

17.0 FLOOD HAZARD OVERLAY DISTRICT – FH (Amended 3-24-2014)

Section 17.0 Flood Hazard Overlay District – FH

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Sec. 17.1.1. Purposes and intent.

Under the authority of Virginia Code § 15.2-2280, the purposes and intent of section 17.0 are to:

- A. *Prevention of harm.* 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.
- B. *Means used.* In order to prevent the several harms described in subsection (A), section 17.0 establishes an overlay zoning district to: (i) regulate 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; (ii) restrict or prohibit certain uses, activities, and development from locating within areas subject to flooding; (iii) require all of those uses, activities, and developments that do occur in areas subject to flooding to be protected or flood-proofed, or both, against flooding and flood damage; and (iv) protect individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
- C. *Flood insurance.* Address a local need for flood insurance and to participate in the National Flood Insurance Program.

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR §§ 59.22(a)(1), (a)(2).

Sec. 17.1.2 Flood Insurance Rate Map and Flood Insurance Study (Amended 4-18-2016).

The flood hazard overlay district shall be composed of all areas of the Town within the special flood hazard areas delineated on panel 51003C0536F dated May 16, 2016, and panels 51003C0520D and 51003C0550D dated February 4, 2005, of the Flood Insurance Rate Map for Albemarle County, Virginia and Incorporated Areas and the Independent City of Charlottesville, most recently amended effective on and after May 16, 2016 (the “Flood Insurance Rate Map”), and the Flood Insurance Study for Albemarle County and Incorporated Areas and the Independent City of Charlottesville prepared by the Federal Emergency Management Agency, most recently amended effective on and after May 16, 2016 (the “Flood Insurance Study”), and includes all subsequent revisions and amendments to the Flood Insurance Rate Map and Flood Insurance Study as they affect the Town.

The Flood Insurance Rate Map and the Flood Insurance Study are incorporated herein by reference. The Flood Insurance Rate Map, including all of the special flood hazard area zones designated thereon, is hereby adopted as the zoning map of the flood hazard overlay district.

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR § 60.2(h).

Sec. 17.1.3 Applicability.

Section 17.0 applies as follows:

- A. *Territory.* Section 17.0 shall apply to all privately and publicly owned lands within the Town that are identified as being within a special flood hazard area according to the Flood Insurance Rate Map provided to the Town by the Federal Emergency Management Agency.
- B. *Relationship to other regulations.* The regulations in section 17.0 supersede any less restrictive conflicting ordinances and regulations. To the extent that the provisions are more restrictive, this ordinance supersedes any ordinance currently in effect in flood-prone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict it shall remain in full force and effect. These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. (Amended 11-21-2016)
- C. *New uses and development.* On and after April 2, 2014, no land shall 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 section 17.0, this ordinance, and any other applicable ordinances and regulations which apply to uses within the Town.
- D. *Pre-existing uses and development.* Any use or development lawfully existing on April 2, 2014 shall be nonconforming to the extent that it is not in compliance with section 17.0.
- E. *Presumptions.* Any, use, structure or other development lawfully established after April 2, 2014 without a floodplain development permit, elevation certificate, or any other certification or documentation (collectively, the “documentation”) required for development within the flood hazard overlay district is presumed to be a violation of this ordinance until the documentation is provided to the floodplain administrator and determined to satisfy the requirements of the district.
- F. *Severability.* If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, 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. (Added 11-21-2016)

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR § 60.1(b).

Sec. 17.1.4 Disclaimer.

The degree of flood protection sought by the provisions in section 17.0 is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. 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. Therefore:

- A. *Flooding and flood damage may occur outside of flood hazard overlay district.* Section 17.0 does not imply that lands or uses outside of the flood hazard overlay district will be free from flooding or flood damage.
- B. *Disclaimer.* Section 17.0 is not a waiver of sovereign immunity or any statutory immunities and shall not create liability on the part of the Town or any of its officers or employees for any flood damage resulting from reliance on this section or any decision or determination lawfully made under this ordinance.

Sec. 17.1.5 Definitions.

The following definitions shall apply in the interpretation and implementation of section 17.0:

Accessory structure: An accessory structure, as defined in section 3.9, having a footprint that does not exceed two hundred (200) square feet.

Base flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year, and also referred to as the “one hundred year flood.”

Base flood elevation: The water surface elevation of the base flood in relation to the datum specified on the Town’s Flood Insurance Rate Map or the elevation determined pursuant to section 17.1.13 (C).

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

Conditional Letter of Map Revision (CLOMR): A formal review and comment by the Federal Emergency Management Agency as to whether a proposed flood protection project or other project complies with the minimum National Flood Insurance Program requirements for such projects with respect to the delineation of special flood hazard areas, but which does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

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.

Elevated building: A building without a basement built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

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

Existing manufactured home park or subdivision: Any manufactured home park or subdivision lawfully approved and recorded before the effective date of the Flood Insurance Rate Map or before January 1, 1975 for Flood Insurance Rate Maps effective before that date.

Existing structure: Any structure for which the “start of construction” commenced before the effective date of the Flood Insurance Rate Map or before January 1, 1975 for Flood Insurance Rate Maps effective before that date.

Flood or flooding: Either (i) a general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters, the unusual and rapid accumulation or runoff of surface waters from any source; or mudflows which are proximately caused by flooding from unusual and rapid accumulation or runoff of surface waters from any source, and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; or (ii) 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 from the overflow of inland waters.

Flood Insurance Rate Map (FIRM): A map of the Town on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable within the Town.

Flood Insurance Study (FIS): A report by the Federal Emergency Management Agency 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.

Floodplain: Any land area susceptible to being inundated by water from any source.

Flood proofing: Any combination of structural and non-structural additions, changes, 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.

Floodplain impact plan. A plan prepared by a professional engineer or other professional of demonstrated qualifications, and submitted to the floodplain administrator in sufficient detail to allow him to conduct a complete review of the impacts to the floodplain that may be caused by an encroachment, wherein the plan is composed of hydrologic and hydraulic analyses performed in accordance with standard engineering practices and demonstrating that a proposed encroachment will not result in an increase in water surface elevation or a change in boundaries of the base flood above that allowed in the particular zone within the Town during the occurrence of the base flood discharge, and studies, analyses, computations, and the plan preparer's certification that the technical methods used correctly reflect currently-accepted technical concepts.

Floodway, regulatory: 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 (1) foot.

Floodway fringe: The portion of the floodplain subject to a one (1) percent or greater chance of flooding in any given year that lies between the regulatory floodway and the outer limits of the special flood hazard area depicted on the Flood Insurance Rate Map.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management, for the primary purpose of compensating 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, all of which, in turn, may allow flood insurance premiums to be reduced below that which they might otherwise be.

Freeboard elevation. The base flood elevation plus eighteen (18) inches. (Amended 11-21-2016)

Habitable space. An enclosed area having more than twenty (20) linear feet of finished walls composed of, but not limited to, drywall, paneling, lath and plaster, or used for any purpose other than solely for parking of vehicles, building access, or storage.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is: (i) 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; (ii) 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; (iii) individually listed on a Secretary of the Interior-approved State inventory of historic places; or (iv) individually listed on a county or town inventory of historic places under a county or town historic preservation program that has been certified by an approved State program as determined by the Secretary of the Interior.

Hydrologic and hydraulic analyses: Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and the Federal Emergency Management Agency, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change (LOMC): An official Federal Emergency Management Agency determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study in the form of a Letter of Map Amendment, a Letter of Map Revision, or any other similar official Federal Emergency Management Agency determination made by letter.

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a parcel, site or structure was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a particular parcel or site as described by metes and bounds, or a structure, is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and regulatory floodway delineations, and planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A revision based on technical data making the determination that a parcel, site or structure has been elevated by fill, authorized and placed in accordance with section 17.0 and all other requirements of this ordinance, above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood.

Lowest floor: The lowest floor of the lowest enclosed area (including basement) of a building, provided that 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, and further provided that the enclosed area is not built so as to render the building in violation of the applicable non-elevation design requirements of section 17.1.15 and 44 CFR §60.3.

Manufactured home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities and, for floodplain management purposes, includes park trailers, travel trailers, and other similar vehicles placed on a site for longer than one hundred eighty (180) consecutive days, but does not include a recreational vehicle.

Manufactured home park or subdivision: A parcel or site divided into two or more manufactured home lots for rent or sale.

New construction: For floodplain management purposes, new construction means structures for which the start of construction commenced on or after September 5, 1979 and includes any subsequent improvements to such structures.

Post-FIRM structures: A structure for which construction or substantial improvement lawfully occurred on or after September 5, 1979.

Pre-FIRM structures: A structure for which construction or substantial improvement lawfully occurred before September 5, 1979.

Recreational vehicle: A vehicle which is: (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Repetitive loss structure: A building covered by a contract for flood insurance that has incurred flood-related damage on two (2) occasions during a ten (10)-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded twenty-five (25) percent of the market value of the building at the time of each flood event.

Shallow flooding area: A special flood hazard area with base flood depths from one (1) to three (3) 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, and where the flooding may be characterized by ponding or sheet flow.

Special flood hazard area: The land in the floodplain subject to a one (1) percent or greater chance of flooding in any given year and which may be designated on the Flood Insurance Rate Map as Zone A or AE. (Amended 11-21-2016)

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 one hundred eighty (180) days after the date the permit was issued; provided that: (i) "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; (ii) "permanent construction" does not include land preparation, such as clearing, grading and filling, nor the installation of streets or walkways, or both; nor any excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor the installation on the site of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure; and further provided that, for a substantial improvement, the actual start of 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.

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.

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 fifty (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 fifty (50) percent of the market value of the structure before the start of construction of the improvement and includes structures which have incurred substantial damage regardless of the actual repair work performed; provided that the term does not include: (i) any

project for improvement of a structure to correct existing violations of state, county, or town health, sanitary, or safety code regulations which have been identified by the zoning administrator, the building official or any other code enforcement officer and which are the minimum necessary to assure safe living conditions; or (ii) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Violation: The failure of a structure or other development to be fully compliant with the community'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. (Added 11-21-2016)

Water-dependent facility. Facilities that cannot exist outside of the flood hazard overlay district and must be located on the shoreline because of the intrinsic nature of its operation and which include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

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

Zone A. A special flood hazard area that is subject to inundation by the one (1) percent annual chance flood event (one hundred year flood) where detailed hydraulic analyses have not been performed and no base flood elevations or flood depths are shown. (Added 11-21-2016)

Zone AE or A1-30. A special flood hazard area that is subject to inundation by the one (1) percent annual chance flood event (one hundred year flood) determined by detailed methods where base flood elevations are shown. Zone AE is the designation replacing Zone A1-30 on new and revised Flood Insurance Rate Maps.

Zone X. Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR § 59.11.

Sec. 17.1.6 Designation of floodplain administrator; powers and duties.

The Town Administrator is hereby designated the floodplain administrator (the “floodplain administrator”) and shall have any and all powers and duties authorized by law to administer and to enforce section 17.0, including, but not limited to, the following:

- A. *Administration.* Administer section 17.0 which shall include, but not be limited to, performing all applicable duties and responsibilities of the Town as provided in 44 CFR § 60.3(a), (b), (c), and (d) relevant to the administration of section 17.0.
- B. *Delegation to qualified employees and authorized public entities.* Delegate any duties and responsibilities set forth in section 17.0: (i) to qualified technical personnel, plan examiners, inspectors, and other employees; and (ii) with the prior consent of the Virginia Department of Conservation and Recreation, to an authorized public entity by written memorandum of understanding or memorandum of agreement; provided that the floodplain administrator and the Town shall remain responsible for complying with the requirements of this section and all applicable state and federal laws.

- C. *Implement commitments.* Implement the commitments required to be made by the Town under 44 CFR § 59.22(a).
- D. *Recordkeeping.* Maintain and permanently keep records that are necessary for the administration of section 17.0, including: (i) Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and (ii) documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the Flood Insurance Rate Map) to which structures have been flood-proofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- E. *Reporting.* Report information as required by law, including the following:
 1. *Periodic report regarding Town participation in program.* Submit to the Federal Emergency Management Agency, either annually or biennially as he determines, a report concerning the Town's participation in the National Flood Insurance Program, including, but not limited to, the Town's development and implementation of floodplain regulations, under 44 CFR § 59.22(b).
 2. *Report of buildings, development and related permits.* Upon the request of the Federal Emergency Management Agency, complete and submit a report concerning participation in the National Flood Insurance Program, and which may include information regarding the number of buildings in the special flood hazard areas, number of permits issued for development in the special flood hazard areas, and number of variances issued for development in the special flood hazard areas.
 3. *Changes to base flood elevation.* As soon as practicable, but not later than six (6) months after the date information regarding an increase or decrease to the Town's base flood elevations resulting from physical changes affecting flooding conditions becomes available, the administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data.
- F. *Signatory on applications for Letters of Map Change.* Sign as the community official on applications for Letters of Map Change to the Federal Emergency Management Agency.
- G. *Enforcement.* In conjunction with the zoning administrator who is authorized by section 20.4 to enforce this ordinance, enforce section 17.0, investigate alleged violations, issue notices to comply, notices of violation, or stop work orders, as authorized by law, and require permit holders to take corrective action.

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR §§ 59.22(b), 60.2(e), 60.3(b)(5), 65.3.

Sec. 17.1.7 Administration; interpretation of Flood Insurance Rate Map.

The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, including the approximated floodplain, and regulatory floodway boundaries. The following shall apply to the use and interpretation of a Flood Insurance Rate Map and data:

- A. *Where field surveyed topography indicates that adjacent ground elevations above or below base flood elevation.* Where field surveyed topography indicates that adjacent ground elevations are:

1. *Above base flood elevation.* Above the base flood elevation, the area shall be regulated as a special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
 2. *Below base flood elevation.* Below the base flood elevation, even in an area not delineated as a special flood hazard area on a Flood Insurance Rate Map, the area shall be regulated as a special flood hazard area and subject to the requirements of section 17.0.
- B. *Special flood hazard area identified, where base flood elevation and floodway data not identified (approximated flood plain).* In any special flood hazard area where base flood elevation and floodway data have not been identified and the flood plain is approximated, any other flood hazard data available from a federal, state, or other sources shall be reviewed and reasonably used and, for example, the floodplain administrator may use as guidance the Federal Emergency Management Agency publication entitled “Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations.”
- C. *Special flood hazard area not identified.* In any area where a special flood hazard area has not been identified, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- D. *Elevations and boundaries on Flood Insurance Rate Map and in Flood Insurance Study take precedence.* The base flood elevations and regulatory floodway boundaries on a Flood Insurance Rate Map and in a Flood Insurance Study shall take precedence over base flood elevations and regulatory floodway boundaries by any other sources if those sources show reduced regulatory floodway widths, lower base flood elevations, or both.
- E. *Reasonable use of other data sources.* Other sources of data shall be reasonably used if they show increased base flood elevations, larger floodway areas, or both, than are shown on a Flood Insurance Rate Map and in a Flood Insurance Study.
- F. *Preliminary Flood Insurance Rate Map; preliminary Flood Insurance Study.* If a preliminary Flood Insurance Rate Map, Flood Insurance Study, or both has been provided by the Federal Emergency Management Agency:
1. *Prior to the issuance of a Letter of Final Determination.* Prior to the issuance of a Letter of Final Determination by the Federal Emergency Management Agency, the use of preliminary flood hazard data: (i) is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations, regulatory floodway widths, or both, in existing flood hazard data provided by the Federal Emergency Management Agency; (ii) shall be deemed the best available data and used where no base flood elevations, floodway areas, or both, are provided on the effective; and (iii) any such preliminary data may be subject to change, appeal to the Federal Emergency Management Agency, or both.
 2. *Upon the issuance of a Letter of Final Determination.* Upon the issuance of a Letter of Final Determination by the Federal Emergency Management Agency, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from the Federal Emergency Management Agency for the purposes of administering section 17.0.

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR § 60.3.

Sec. 17.1.8 Administration; interpretation of district boundaries.

The zoning administrator, in consultation with the floodplain administrator, is authorized to interpret the boundaries of the flood hazard overlay district, subject to any aggrieved person's right to appeal any decision, determination or order to the board of zoning appeals as provided in section 17.1.17.

State law reference – Va. Code §§ 15.2-2286, 15.2-2311.

Federal law reference – 44 CFR § 59.22(b)(1).

Sec. 17.1.9 Administration; amendment to district boundaries.

With the prior approval of the Federal Emergency Management Agency, the Town Council may amend the boundaries of the flood hazard overlay district in one or more of the following cases: (i) where natural or man-made changes have occurred; (ii) where more detailed studies have been conducted or undertaken by the United States Army Corps of Engineers or other qualified agency; or (iii) an individual documents the need for such change.

State law reference – Va. Code §§ 15.2-2285, 15.2-2286

Federal law reference – 44 CFR § 59.22(b)(1).

Sec. 17.1.10 Administration; Letters of Map Change.

Letters of Map Change are subject to the following:

- A. *Request.* Any owner, developer or subdivider (collectively, the “owner”) shall or may request a Letter of Map Change or a Conditional Letter of Map Change as provided by federal law, and as follows:
1. *Letter of Map Amendment (“LOMA”) or Conditional Letter of Map Amendment (“CLOMA”).* If survey data shows that a parcel, site or structure is or will be above the base flood elevation and the owner wants the parcel, site or structure removed from the special flood hazard area designation, he may request a Letter of Map Amendment from the Federal Emergency Management Agency. The owner also shall provide survey data to the floodplain administrator, which shall be in a form and of a substance that is satisfactory to the floodplain administrator. If the survey data is satisfactory to the floodplain administrator, he shall record the data. An owner may request a Conditional Letter of Map Amendment for an undeveloped parcel.
 2. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), optional.* If a new flood study has been conducted showing that the original study was in error or that the new study is based on more accurate or better technical data, an owner may request a Letter of Map Revision or a Conditional Letter of Map Revision from the Federal Emergency Management Agency to change the floodplain or regulatory floodway boundaries or to include new flood data.
 3. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), required.* If development, or proposed development, in the floodplain may result in a change to the base flood elevation in any special flood hazard area, encroaches on the regulatory floodway, or would alter or relocate a stream, the owner shall request a Letter of Map Revision or a Conditional Letter of Map Revision from the Federal Emergency Management Agency. If the requested Letter of Map Revision is based on new fill in the floodway fringe where a regulatory floodway is defined, the owner shall request a Letter of Map Revision-fill (“LOMR-F”) or a Conditional Letter of Map Revision – fill (“CLOMR-F”).

4. *Minimal submittal requirements to the floodplain administrator; signature.* The owner shall submit to the floodplain administrator two (2) copies of the proposed application, together with supporting documentation and models, and the applicable fee, for review and approval prior to the floodplain administrator signing the application as the community official. If the owner is required to obtain a special use permit for any proposed development in the flood hazard overlay district, the owner shall first obtain approval of the special use permit and satisfy all applicable conditions of the special use permit before the floodplain administrator signs the application.
- B. *Effect of conditional Letter of Map Change.* A Conditional Letter of Map Change informs the owner and others that when the development is completed, and if the owner submits an elevation certificate and as-built drawings certified by a land surveyor or a professional engineer to demonstrate that the development was built as approved in the Conditional Letter of Map of Map Change, it will qualify for the particular Letter of Map Change, which must be requested from and issued by the Federal Emergency Management Agency in order for the map to be amended or revised.
- C. *Effect of Letter of Map Change on permitting and uses.* A proposed or pending request for a Letter of Map Change affects permitting and uses as follows:
1. *Letter of Map Amendment or Conditional Letter of Map Amendment.* If the owner has or will be requesting a Letter of Map Amendment or a Conditional Letter of Map Amendment as provided in subsection (A)(1), the administrator or any other Town official or body may act on any pending application and any authorized use may begin, provided that the owner furnished to the administrator the survey data on which a Letter of Map Amendment or Conditional Letter of Map Amendment is or will be based before the Letter of Map Amendment or Conditional Letter of Map Amendment is issued.
 2. *Letter of Map Revision or Conditional Letter of Map Revision, optional.* If the owner has or will be requesting an optional Letter of Map Revision or Conditional Letter of Map Revision as provided in subsection (A)(2), the administrator or any other Town official or body may act on any pending application and any authorized use may begin, provided that if the Letter of Map Revision or Conditional Letter of Map Revision, if issued, would reduce any design or construction standard, or change the special flood hazard area designation of the parcel, site or structure from the regulatory floodway to the floodway fringe, any approval may be conditioned on, and no use shall be begin, until the Federal Insurance Administrator issues the Letter of Map Revision or Conditional Letter of Map Revision.
 3. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), required.* If the owner has or will be requesting a required Letter of Map Revision or Conditional Letter of Map Revision as provided in subsection (A)(3), the administrator or any other Town official or body shall not act on any pending application and no use shall begin until the Federal Emergency Management Agency issues the Letter of Map Revision and all requirements of 44 CFR § 65.12 are satisfied.

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR §§ 59.22(b)(1), 65.3, 65.6.

Sec. 17.1.11 Permitted uses.

The uses permitted in the flood hazard overlay district are as follows:

- A. *Regulatory floodway.* The following uses and activities are permitted in the regulatory floodway 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 they do not require structures, fill, or storage of materials and equipment:
 - 1. *Recreational uses.* 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.
 - 2. *Accessory residential uses.* Accessory residential uses, such as yard areas, gardens, play areas, and pervious parking areas.
 - 3. *Accessory industrial and commercial uses.* Accessory industrial and commercial uses, such as yard areas and pervious parking and loading areas.
- B. *Floodway fringe.* In the floodway fringe, 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 flood-proofing and related provisions contained in the Virginia Uniform Statewide Building Code, the provisions of this ordinance, and all other applicable codes and ordinances.

Sec. 17.1.12 Prerequisite to development; required permits and certifications.

In addition to the requirements for any other permits under this ordinance, no use, structure, or any other development (collectively, the “development”) within the flood hazard overlay district shall commence without the owner first obtaining or providing the following:

- A. *Floodplain development permit.* A floodplain development permit for any development, including those for which other permits or certificates are required under subsections (B) through (E), issued by the floodplain administrator, which shall be deemed to be certification of the following:
 - 1. *Uses, structures or development subject to permit.* The owner submitted documentation that the proposed development is authorized within the district as it has been proposed and approved under this ordinance and that it is in compliance with all applicable state and federal laws.
 - 2. *Compliance with all applicable laws.* The development is authorized to be undertaken only in strict compliance with the requirements of the flood hazard overlay district, this ordinance, and all other applicable laws, including the Virginia Uniform Statewide Building Code, the Subdivision Ordinance, and the Water Protection Ordinance.
 - 3. *Reasonably safe from flooding.* The site has been reviewed by the floodplain administrator and he is assured that it is reasonably safe from flooding. This assurance shall be based, in part, upon any documentation provided by the owner showing the elevation of the lowest floor, including the basement, of any new and substantially improved structures and, if the structure has been flood-proofed in accordance with the requirements of the flood hazard overlay district, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.
 - 4. *Adverse effect on capacity of channels and floodways prohibited.* Under no circumstances shall any development adversely affect the capacity of the channels or floodways of any

watercourse, drainage ditch, or any other drainage facility or system.

5. *Floodway or in a riverine floodplain where the floodway is not mapped.* For any development in the regulatory floodway or in a riverine floodplain where the floodway is not mapped, the owner shall submit to the floodplain administrator a no-rise certificate composed of a professional engineer's certification that the development will not cause an increase in flood levels, based on the technical data required by section 17.1.13. The no-rise certificate shall be on a form provided by the floodplain administrator.
- B. *Grading permit.* No grading permit shall be issued for fill in the floodway fringe unless the floodplain administrator determines that the proposed fill satisfies the requirements of section 17.1.14.
- C. *Permit to relocate or alter a watercourse; required notice.* Prior to any proposed alteration or relocation of any channels or of any watercourse within the flood hazard overlay district, the owner shall obtain all required permits from the United States 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). In riverine areas, notification of the proposed relocation or alteration shall be given by the owner to all affected adjacent jurisdictions, the Virginia Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management, the Federal Emergency Management Agency, and any other public agencies required to be notified by state or federal law. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- D. *Building permits.* No building permit shall be issued for any structure within the flood hazard overlay district unless:
 1. *Elevations.* The building permit includes the existing and proposed ground elevations, the boundaries of the flood hazard overlay district, the base flood elevation on the site, the elevation of the lowest floor, including any basement, and for any structures to be flood-proofed as required by section 17.0, the elevation to which the structure will be flood-proofed.
 2. *Elevation certificate.* The owner submits to the floodplain administrator an elevation certificate, to be retained by the floodplain administrator, certifying that the lowest floor is elevated at or above the freeboard elevation. The elevation certificate shall be either on the Federal Emergency Management Agency Elevation form or a form provided by the floodplain administrator.
 3. *Flood-proofing certificate; non-residential buildings.* The owner submits to the floodplain administrator a flood-proofing certificate composed of a professional engineer's certification that a non-residential building was properly flood-proofed as required by section 17.1.15. The flood-proofing certificate shall be either on the Federal Emergency Management Agency Elevation form or a form provided by the floodplain administrator.

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR §§ 60.3(a)(1), (a)(2), (a)(4)(i), (a)(3), (b)(1), (b)(6), (b)(7).

Sec. 17.1.13 Encroachment standards; determining impact on base flood elevation. (Amended 11-21-2016)

Any use, structure or other development authorized by section 17.1.11 shall be subject to the following:

- A. *Within the floodway in Zone A1-30 or AE.* The following shall apply within the regulatory floodway of any Zone A1-30 or AE:
1. *Encroachment prohibited unless owner demonstrates no increase in water surface elevation of the base flood.* Any encroachment, including new construction, substantial improvements, fencing crossing a stream channel, or other development, but excluding fill, is prohibited unless the owner demonstrates in a floodplain impact plan that the proposed encroachment will not result in any increase in the water surface elevation of the base flood within the county during the occurrence of the base flood discharge. Fill is prohibited in the regulatory floodway regardless of whether the owner demonstrates that the fill will not result in any increase in the water surface elevation of the base flood.
 2. *Encroachment which would increase the water surface elevation may be allowed with Conditional Letter of Map Revision.* Any encroachment, including fill, new construction, substantial improvements, or other development, which would increase the water surface elevation of the base flood may be allowed provided that the owner first applies, with the floodplain administrator's endorsement, for a Conditional Letter of Map Revision as provided in section 17.1.10, and receives the approval of the Federal Emergency Management Agency.
 3. *Authorized encroachments; applicable design standards.* All new construction and substantial improvements shall comply with the applicable standards in section 17.1.15. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision to replace an existing manufactured home, provided the anchoring, elevation, and encroachment standards in section 17.1.15(A) and (B) are satisfied.
- B. *Within Zone A1-30 or AE, floodway not designated.* The following shall apply within any Zone A1-30 or AE where the floodway is not designated:
1. *Encroachment prohibited unless owner demonstrates cumulative increase in water surface elevation of the base flood will not exceed one (1) foot.* Any encroachment, including fill, new construction, substantial improvements, fencing crossing a stream channel, or other development, is prohibited unless the owner demonstrates in a floodplain impact plan that the cumulative effect of the proposed encroachment, when combined with all other existing and anticipated development, will not result in an increase in water surface elevation of the base flood by more than one (1) foot within the Town during the occurrence of the base flood discharge.
 2. *Encroachment which would increase the water surface elevation of the base flood by more than one foot may be allowed with Conditional Letter of Map Revision.* Any encroachment, including fill, new construction, substantial improvements, or other development, which would increase the water surface elevation of the base flood by more than one (1) foot may be allowed provided that the owner first applies, with the floodplain administrator's endorsement, for a Conditional Letter of Map Revision as provided in section 17.1.10, and receives the approval of the Federal Emergency Management Agency.

- C. *Within Zone A; floodway not designated and floodplain boundary approximated.* The following shall apply within any Zone A where the floodway is not designated and the floodplain boundary is approximated, in order to determine the location of the floodway and the flood plain, and the elevation of the base flood:
1. *Floodway and base flood elevation.* The base flood elevation and floodway shall be determined for the proposed development using information from federal, state, and other acceptable sources shall be used to determine the floodway and base flood elevation, when available. These sources shall include, but are not limited to, the United States Army Corps of Engineers Floodplain Information Reports and the United States Geological Survey Flood-Prone Quadrangles. If the base flood elevation cannot be determined using these sources of data, then the applicant for the proposed encroachment shall determine the base flood elevation, as follows:
 - a. *Other sources.* Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, comparable to those contained in a Flood Insurance Study for subdivisions, site plans, and other proposed development proposals that exceed fifty (50) lots or five (5) acres, whichever is the lesser; or
 - b. *Hydrologic and hydraulic analyses.* In his discretion, the floodplain administrator may require a floodplain impact plan.
 2. *Approximated floodplain.* In the approximated floodplain, the applicant shall use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, detailed methodologies, or hydrologic and hydraulic analyses. Studies, analyses, computations, and other information shall be submitted to the floodplain administrator in sufficient detail to allow him to conduct a complete review of the analyses. In his discretion, the floodplain administrator may require the owner to submit a floodplain impact plan.
- D. *Any zone; additional information.* The floodplain administrator may require a hydrologic and hydraulic analysis for any development. When the base flood elevation data is used, the lowest floor shall be elevated to or above the freeboard elevation.

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR §§ 59.1, 60.3(b), (c), (d).

Sec. 17.1.14 Encroachment standards; fill in the floodway fringe. (Amended 4-18-2016)

Any fill in the floodway fringe shall, in addition to any condition of approval and any applicable encroachment standard in section 17.1.13, be subject to the following:

- A. *Minimize obstruction.* The fill shall be designed and constructed to minimize obstruction to and effect upon the flow of water such that: (i) the fill will not, in the opinion of the floodplain administrator, result in any increase in the base flood elevation above that authorized in section 17.1.13; and (ii) no fill is placed in the regulatory floodway.
- B. *Protect against erosion.* The fill shall be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead or another method acceptable to the floodplain administrator. Any structure, equipment or material installed to protect against erosion shall be firmly anchored to prevent dislocation due to flooding.
- C. *Non-polluting.* The fill shall be of a material that will not pollute surface water or groundwater.

- D. *Additional information.* The floodplain administrator may require any owner to submit additional topographic, engineering and other data or studies as the administrator deems necessary to determine the effect of flooding on a proposed structure or fill, the effect of the structure or fill, or both, on the flow of water during a flood.
- E. *Certification by floodplain administrator.* No fill activity shall occur before the owner submits a site plan for review, the floodplain administrator certifies that the requirements of subsections (A) through (D), and all other applicable requirements of the Code, have been satisfied.

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR § 60.1(d).

Sec. 17.1.15 Construction standards.

The following standards shall apply to any structure authorized under section 17.1.11 within the flood hazard overlay district, and its special flood hazard area zones:

- A. *Structures and related improvements in any special flood hazard area; general standards.* Any structures and related improvements in any special flood hazard zone satisfy the following:
 - 1. *Compliance with building code and required anchoring.* New construction and substantial improvements shall be according to the Virginia Uniform Statewide Building Code, and anchored to prevent flotation, collapse or lateral movement of the structure.
 - 2. *Use materials resistant to flood damage.* New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - 3. *Use methods to minimize flood damage.* New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - 4. *Design to prevent water entering systems.* Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
 - 5. *Design to prevent water entering water supply systems.* New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - 6. *Design to prevent water entering sanitary sewage systems.* New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - 7. *Design to prevent impairment or contamination of on-site waste disposal systems.* On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
 - 8. *Historic structures.* Any historic structure undergoing repair or rehabilitation that would constitute a substantial improvement shall comply with any requirements of the flood hazard overlay district that do not preclude the structure's continued designation as a historic structure. The owner shall provide documentation from the Secretary of the Interior or the State Historic Preservation Officer that a specific requirement of the flood hazard overlay district will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places, as applicable. Any relief from any requirement shall be the minimum necessary to preserve the historic character and

design of the structure.

- B. *Buildings in Zones A1-30 or AE; elevation and construction standards.* Any buildings in Zones A1-30 or AE, where base flood elevations have been provided in the Flood Insurance Study or generated by a certified professional, shall satisfy the following:
1. *Residential buildings.* Any new construction or substantial improvement of any residential building, including any manufactured home, shall have the lowest floor, including the basement, elevated to or above the freeboard elevation. (Amended 11-21-2016)
 2. *Non-residential buildings.* Any new construction or substantial improvement of any non-residential building shall: (i) have the lowest floor, including basement, elevated to or above the freeboard elevation; or (ii) in any Zone A1-30 or AE, the building may be flood-proofed in lieu of being elevated to or above the freeboard elevation, provided that all areas of the building components below the freeboard elevation 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 effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The certification, including the specific elevation, in relation to mean sea level, to which such structures are flood-proofed, shall be maintained by the floodplain administration.
- C. *Structures in Zones A1-30 or AE; design, construction and use standards for space below the freeboard elevation.* Any fully enclosed area below the freeboard elevation (the “enclosed area”) in any new construction or substantially improved structure in Zones A1-30 or AE, where base flood elevations have been provided, shall satisfy the following:
1. *Uses.* The enclosed area shall be used only for parking vehicles, building access, or the limited storage of maintenance equipment not otherwise prohibited by section 17.1.11 that is used in connection with the premises.
 2. *Access.* Access to the enclosed area shall be the minimum necessary to allow for parking vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to other areas of the structure (stairway or elevator).
 3. *Construction materials.* The enclosed area shall be constructed entirely of flood resistant materials below the freeboard elevation.
 4. *Openings.* The enclosed area shall include measures to automatically equalize hydrostatic flood forces on walls by allowing floodwaters to enter and exit. To meet this requirement, openings shall be provided that are either certified by a professional engineer or architect, or meet the following minimum design criteria:
 - a. *Minimum number.* Provide a minimum of two (2) openings on different sides of each enclosed area.
 - b. *Minimum net area.* The total net area of all openings shall be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - c. *Multiple enclosed areas.* If a structure has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. *Bottom of opening.* The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

- e. *Permitted equipment on openings.* 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. *Flexible skirting, masonry and wood foundations; requirement for openings.* Foundation enclosures made of flexible skirting do not create enclosed areas and do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings.
- E. *Recreational vehicles.* Any recreational vehicle in Zone A1-30 or AE where base flood elevations have been provided shall either: (i) be stored on the lot for fewer than one hundred eighty (180) consecutive days, be fully licensed and ready for highway use; or (ii) satisfy all requirements for new construction in subsections (A) and (B). For the purposes of this subsection, 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.
- F. *Fences.* Any fence crossing a stream channel that, as determined by the floodplain administrator, may block the passage of floodwaters or may catch debris during a flood, shall be designed and constructed to be a breakaway fence that will give way on one end under a specified amount of pressure in order to swing parallel to the flow and minimize both resistance to floodwaters and catching debris.

State law reference – Va. Code §§ 15.2-2286, 36-98.

Federal law reference – 44 CFR §§ 60.3(a), (b), (c), (d).

Sec. 17.1.16 Nonconforming uses and structures.

Any pre-FIRM structure or any use which lawfully existed before September 5, 1979, but which is not in conformity with the requirements of the flood hazard overlay district, may continue, subject to the following:

- A. *Expansion or enlargement of existing uses or structures.* Existing structures 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 practices that the proposed expansion would not result in any increase in the base flood elevation.
- B. *Modification, alteration, repair, reconstruction or improvement of an existing use or structure; not a substantial improvement.* Existing uses or structures may be modified, altered, repaired, reconstructed or improved (collectively, the “improvements”), where the improvements are not a substantial improvement, provided that the improvements: (i) are authorized by section 6.0 as applicable; and (ii) comply with the Virginia Uniform Statewide Building Code.
- C. *Modification, alteration, repair, reconstruction or improvement of an existing use or structure; substantial improvement.* Existing uses or structures may be modified, altered, repaired, reconstructed or improved (the “improvements”), where the improvements qualify as a substantial improvement, provided that: (i) the entire use or structure complies with the requirements of the flood hazard overlay district and all other applicable laws; and (ii) the entire structure complies with the Virginia Uniform Statewide Building Code.
- D. *Repair or rehabilitation of historic structure; substantial improvement.* Any historic structure undergoing repair or rehabilitation that would constitute a substantial improvement shall comply with any requirements of the flood hazard overlay district that do not preclude the structure’s continued designation as a historic structure. The owner shall provide documentation from the

Secretary of the Interior or the State Historic Preservation Officer that a specific requirement of the flood hazard overlay district will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places, as applicable. Any relief from any requirement shall be the minimum necessary to preserve the historic character and design of the structure.

State law reference – Va. Code §§ 15.2-2286, 15.2-2307.

Federal law reference – 44 CFR § 60.1(d).

Sec. 17.1.17 Variances.

The board of zoning appeals is authorized to consider and act on applications for variances, subject to the following:

- A. *Eligibility.* Variances may be issued in the following circumstances:
1. *New construction or substantial improvements; nearby structures constructed below the base flood elevation.* For new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided that the board of zoning appeals may, upon good cause shown, consider a variance application pertaining to a lot larger than one-half acre.
 2. *New construction, substantial improvement, or development; required for water-dependent facilities.* For new construction, substantial improvements, or other development necessary for a water-dependent facility, not otherwise authorized by a special use permit, provided that all applicable requirements of the flood hazard overlay district not varied are satisfied and any structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- B. *What may be varied.* The following may be varied within the flood hazard overlay district: (i) any requirement of this ordinance that is eligible to be varied under section 22.0 and Virginia Code § 15.2-2309; (ii) any minimum encroachment standard in sections 17.1.13 and 17.1.14; (iii) any minimum construction standard in section 17.1.15; or (iv) any standard applicable to nonconforming uses and structures in 17.1.16. Neither any part of section 17.1.11 nor any administrative or procedural requirement of the flood hazard overlay district may be varied.
- C. *Procedures.* The procedures and requirements for applying for and acting on a variance application shall be as provided in section 22.0.
- D. *Factors to be considered.* In considering a variance application under this section, the board of zoning appeals shall consider the following factors in addition to those in section 22.0:
1. *Danger to life and property.* The danger to 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 any regulatory floodway that will cause any increase in the base flood elevation.
 2. *Danger of materials being swept away.* The danger that materials may be swept on to other lands or downstream to the injury of others.
 3. *Water supply and sewage systems.* The proposed water supply and sanitary sewage systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

4. *Susceptibility to flood damage.* The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 5. *Importance of services.* The importance of the services provided by the proposed facility to the community.
 6. *Need for waterfront location.* The requirements of the facility for a waterfront location.
 7. *Availability of alternative locations.* The availability of alternative locations not subject to flooding for the proposed use.
 8. *Compatibility.* The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 9. *Comprehensive plan and flood management program.* The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 10. *Vehicular access.* The safety of access by emergency and non-emergency vehicles to the site in time of flood.
 11. *Flood waters.* The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 12. *Historic nature of structure.* The historic nature of a structure and whether the proposed repair or rehabilitation will preclude the structure's continued designation as a historic structure.
- E. *Referral to obtain technical assistance.* The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to the floodplain administrator 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.
- F. *Findings.* A variance may be issued if the board of zoning appeals finds:
1. *Cause.* The owner has demonstrated good and sufficient cause consistent with the requirements of this section.
 2. *Undue hardship.* The failure to issue the variance would result in undue hardship.
 3. *Impacts.* The issuance of the variance will not: (i) result in unacceptable or prohibited increases in flood heights; (ii) result in additional threats to public safety; (iii) result in extraordinary public expense; (iv) create a public or private nuisance; (v) cause fraud or victimization of the public; and (vi) conflict with Town regulations.
 4. *Variance is minimum required.* The variance to be issued will be the minimum required to provide relief.
 5. *Additional finding for historic structures.* In addition to findings (1) through (4) above, the proposed repair or rehabilitation of the historic structure will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

- G. *Structure below base flood elevation; notice to owner of effect of issuing a variance.* The board of zoning appeals shall notify the applicant in writing that the issuance of a variance to construct a structure below the base flood elevation increases the risks to life and property and will result in increased premium rates for flood insurance. Providing this information on a variance application form shall satisfy the notice requirements of this subsection.
- H. *Recordkeeping.* 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 that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
- I. *Use variances.* No variance may be issued to authorize a use in the flood hazard overlay district not otherwise expressly authorized.

State law reference – Va. Code § 15.2-2309.

Federal law reference – 44 CFR § 60.6.

Sec. 17.1.18 Site Development Plan – Flood Hazard Overlay District.

Sec. 17.1.18.1 Contents of an initial site plan.

Each initial site plan shall contain, the following information, to the degree that the site plan requirements set out in section 24.0 do not so provide:

- A. *General information.* The name of the development; names of the owner, developer and individual who prepared the plan; tax map and parcel number; boundary dimensions; zoning district; descriptions of all proffers, special use permits and conditions thereof, special exceptions and conditions thereof, variances and conditions thereof, application plans, codes of development and bonus factors applicable to the site; magisterial district; county and state; north point; scale; one datum reference for elevation (section 17.0, flood hazard overlay district, applies to any portion of the site, United States Geological Survey vertical datum shall be shown and/or correlated to plan topography and show existing and proposed ground elevations); the source of the topography; departing lot lines; minimum setback lines, yard and building separation requirements; the source of the survey; sheet number and total number of sheets; and the names of the owners, zoning district, tax map and parcel numbers and present uses of abutting parcels.
- B. *Information regarding the proposed use.* Written schedules or data as necessary to demonstrate that the site can accommodate the proposed uses, including proposed uses and maximum acreage occupied by each use; maximum number of dwelling units by type including the number of bedrooms for multi-family dwellings; gross residential density; square footage of recreational areas; the percentage and acreage of open space; maximum square footage for commercial and industrial uses; maximum floor area ratio and lot coverage for industrial use; maximum height of all structures; schedule of parking including the maximum amount required and the amount provided; the maximum amount of impervious cover on the site; and if a landscape plan is required, the maximum amount of paved parking and other vehicular circulation areas.
- C. *Phase lines.* If phasing is planned, phase lines and the proposed timing of development.
- D. *Topography and proposed grading.* Existing topography (up to twenty [20] percent slope, maximum five [5] foot contours, over twenty [20] percent slope, maximum ten [10] foot contours) for the entire site with sufficient offsite topography to describe prominent and pertinent offsite features and physical characteristics, but in no case less than fifty (50) feet outside of the site unless otherwise approved by the agent; proposed grading (maximum five [5] foot contours) supplemented where necessary by spot elevations; areas of the site where existing slopes are critical slopes.

- E. *Landscape features.* The existing landscape features as described in section 24.11.9.4.c.
- F. *Watercourses and other bodies of water.* The name and location of all watercourses and other bodies of water adjacent to or on the site; indicate whether the site is located within the watershed of a public water supply reservoir.
- G. *Onsite sewage system setback lines.* The location of onsite sewage system setback lines from watercourses including intermittent streams and other bodies of water.
- H. *Floodplain and related information.* The boundaries of the flood hazard overlay district, the base flood elevation on the site, the elevation of the lowest floor, including any basement, and for any structures to be flood-proofed as required by section 17.0, the elevation to which the structures will be flood-proofed.
- I. *Streets, easements and travelways.* The existing and proposed streets, including proposed bike lanes, access easements, alley easements and rights-of-way, and travelways, together with street names, state route numbers, right-of-way lines and widths, centerline radii and pavement widths.
- J. *Existing sewer and drainage facilities.* The location and size of existing water and sewer facilities and easements, the storm drainage system, drainage channels, and drainage easements.
- K. *Proposed sewer and drainage facilities.* The proposed conceptual layout for water and sewer facilities and the storm drainage system, indicating the direction of flow in all pipes and watercourses with arrows.
- L. *Existing and proposed utilities.* The location of other existing and proposed utilities and utility easements, including existing telephone, cable, electric and gas easements.
- M. *Ingress and egress.* The location of existing and proposed ingress to and egress from the property, showing the distance to the centerline of the nearest existing street intersection.
- N. *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements including buildings (maximum footprint and height) and other structures; walkways; fences; walls; trash containers; outdoor lighting; landscaped areas and open space; recreational areas and facilities; parking lots and other paved areas; loading and service areas; signs; and the proposed paving material types for all walks, parking lots and driveways.
- O. *Areas to be dedicated or reserved.* All areas intended to be dedicated or reserved for public use under sections 68-404 through 68-411, and shall include a note on the plan stating that the land is to be dedicated or reserved for public use.
- P. *Landscape plan.* A landscape plan that complies with section 19.6 and/or section 24.11.9, if it is required to be submitted with the initial site plan.
- Q. *Traffic generation figures.* If deemed appropriate by the agent due to the intensity of the development, estimated traffic generation figures for the site based on current Virginia Department of Transportation rates; indicate the estimated number of vehicles per day and the direction of travel for all connections from the site to a public street.
- R. *Symbols and abbreviations.* A legend showing all symbols and abbreviations used on the plan.
- S. *Additional information.* The agent may require additional information to be shown on the initial site plan as deemed necessary to provide sufficient information for the agent and the site review committee to adequately review the plan.

T. *Dam break inundation zones.* The limits of a dam break inundation zone.

State law reference – Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2286(A)(8).

Federal law reference – 44 CFR § 60.3(b)(3).

Sec. 17.1.18.2 Flood hazard overlay district.

If the proposed development is located wholly or partially within the flood hazard overlay district, the site review committee shall review the initial site plan to determine that the site will be reasonably safe from flooding and, if the development is in a flood-prone area: (i) that it is designed to minimize flood damage within a flood-prone area; (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems will be located and constructed to minimize or eliminate flood damage; and (iii) adequate drainage will be provided to reduce exposure to flood hazards.

State law reference – Va. Code § 15.2-2241(3), 15.2-2280.

Federal law reference – 44 CFR § 60.3(a)(4).

Sec. 17.1.18.3 Fees.

Each applicant shall pay the following applicable fees, in addition to the applicable fees required by the Town of Scottsville Zoning Fee Schedule and Fees Ordinance, provided that the Town shall not be required to pay any fee if it is the applicant:

Matters considered by the zoning administrator or other officials:

1. Letter of Map Change review: \$150.00 (topographic plan only); \$300.00 (topographic plan with floodplain model)
2. Floodplain Impact Plan review: \$300.00

State law reference – Va. Code §§ 15.2-2286(A)(6), 15.2-2241(9), 15.2-2243.1.

Sec. 17.1.18.4 Violations.

The following are violations of this ordinance and are declared to be unlawful:

- A. *Uses.* Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this ordinance, any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any Town approval under this ordinance, or without any required permit, certificate or other required approval under this ordinance.
- B. *Structures or improvements.* Any structure or improvement and, within the flood hazard overlay district, any development as that term is defined in section 17.1.5, that is established, conducted, operated or maintained in violation of any provision of this ordinance, any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any Town approval under this ordinance, or without any required permit, certificate or other required approval under this ordinance.
- C. *Structures without building permits.* Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

- D. *Use of structure or site without certificate of occupancy.* Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

State law reference – Va. Code § 15.2-2286.

Sec. 17.1.18.5 Penalty for violations. (Added 11-21-2016)

Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the zoning administrator or any authorized employee of the Town of Scottsville shall be guilty of the appropriate violation and subject to the penalties thereof.

The Virginia Uniform Statewide Building Code addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Town of Scottsville Zoning Ordinance are addressed in Sections 26.0 and 27.0 of the Zoning Ordinance.

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