

## **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 privately and publicly owned lands within the jurisdiction of the Town of New Market and identified as being in the 100-year floodplain by the Federal Emergency Management Agency.

### **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 A flood that has one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.
- (b.) Base Flood Elevation (BFE) The water surface elevation of the Base Flood in relation to the vertical datum specified on the Flood Insurance Rate Map.
- (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 improve 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.) Flood Insurance Rate Map (FIRM) An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- (h.) Flood Insurance Study (FIS) A report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.
- (i.) Flood Proofing Any combination of structural and non-structural additions, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (j.) Floodplain Any land area susceptible to being inundated by water from any source.
- (k.) 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 one foot.
- (l.) Freeboard A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.
- (m.) 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.

- (n.) Lowest Floor The lowest floor of the lowest enclosed area (including basement).
- (o.) Manufactured Home A structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and forty 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.
- (p.) Manufactured Home Park/Subdivision A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.
- (q.) New Construction For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after October 23, 1981, 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 October 23, 1981 and includes any subsequent improvements to such structures.
- (r.) 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.
- (s.) Special Flood Hazard Area The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in Section 70-94 of this Article.
- (t.) 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 alternation affects the external dimensions of the building.

- (u.) Structure For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
- (v.) 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.
- (w.) 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”.
- (x.) Violation The failure of a structure or other development to be fully compliant with the Town’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

#### Section 70-94 Description of District

##### (a.) Basis of District

1. The floodplain district shall include Special Flood Hazard Areas subject to inundation by waters of the Base Flood. The basis for the delineation of the district shall be Base Flood Elevations or profiles contained in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) for Shenandoah County, Virginia and Incorporated Areas, prepared by the Federal Emergency Management Agency, dated July 16, 2003, as amended or revised.
2. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where the Special Flood Hazards Area boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one-percent annual chance flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one-percent annual chance 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.

3. The Detailed Floodplain District shall be those areas for which detailed flood profiles or elevations have been provided in the FIS or the FIRM. Such areas are shown as Zone AE on the FIRM.

(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 Emergency Management Agency. A completed LOMR is record of this approval.

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 this Chapter, 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, Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any other these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation, and the Federal Emergency Management Agency. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(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 Base Flood at the project site.
4. Topographic information showing existing and proposed ground elevations.
5. The zoning approval for the use.

Section 70-98.1          Approximated Floodplain District (Zone A)

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 Base 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 Base Flood Elevations.

#### Section 70-98.2 Detailed Floodplain District (Zone AE)

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of Special Flood Hazard, designated as Zone AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point.

Development activities in Zone AE which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the Town’s endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval from the Federal Emergency Management Agency.

#### Section 70-98.3 Floodway District

Within any Floodway Area shown on the FIRM in Zone AE no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analysis 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.

Development activities in the Floodway which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Town’s endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval from the Federal Emergency Management Agency.

#### 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.



There 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 launches, 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 Section 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 Section 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 70-100.1          Permitting Process Information

During the permitting process, the Floodplain Administrator shall obtain:

- (a.) The elevation of the lowest floor (in relation to mean sea level), including the basement, of all new and substantially improved structures; and
- (b.) If the structure has been flood-proofed in accordance with the requirements of the Article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

#### Section 70-100.2          General Standards

The following provisions shall apply to all permits:

- (a.) New construction and substantial improvements shall be built according to this ordinance and the Virginia Uniform Statewide Building Code, and anchored to prevent floatation, collapse or lateral movement of the structure.
- (b.) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
- (c.) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (d.) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (e.) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (f.) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

#### Section 70-100.3          Elevation and Construction Standards

In all identified Flood Hazard Areas, the following provisions shall apply:

- (a.) Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) in Zone AE with detailed Base Flood Elevations shall have the lowest floor, including basement, elevated to or above the base flood level.

(b.) Non-Residential Construction

1. New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level.
2. Non-residential buildings located in all AE zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Zoning Administrator.

(c.) Space Below the Lowest Floor

In Zones A and AE, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. Not be designed or used for human habitation, but shall be used solely for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation.
3. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
  - A. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
  - B. The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.
  - C. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
  - D. The bottom of all required openings shall be no higher than one foot above the adjacent grade.

- E. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
- F. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

4. Manufactured Homes and Recreational Vehicles

- A. New manufactured homes are not a permitted use of the SFHA under Section 70-99 of this Article. Substantial improvements to existing manufactured homes must meet all the standards of this Chapter.
- B. Recreational Vehicles are not a permitted use of the SFHA under Section 70-99 of this Article.

Section 70-100.4 Standards for Subdivision Proposals

- (a.) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b.) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage; and
- (c.) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

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 infiltration of flood waters into the system and 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 upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) 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 the 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 notifications 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

Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved unless one of the following exceptions is established before the change is made:

- (a.) The changes are required to comply with a citation for a health or safety violation.
- (b.) The structure is a historic structure and the change required would impair the historic nature of the structure.
- (c.) The Floodplain Administrator has determined that:

1. Change is not a substantial repair or substantial improvement;
2. No new square footage is being built in the designated Floodway; and
3. Any new square footage is being built in full compliance with this Chapter and the Virginia Uniform Statewide Building Code.

Section 70-103.1        Records

Records of actions associated with administering this ordinance shall be kept on file and maintained by or under the direction of the Floodplain Administrator in perpetuity.

Section 70-103.2        Designation of the Floodplain Administrator

The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- (a.) Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Town Manager.
- (b.) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (c.) With the approval of the Town Council, enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

Section 70-103.3        Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (a.) Review applications for permits to determine whether activities will be located in the Special Flood Hazard Area (SFHA).
- (b.) Interpret floodplain boundaries and provide available flood elevation and flood hazard information.
- (c.) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- (d.) Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross

section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.

- (e.) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
- (f.) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- (g.) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- (h.) Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
- (i.) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Town within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
- (j.) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - 1. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
  - 2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- (k.) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- (l.) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- (m.) Administer the requirements related to proposed work on existing buildings:
  - 1. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
  - 2. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the



non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

- (n.) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
- (o.) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town have been modified and:
  - 1. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
  - 2. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
- (p.) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
- (r.) It is the duty of the Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Town of New Market, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

#### Section 70-103.4 Use and Interpretation of FIRMs

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (a.) Where field surveyed topography indicates that adjacent ground elevations:

1. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
  2. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
- (b.) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
  - (c.) Base flood elevations and designed floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
  - (d.) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
  - (e.) If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
    1. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
    2. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
    3. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

#### Section 70-103.5      **Jurisdictional Boundary Changes**

The Shenandoah County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the Town for all annexed areas until the Town of New Market adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. The Town acknowledges and accepts responsibility for enforcing floodplain standards for any future annexation areas containing identified flood hazards, and if necessary, updating the ordinance to include flood zones not currently regulated by the Town. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be

provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a)(9)(v) all NFIP participating communities must notify FEMA in writing whenever the boundaries of the Town have been modified by annexation or the Town has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the Town's boundaries, a copy of a map of the town suitable for reproduction, clearly delineating the new corporate limits or new area for which the Town has assumed or relinquished floodplain management regulatory authority must be included with the notification.

#### Section 70-103.6      Submitting Model Backed Technical Data

The Town's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Town shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The Town may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

#### Section 70-103.7      Letters of Map Revision

When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision.

Example cases:

- (a.) Any development that causes a rise in the base flood elevations within the floodway.
- (b.) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- (c.) Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations §65.3 and §65.6(a)(12).

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