

COMMON COUNCIL



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I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 15th day of May, 2014, that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 13th day of May 2014.

AN ORDINANCE AMENDING ARTICLE 14.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FLOODPLAIN REGULATIONS

TA-14-33

WHEREAS, the Federal Emergency Management Administration, hereinafter “FEMA,” prescribes certain requirements for Floodplain District Ordinances; and,

WHEREAS, Section 14.1 of the Winchester Zoning Ordinance, containing provisions of the City’s Floodplain districts, was adopted by Council on October 13, 1999, and further amended on September 1, 2009; and,

WHEREAS, necessary changes have been identified by the Virginia Department of Conservation and Recreation of the City’s existing Floodplain ordinance; and,

WHEREAS, the Zoning Ordinance provides floodplain standards in order 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 impairment of the tax base; and,

WHEREAS, it is the interest of the City to necessitate these changes in order to best meet the requirements of FEMA and the National Flood Insurance Program; and,

WHEREAS, the Planning Commission has considered the aforesaid amendment and, at its meeting of March 18, 2014, forwarded TA-14-33 to City Council recommending approval because the amendment presents good planning practice by providing clear local ordinances for development and redevelopment within established floodplain districts in order to meet the requirements of FEMA and the National Flood Insurance Program; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the amendment represents good planning practice.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that the Winchester Zoning Ordinance of 1976, as amended, be further amended to read as follows:

**AN ORDINANCE AMENDING ARTICLE 14.1 OF THE WINCHESTER ZONING ORDINANCE
PERTAINING TO FLOODPLAIN REGULATIONS**

TA 14-33

Draft 1 – (1/14/2014)

*Ed. Note: The following text represents an excerpt of Article 14.2 of the Zoning Ordinance that is subject to change. Words with strikethrough are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

ARTICLE 14.1

FLOODPLAIN DISTRICTS - FP

STATEMENT OF INTENT

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

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage.
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

14.1-1 STATUTORY AUTHORIZATION AND PURPOSE

This ordinance is adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

14.1-2 APPLICABILITY

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

14.1-3 COMPLIANCE AND LIABILITY

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.
- C. This ordinance shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- D. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Program Administrator.

14.1-4 PENALTY FOR VIOLATIONS

Any person who fails to comply with any of the requirements or provisions of this article or directions of the Program Administrator or any authorized employee of the City of Winchester shall be subject to the penalties therefor.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article 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 or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the City of Winchester to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

14.1-5 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.

14.1-6 ABROGATION AND GREATER RESTRICTIONS

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

14.1-7 DEFINITIONS

- 14.1-7-1 Base Flood/One-Hundred Year Flood - A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).
- 14.1-7-2 Base Flood Elevation (BFE) - The Federal Insurance Administration designated 100 year water surface elevation.
- 14.1-7-3 Basement – (For purposes of this Article...) Any area of the building having its floor sub-grade (below ground level) on all sides.

- 14.1-7-4 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.
- 14.1-7-5 Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).
- 14.1-7-6 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.
- 14.1-7-7 Existing manufactured home park or subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
- 14.1-7-8 Expansion to an existing manufactured home park or subdivision - the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- 14.1-7-9 Flood or flooding -
1. A general or temporary condition of partial or complete inundation of normally dry land areas from
 - a. the overflow of inland or tidal waters; or,
 - b. the unusual and rapid accumulation or runoff of surface waters from any source.
 2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.
 3. Mudflows which are proximately caused by flooding as defined in paragraph (a)(2) of this definition 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.
- 14.1-7-10 Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community
- 14.1-7-11 **Flood Insurance Study (FIS) – a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface**

elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

- 14.1-**7-12** **Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.**
- 14.1-**7-13** **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.**
- 14.1-**7-14** **Floodway** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- 14.1-**7-15** **Freeboard** - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.
- 14.1-**7-16** **Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.**
- 14.1-**7-17** **Historic structure** - Any structure that is
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 3. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
 4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
 - a. by an approved state program as determined by the Secretary of the Interior; or,
 - b. directly by the Secretary of the Interior in states without approved programs.
- 14.1-**7-18** **Lowest Floor** - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in

violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

- 14.1-7-19** 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. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed one a site for greater than 180 consecutive days.
- 14.1-7-20** Manufactured home park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- 14.1-7-21** New construction - For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial Flood Insurance Rate Map on or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- 14.1-7-22** Recreational vehicle - A vehicle which is
1. built on a single chassis;
 2. 400 square feet or less when measured at the largest horizontal projection;
 3. designed to be self-propelled or permanently towable by a light duty truck; and,
 4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- 14.1-7-23** Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 14.1-6 of this ordinance.
- 14.1-7-24** Start of construction - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- 14.1-7-25** Structure - for flood plain 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. “Structure” for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a

permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

- 14.1-7-26 Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 14.1-7-27 Substantial Improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".
- 14.1-7-28 Violation - the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- 14.1-7-29 Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

14.1-8 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

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

- A. **Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the City of Winchester chief executive officer.**
- B. **Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.**
- C. **Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.**

14.1-9 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

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

- A. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- B. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- C. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- D. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
- E. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
- F. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
- G. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- H. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- I. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
- J. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the (community), within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

- K. Maintain and permanently keep records that are necessary for the administration of these regulations, including:**
- 1. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and**
 - 2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.**
- L. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.**
- M. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.**
- N. Administer the requirements related to proposed work on existing buildings:**
- 1. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.**
 - 2. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.**
- O. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.**
- P. Notify the Federal Emergency Management Agency when the corporate boundaries of the (community) have been modified and:**
- 1. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and**
 - 2. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department**

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

- Q. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.**
- R. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).**

14.1-10 DESCRIPTION OF DISTRICTS

14.1-10-1 Basis of Districts

The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps for the City of Winchester prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 2, 2009, as amended.

1. The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 2 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
2. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the City.
3. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.

14.1-10-2 Overlay Concept

1. The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
2. Any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
3. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

14.1-11 OFFICIAL ZONING MAP

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

14.1-12 DISTRICT BOUNDARY CHANGES

The delineation of any of the Floodplain Districts may be revised by the Governing Body where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

14.1-13 SUBMITTING TECHNICAL DATA

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

14.1-14 INTERPRETATION OF DISTRICT BOUNDARIES

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

14.1-15 GENERAL PROVISIONS

14.1-15-1 Permit Requirement

All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all

other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the City Land Subdivision Regulations. Prior to the issuance of any such permit, the Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

14.1-15-2 Alteration or Relocation of Watercourse

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

14.1-15-3 General Standards

In all special flood hazard areas the following provisions shall apply:

- a) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- b) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- g) 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.
- h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- i) Any alteration, repair, reconstruction or improvements to a building that is in

compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.

- j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.
- k) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administration.
- l) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

14.1-~~15~~-4 Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

14.1-~~15~~-5 Site Plans and Permit Applications

All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. For structures to be elevated, the elevation of the lowest floor (including basement).
2. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
3. The elevation of the one hundred (100)-year flood.
4. Topographic information showing existing and proposed ground elevations.

14.1-~~15~~-6 Specific Standards

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according **to Article 14.1, Section 14.1-10-1.2**, the following provisions shall apply:

a) Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than 1 foot above the base flood elevation.

b) Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than 1 foot above the base flood elevation. Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot 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.

c) Elevated Buildings

Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. include, in Zones AE and A, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.
 - e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

14.1-~~15~~-7 **Manufactured Homes and Recreational Vehicles**

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction.
2. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision in which a manufactured home has not incurred substantial damage as the result of a flood shall be elevated so that either
 - a. the lowest floor of the manufactured home is elevated no lower than 3 feet above the base flood elevation; or
 - b. the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade
 - c. and be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.
3. All recreational vehicles placed on sites must either
 - a. be on the site for fewer than 180 consecutive days;
 - b. be fully licensed and ready for highway use (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); or,
 - c. meet all the requirements for manufactured homes.

14.1-16 FLOODWAY DISTRICT

In the Floodway District no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one hundred (100)-year flood elevation.

14.1-~~15~~-1 **Permitted Uses in the Floodway District**

The following uses and activities are permitted provided that they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials and equipment:

1. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. 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.

3. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.

4. Accessory industrial and commercial uses such as yard areas, pervious parking and loading areas, airport landing strips, etc.

14.1-17 SPECIAL FLOODPLAIN DISTRICT

The following provisions shall apply within the Special Floodplain District:

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

Development activities in Zones A and AE on the Frederick County Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the City of Winchester’s endorsement – for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

14.1-17-1 Standards for Approximated Floodplain

The following provisions shall apply with the Approximate Floodplain District:

1. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Program Administrator.
2. When such base flood elevation data is utilized, the lowest floor shall be 1 foot above the base flood elevation. During the permitting process, the Program Administrator shall obtain:
 - a) the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,

- b) if the structure has been flood-proofed in accordance with the requirements of this article, the elevation to which the structure has been flood-proofed.

14.1-17-2

Standards for Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

14.1-18

VARIANCES: FACTORS TO BE CONSIDERED

In passing upon applications for Variances, the Board of Zoning Appeals (“the Board”) shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- A. 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 Floodway District that will cause any increase in the one hundred (100)-year flood elevation. No variance shall be granted within the Special Flood Plain District for any proposed development that would cause an increase of more than one foot in the one hundred (100) year flood elevation.
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. Such other factors which are relevant to the purposes of this ordinance.

The Board may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

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

Variances shall be issued only after the Board has determined that variance will be the minimum required to provide relief from hardship to the applicant.

The Board shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

14.1-19 EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS

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

- A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one hundred (100)-year flood elevation.
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, elevation and/or floodproofing should be considered to the greatest extent possible.
- C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of this ordinance and the Virginia Uniform Statewide Building Code.

- D. Existing structures in the Special Flood Plain District shall not be expanded or enlarged unless it has been demonstrated through hydraulic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion or enlargement would not result in an increase of more than one foot in the one hundred (100) year flood elevation.

14.1-20 FLOODING

Land subject to flooding and land deemed to be topographically unsuitable shall not be platted for residential occupancy, nor for such other uses as may increase danger of health, life or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare. All subdivisions within the City of Winchester shall conform with the recommendation of the applicable Storm Drainage Report. Any new subdivision or development shall be subject to the requirements of Article 14.1 FLOODPLAIN DISTRICTS, FP, of the Official Zoning Ordinance.

Ordinance No. 2014-10

ADOPTED by the Common Council of the City of Winchester on the 13th of May, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest, CMC
Deputy Clerk of the Common Council*