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CANDICE W. MCGARRY  
County Administrator

AMANDA B. SPIVEY  
Administrative Assistant/  
Deputy Clerk

GRACE E. MAWYER  
Director of Finance and  
Human Resources

**AGENDA  
COUNTY OF NELSON  
JOINT MEETING OF BOARD OF SUPERVISORS AND PLANNING COMMISSION  
JUNE 25, 2025 AT 7:00 P.M.  
GENERAL DISTRICT COURTROOM AT THE COURTHOUSE IN LOVINGSTON  
(The meeting is a continued session from 06/25/25 (BOS) and 6/25/25 (PC))**

**I. CALL TO ORDER**

**II. JOINT PUBLIC HEARING**

**A. Ordinance O2025-03 – Amendment to Appendix A Zoning, Article 10 General Floodplain District FP**

Consideration of proposed amendments that would keep the County's floodplain management ordinance and enforcement procedures in compliance with NFIP requirements (44CFR 59.22) by replacing the definitions for "Post FIRM," "Pre FIRM," and "New Construction," and updating references to the upcoming effective date in Sections 10-7, 10-8, and 10-9. This proposed ordinance would adopt the new floodplain maps effective August 5, 2025.

**III. OTHER BUSINESS (AS PRESENTED)**

**IV. ADJOURNMENT OF THE BOARD OF SUPERVISORS, PLANNING COMMISSION WILL PROCEED WITH THEIR REGULAR MEETING AND PUBLIC HEARING.**

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**DRAFT**  
**ORDINANCE O2025-03**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**AMENDMENT OF THE CODE OF NELSON COUNTY, VIRGINIA**  
**APPENDIX A – ZONING, ARTICLE 10 GENERAL FLOODPLAIN DISTRICT FP**

**BE IT HEREBY ORDAINED**, by the Nelson County Board of Supervisors that the Code of Nelson County, Virginia, Appendix A – Zoning, Article 10 General Floodplain District FP is hereby amended as follows:

***Amend***

10-7

***Definitions.***

For the purpose of this Article, words and terms are defined as follows:

***Appurtenant or accessory structure:*** Accessory structures not to exceed 200 sq. ft. ***Base flood:*** The flood having a one (1) percent chance of being equaled or exceeded in any given year.

***Base flood:*** The flood having a one (1) percent chance of being equaled or exceeded in any given year.

***Base Flood Elevations (BFE):*** The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or one (1) percent annual chance flood.

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

***Board of Zoning Appeals:*** The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this ordinance, and to review and approve variances (as appropriate) as explicitly specified in this ordinance.

***Building:*** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or equipment of any kind.

***Critical facilities:*** Structures, improvements, or uses that, by virtue of their importance to the community and/or their sensitivity to the risks of flooding, are prohibited from being located within any Special Flood Hazard Area unless a variance is granted. Critical facilities include but are not limited to: emergency services and rescue squads, schools, medical facilities, senior care centers, evacuation centers, hazardous materials or fuel storage, and other similar improvements and uses. See 10.14 and 10.15.

***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.

*Drop-down Fence:* A fence design that gives way under the pressure of flood flows to lay flat on the ground, and which can be re-erected after the flood.

*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).

*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 construction:* For the purposes of determining rates, structures for which the "start of construction" commenced before August 1, 1978. "Existing construction" may also be referred to as "existing structures."

*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.

*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 manufactured 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).

*Flood or flooding:*

- (a) A general or temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) the overflow of inland or tidal waters; or
  - (2) the unusual and rapid accumulation or runoff of surface waters from any source; or
  - (3) mudslides (i.e. 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.
- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a) (1) of this definition.

*Flood-prone area:* Any land area susceptible to being inundated by water from any source.

*Flood Insurance Rate Map (FIRM):* An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*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.

*Floodplain:*

- (a) A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (b) An area subject to the unusual and rapid accumulation or runoff of surface 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.

*Floodway:* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot at any point within the community.

*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.

*Functionally dependent use:* A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) by an approved state program as determined by the Secretary of the Interior; or
  - (2) directly by the Secretary of the Interior in states without approved programs.

*Hydrologic and Hydraulic Engineering Analysis:* 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 FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

*Letters of Map Change (LOMC):* A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Conditional Letters of Map Revision.

*Letter of Map Amendment (LOMA):* An amendment based on technical data showing that a property was incorrectly included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or 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 floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

*Conditional Letter of Map Revision (CLOMR):* A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of Special Flood Hazard Areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

*Lowest adjacent grade:* the lowest natural elevation of the ground surface next to the walls of a structure.

*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.

*Manufactured home:* A structure, transportable in one (1) 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 on a site for greater than one hundred eighty (180) consecutive days.

*Manufactured home park/subdivision:* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New construction:* ~~For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 1, 1978 (the effective date of the initial FIRM) and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the 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. Such structure is also referred to as "post-FIRM."~~ **Structures for which the start of construction commenced on or after the effective start date of this floodplain management ordinance and includes any subsequent improvements to such structures. Any construction started after effective date of community's first floodplain management ordinance adopted by the community and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.**

*New 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 on or after the effective date of floodplain management regulations adopted by a community.

*Post-FIRM structures:* ~~A structure for which construction or substantial improvement occurred after August 1, 1978.~~ **For floodplain management purposes, a structure for which construction, or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.**

*Pre-FIRM structures:* ~~A structure for which construction or substantial improvement occurred on or before August 1, 1978.~~ **For floodplain management purposes, a structure for which construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.**

*Recreational vehicle:* A vehicle which is:

- (a) built on a single chassis;
- (b) four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) 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 damages on two (2) occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded twenty-five (25) percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

*Severe repetitive loss structure:* A structure that:

- (a) is covered under a contract for flood insurance made available under the NFIP; and
- (b) has incurred flood related damage:
  - (1) for which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
  - (2) for which at least two (2) separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

*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. Such flooding is 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 being flooded in any given year as determined in Section 10.8.A.1 of this ordinance.

*Start of construction:* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (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 of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; 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 construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the 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 predamaged 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. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (a) 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
- (b) any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure."
- (c) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement, as defined above, must comply with all ordinance requirements that do not

preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer.

Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

*Suspended cable fence:* A steel cable or chain suspended across the waterway between two (2) secured posts. From the cable a fence made of galvanized chain, chain mesh, galvanized mesh or prefabricated fencing or netting is attached. The suspended cable remains taut during the flood while the flood gate fence remains flexible and rises with the flow. Some variations of the flood gate fence have foam or plastic floats at the bottom of the fence to aid in flotation on the surface of the flood flow.

*Variance:* For the purposes of this Article 10, a variance is a grant of relief by a community from the terms of a floodplain management regulation.

*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.

*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.

(Ord. No. O2017-01, 9-12-17)

## ***Amend***

10-8

### ***Establishment of floodplain districts.***

#### ***A. Description of districts.***

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 (FIRM) for Nelson County, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated ~~June 18, 2010~~, **August 5, 2025** and any subsequent revisions or amendments thereto.

The boundaries of the special flood hazard area and 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 Nelson County Planning and Zoning Office.

2. 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 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
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.
4. The Approximated Floodplain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100)-year floodplain boundary

has been approximated. 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 Flood Plain 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 governing body.

B. *Overlay concept.*

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance 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.

(Ord. No. O2017-01, 9-12-17)

***Amend***

10-9

*Official zoning map.*

The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate Map dated ~~June 18, 2010~~ **August 5, 2025** which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

(Ord. No. O2017-01, 9-12-17)

**BE IT FURTHER ORDAINED**, that this ordinance becomes effective upon adoption.

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_, Clerk  
Nelson County Board of Supervisors



**Please publish June 5 and June 12 in The Nelson County Times:**

**LEGAL NOTICE  
NOTICE OF PUBLIC HEARING  
NELSON COUNTY BOARD OF SUPERVISORS**

In accordance with Volume 3A, Title 15.2, Counties, Cities and Towns, of the Code of Virginia, 1950, as amended, and pursuant to §15.2-2204 and §15.2-2285, the **Nelson County Board of Supervisors hereby gives notice that a Joint Public Hearing of the Board and Planning Commission will start at 7:00 p.m., Wednesday, June 25, 2025 at the General District Courtroom** on the third floor of the Nelson County Courthouse located at 84 Courthouse Square, Lovingson. The purpose of the public hearing is to receive public comment on an Ordinance proposed for passage amending and re-enacting Zoning Ordinance Article 10, General Floodplain District FP as follows:

**1. Zoning Ordinance Amendment: Article 10 General Floodplain District FP**

Proposed amendments would keep the County's floodplain management ordinance and enforcement procedures in compliance with NFIP requirements (44CFR 59.22) by replacing the definitions for "Post FIRM," "Pre FIRM," and "New Construction," and updating references to the upcoming effective date in Sections 10-7, 10-8, and 10-9. This proposed ordinance would adopt the new floodplain maps effective August 5, 2025.

Copies of the proposed Ordinance Amendments are available for review in the Dept. of Planning & Zoning office, 80 Front Street, Lovingson, Virginia, Monday through Friday, 8:00 a.m. to 4:00 p.m., or the Office of the County Administrator, 84 Courthouse Square, Monday through Friday, 9:00 a.m. to 5:00 p.m. For more information, call the County Administrator's Office at (434) 263-7000, or the Dept. of Planning & Zoning office at (434) 263-7090. EOE.

BY AUTHORITY OF NELSON COUNTY BOARD OF SUPERVISORS

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**RESOLUTION R2025-36  
NELSON COUNTY BOARD OF SUPERVISORS  
AUTHORIZATION FOR PUBLIC HEARING  
AMENDMENT OF THE CODE OF NELSON COUNTY, VIRGINIA  
APPENDIX A- ZONING, ARTICLE 10 GENERAL FLOODPLAIN DISTRICT FP**

**BE IT RESOLVED**, that pursuant to §15.2-1427 and §15.2-2204 of the Code of Virginia 1950 as amended, the County Administrator is hereby authorized to advertise a **joint public hearing** between the Board of Supervisors and Planning Commission to be held on **June 25, 2025 at 7:00 P.M.** in the General District Courtroom in the Courthouse in Lovingson, Virginia. The purpose of the public hearing is to receive public input on an Ordinance proposed for passage to amend Appendix A - Zoning, Article 10 General Floodplain District FP. Proposed amendments would keep the County's floodplain management ordinance and enforcement procedures in compliance with NFIP requirements (44CFR 59.22) by replacing the definitions for "Post FIRM," "Pre FIRM," and "New Construction," and updating references to the upcoming effective date in Sections 10-7, 10-8 and 10-9. This proposed ordinance would also adopt the new floodplain maps effective August 5, 2025.

Approved: May 13, 2025

Attest: *Candice W. McGarry*, Clerk  
Nelson County Board of Supervisors

**Nelson County  
Board of Supervisors**

# Memo

**To:** Board of Supervisors

**From:** Dylan M. Bishop, Director of Planning & Zoning *DMB*

**Date:** May 13, 2025

**Re:** Updates to Article 10: General Floodplain District and Adoption of Updated Maps

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FEMA is the federal agency that administers the National Flood Insurance Program (NFIP) and creates the maps for regulatory purposes. State agencies such as Department of Conservation and Recreation (DCR) and responsible for guiding and providing technical assistance with floodplain administration to the locality. And the locality is responsible to administer its floodplain ordinance in compliance with FEMA regulations. The current effective flood maps are dated June 10, 2010.

The latest Flood Insurance Rate Maps (FIRMs) have been finalized for Nelson County, and are due to be effective on August 5, 2025. This involved years of data compilation, studies, and community meetings facilitated by FEMA. To remain active in the National Flood Insurance Program (NFIP), the locality is required to amend, update and its floodplain ordinance, and submit the adopted ordinance back to DCR for review at least 30 days prior to the effective date. The current floodplain ordinance was amended in 2017, and was sent to DCR for a compliance review. Only minor changes were required, including replacement of definitions for "Post FIRM," "Pre-FIRM," and "New Construction," and updating references to the upcoming effective date.

Staff is requesting that the BOS authorize a joint public hearing with the Planning Commission to be held on June 25, 2025. Upon adoption, the ordinance will be sent back to DCR and FEMA for final review and acceptance.

## **ARTICLE 10. GENERAL FLOODPLAIN DISTRICT FP<sup>1</sup>**

10-1

### *Purpose.*

This ordinance is adopted pursuant to the authority granted to localities by Va. Code §15.2 - 2280. 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 necessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

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

(Ord. No. O2017-01, 9-12-17)

10-2

### *Applicability.*

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

(Ord. No. O2017-01, 9-12-17)

10-3

### *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 manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not

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<sup>1</sup>Editor's note(s)—Ordinance No. O2017-01, adopted September 12, 2017, amended App. A, Art. 10, in its entirety to read as herein set out. Former Art. 10 pertained to the same subject matter and derived from an ordinance adopted Oct. 8, 1991; Ordinance No. O2010-003, adopted May 12, 2010; Ordinance No. O2010-04, adopted July 13, 2010; Ordinance No. O-2015-04, adopted May 12, 2015.

- NELSON COUNTY CODE  
APPENDIX A - ZONING  
ARTICLE 10. GENERAL FLOODPLAIN DISTRICT FP

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imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damages.

- C. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Floodplain Administrator.
- D. This ordinance shall not create liability on the part of Nelson County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(Ord. No. O2017-01, 9-12-17)

10-4

*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.

(Ord. No. O2017-01, 9-12-17)

10-5

*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.

(Ord. No. O2017-01, 9-12-17)

10-6

*Penalties.*

- A. Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the Floodplain Administrator or any other authorized employee of Nelson County shall be guilty of a misdemeanor and subject to the penalties as provided in Section 15-2 of the Zoning Ordinance.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action of 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 to permit it to continue, and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this ordinance may be declared by the Board of Supervisors to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

(Ord. No. O2017-01, 9-12-17)

10-7

*Definitions.*

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For the purpose of this Article, words and terms are defined as follows:

*Appurtenant or accessory structure:* Accessory structures not to exceed 200 sq. ft. *Base flood:* The flood having a one (1) percent chance of being equaled or exceeded in any given year.

*Base flood:* The flood having a one (1) percent chance of being equaled or exceeded in any given year.

*Base Flood Elevations (BFE):* The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or one (1) percent annual chance flood.

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

*Board of Zoning Appeals:* The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this ordinance, and to review and approve variances (as appropriate) as explicitly specified in this ordinance.

*Building:* Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or equipment of any kind.

*Critical facilities:* Structures, improvements, or uses that, by virtue of their importance to the community and/or their sensitivity to the risks of flooding, are prohibited from being located within any Special Flood Hazard Area unless a variance is granted. Critical facilities include but are not limited to: emergency services and rescue squads, schools, medical facilities, senior care centers, evacuation centers, hazardous materials or fuel storage, and other similar improvements and uses. See 10.14 and 10.15.

*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.

*Drop-down Fence:* A fence design that gives way under the pressure of flood flows to lay flat on the ground, and which can be re-erected after the flood.

*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).

*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 construction:* For the purposes of determining rates, structures for which the "start of construction" commenced before August 1, 1978. "Existing construction" may also be referred to as "existing structures."

*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.

*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 manufactured 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).

*Flood or flooding:*

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- (a) A general or temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) the overflow of inland or tidal waters; or
  - (2) the unusual and rapid accumulation or runoff of surface waters from any source; or
  - (3) mudslides (i.e. 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.
- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a) (1) of this definition.

*Flood-prone area:* Any land area susceptible to being inundated by water from any source.

*Flood Insurance Rate Map (FIRM):* An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*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.

*Floodplain:*

- (a) A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (b) An area subject to the unusual and rapid accumulation or runoff of surface 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.

*Floodway:* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot at any point within the community.

*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.

*Functionally dependent use:* A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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*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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) by an approved state program as determined by the Secretary of the Interior; or
  - (2) directly by the Secretary of the Interior in states without approved programs.

*Hydrologic and Hydraulic Engineering Analysis:* 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 FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

*Letters of Map Change (LOMC):* A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Conditional Letters of Map Revision.

*Letter of Map Amendment (LOMA):* An amendment based on technical data showing that a property was incorrectly included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or 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 floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

*Conditional Letter of Map Revision (CLOMR):* A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of Special Flood Hazard Areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

*Lowest adjacent grade:* the lowest natural elevation of the ground surface next to the walls of a structure.

*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.



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*Manufactured home:* A structure, transportable in one (1) 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 on a site for greater than one hundred eighty (180) consecutive days.

*Manufactured home park/subdivision:* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New construction:* For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 1, 1978 (the effective date of the initial FIRM) and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the 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. Such structure is also referred to as "post-FIRM." Structures for which the start of construction commenced on or after the effective start date of this floodplain management ordinance and includes any subsequent improvements to such structures. Any construction started after effective date of community's first floodplain management ordinance adopted by the community and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

*New 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 on or after the effective date of floodplain management regulations adopted by a community.

*Post-FIRM structures:* A structure for which construction or substantial improvement occurred after August 1, 1978. For floodplain management purposes, a structure for which construction, or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.

*Pre-FIRM structures:* A structure for which construction or substantial improvement occurred on or before August 1, 1978. For floodplain management purposes, a structure for which construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.

*Recreational vehicle:* A vehicle which is:

- (a) built on a single chassis;
- (b) four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) 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 damages on two (2) occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded twenty-five (25) percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

*Severe repetitive loss structure:* A structure that:

- (a) is covered under a contract for flood insurance made available under the NFIP; and
- (b) has incurred flood related damage:

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- (1) for which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
- (2) for which at least two (2) separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

*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. Such flooding is 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 being flooded in any given year as determined in Section 10.8.A.1 of this ordinance.

*Start of construction:* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (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 of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; 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 construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the 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 predamaged 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. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (a) 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
- (b) any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure."
- (c) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement, as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer.

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Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

*Suspended cable fence:* A steel cable or chain suspended across the waterway between two (2) secured posts. From the cable a fence made of galvanized chain, chain mesh, galvanized mesh or prefabricated fencing or netting is attached. The suspended cable remains taut during the flood while the flood gate fence remains flexible and rises with the flow. Some variations of the flood gate fence have foam or plastic floats at the bottom of the fence to aid in flotation on the surface of the flood flow.

*Variance:* For the purposes of this Article 10, a variance is a grant of relief by a community from the terms of a floodplain management regulation.

*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.

*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.

(Ord. No. O2017-01, 9-12-17)

10-8

*Establishment of floodplain districts.*

A. *Description of districts.*

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 (FIRM) for Nelson County, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 18, 2010, August 5, 2025 and any subsequent revisions or amendments thereto.  
  
The boundaries of the special flood hazard area and 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 Nelson County Planning and Zoning Office.
2. 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 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
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.
4. The Approximated Floodplain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100)-year floodplain boundary has been approximated. For these areas, the one hundred (100)-year flood elevations and

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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 Flood Plain 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 governing body.

B. *Overlay concept.*

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance 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.

(Ord. No. O2017-01, 9-12-17)

10-9

*Official zoning map.*

The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate Map dated ~~June 18, 2010~~ **August 5, 2025** which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

(Ord. No. O2017-01, 9-12-17)

10-10

*District boundary changes.*

The delineation of any of the floodplain districts may be revised by the Board of Supervisors 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 such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

(Ord. No. O2017-01, 9-12-17)

10-11

*Interpretation of district boundaries.*

Initial interpretations of the boundaries of the floodplain districts shall be made by the Floodplain 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

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given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

(Ord. No. O2017-01, 9-12-17)

10-12

*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 no later than six (6) 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.

(Ord. No. O2017-01, 9-12-17)

10-13

*Permit and application requirements.*

- A. *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, 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, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Nelson County Subdivision Ordinance. Prior to the issuance of any such zoning permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws, and shall review all sites to assure they are reasonably safe from flooding.

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.

- B. *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia State Water Control Board, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.
- C. *Site plans and permits applications.* All applications for zoning permit for development in the floodplain district and all building permits issued for the floodplain shall incorporate the information contained in subparagraph 1., 2., 3., 4., and 5., and the Floodplain Administrator may require the applicant to furnish any and all of the following information in subparagraphs 6 through 8. As deemed necessary for determining the suitability of the particular site for the proposed use, the following is required:
1. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the flood protection elevation.

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2. For structures to be elevated, the elevation of the lowest floor (including basement).
  3. For structures to be flood proofed (nonresidential only), the elevation to which the structure will be flood proofed.
  4. The elevation of the 100-year flood.
  5. Topographic information showing existing and proposed ground elevations.
  6. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.
  7. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
  8. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.
- D. *Permitted Uses in the Floodway District.* The following non-structural uses and activities are permitted in any floodplain district and the Floodplain Administrator may waive the requirements for an application for a zoning permit, provided the uses are in compliance with the zoning provisions of the underlying area and are not prohibited by any other ordinance and further provided that they do not require structures, fill, or storage of materials or 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 area, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas, but excluding golf courses and other recreational uses that cause change in land contours.
  3. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.
  4. Flood warning aids and water measurement devices.

(Ord. No. O2017-01, 9-12-17)

10-14

*General standards.*

The following provisions shall apply to all permits:

- 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 anchoring requirements for resisting wind forces.

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- 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.

In addition to provisions A.—H. above, in all Special Flood Hazard Areas (SFHA), these additional provisions shall apply:

- I. 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, in riverine areas, 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 Administrator.
- J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- K. Fences shall be installed parallel to a waterway. When a fence crosses a waterway, it shall be designed as a drop-down fence or a suspended cable fence.
- L. No zoning permit shall be administratively issued by the Floodplain Administrator for any proposed critical facilities as defined by this ordinance within any SFHA. See 10.7 and 10.15-E. Construction or operation of critical facilities within a SFHA requires a variance pursuant to 10.21.
- M. No zoning permit shall be administratively issued by the Floodplain Administrator for the storage of hazardous materials for any time period longer than thirty (30) days within any SFHA. See 10.7 and 10.15-F. Storage of hazardous materials within a SFHA requires a variance pursuant to 10.21.
- N. No zoning permit shall be administratively issued by the Floodplain Administrator for the placement of any non-native fill materials (such as fly ash or other waste by- products) within any SFHA. Only locally-borrowed mineral materials may be used as fill within a SFHA, and all such uses must first obtain the necessary permit approval(s) as required by this ordinance. Placement of non-native fill materials within a SFHA requires a variance pursuant to 10.21.

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10-15

*Specific standards.*

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In all Special Flood Hazard Areas where Base Flood Elevations have been provided in the Flood Insurance Study or generated according to Section 10.18, 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 eighteen (18) inches or more above the Base Flood Elevation.
- B. *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured/mobile home) shall have the lowest floor, including basement, elevated eighteen (18) inches or more above the Base Flood Elevation. Buildings located in all A1-30, AE, and AH zones maybe flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one (1) 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. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the Floodplain Administrator.
- C. *Elevated Buildings - Space Below the Lowest Floor*

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

- 1. Not be designed or used for human habitation, but shall 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 A, AO, AE, and A1-30, 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 (2) 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 (1) 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;



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- 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.

D. *Standards for 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, including the elevation and anchoring requirements in Section 10.13 A. and B. and Section 10.15 A.
- 2. All recreational vehicles placed on sites must either:
  - a. be on the site for fewer than one hundred eighty (180) consecutive days, 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,
  - b. meet all the requirements for manufactured homes in Section 10.15.D.1.

E. Accessory structures in the Special Flood Hazard Area shall comply with the elevation requirements and other requirements of Section 10.15.B or, if not elevated or dry flood-proofed shall:

- 1. Not be used for human habitation;
- 2. Be limited to no more than six hundred (600) square feet in total floor area;
- 3. Be usable only for parking of vehicles or limited storage;
- 4. Be constructed with flood damage-resistant materials below the base flood elevation;
- 5. Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
- 6. Be anchored to prevent flotation;
- 7. Have electrical service and mechanical equipment elevated to or above the base flood elevation;
- 8. Shall be provided with flood openings which shall meet the following criteria:
  - a. There shall be a minimum of two (2) flood openings on different sides of each enclosed area; if a building has more than one (1) enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.
  - b. The total net area of all flood openings shall be at least one (1) square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.

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- c. The bottom of each flood opening shall be one (1) foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
- d. Any louvers, screens, or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.

In addition, the following higher standards which go beyond National Flood Insurance Program minimum requirements shall apply to all Special Flood Hazard Areas, pursuant to 44 CFR 60.1(d):

- F. *Higher Standards and Critical Facilities.* For some activities and uses, even a slight chance of flooding poses too great a threat to public health, safety, and welfare. Critical facilities, as defined in this ordinance, are examples of such activities and uses which require special regulation. Therefore, critical facilities are prohibited from being constructed or operated within a SFHA unless a variance is granted pursuant to 10.21. The following list of critical facilities provides examples of uses or improvements which are prohibited in a SFHA:
  - 1. Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials.
  - 2. Hospitals, nursing homes, or other housing likely to have occupants who may not be sufficiently capable of avoiding injury or death during a flood.
  - 3. Police stations, fire departments, rescue squads, and/or emergency operations centers and equipment storage facilities which are needed for flood response activities before, during, and after a flood.
  - 4. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.
- G. *Higher Standards and Hazardous Materials.* Some items and products are extremely hazardous and vulnerable to flood conditions, and would pose an unacceptable risk to public health, safety, and welfare during flooding. Therefore, the following hazardous materials are prohibited as follows, unless a variance is granted pursuant to 10.21:
  - 1. The storage of Acetone, Ammonia, Benzene, Calcium carbide, Carbon disulfide, Celluloid, Chlorine, Hydrochloric acid, Magnesium, Nitric acid, Oxides of nitrogen, Phosphorus, Potassium, Prussic acid, Sodium, and/or Sulfur is prohibited in a SFHA.
  - 2. The storage of Acetylene gas containers, Storage tanks, Lumber/buoyant items, Gasoline, Charcoal/coal dust, Petroleum products, and/or Natural gas for any time period longer than thirty (30) days is prohibited in a SFHA.

(Ord. No. O2017-01, 9-12-17)

10-16

*Standards for the floodway district.*

The following provisions shall apply within the Floodway District:

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any

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increase in flood levels during occurrence of the base flood. 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 Floodplain Administrator.

Development activities which increase the water surface elevation of the base flood may be allowed, provided that the property owner first applies and obtains the following:

1. Receives an endorsement from the State's Floodplain Program Engineer;
  2. Receives an endorsement from The Nelson County Board of Zoning Appeals for a Conditional Letter of Map Revision (CLOMR); and
  3. Receives the approval of the Federal Emergency Management Agency.
- B. If Section 10.19 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.
- C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

(Ord. No. O2017-01, 9-12-17)

10-17

*Standards for the 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 A1-30 and AE on the Flood Insurance Rate 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 (1) foot at any point within Nelson County.

Development activities in Zones A1-30, AE, and AH, on the Nelson County's Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one (1) foot may be allowed, provided the property owner first applies, with the Nelson County Board of Zoning Appeal's endorsement, for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

(Ord. No. O2017-01, 9-12-17)

10-18

*Standards for Approximated Floodplain.*

The following provisions shall apply with the Approximated Floodplain District:

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.

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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. For development proposed in the Approximated Floodplain District the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

The Floodplain Administrator reserves the right to require hydrologic and hydraulic analyses for any development.

When such base flood elevation data is utilized, the lowest floor shall be elevated to eighteen (18) inches above the base flood elevation. During the permitting process, the Floodplain Administrator shall obtain:

- A. the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,
- B. the elevation (in relation to mean sea level) to which the structure has been flood-proofed if the structure has been flood-proofed in accordance with the requirements of this article.

(Ord. No. O2017-01, 9-12-17)

10-19

*Standards for Subdivision Proposals.*

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- D. Base Flood Elevation data shall be provided for subdivision proposals and other development proposals (including manufactured home parks and subdivisions) that exceed eleven lots or five acres, whichever is the lesser.

(Ord. No. O2017-01, 9-12-17)

10-20

*Standards for subdivision proposals.*

- A. *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- B. *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- C. *Drainage facilities.* All storm facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors may require a primarily underground

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system to accommodate frequent floods and a secondary surface system to accommodate large, 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 flood prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- E. *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

(Ord. No. O2017-01, 9-12-17)

10-21

*Variances.*

Variances shall be issued by the Board of Zoning Appeals upon:

- A. A showing of good and sufficient cause;
- B. Determination by the Board of Zoning Appeals that failure to grant the variance would result in exceptional hardship to the applicant; and
- C. Determination by the Board of Zoning Appeals that the granting of such variance will not result in:
  - 1. Unacceptable or prohibited increases in flood heights;
  - 2. Additional threats to public safety;
  - 3. Extraordinary public expense;
  - 4. Nuisances being created;
  - 5. Fraud or victimization of the public; or
  - 6. Conflict with local laws or ordinances.

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals 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 level, in conformance with the provisions of this section.

Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

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

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- 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 Base Flood Elevation (BFE).
- 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 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 floodwaters 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 of Zoning Appeals may, at the applicant's expense, 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 of Zoning Appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.

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 Base 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 variance which is issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(Ord. No. O2017-01, 9-12-17)

10-22

*Existing Structures in Floodplain Districts.*

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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 Base 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, shall be elevated and/or flood-proofed to the greatest extent possible.
- C. The modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location 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.

(Ord. No. O2017-01, 9-12-17)

10-23

*Administration.*

- A. *Designation of the Floodplain Administrator.* The Nelson County Planning & Zoning Director (or authorized designee) shall be designated as the Floodplain Administrator and is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:
  1. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the chief executive officer for Nelson County.
  2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
  3. 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.
- B. *Duties and Responsibilities of the Floodplain Administrator.* The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:
  1. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
  2. Interpret floodplain boundaries and provide available Base Flood Elevation and flood hazard information.
  3. 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.
  4. 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

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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.

5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Virginia Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (such as Virginia Department of Environmental quality and U.S. Army Corps of Engineers), and have submitted copies of such notifications to FEMA.
6. 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).
7. Approve applications and issue zoning permits to develop in Special 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.
8. 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.
9. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
10. 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 Nelson County, within six (60) months after such data and information becomes available if the analyses indicate changes in Base Flood Elevations.
11. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - a. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
  - b. Documentation supporting issuance and denial of zoning permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood-proofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
12. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
13. 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.
14. Administer the requirements related to proposed work on existing buildings:



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- a. Make determinations as to whether buildings and structures that are located in Special Flood Hazard Areas and that are damaged by any cause have been substantially damaged.
  - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
15. 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.
16. Notify the Federal Emergency Management Agency when the corporate boundaries of Nelson County have been modified and:
  - a. 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
  - b. 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.
17. 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.
18. 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).
- C. *Use and Interpretation of FIRMs.* The Floodplain Administrator shall make interpretations, where needed, as to the exact location of Special Flood Hazard Areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:
  1. Where field surveyed topography indicates that adjacent ground elevations:

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- a. Are below the base flood elevation, even in areas not delineated as a Special Flood Hazard Area on a FIRM, the area shall be considered as Special Flood Hazard Area and subject to the requirements of these regulations;
  - b. Are 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 SFHA.
2. In FEMA-identified special flood hazard areas where Base Flood Elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
3. Base Flood Elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over Base Flood Elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
4. Other sources of data shall be reasonably used if such sources show increased Base Flood Elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
  - a. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
  - b. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 3.1.A.3. and used where no Base Flood Elevations and/or floodway areas are provided on the effective FIRM.
  - c. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary Base Flood Elevations or floodway areas exceed the Base Flood Elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
- D. *Jurisdictional Boundary Changes.* The Nelson County Floodplain Ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.

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.

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

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

- E. *District Boundary Changes.* The delineation of any of the Floodplain Districts may be revised by Nelson County 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 Emergency Management Agency. A completed LOMR is a record of this approval.
- F. *Interpretation of District Boundaries.* Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Floodplain 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.
- G. *Submitting Model Backed 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 (6) months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- H. *Letters of Map Revision.* When development in the floodplain will cause or causes a change in the Base Flood Elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision. Example cases:
  - 1. Any development that causes a rise in the Base Flood Elevations within the floodway.
  - 2. Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one (1) foot in the Base Flood Elevation.
  - 3. Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations §65.3 and §65.6(a)(12).

(Ord. No. O2017-01, 9-12-17)

10-24  
*Enactment.*

(Ord. No. O2017-01, 9-12-17)