlet stations for sewage treatment plants, sewage pumping stations, water treatment plants, or water intake systems, with the approval of the town engineer or appropriate authorities.

(c.) Sealed public water supply wells, with the approval of the town engineer or appropriate authorities.

(d.) Utilities, public facilities and improvements, such as streets, bridges, dams, culverts, transmission lines, pipe lines, and other similar uses, with the approval of the appropriate authorities.

(e.) Sanitary or storm sewers or impoundment basins, with the approval of the town engineer or appropriate authorities.

(f.) Temporary uses, in accordance with Sec. 70- 138 of this chapter.

(g.) 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.

(h.) Water-related uses and activities, such as piers, docks, floats, and marinas.

(i.) Other similar uses and activities, provided that they cause no increase in flood heights and/or flood velocities. All uses, activities and structural developments shall be undertaken in strict compliance with the flood-proofing provisions contained in the Virginia Uniform Statewide Building Code and in all other applicable codes and ordinances.

Section 70- 101 Design Criteria for Utilities and Facilities

(a.) Sanitary Sewer Facilities

All new or replacement sanitary sewer facilities and sewerage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems, and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

(b.) Water Facilities

All new or replacement water facilities shall be designed to minimize or eliminate flood damages.

(c.) Drainage Facilities

All storm drainage 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 council 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 into adjacent properties.

(d.) Utilities

All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

(e.) 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 levels without unduly increasing flood heights.

Section 70- 102 Variances: Factors to be Considered

(a.) In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of this chapter, and consider the following additional factors:

1. The danger of life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within the Floodplain Conservation District that will cause any increase in the 100-year flood elevation.
2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and to the floodplain management program for the area.
10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure.
13. Such other factors which are relevant to the purposes of this chapter.

(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.

(c.) 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 height, 2.) additional threats to public safety, 3.) extraordinary public expense, and will not 4.) create nuisance, 5.) cause fraud or victimization of the public, or 6.) conflict with local laws or ordinances.

(d.) Variances shall be issued only after the board of zoning appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.

(e.) 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 1.) increases the risks to life and property, and 2.) will result in increased premium rates for flood insurance.

(f.) 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 Administrator.

Section 70- 103 Existing Structures in the Floodplain Conservation District

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions may be continued, subject to the following conditions:

(a.) Existing structures in the Floodplain Conservation District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analysis,

performed in accordance with the standard engineering practice that the proposed expansion or enlargement would not result in any increase in the 100-year flood elevation.

(b.) Any modifications, alterations, 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 fifty (50) percent of its market value shall be elevated and/or flood proofed to the greatest extent possible.

(c.) The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use in the Floodplain Conservation District, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of this chapter and the Virginia Uniform Statewide Building Code.