ORDINANCE NO. 2016-01

AN ORDINANCE AMENDING AND REENACTING ARTICLE XXII (FLOODPLAIN OVERLAY DISTRICT, F-1) OF THE ZONING ORDINANCE OF SUSSEX, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS, BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT, AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE FLOODPLAIN REGULATIONS.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SUSSEX, Virginia, as follows:

ARTICLE XXII. FLOODPLAIN OVERLAY DISTRICT.

DIVISION 1 - GENERAL PROVISIONS

Section 1.1 – Statutory Authorization and 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 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, 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; and,

D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

Section 1.2 - Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the county and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the county by FEMA.

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Section 1.3 - 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 article and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this article.

B. The degree of flood protection sought by the provisions of this article is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. 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 article does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

C. This article shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

D. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Director of Community Development, who is designated as the Floodplain Administrator for the purposes of administering and enforcing this article.

Section 1.4 - Abrogation and Greater Restrictions

This article supersedes any ordinance currently in effect in flood-prone districts. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive than this article.

Section 1.5 - Severability

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

Section 1.6 - Penalty for Violations

Any person who fails to comply with any of the requirements or provisions of this article or directions of the floodplain administrator or any authorized employee of the county shall be guilty of the stated violation and subject to the penalties therefore in accordance with Section 16-284.

Whenever the floodplain administrator or his designee determines that there are reasonable grounds to believe that there has been a violation of any provisions of this article, or of any regulations adopted pursuant thereto, the floodplain administrator or his designee shall give notice of such alleged violation as hereafter provided. Such notice shall: (1) be in writing, (2) include a statement of the reasons for its issuance, (3) allow a reasonable time not to

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exceed a period of 30 days for the performance of any act it requires, (4) be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized by state code; and (5) contain an outline of remedial actions which, if taken, will affect compliance with the provisions of this article.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article 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 within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the county to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

DIVISION 2. ADMINISTRATION

Section 2.1 - Designation of the Floodplain Administrator

The Director of Community Development or his designee is hereby appointed to administer and implement these regulations and is referred to herein as the floodplain administrator. The floodplain administrator may:

(A) Do the work themselves. In the absence of a designated floodplain administrator, the duties are conducted by the county administrator.
(B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
(C) 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.

Section 2.2 - Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the floodplain administrator shall include but are not limited to:

(A) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
(B) Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
(C) 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.
(D) Review applications to determine whether all necessary permits have been obtained

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from the federal, state or local agencies from which prior or concurrent approval is required; in 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.

(E) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation Division of Dam Safety and Floodplain Management, and other appropriate agencies, such as the Virginia Department of Environmental Quality and U.S. Army Corps of Engineers, and have submitted copies of such notifications to FEMA.

(F) 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).

(G) Approve applications and issue permits to develop in 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.

(H) 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.

(I) Review Elevation Certificates and require incomplete or deficient certificates to be corrected.

(J) 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 the County of Sussex, Virginia , within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

(K) Maintain and keep records that are necessary for the administration of these regulations, including:

(1) Flood insurance studies, flood insurance rate maps, including historic studies and maps and current effective studies and maps and letters of map change; and

(2) Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation in relation to the datum on the FIRM to which structures have been flood-proofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

(L) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

(M) 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.

(N) Administer the requirements related to proposed work on existing buildings:

(1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and 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.

(O) 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.

(P) Notify the Federal Emergency Management Agency (FEMA) when the corporate boundaries of the county have been modified and:

(1) 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

(2) 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.

(Q) 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.

(R) It is the duty of the 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 Sussex County, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

Section 2.3 - 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:

(A) Where field surveyed topography indicates that adjacent ground elevations:

(1) 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;

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(2) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.

(B) 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.

(C) 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.

(D) 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.

(E) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:

(1) 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.

(2) 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.

(3) 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.

Section 2.4 - Jurisdictional Boundary Changes

The 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

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provided to Department of Conservation and Recreation Division of Dam Safety and Floodplain Management and FEMA.

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 (the Virginia Department of Conservation and Recreation) 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.

Section 2.5 - District Boundary Changes

The delineation of any of the floodplain districts may be revised by the 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.

Section 2.6 - 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.

Section 2.7 – 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 not later than six 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. 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.

Section 2.8 – Letters of Map Revision

When development in the floodplain 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 or a Letter of Map Revision. Examples are provided below:

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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 foot in the base flood elevation.
3. Alteration or relocation of a stream (including but not limited to installing culverts and bridges).

DIVISION 3 - ESTABLISHMENT OF ZONING DISTRICTS

Section 3.1 - Description of Special Flood Hazard Districts

A. Basis of Districts

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for the county prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated July 7th, 2009, and any subsequent revisions or amendments thereto.

The county may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this article and which the floodplain administrator shall maintain in his records.

1. The **Floodway District** is in an **AE Zone** and is delineated, for purposes of this article, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance 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 5 of the above-referenced FIS and shown on the accompanying FIRM.

The following provisions shall apply within the floodway district of an AE zone:

a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. 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 applicant first applies with the county's endorsement for a conditional letter of map revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

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If Section 3.1(A)(1)(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of division 4 of this article.

b. The placement of manufactured homes is prohibited, except in an existing manufactured home (mobile home) 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.

2. The **AE, or AH Zones** on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has **not** been delineated. The following provisions shall apply within an AE or AH zone:

The current FIRM/FIS shows no AH Zones within the County of Sussex.

The following provisions apply within an AE or AH zone where FEMA has provided base flood elevations.

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 or AH on the FIRM, 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 foot at any point within the county.

Development activities in Zones Al-30 and AE or AH, on the county's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies with the county's endorsement for a conditional letter of map revision, and receives the approval of the Federal Emergency Management Agency.

3. The **A Zone** on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply:

The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one percent annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance 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 base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

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The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood level.

During the permitting process, the floodplain administrator shall obtain:

1) the elevation of the lowest floor including the basement of all new and substantially improved structures; and,

2) if the structure has been flood-proofed in accordance with the requirements of this article, the elevation in relation to mean sea level to which the structure has been flood-proofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals including manufactured home parks and subdivisions that exceed fifty lots or five acres, whichever is the lesser.

4. The **AO Zone** on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM.

The current FIRM/FIS shows no AO Zones within Sussex County.

5. The **Coastal A Zone** shall be those areas, as defined by the VA USBC, that are subject to wave heights between 1.5 feet and 3 feet, and identified on the FIRM as areas of **Limits of Moderate Wave Action (LiMWA)**. For these areas, the following provisions shall apply:

The current FIRM/FIS shows no LiMWA lines within the County of Sussex.

6. The **VE or V Zones** on FIRMs accompanying the FIS shall be those areas that are known as Coastal High Hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast or other areas subject to high velocity waves.

The current FIRM/FIS shows no V or VE Zones within the County of Sussex.

Section 3.2 - Overlay Concept

The floodplain districts described above shall be overlays to the existing underlying districts as shown on the official zoning map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is 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.

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.

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DIVISION 4 - DISTRICT PROVISIONS

Section 4.1 – 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 this article and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Sussex County Subdivision Ordinance. Prior to the issuance of any such 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 floodways of any watercourse, drainage ditch, or any other drainage facility or system.

B. Site Plans and Permit Applications

All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. The elevation of the base flood at the site.

2. The elevation of the lowest floor including the basement or, in V zones, the lowest horizontal structural member.

3. For structures to be flood-proofed non-residential only, the elevation to which the structure will be flood-proofed.

4. Topographic information showing existing and proposed ground elevations.

Section 4.2 - General Standards

The following provisions shall apply to all permits:

A. New construction and substantial improvements shall be issued 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.

C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

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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 subsections A through H above, in all special flood hazard areas, the 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. 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, 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), any other required agencies, and the Federal Emergency Management Agency.

J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Section 4.3 - Elevation and Construction Standards

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with Section 3.1(A)(3), the following provisions shall apply:

A. Residential construction

New construction or substantial improvement of any residential structure, including manufactured homes, in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor, including the basement, elevated to at least one foot above the base flood level.

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B. Non-residential construction

1) New construction or substantial improvement of any commercial, industrial, or non-residential building or manufactured home shall have the lowest floor, including the basement, elevated to at least one foot above the base flood level.
2) Non-residential buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one 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 or his designee.

C. Space below the lowest floor

In zones A, AE, AH, AO, and A1-A30, 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, such as a garage door, or limited storage of maintenance equipment, such as a standard exterior door, or entry to the living area, such as a stairway or elevator.

2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation; and

3. include 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 openings on different sides of each enclosed area subject to flooding.

b. The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.

c. If a building has more than one 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 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. In all designated special flood hazard areas, all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in division 4, sections 4.2 and section 4.3.

2. All recreational vehicles placed on sites must either:

a. be on the site for fewer than 180 consecutive days, and 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 set forth in Section 4.3(D)(1) of this article.

Section 4.4 - 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 obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a flood insurance study for subdivision proposals and other proposed development proposals, including manufactured home parks and subdivisions, that exceed fifty lots or five acres, whichever is the lesser.

DIVISION 5 – EXISTING STRUCTURES IN FLOODPLAIN AREAS

Section 5.1 - Existing structures in floodplain areas

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 area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance

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with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than fifty percent of its market value shall conform to the VA USBC.

C. 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 percent or more of its market value shall be undertaken only in full compliance with this article and shall require the entire structure to conform to the VA USBC.

DIVISION 6 - VARIANCES

Section 6.1. Variances; Factors to be considered

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.

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:

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 one hundred-year flood elevation.

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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 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 article.

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.

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.

Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief. The board of zoning appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a

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structure below the one hundred-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 variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the federal insurance administrator.

DIVISION 7 – DEFINITIONS.

Section 7.1. Definitions.

A. Appurtenant or accessory structure - Accessory structures not to exceed 200 square feet.

B. Base flood - The flood having a one percent chance of being equaled or exceeded in any given year.

C. Base flood elevation - The Federal Emergency Management Agency designated one percent annual chance water surface elevation and the elevation determined per Section 4.6. 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 base flood is the one percent annual chance flood.

D. Basement - Any area of the building having its floor sub-grade, or below ground level, on all sides.

E. Board of Zoning Appeals - The board appointed to review appeals made by individuals with regard to decisions of the floodplain administrator in the interpretation of this article.

F. Coastal A Zone - Flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

G. 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.

H. Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns, such as posts and piers.

I. 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.

J. Existing construction - structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

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K. Flood or flooding –

1. A general or temporary condition of partial or complete inundation of normally dry land areas from

a. the overflow of inland or tidal waters; or,

b. the unusual and rapid accumulation or runoff of surface waters from any source.

c. mudflows which are proximately caused by flooding as defined in paragraph (1)(b) 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.

2. 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 flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

L. 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).

M. 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.

N. Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.

O. 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.

P. 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 foot.

Q. 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. When a freeboard is included in the height of a structure, the flood insurance premiums may be less expensive.

R. 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

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passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

S. Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

T. Historic structure - Any structure that is

1. 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;

2. 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;

3. 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

4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

a. by an approved state program as determined by the Secretary of the Interior; or,

b. directly by the Secretary of the Interior in states without approved programs.

U. 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.

V. 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:

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*.

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

X. Lowest floor - The lowest floor of the lowest enclosed area including the 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 44 CFR § 60.3.

Y. 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 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 180 consecutive days, but does not include a recreational vehicle.

Z. Manufactured home park or subdivision - a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

AA. Mean Sea Level – is an elevation point that represents the average height of the ocean's surface (such as the halfway point between the mean high tide and the mean low tide) which is used as a standard in reckoning land elevation.

BB. New construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after March 2, 1983 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.

CC. Post-FIRM structures - A structure for which construction or substantial improvement occurred on or after March 2, 1983.

DD. Pre-FIRM structures - A structure for which construction or substantial improvement occurred before March 2, 1983.

EE. 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,

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4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

FF. Repetitive Loss Structure – A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each flood event.

GG. 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 rated damage – (i) For which four or more separate claims payments have been made under flood insurance coverage with the amount of each claim exceeding $5,000, and with the cumulative amount of such claims exceeding $20,000; or (ii) for which at least two separate claim payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

HH. Shallow flooding area – A special flood hazard area with base flood depths from one to three 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.

II. Special flood hazard area - The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in Section 3.2 of this article.

JJ. Start of construction - For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was 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 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 the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

KK. 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.

LL. 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.

MM. 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 preclude the structure's continued designation as a *historic structure*.

3. 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.

NN. 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 Section 3.7 B11, Section 4.3 B, Section 4.4 A, Section 4.5, and section 4.8 is presumed to be in violation until such time as that documentation is provided.

OO. 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.

FIRM Flood Insurance Rate Map
Sussex County, Virginia and Incorporated Areas

FIRM Map Number	Map Revised/Adopted
51183C0065D	July 7, 2009
51183C0075D	July 7, 2009
51183C0100D	July 7, 2009
51183C0125D	July 7, 2009
51183C0150D	July 7, 2009
51183C0175D	July 7, 2009
51183C0180D	July 7, 2009
51183C0185D	July 7, 2009
51183C0188D	July 7, 2009

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51183C0189D	**July 7, 2009**
51183C0190D	**July 7, 2009**
51183C0195D	**July 7, 2009**
51183C0205D	**July 7, 2009**
51183C0215D	**July 7, 2009**
51183C0225D	**July 7, 2009**
51183C0250D	**July 7, 2009**
51183C0275D	**July 7, 2009**
51183C0280D	**July 7, 2009**
51183C0325D	**July 7, 2009**
51183C0330D	**July 7, 2009**
51183C0335D	**July 7, 2009**
51183C0350D	**July 7, 2009**
51183C0375D	**July 7, 2009**
51183C0400D	**July 7, 2009**
51183C0425D	**July 7, 2009**
51183C0450D	**July 7, 2009**
51183C0475D	**July 7, 2009**

ENACTED AND ORDAINED THIS ____ DAY OF _____, 20__. This ordinance, number _____ of the County of Sussex, Virginia shall become effective upon passage.

_____
Signature

_____
Title

_____
Attested

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