

## Chapter 99

### FLOOD DAMAGE PREVENTION

**[HISTORY: Adopted by the Town Council of the Town of Pennington Gap 1-20-1986. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Nuisances — See Ch. 129.

#### ARTICLE I General Provisions

##### **§ 99-1. Purpose.**

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

- A. Regulating uses, activities, and development which, acting 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 areas subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
- D. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

##### **§ 99-2. Applicability.**

These provisions shall apply to all lands within the jurisdiction of the Town of Pennington Gap and identified as being flood-prone as stipulated in this chapter.

##### **§ 99-3. Compliance required.**

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 chapter and any other applicable ordinances and regulations.

##### **§ 99-4. Effect on existing regulations.**

This chapter supersedes any ordinance currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

ARTICLE II  
**Establishment of Floodplain Districts**

**§ 99-5. Description of districts.**

The various floodplain districts shall include areas subject to inundation by waters of the one-hundred-year flood. The basis for the delineation of these districts shall be the Flood Insurance Study for Pennington Gap prepared by the U.S. Federal Emergency Management Agency, Federal Insurance Administration, dated July 3, 1985.

- A. The Floodway District is delineated for purposes of this chapter using the criteria that a certain area within the floodplain must be capable of carrying the waters of the one-hundred-year flood without increasing the water surface elevation of that flood more than one foot at any point. These areas included in this district are specifically defined in the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
- B. The Flood-Fringe District shall be that area of the one-hundred-year floodplain not included in the Floodway District. The basis for the outermost boundary of this district shall be the one-hundred-year flood elevations contained in the flood profiles of the above-referenced Flood Insurance Study and as shown on the accompanying Flood Insurance Rate Map.

**§ 99-6. Official floodplain map.**

The boundaries of the flood plain districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this chapter and which shall be kept on file at the offices of Pennington Gap Town Hall.

**§ 99-7. District boundary changes.**

The delineation of any of the floodplain districts may be revised by the Town of Pennington Gap where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency or individual document the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

**§ 99-8. Interpretation of district boundaries.**

Initial interpretations of the boundaries of the floodplain districts shall be made by the Lee County Building Inspector. Should a dispute arise concerning the boundaries of any of the districts, the Town Council shall make the necessary determination. The person questioning or contesting the location of the district shall be given a reasonable opportunity to present his case to the Town Council and to submit his own technical evidence if he so desires.

ARTICLE III  
District Provisions

**§ 99-9. Permit required; Water Control Board approval; notice to other municipalities.**

- A. All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a building permit. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances such as the Virginia Uniform Statewide Building Code. Prior to the issuance of any such permit, the Building Inspector shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- B. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within a municipality, approval shall be obtained from the State Water Control Board. Further, notification of the proposal shall be given to all affected adjacent municipalities. Copies of such notification shall be forwarded to both the State Water Control Board, the State Department of Housing and Community Development, and the Federal Insurance Administration.

**§ 99-10. Floodway District.**

- A. In the Floodway District no development shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate local and/or state authorities as required above.
- B. The placement of any mobile home, except in an existing mobile home park or subdivision, within the Floodway District is specifically prohibited.

**§ 99-11. Flood-Fringe Districts.**

- A. In the Flood-Fringe Districts the development and/or use of land shall be permitted in accordance with the regulations of this chapter, provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances.
- B. In accordance with the regulations of the National Flood Insurance Program, all building permit applications issued for the Flood-Fringe District shall incorporate the following information:
  - (1) For structures that have been elevated, the elevation of the lowest floor (including basement);
  - (2) For structures that have been floodproofed (nonresidential only), the elevation to which the structure has been floodproofed;
  - (3) The elevation of the one-hundred-year flood.

**§ 99-12. Design criteria for utilities and facilities.**

- 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 floodwaters into the systems and discharges from the systems into the floodwaters. 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 floodwaters into the system, and be located and constructed to minimize or eliminate flood damages.
- C. Drainage facilities. All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The system shall ensure drainage away from buildings and on-site waste disposal sites. The Town of Pennington Gap may require a primarily underground system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- D. Utilities. All utilities such as gas lines, electrical and telephone systems being placed in 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.

**ARTICLE IV  
Variances**

**§ 99-13. Standards for issuance.**

It is possible that variances may be requested from the provisions of this chapter. Such variances can be considered by the Town Council. The National Flood Insurance Program details certain requirements which should be met when granting variances.

**§ 99-14. Procedures for granting.**

The Town Council shall observe the following procedures, as required by the National Flood Insurance Program, when granting a variance:

- A. A variance shall not be granted for any proposed use, development or activity within the Floodway District that will cause any increase in flood levels during the one-hundred-year flood;
- B. Variances shall only be issued upon:
  - (1) A showing of good and sufficient cause;

- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) A determination that the granting of a variance shall not result in unacceptable or prohibited flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- D. The applicant will be notified by the community that:
- (1) The issuance of a variance to construct a structure below the one-hundred-year flood level will result in an increased flood insurance premium rate; and
  - (2) Such construction below the one-hundred-year flood level increases risks to life and property.
- E. Records shall be maintained of all variance actions, including their justification, and shall be noted in the annual report submitted to the Federal Insurance Administrator.

## ARTICLE V Penalties

### **§ 99-15. Violations and penalties.**<sup>1</sup>

Any person who fails to comply with any or all of the requirements or provisions of this chapter or direction of the Building Inspector or any other authorized employee of the municipality shall be guilty of a Class 4 misdemeanor and shall be subject to a fine of not more than \$250, plus costs of prosecution. In default of such payment such person shall be imprisoned in county prison for a period not to exceed 10 days. Each day during which any violation of this chapter continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved, including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of, or noncompliance with, this chapter shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared by the Town Council to be a public nuisance and abatable as such.

## ARTICLE VI Existing Structures in Floodplain Districts

### **§ 99-16. Exceptions for nonconforming uses.**

A structure or use of a structure or premises which lawfully existed before the enactment

---

<sup>1</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- A. Existing structures and/or uses located in the Floodway District shall not be expanded or enlarged (unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements).
- B. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than 50% of its market value shall be elevated and/or floodproofed to the greatest extent possible.
- C. The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use regardless of its location in a floodplain district to an extent or amount of 50% or more of its market value shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code.
- D. Uses or adjuncts thereof which are, or become, nuisances shall not be permitted to continue.

## ARTICLE VII Definitions

### § 99-17. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

**DEVELOPMENT** — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations.

**FLOOD** — A general and temporary inundation of normally dry land areas.

#### **FLOODPLAIN**

- A. A relatively flat or low land 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 waters from any source.

**MOBILE HOME** — A structure transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities.

**MOBILE HOME PARK OR SUBDIVISION, EXISTING** — A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this

chapter.

**ONE-HUNDRED-YEAR FLOOD** — A flood that, on the average, is likely to occur once every 100 years (i.e., that has one-percent chance of occurring each year, although the flood may occur in any year).

**ARTICLE VIII**  
**Municipal Liability**

**§ 99-18. Municipal liability restricted.**

- A. The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the floodplain districts, or that land uses permitted within such districts, will be free from flooding or flood damages.
- B. This chapter shall not create liability on the part of the Town of Pennington Gap or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.