

© Copyrighted. Municipal Code Corp., affiliated Municipality.
1998.

Chapter 26 FLOODS*

***Cross reference(s)**--Buildings and building regulations, ch. 10; environment, ch. 18; health and sanitation, ch. 30; site plan, ch. 46; streets, sidewalks and other public places, ch. 50; subdivisions, ch. 54; zoning, ch. 66.

State law reference(s)--Flood Damage Reduction Act, Code of Virginia, § 10.1-600 et seq.

Article I. In General

Secs. 26-1--26-30. Reserved.

Article II. Floodplain Management

Sec. 26-31. Purpose.

Sec. 26-32. Applicability.

Sec. 26-33. Compliance and liability.

Sec. 26-34. Abrogation and greater restrictions.

Sec. 26-35. Definitions.

Sec. 26-36. Description of districts.

Sec. 26-37. Official floodplain map.

Sec. 26-38. District boundary changes.

Sec. 26-39. Interpretation of district boundaries.

Sec. 26-40. District provisions.

Sec. 26-41. Floodway district.

Sec. 26-42. Flood fringe and approximated floodplain districts.

Sec. 26-43. Design criteria for utilities and facilities.

Sec. 26-44. Variances; factors to be considered.

Sec. 26-45. Existing structures in floodplain districts.

ARTICLE I. IN GENERAL

Secs. 26-1--26-30. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT

Sec. 26-31. Purpose.

The purpose of this article is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (1) Regulating uses, activities and development that, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities and frequencies.
- (2) Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
- (3) Requiring all those uses, activities and developments that do occur in floodprone areas to be protected and/or floodproofed against flooding and flood damage.

(Code 1981, § 12-1)

Sec. 26-32. Applicability.

This article shall apply to all lands within the jurisdiction of the town and identified as being in the 100-year floodplain by the Federal Emergency Management Agency.

(Code 1981, § 12-2)

Sec. 26-33. Compliance and liability.

(a) 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 this article and any other applicable ordinances and regulations that apply to uses within the jurisdiction of this article.

(b) The degree of flood protection sought by the provisions of this article is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside the floodplain districts, or that land uses permitted within such districts, will be free from flooding or flood damages.

(c) This article shall not create liability on the part of the town or any officer or employee of the town for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.

(Code 1981, § 12-3)

Sec. 26-34. Abrogation and greater restrictions.

This article supersedes any ordinance currently in effect in floodprone areas. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this article.

(Code 1981, § 12-4)

Sec. 26-35. Definitions.

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

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

Basement means any area of a building having its floor subgrade (below ground level) on all sides.

Board of zoning appeals means the board established in chapter 2, article IV, division 3, and which shall review appeals with regard to decisions of the zoning administrator in the interpretation of this article.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operation, or storage of equipment or materials, and the subdivision of land.

Flood means a general and temporary inundation of normally dry land areas.

Floodplain means:

- (1) A relatively flat or low land area adjoining a river, stream or watercourse that is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodprone area means any land area susceptible to being inundated by water from any source.

Floodway means the designated area of the floodplain required to carry and discharge floodwaters of a given magnitude. For the purposes of this article, the floodway shall be capable of accommodating a flood of the 100-year magnitude.

Historic structure means any structure that is:

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

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area is not considered a building's lowest floor provided such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

New construction means, for floodplain management purposes, structures for which the start of construction commenced on or after November 1994, and includes any subsequent improvements to such structures.

Recreational vehicle means a vehicle that is:

- (1) Built on a single chassis;

- (2) No more than 400 square feet 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.

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

Substantial improvement means 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 that 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 that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an historic structure, provided the alteration will not preclude the structure's continued designation as an historic structure.

(Code 1981, § 12-6; Ord. of 5-13-1997, ch. 12, § 12-6)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-36. Description of districts.

(a) The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The basis for the delineation of these districts shall be the flood insurance study for the town prepared by the Federal Emergency Management Agency, dated January 5, 1995, or its most recent revision.

(b) The floodway district is delineated, for purposes of this article, using the criterion that certain areas within the

floodplain must be capable of carrying the waters of 100-year flood without increasing the water surface elevation of that flood more than one foot at any one point. The areas included in this district are specifically defined in the flood insurance study and shown on the accompanying flood boundary and floodway map or flood insurance rate map.

(c) The flood fringe district shall be that area of the 100-year floodplain not included in the floodway district. The basis for the outermost boundary of this district shall be the 100-year flood elevations contained in the flood profiles of the flood insurance study and as shown on the accompanying flood boundary and floodway map or flood insurance rate map.

(d) The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as zone A on the maps accompanying the flood insurance study. For these areas, the 100-year flood elevations and floodway information from federal, state and other acceptable sources shall be used, when available. Where the specific 100-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., 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.

(Code 1981, § 12-7)

Sec. 26-37. Official floodplain map.

The boundaries of the floodplain districts are established as shown on the flood boundary and floodway map, which is declared to be a part of this article and which shall be kept on file at the town offices.

(Code 1981, § 12-8)

Sec. 26-38. District boundary changes.

The delineation of any of the floodplain districts may be revised by the town council where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for

possibility for such change. However prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

(Code 1981, § 12-9)

Sec. 26-39. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the permit officer. Should a dispute arise concerning the boundaries of any of the districts, the board of 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.

(Code 1981, § 12-10)

Sec. 26-40. District provisions.

(a) All uses, activities and development occurring within any floodplain district shall be undertaken only upon the issuance of a special permit. Such development shall be undertaken only in strict compliance with the provisions of this article and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code. Prior to the issuance of any such permit, the permit officer 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 floodways or any watercourse, drainage ditch, or any other drainage facility or system.

(b) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction, a permit from the U.S. Army Corps of Engineers or the Virginia Marine Resources Commission or the certification from the Virginia State Water Control Board may be necessary (a joint permit application is available from any one of these organizations). Further notification of the proposal shall be given to all affected adjacent jurisdictions, the division of soil and water conservation (department of conservation and recreation), and the Federal Emergency Management Agency.

(c) All applications for the development in the floodplain district and all special permits issued for the floodplain shall incorporate the following information:

- (1) For structures that have been elevated, the elevation of the lowest floor (including basement).
- (2) For structures that have been floodproofed (nonresidential only), the elevations to which the structure has been floodproofed.

- (3) The elevation of the 100-year flood.
- (4) Topographic information showing the existing and proposed ground elevations.

(Code 1981, § 12-11)

Sec. 26-41. Floodway district.

In the floodway district, no development, including fill or substantial improvements, shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements that shall have demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed development will not result in any increase in the 100-year flood elevation.

(Code 1981, § 12-12)

Sec. 26-42. Flood fringe and approximated floodplain districts.

(a) In the flood fringe and approximated floodplain districts, the development and/or use of land shall be permitted in accordance with the regulations of this article provided that all such uses, activities and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances.

(b) Within the approximated floodplain areas, the applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the 100-year flood elevation more than one foot at any one point. The engineering principle--equal reduction of conveyance--shall be used to make the determination of increased flood heights.

(c) Within the floodway area delineated by the applicant, the provisions of section 66-239 shall also apply.

(Code 1981, § 12-13)

Sec. 26-43. Design criteria for utilities and facilities.

(a) *Sanitary sewerage facilities.* All new or replaced sanitary sewerage facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into the floodwaters. In addition, they shall 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 floodwaters into the system and be located and constructed to minimize or eliminate flood damages.

(c) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. 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 onto adjacent properties.

(d) *Utilities.* All utilities, such as gas lines, electrical and telephone systems, being placed in floodprone areas shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flooding occurrence.

(e) *Streets and sidewalks.* Streets and sidewalks shall be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

(Code 1981, § 12-14)

Sec. 26-44. Variances; factors to be considered.

(a) Whenever any person is aggrieved by a decision of the permit officer with respect to the provisions of this article, it is the right of that person to appeal to the board of zoning appeals for a variance. Such appeal must be filed, in writing, within 30 days after the determination by the permit officer.

(b) Upon receipt of such an appeal, the board of zoning appeals shall set a time and place for the purpose of hearing the appeal, which shall be not less than ten nor more than 30 days from the date of the receipt of the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard. The determination by the board of zoning appeals shall be final in all cases.

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

- (1) 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 the floodway district that will cause any increase in flood levels during the 100-year flood.

- (2) The danger that materials may be swept on to 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 town.
- (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 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) Such other factors relevant to the purposes of this article.

(d) 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 height and velocities, and the adequacy of the plans for the flood protection, and other related matters.

(e) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety or extraordinary public expense, and will not create a nuisance, cause fraud or victimization of the public, or conflict with local laws or ordinances.

(f) 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.

(g) 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 increases the risks to life and property and will result in increased premium rates for flood insurance.

(h) A record of the notification required by subsection (g) of this section, as well as all variance actions, including justification for their issuance, shall be maintained; and any variances shall be noted in the annual or biennial report submitted to the Federal Emergency Management Agency.

(Code 1981, § 12-15)

Sec. 26-45. Existing structures in floodplain districts.

A structure or use of a structure or premises which lawfully existed before November 1994, but which is not in conformity with this article, may be continued subject to the following conditions:

- (1) Existing structures and/or uses located in the floodway district shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements.
- (2) Any modifications, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than 50 percent of its market value shall be elevated and/or floodproofed to the greatest extent possible.
- (3) The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use, regardless of its location in a floodplain district, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code.
- (4) Uses or their adjuncts that are or become nuisances shall not be permitted to continue.
- (5) No building or structure shall be occupied/reoccupied after a natural disaster such as fire or flood without an inspection for structural stability and livability by competent authority.

(Code 1981, § 12-16; Ord. of 5-13-1997, ch. 12, § 12-16)