

OCT 29 1990

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

ORDINANCE NO. 31A-127

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY REPEALING AND REPLACING ARTICLE X. OVERLAY DISTRICTS, DIVISION 2. FLOODPLAIN AREA REGULATIONS, SECTIONS 20-546 THROUGH 20-560, AND BY ADDING NEW SECTIONS 20-561 THROUGH 20-563.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Zoning, is hereby amended and reordained by repealing and replacing those sections with new Article X. Overlay Districts, Division 2. Floodplain Area Regulations, Section 20-546. Statement of intent, Section 20-547. Applicability, Section 20-548. Compliance and liability, Section 20-549. Definitions, Section 20-550. Designation of floodplain districts, Section 20-551. Official map, Section 20-552. Permits, Section 20-553. Permitted uses, Section 20-554. Prohibited uses, Section 20-555. Regulations for construction, Section 20-556. Regulations for subdivisions and site plans, Section 20-557. Regulations for replacement manufactured homes, Section 20-558. Recreational vehicles, Section 20-559. Design criteria for utilities and facilities, Section 20-560. Regulations for filling in flood fringe and approximated floodplain districts, and by adding new Section 20-561. Watercourse modification, Section 20-562. Existing structures in floodplain districts, and Section 20-563. Variances: Factors to be considered.

CHAPTER 20. ZONING

Article X. Overlay Districts

Division 2. Floodplain Area Regulations

Section 20-546. Statement of intent

- A. These regulations are intended to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
1. regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities and development, may cause unacceptable increases in flood heights, velocities and frequencies;
 2. restricting or prohibiting certain uses, activities and development within districts subject to flooding;
 3. requiring activities and developments that do occur in flood-prone districts to be protected and-or flood proofed against flooding and flood damage; and
 4. protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
- B. These regulations comply with the requirements of the National Flood Insurance Program (42 U.S.C. 4001-4128) of the Federal Insurance Administration. These regulations are necessary in order for all property owners within the County to be eligible for the National Flood Insurance Program and thereby purchase such insurance at nominal rates.

Section 20-547. Applicability.

These regulations shall apply to all property located within an area designated as a floodplain area, and as such shall supplement the regulations of the zoning district within which such property is located. Where these

regulations are at variance with other provisions of this chapter, it is intended that these regulations shall apply. These regulations shall only apply to property which is designated as being within a floodplain area.

Section 20-548. 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 these regulations and any other applicable ordinances and regulations.
- B. The degree of flood protection sought by the provisions of these regulations is for reasonable regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These regulations do not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damage.

Section 20-549. Definitions.

- A. Base Flood-100-Year Flood - A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one (1) percent chance of occurring each year although the flood may occur in any year).
- B. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations, storage of equipment or materials.
- C. Floodplain - a) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation; and, b) any area subject to the unusual and rapid accumulation or runoff of surface water from any source.
- D. Floodway - The designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of these regulations, the floodway shall be capable of accommodating a flood of the 100-year magnitude.
- E. Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

- F. Recreational Vehicle - A vehicle which is:
1. built on a single chassis;
 2. 400 square feet or less when measured at the largest horizontal projection;
 3. designed to be self-propelled or permanently towable by a light duty truck; and
 4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.
- G. Start of construction - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading or filling; 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 on any wall, ceiling, floor, or other structural part of a building, whether or not the alternation affects the external dimensions of the building.

Section 20-550. Designation of floodplain districts.

- A. The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The minimum basis for the delineation of these districts shall be, but not limited to the February 6, 1991, Flood Insurance Study since other flood-prone areas exist in James City which are not shown on the floodplain maps. To determine these areas, the 100-year flood elevations and floodways from Federal, State, and local sources may be used when available. Where the specific 100-year flood elevation cannot be determined for an area by using available sources of data, then the applicant for the proposed use, development and-or activity shall determine this elevation to the satisfaction of the Director of Code Compliance 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 consider full development of the watershed and shall be submitted in sufficient detail to allow a thorough review by the County Engineer.

Where flood elevations are provided by the FIS these elevations shall not be changed except with FEMA approval. Local sources of floodplain data include but are not limited to the following reports. Drainage Study of Upper Powhatan Creek Watersheds, Camp Dresser and McKee 1987. Mill Creek-Lake Watershed Study, GKY and Associates, 1988.

- B. The Floodway District, minimally shown on the maps accompanying the Flood Insurance Study, is established for purposes of these regulations, using the criterion that certain areas within the floodplain must be kept free of encroachment in order that the 100-year flood be conveyed without increasing the water surface areas included in this District.
- C. The Flood-Fringe District shall be that area of the 100-year floodplain not included in the Floodway District. The basis for the outmost boundary of the District shall be the 100-year flood elevations minimally shown as Zone AE on the maps accompanying the Flood Insurance Study.
- D. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are minimally shown as Zone A on the maps accompanying the Flood Insurance Study.

Section 20-551. Official map.

The boundaries of Floodway, Flood-finge and Approximated Floodplain Districts in B,C, D above are established as minimum areas, as shown on the Flood Insurance Rate Map which is declared to be a part of these regulations and which shall be kept on file at the Office of Code Compliance.

Section 20-552. Permits.

No specific permit shall be required by these regulations. An application for subdivision, site plan, rezoning, building permit, special use permit, sedimentation and erosion control permit, wetlands permit or other local development permit shall be considered an application for development under these regulations. The applicant shall be informed of the provisions of this article as they may apply to the property, and no permit shall be issued until the applicant has complied with such provisions.

Section 20-553. Permitted uses.

Permitted uses, special permit uses, accessory uses, dimensional standards, and special requirements shall be as established by the underlying zoning district, except as specifically modified herein.

Section 20-554. Prohibited uses.

1. The following uses shall be specifically prohibited within all Floodplain Districts:
 - A. Sanitary landfills, junkyards, outdoor storage of inoperative vehicles.
 - B. Manufactured Homes.
 - C. Surface mines-borrow pits.
 - D. Manufacture, bulk storage, transformation or distribution of petroleum, chemical or asphalt products or any hazardous materials as defined in either or both of the following:
 - o Superfund Amendment and Re-authorization Act of 1986.
 - o Identification and Listing of Hazardous Wastes, 40 C.F.R. Section 261 (1987).

The following products shall be specifically included:

- (1) Oil and oil products including petrochemicals.
 - (2) Radioactive materials.
 - (3) Any material transported or stored in large commercial quantities (such as 55-gallon drums) which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable, exerting a strong oxygen demand.
 - (4) Biologically accumulative poisons.
 - (5) Substances containing the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 135 et seq.)
 - (6) Substances highly lethal to mammalian or aquatic life.
- E. Storage or land application of industrial wastes.
 - F. Outdoor storage of equipment, materials, or supplies which are buoyant, flammable or explosive.

2. Nonconforming Uses of this Chapter notwithstanding, no expansion of any of the above uses located within the Floodplain District shall be permitted.

Section 20-555. Regulations for construction.

The construction or placement of any structure or obstruction, filling or changing the cross-section or flow characteristics within the 100-year floodplain shall not be permitted unless the project is in conformance with the following requirements:

1. In case of residential usage, the finished grade shall be at least one foot above the 100-year flood elevation for the lowest floor, including basement or cellar of structure. For nonresidential structures, watertight flood proofing in accordance with the Virginia Uniform Statewide Building Code may be provided in lieu of the finished grade requirement described herein. Prior to issuance of a Certificate of Occupancy, the owner of any structure located in a Floodplain District shall submit a completed Elevation Certificate or Flood Proofing Certificate as appropriate to the Director of Code Compliance.
2. Utility and sanitary facilities shall be flood proofed up to the level of the 100-year flood.
3. Encroachments, including fill, new construction, substantial improvements, and other development are prohibited within the Floodway district unless it has been demonstrated through hydrologic and hydraulic analyses that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
4. All other Federal and State permits shall be obtained by the applicant before a building permit can be issued.

It shall be the responsibility of the applicant to provide this data, certified by a licensed surveyor or engineer or other source acceptable to the Director of Code Compliance.

Section 20-556. Regulations for subdivisions and site plans.

The applicant of any subdivision of land or site plan within the County shall submit with his application a statement by a licensed surveyor or engineer as to whether or not any property shown on the plat or plan is at an elevation lower than the 100-year flood level. Where a 100-year flood level exists the extent of this area shall be shown on the plat or plan. Further, the elevation of the finished surface of the ground at each building location shall be shown. Lots created after February 6, 1991, which are within a floodplain district having a 100-year flood elevation greater than 8.5 feet,

shall contain a natural, unfilled building site at least one foot above the 100-year flood elevation, adequate to accommodate all proposed structures. All structures shall be constructed solely within said building site.

Section 20-557. Regulations for replacement manufactured homes.

- (a) Replacement manufactured homes shall be elevated on a permanent foundation so that the lowest floor is one foot above the level of the 100-year flood.
- (b) In floodplain areas, replacement manufactured homes shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors in either of the following arrangements:
 - (1) Over-the-top ties at each corner plus one (1) frame tie at the middle of each side; or
 - (2) Frame ties at each corner plus no less than five (5) evenly spaced additional frame ties per side.
- (c) All ties to the ground shall be able to carry a force of four thousand eight hundred (4,800) pounds.

Section 20-558. Recreational vehicles.

Recreational vehicles placed on sites must either:

- a. be on the site for fewer than 180 consecutive days; and
- b. be fully licensed and ready for highway use; or
- c. meet requirements for placement, elevation and anchoring requirements for manufactured homes.

Section 20-559. Design criteria for utilities and facilities.

A. Sanitary sewer facilities.

All new or replacement sanitary sewer facilities shall be designed to eliminate infiltration of floodwaters into the systems up to the 100-year flood level and discharges from the systems into the floodwaters. In addition, they should be located and constructed to eliminate flood damage and impairment.

B. Water facilities.

All new or replacement water facilities shall be designed to eliminate infiltration of flood waters into the systems and be located and constructed to minimize or eliminate flood damages.

C. Drainage facilities.

All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites.

D. Septic tanks.

New or replacement septic tank drain fields shall be placed where they shall not be impaired or contaminated by a base flood. The Virginia Department of Health shall be consulted to verify compliance with this requirement.

E. Utilities.

All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located and constructed to eliminate the chance of impairment during a 100-year flooding occurrence.

F. 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.

Section 20-560. Regulations for filling in flood fringe and approximated floodplain districts.

No permit shall be issued or approved until the site development plan for such fill meets the following requirements:

1. The filling of land shall be designed and constructed to minimize obstruction to and effect upon the flow of water and more particularly that:
 - a. Such fill will not, result in any increase in flood levels during the occurrence of a 100-year flood discharge.
 - b. The flood carrying capacity of the watercourse shall be maintained.
2. Fill shall be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead or other acceptable method. Any structure, equipment or material permitted shall be firmly anchored to prevent dislocation due to flooding;
3. Fill shall be of a material that will not pollute surface water or groundwater;

4. Where, in the opinion of the Director of Code Compliance additional topographic, engineering and other data or studies are necessary to determine the effects of flooding on a proposed structure or fill and-or the effect of such structure or fill on the flow of water in flood stage, the applicant shall submit such data or studies.

Section 20-561. Watercourse modification.

The Federal Insurance Administrator, adjacent jurisdictions and the Department of Conservation and Recreation, Division of Soil and Water Conservation shall be notified prior to the alteration or relocation of any water course. The flood carrying capacity to such watercourse shall be maintained.

Section 20-562. Existing Structures in Floodplain Districts.

A structure or use of a structure or premises which lawfully existed before the enactment of these regulations, but which is not in conformity with these regulations, 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 100-year flood elevation;
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and-or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and-or flood proofed to the greatest extent possible; and,
- C. The modification, alteration, repair, reconstruction or improvement of any kind to a structure and-or use, regardless of its locations in a floodplain area, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of these regulations and the Virginia Uniform Statewide Building Code.

Section 20-563. Variances: Factors to be Considered.

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. No variance shall be granted for any proposed use, development or activity within any Floodway District that will cause any increase in the 100-year flood elevation.

- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. Such other factors which are relevant to the purposes of this ordinance.

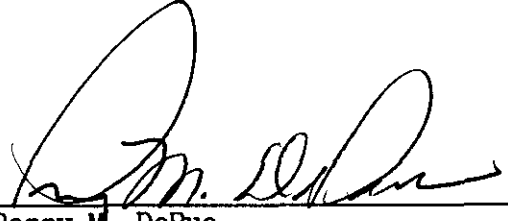
The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of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

In reviewing all variance applications, the Board of Zoning Appeals shall consider the following factors: a) increases in flood heights; b) additional threats to public safety; c) extraordinary public expense; d) creation of nuisances; e) fraud or victimization of the public; and f) conflicts with local laws or ordinances.

Variations 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 100-year flood elevation: a) increases the risks to life and property; and b) will result in increased premium rates for flood insurance.

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



Perry M. DePue
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

| <u>SUPERVISOR</u> | <u>VOTE</u> |
|-------------------|-------------|
| NORMENT | AYE |
| TAYLOR | AYE |
| EDWARDS | AYE |
| KNUDSON | AYE |
| DEPUE | AYE |

Adopted by the Board of Supervisors of James City County, Virginia,
this 29th day of October, 1990.

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