[27 June 2001]

AN ORDINANCE OF THE TOWN COUNCIL, TOWN OF MONTEREY, VIRGINIA. ESTABLISHING FLOODPLAIN AREAS, REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPING, PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR DEVELOPMENT, AND PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCE.

BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL, TOWN OF MONTEREY, Virginia, as follows:

ARTICLE I – GENERAL PROVISIONS.

Sec. 1.1. Purpose.

The purpose of these provisions is the prevent 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, both as defined in the Highland County Zoning and Subdivision Ordinances, 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.
2. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
3. Requiring all those uses, activities, and development that do occur in flood-prone districts to be protected and/or floodproofed against flooding and damage.
4. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

Sec. 1.2. Applicability.

These provisions shall apply to all lands within the jurisdiction of the Town of Monterey and identified as being in the 100-year floodplain by the Federal Insurance Administration in the Flood Insurance Rate Map (FIRM) for the Town of Monterey, Virginia, Highland County, Community – Panel Number 510379 0001, **as revised**.

Sec. 1.3. Compliance and Liability.

1. 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 ordinance and regulations which apply to uses within the jurisdiction of this ordinance.
2. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is bases on acceptable engineering methods or study. Larger floods may occur on rare occasions. Flood heights may be increases by man-made or natural cases, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain area, or that that land uses permitted within such area, will be free from flooding or flood damages.
3. This ordinance shall not create liability on the part of the Town of Monterey or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec. 1.4. Abrogation and Greater Restrictions.

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

Sec. 1.5. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portion shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

ARTICLE II – DEFINITIONS.

1. *Administrator* – This is the Zoning Administrator for Highland County/Town of Monterey, Virginia.
2. *Base Flood/One-Hundred Year Flood* – A flood that, on the average, is likely to occur one every 100 years (i.e. that has one [1] percent chance of occurring each year, although the flood may occur in any year).
3. *Base Flood Elevation (BFE)* – The Federal Emergency Management Agency (FEMA) designated 100 year water surface elevation (plus one foot) as published in the FIRM for the Town of Monterey, Community – Panel Number 510379 0001, **as revised.**
4. *Basement –* Any area of the building having its floor subgrade (below ground level) on all sides.
5. *Board of Appeals –* The body to which appeals of rulings by the Administrator are to be made is the Town Council, Town of Monterey.
6. *Development –* Any man-made change to improved or unimproved real estate, including, but no limited to, buildings or other structures, mining, dredging, filling, grading/paving, excavation or drilling operations or storage of equipment or materials.
7. *Floodplain –* Any land area susceptible to being inundated by water from any source.
8. *Floodplain Management Coordinator –* That person appointed by the Town Council, Town of Monterey, to coordinate all aspects of this ordinance with other governmental agencies, and to rule with respect to disputes between the person questioning the location of the Area boundary and the Highland County Zoning Administrator. The position should be filled by a licensed professional engineer.
9. *Freeboard –* A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.
10. *Lowest Floor –* The lowest floor of the lowest enclosed area (including basement).
11. *Recreational Vehicle –* A vehicle which is:
12. Built on a single chassis;
13. 400 square feet or less when measured at the largest horizontal projection.
14. Designed to be self-propelled or permanently towable by a light-duty truck or automobile, and
15. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
16. *Substantial Damage* – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
17. *Substantial Improvement* – Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or, (2) any alteration of a “historic structure”, provided that the alteration will not preludes the structures continued designation as a “historic structure”.

ARTICLE III – ESTABLISHMENT OF FLOODPLAIN AREAS

Sec. 3.1. Description of Areas.

The Floodplain Areas shall include areas subject to inundation by waters of the one hundred (100)-year flood. The basis for delineation of these areas shall be the Flood Insurance Rate Map (FIRM) for the Town of Monterey prepared by the Federal Emergency Management Agency (FEMA), **as most recently revised**.

Sec. 3.2. Official Floodplain Map.

The boundaries of the Floodplain Areas are established as shown on the Flood Insurance Rate Map (FIRM) for the Town of Monterey, Virginia, Community Panel Number 510379 0001, as most recently revised, and which shall be kept on file at the Highland County Building and Zoning Office, and the Town Hall, Town of Monterey.

Sec. 3.3. Boundary Changes

The delination of the Floodplain Areas may be revised by the Town Council, Town of Monterey, where natural or man-made changes have occurred and/or where 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.

Sec. 3.4. Interpretation of Area Boundaries.

Initial interpretations of the boundaries of the Floodplain Area shall be made by the Highland County Zoning Administrator. Should a dispute arise concerning the boundaries, the Floodplain Management Coordinator for the Town of Monterey shall make the necessary determination. The person questioning or contesting the location of the Area boundary shall be given a reasonable opportunity to present his case to the Floodplain Management Coordinator, Town of Monterey and to submit his own technical evidence if he so desires.

ARTICLE IV – DEVELOPMENT REGULATIONS.

Sec. 4.1. General Provisions.

1. Permit Requirements

All uses, activities, and development occurring within any floodplain area shall be undertaken only upon the issuance of a special permit. Such development undertaken only in strict compliance with provisions of this Ordinance and all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code. Prior to the issuance of any such permit, the Highland County Zoning Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or Floodplain of any watercourse, drainage ditch, or any other drainage facility or system.

1. 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. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdiction, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.

1. Drainage Facilities

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

1. Site Plans and Permit Applications

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

1. For structures to be elevated, the elevation of the lowest floor (including basement).
2. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
3. The elevation of the one hundred (100)-year flood plain (highest BFE touching the building).
4. Topographic information showing existing and proposed ground elevations, referenced to the NGVD 1929 Datum.
5. Encroachment Provisions
6. No new construction or development shall be permitted within the floodplain area unless it is demonstrated, using good engineering practices, that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the one hundred (100)-year flood elevation more than one foot at any point.
7. Recreational Vehicles

Recreational vehicles placed on sites shall either:

1. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, or
2. Be permanently stored, not for habitation, or any other use, on the site, which must be owned by the owner of the Vehicle, and be on the site fewer than 180 consecutive days, or
3. Meet the permit requirements for placement and elevation and anchoring requirements for manufactured homes as stated in the Uniform Statewide Building Code.

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.

ARTICLE V – VARIANCES: FACTORS TO BE CONSIDERED.

Whenever any person is aggrieved by a decision of the Highland County Zoning Administrator with respect to the provisions of this ordinance, it is the right of that person to appeal to the Town Council, Town of Monterey for a variance. Such appeal must be filed, in writing within thirty (30) days after the determination by the Highland County Zoning Administrator. Upon receipt of such an appeal, the Town Council shall set a time and place for the purpose of hearing the appeal, which shall not be less than ten (10) nor more than thirty (30) days from the date of the receipt of the appeal. Notice of that time and place of the hearing shall be given to all parties at which time they may appear and be heard. The decision by the Town Council, Town of Monterey shall be final in all cases.

Any person or persons jointly or severally aggrieved by any decision of the Town Council, Town of Monterey, or any taxpayer or any officer, department, board or bureau of Highland County or the Town of Monterey may present to the Circuit Court of Highland County a petition specifying the grounds of which aggrieved within thirty (30) days after the filing of the decision in the office of the Town Council, Town of Monterey.

In passing upon applications for Variances, the Town Council, Town of Monterey shall satisfy all relevant factors and procedures specified in other sections of the Floodplain Management Ordinance and consider the additional factors:

1. The danger to life and property due to increases flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodplain Area that will cause any increase of more than one foot (1.0’) in the one-hundred (100)-year flood elevation.
2. The danger that material may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation system and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for the area.
10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
12. 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.
13. Such other factors which are relevant to the purposes of this ordinance.

The Town Council, Town of Monterey may refer any application and accompanying documentation pertaining to any request for a variance to any professional engineer or other qualified 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. All costs of such referrals shall be at the expense of the applicant.

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

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

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

ARTICLE VI – EXISTING STRUCTURE IN FLOODPLAIN AREAS

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

1. Existing structures in the Floodplain Area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one hundred (100)-year flood elevation of more than one foot (1.0”).
2. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent of less than fifty (50) percent of its market value, elevation and/or floodproofing should be considered to the greatest extent possible.
3. The modification, 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 of 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.
4. The individual property owner whose property is crossed by a stream, river, watercourse or drainage system is responsible for maintenance of a clear channel (i.e., removal of rocks, stumps, limbs, trash or other debris) at all times from the portion of the channel that is on his and/or her property, at no cost to the Town of Monterey.

ARTICLE VII – ENACTMENT

ENACTED AND ORDAINED THIS 27th DAY OF June, 2001. This ordinance shall become effective upon passage.

/s/ Janice S. Warner

Mayor, Town of Monterey

/s/ Nancy H. Hooke

Clerk, Town of Monterey