

## EXISTING FLOODPLAIN ORDINANCE

### Sec. 7.11 Floodplain Overlay District

#### 7.11.1 Applicability

The Floodplain Overlay District regulations shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Leesburg that are susceptible to being inundated by water from the base flood and **have** a drainage area greater than one hundred (100) acres. For purposes of regulations under this Ordinance, a distinction is made between major and minor floodplains as defined in Section 7.11.2.

**The provisions of Sec. 7.11 shall no longer apply to any land removed from the Floodplain Overlay District as the result of a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR) approved by the Town and FEMA subject to setbacks (vertical and horizontal) and floodproofing measures as set forth in the Town's Design and Construction Standards Manual (DCSM).**

Additional Floodplain Requirements can be found in the Town's Subdivision **and** Land Development Regulations (SLDR) Division 7, Article 5 of the Design **and** Construction Standards Manual (DCSM), and Section 14-40 through 14-49 of the Town Code.

#### 7.11.2 Definitions

- A. Capital Improvement Project:** Any federal, state or local government public improvement project.
- B. Channelization:** Alterations made to the channels of rivers, streams, or drainage ways, usually to improve drainage, relocate the channel, or to increase its flood carrying capacity.
- C. CLOMR: Conditional Letter of Map Revision**
- D. DCSM: The Leesburg Design and Construction Standards Manual, latest edition**
- E. FEMA:** Federal Emergency Management Agency.
- F. Flood (100-Year) or Base Flood:** The flood having a one-percent chance of being equaled or exceeded in any given year.
- G. Floodplain: A floodplain or flood-prone area is defined as any land area susceptible to being inundated by water from any source. A floodplain is further subject to the area subject to flooding by the base flood which is usually low flat terrain on either side of a river or stream that is normally dry but submerged at times of high water, where accumulations of silt and sand are deposited away from the main channel.**
- H. Floodplain (Major):** The area subject to flooding by the base flood as designated by the Federal Emergency Management Agency (FEMA). This area corresponds to FEMA Special Flood Hazard Areas (SFHA) with a Zone AE and/or A as shown on the Flood Insurance Rate Map (FIRM). Major Floodplains are generally associated with streams having a drainage area of 640 acres or more.

- I. Floodplain (Minor):** Those areas subject to flooding by the base flood that do not meet the definition of Major Floodplain ~~but have a drainage area of 100 acres or greater~~ **and has not been displayed as a FEMA SFHA with a Zone AE and/or A as shown on the FIRM but have a drainage area of 100 acres or greater.**
- IJ. Floodplain Administrator:** The ~~Director of Plan Review~~ **Chief Engineer, or their designee,** who administers and implements all coordination with FEMA and the Virginia Department of Conservation and Recreation (DCR) necessary for full compliance with the provisions of the National Flood Insurance Program.
- JK. Floodproof:** 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 in accordance with minimum FEMA Standards and Regulations.
- L. 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 increasing the water surface elevation.
- M. FOD: Floodplain Overlay District**
- N. FIRM: Flood Insurance Rate Map**
- O. LOMR: Letter of Map Revision**
- P. Overland Relief:** A pathway conveying the 100-year rainfall event as if the minor storm system (pipe system) has failed to function or does not exist.
- Q. SLDR: Subdivision and Land Development Regulations**
- R. SFHA: Special Flood Hazard Area** - The floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined by FEMA on the Flood Insurance Rate Map.

### 7.11.3 Density Calculations

For purposes of calculating the permitted floor area and number of residential units in the underlying zoning district, the land area in any portion of the Floodplain Overlay District shall be treated as follows:

- A.** Any Minor Floodplain shall be included as part of the net land area for such calculations.
- B.** Areas within the Major Floodplain shall be excluded as part of the land area for residential density calculations (but not for commercial density calculations).

#### **7.11.4 Floodplain Overlay District Established**

The Floodplain Overlay District (FOD) is hereby established as both those areas of Major and Minor Floodplain as defined in Section 7.11.2. The provisions for the Floodplain Overlay District shall serve as a supplement to the underlying zoning district provisions. Only those uses set forth in Sections 7.11.8 and 7.11.9 shall be permitted by right or special exception within the Floodplain Overlay District, and land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the overlay district. If there is any conflict between the provisions or requirements of the Floodplain Overlay Districts and those of any underlying district, the more restrictive provisions shall apply.

#### **7.11.5 Official Floodplain Overlay District Map**

The Town of Leesburg Floodplain Map is hereby adopted as the source for floodplain boundary information. The Town of Leesburg Floodplain Map is established based on those flood hazard areas designated on the flood insurance rate map (FIRM) that is provided to the Town of Leesburg by FEMA as may be modified from time to time by a Letter of Map Revision (LOMR) issued by FEMA; as well as minor floodplain areas whose boundaries are established through detailed site-specific floodplain studies.

#### **7.11.6 Interpretation of Floodplain Overlay District Boundaries**

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

#### **7.11.7 Prohibited Activities**

Unless otherwise exempted as provided below, all uses and/or development activities that may adversely affect the capacity of the channel or floodway of any watercourse, drainage ditch, or any other drainage facility or system offsite within the Floodplain Overlay District, are prohibited.

- A. Uses and/or development may be approved when all applicable provisions of DCSM Article 5, and other applicable provisions of the DCSM, have been met relative to obtaining necessary offsite easements, and when approved by the Floodplain Administrator.
- B. Unless applicable provisions of the DCSM have been met relative to obtaining necessary offsite easements, and the Floodplain Administrator has issued an approval, no development shall be permitted effecting flood heights that is not fully offset by accompanying improvements that have been approved by all appropriate authorities.
- C. The placement of any new mobile home within the Floodplain Overlay District is prohibited. Any pre-existing nonconforming mobile home park or subdivision may remain in place pursuant to Leesburg Zoning Ordinance Article 16 Nonconformities.

#### **7.11.8 Permitted Uses**

- A. **General** – Floodplain areas are primarily intended to remain as open or common areas. These areas may be utilized to provide space for recreational activities.

- B. Permitted Uses in Major Floodplain** – The following uses are permitted in Major Floodplain provided that they are not prohibited by any other applicable ordinance and provided that they do not require structures, fill (except as provided for in Sec. 7.11.8.B.10 and 11), or storage of materials and equipment:
1. Agricultural uses such as general farming, pasturing, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
  2. Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries and fishing areas provided that under no circumstances shall recreational vehicles be allowed in Major Floodplain for a period exceeding thirty (30) days.
  3. Accessory residential uses such as gardens, play areas, and loading areas.
  4. Accessory industrial and commercial uses such as parking and loading areas.
  5. Incidental structures, not exceeding 840 square feet of floor area, associated with permitted or approved special exception uses in the Floodplain Overlay District. Such structures include storage sheds, maintenance sheds, backstops, bath houses and locker rooms. Provided, however, bulk storage of gasoline, chemicals, fuels or similar substances are prohibited and further provided that any new construction shall comply with applicable FEMA standards. All structures shall be anchored to prevent flotation and shall not cause any increase in the base flood elevation.
  6. Utility lines, road crossings, and private drives or private access easements.
  7. Road crossings consistent with the standards of the DCSM.
  8. Low Impact Stormwater Management Best Management Practices as permitted by the **Virginia Department of Environmental Quality (DEQ)** “Clearinghouse” as follows:
    - a. Rooftop disconnection
    - b. Sheet flow to conservation areas
    - c. Sheet flow to vegetated filter and associated soil amendments
    - d. Grass channel and associated soil amendments.
    - e. Other stormwater management facilities as approved by the **Director of Plan Review Chief Engineer or their designee.**
  9. Alterations of the floodplain associated with any permitted or special exception uses in the Floodplain Overlay District. However, no channelization shall occur except:
    - a. To protect existing habitable structures subject to periodic flooding; or
    - b. As part of a town sanctioned stream rehabilitation or flood mitigation

- program; or
- c. As provided for in Sec. 7.11.8.B.10
- d. Public improvement projects including bridge and culvert improvements.
- e. Projects meant to improve overall stream health or generate credits.
- f. Projects that have been previously approved by FEMA.

To the extent that the elevations and boundaries of the Floodplain Overlay District change as a result of the alteration action, any areas no longer within the Floodplain Overlay District may be used for any use in the underlying district, subject to the provisions of the applicable district regulations, applicable DCSM regulations and/or conditions of any approved special exception.

10. Along the north side of Town Branch between Wirt Street SW and Harrison Street SE, a building used solely for non-residential uses or for mixed use Building(s) (provided residential uses meet all requirements of the DCSM) may be located within the Floodplain Overlay District provided it is entirely outside of the floodway and meets the following provisions:
  - a. All floors below the 100-year flood level shall be floodproofed up to a minimum of two (2) feet above the 100-year flood level, and the building, any building extensions, and/or accessory buildings shall be designed to resist uplift and/or horizontal water pressure; provided, that in no event shall any floor below the 100-year level be used for human or animal habitation, food storage or food preparation.
  - b. All new and/or replacement public utilities, water mains, sanitary sewers and their appurtenances, shall be designed to be floodproofed to minimize or eliminate infiltration and exfiltration and to ensure their structural integrity under flood conditions.
  - c. Water heaters, furnaces, air conditioners, electrical distribution panels and other critical mechanical or electrical installations shall not be installed below the 100-year flood level. Separate electrical circuits shall serve areas below the 100-year flood level and shall be dropped from above.
  - d. A registered professional engineer or licensed architect shall certify the adequacy of the floodproofing design to withstand the stresses of the base flood and such plan shall cite the elevation to which the structure is floodproofed (a minimum of two (2) feet above the 100-year flood level). Such certification shall be provided on a Federal Emergency Management Agency/National Flood Insurance Program Elevation Certificate and/or Floodproofing Certificate as applicable.
  - e. Prior to approval of any construction plan that proposes a non-residential building or mixed use building (provided residential uses meet all requirements of the DCSM) within the Floodplain Overlay District, the applicant shall obtain a Conditional Letter of Map Revision

(CLOMR), **a Conditional Letter of Map Revision–Fill only (CLOMR-F or other type of applicable MT-1 Application** from FEMA that includes FEMA approved floodproofing requirements and is in conformance with all Town and FEMA floodplain requirements.

- f. Prior to issuance of any occupancy permit for a non-residential building **or mixed use building (provided residential uses meet all requirements of the DCSM)** within the Floodplain Overlay District, the applicant shall obtain a Letter of Map Revision (LOMR), **a Letter of Map Revision – Fill only (LOMR-F), or other type of applicable MT-1 Application** from FEMA that verifies the building has been constructed in general conformance to the approved CLOMR elevations and all required floodproofing mechanisms have been properly installed.
- g. Building permits for proposed residential buildings associated with a related subdivision plan or site plan that are located within an area previously designated a 100-year floodplain shall not be issued until such time as the Town has been provided a copy of the approved LOMR from FEMA and the appropriate appeals process has expired which officially removed said area from the FEMA regulated floodplain.
- h. Adverse impacts to the floodplain and stream channel shall be mitigated using methods specified in the DCSM.
- i. **Parking lots or parking structures provided all DCSM, SLDR, Zoning Ordinance and all other applicable Local, State, and FEMA regulations and ordinances are met.**

#### 11. Capital Improvement Projects

- 12. **Fill in floodplain shall be allowed by right along Town Branch provided all DCSM, SLDR, Zoning Ordinance and all other applicable Local, State, and FEMA regulations and ordinances are met.**

#### C. Permitted uses in Minor Floodplain.

- 1. Uses allowed under Section 7.11.8.B
- 2. Residential uses accessory to single family detached and attached dwellings such as play areas, lawns, paved tennis or play courts, trails, gardens, patios, swimming pools, decks and docks, which do not require major fill and accessory structures such as children’s playhouses, doghouses, storage structures and other similar structures which do not require a Building Permit or major fill. All structures shall be anchored to prevent flotation.
- 3. New construction or additions to existing structures or accessory structures (as may be permitted within the underlying zoning district) in developed areas only where the minor floodplain is defined by overland relief; not defined by a natural or manmade channel. All proposed structures shall not increase the 100-year water surface elevations on adjacent properties unless offsite easements are obtained to contain any increases in 100-year water surface.
- 4. Storm water management facilities including improvements to existing facilities, as may be permitted by the **Chief Engineer or his/her designee**

~~Director of Plan Review~~ whether or not associated with permitted or approved special exception uses in the FOD.

5. Alterations including channelization and channel modifications. To the extent that the boundaries of the Floodplain Overlay District may be used for any use in the underlying district, subject to the provisions of the applicable district regulations and conditions of any approved special exception.
6. Capital Improvement Projects

### **7.11.9 Special Exception Uses**

The following uses may be permitted in the Floodplain Overlay District when reviewed and approved as a Special Exception use in accordance with the procedures of Sec. 3.4, provided that they are not prohibited by this or any other ordinance.

- A. Structures, except for mobile homes, accessory to the uses and activities in Sec. 7.11.8.
- B. Temporary uses such as circuses, carnivals and similar activities.
- C. Storage of materials and equipment provided that they are not buoyant, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is firmly anchored to prevent flotation or movement, and/or can readily be removed from the area within the time available after flood warning.
- D. Other uses and activities provided they cause no increase in flood heights and/or velocities. All uses, activities, and structural developments shall be undertaken in strict compliance with the flood-proofing provisions contained in all other applicable codes and ordinances.
- E. Channelization and channel modifications of the primary channel in major floodplain not otherwise allowable under 7.11.8.
- F. Substantial improvements to historic structures provided that areas below any floor below the base flood elevation shall not be designed or used for human habitation but shall only be used for parking of vehicles, storage of maintenance materials used in connection with the premises or other similar use.

### **7.11.10 Standards for a Special Exception**

The following uses may be permitted in the Floodplain Overlay District when reviewed and approved as a Special Exception use in accordance with procedures of Sec. 3.4, provided that they are not prohibited by this or any other ordinance.

- A. There will be no increase to the danger to life and property due to increased flood heights or velocities.
- B. Materials will not be swept downstream to the injury of others during flood events.
- C. Water supply and sanitation systems are designated to prevent disease, contamination, and unsanitary conditions.

- D. Location and design limits susceptibility to flood damage, and available alternative locations, not subject to flooding, for the proposed use must be considered.
- E. The proposal is compatible with existing and planned development.
- F. The use is in harmony with the comprehensive plan.
- G. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site should not cause significant damage.

#### **7.11.11 Factors to be Satisfied for a Variance**

Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

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:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services by the proposed facility to the Town.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- L. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted 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.

#### **7.11.12 Referral for Technical Assistance**

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

#### **7.11.13 Hardship Relief Finding**

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

#### **7.11.14 Required Notification to Applicant**

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

#### **7.11.15 Records**

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. The Zoning Administrator shall provide notice to the Floodplain Administrator of any variances issued. Such notices shall be noted in the Town's annual or biennial report submitted to the Federal Insurance Administrator.

#### **7.11.16 Existing Structures**

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 standards of this section.

##### **A. Expansion or Enlargement**

Existing structures in the Floodplain Overlay District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation **and all other Town, DCR, and FEMA requirements are met.**

##### **B. Modifications and Improvements**

Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area must meet all design and construction standards including floodproofing as may be required unless such modification or improvement meets one of the following:

1. The proposed changes to a structure are of an extent or amount totaling fifty (50) percent or less of its market value **(exclusive of land value)** and

such changes are undertaken in conformance with the VA USBC **and all other Town, DCR, and FEMA requirements**.

2. The changes are required to comply with a citation for a health or safety violation.
3. The structure is historic and strict compliance to the existing regulations would impair the historic nature of the structure.