

ORDINANCE NO. 1, 2011

AN ORDINANCE AMENDING ARTICLE 4, SECTION 9 OF THE ZONING ORDINANCE AND SUBDIVISION REGULATIONS OF THE TOWN OF WISE, VIRGINIA, BY UPDATING REGULATIONS PERTAINING TO DEVELOPMENT IN THE FLOOD PLAIN DISTRICTS AS REQUIRED BY THE DEPARTMENT OF CONSERVATION AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Federal Emergency Management Agency has updated the Town of Wise Flood Plain mapping effective February 18, 2011 and the Department of Conservation has reviewed Article 4, Section 9 of the Town of Wise Zoning Ordinance and Subdivision Regulations wherein several required changes have been suggested regarding development in the Flood Plain; and

WHEREAS, the Wise Town Council wishes to amend Article 4, Section 9 of the Zoning Ordinance and Subdivision Regulations of the Town of Wise, Virginia, adopted March 23, 1987, to incorporate the required changes by the Department of Conservation and Resources and FEMA with regard to development in the Flood Plain; and

WHEREAS, this matter had been previously referred to the Planning Commission of the Town of Wise, Virginia who considered the same at a meeting held on January 4, 2011 after advertisement and notice as provided by statute and ordinance, and the Commission adopted PC Resolution No., 1, 2011, recommending that the Wise Town Council approve said Zoning Ordinance Amendment; and

WHEREAS, The Town Council of the Town of Wise, Virginia met on Tuesday January 25, 2011 at 7:00 p.m. in Council Chambers of the Wise Municipal Building at 501 W. Main Street and held a public hearing for the purpose of consideration of an amendment to Article 4, Section 9 of the Zoning Ordinance and Subdivision Regulations for the Town of Wise; and

WHEREAS, notice of the time and place of the public hearing and meeting of said Town Council were advertised as provided by statute and ordinance in The Coalfield Progress a newspaper having general circulation in the Town of Wise, Virginia, and said hearing was open to the public and persons desiring to be heard were given an opportunity to present testimony; and

WHEREAS, after review of the guidelines and standards for amending the text of the Zoning Ordinance as set forth in Article 9 of the Zoning Ordinance and Subdivision Regulations of the Town of Wise, Virginia; and careful consideration of the testimony offered, the Wise Town Council wishes to amend Article 4, Section 9 of the Zoning Ordinance as set forth in the attached.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council fo the Town of Wise, Virginia that Article 4 Section 9 of the Zoning Ordinance and

Subdivision Regulations of the Town of Wise, Virginia, be amended and reenacted as set forth in the attached.

**BE IT ORDNANIED AND ENACTED** by said Town Council that all other provisions of the aforementioned Ordinance shall remain unchanged. The authority for this amendment is contained in Virginia Code Section 15.2-1427-D and in Article 9 of the Zoning Ordinance and Subdivision Regulations of the Town of Wise, Virginia.

ORDAINED, ENACTED AND EFFECTIVE THIS THE 25<sup>TH</sup> DAY OF JANUARY 2011.

VOTING "AYE": Erra Sutherland, Caynor Smith, Teresa Adkins, Luther Adkins, Clifton Carson

VOTING "NAY": - None -

ABSENT FROM MEETING: - None -

ABSTENTIONS: - None -

TOWN OF WISE, VIRGINIA

Erra Sutherland  
MAYOR

ATTEST: Rebecca M. Bryant  
CLERK OF COUNCIL

## SECTION 9. FLOOD PLAIN ORDINANCE

### Section 9.1 General Provisions

#### Section 9.1.1 Statutory Authorization and Purpose

This ordinance is adopted pursuant to the authority granted to localities by Virginia Code Section 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 9.1.2 Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Wise, Virginia and identified as being flood prone.

#### Section 9.1.3 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 ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
- B. The degree of flood protection sought by the provisions of this ordinance 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 manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance 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. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Town of Wise Flood Plain Administrator.

- D. This ordinance shall not create liability on the part of the Town of Wise or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

#### Section 9.1.4 Abrogation and Greater Restrictions

This ordinance 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.

#### Section 9.1.5 Severability

In 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 ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

#### Section 9.1.6 Penalty for Violations

Any person who fails to comply with any of the requirements or provisions of this Section shall be subject to the penalties for violation set forth in Article 10 of this zoning ordinance, as amended.

In addition to the above referenced penalties, all other actions are hereby reserved, including an action in equity for the property enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with this Section 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 article may be declared by the Town of Wise to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this section.

#### Section 9.2 Definitions

- A. Base Flood – The flood having a one percent chance of being equaled or exceeded in any given year.
- B. Base Flood Elevation – The Federal Emergency Management Agency designated one hundred (100) – year water surface elevation. 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 one hundred (100) – year flood or 1% annual chance of flood.
- C. Basement – Any area of the building having its floor sub-grade (below ground level) on all sides.

- D. Board of Zoning Appeals – The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this Section.
- E. 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.
- F. Elevated Building – A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).
- G. Encroachment – The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a flood plain, which may impede or alter the flow capacity of a flood plain.
- H. 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 or rapid accumulation or runoff of surface waters from any source; or,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 subsistence 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 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.
- I. Flood Insurance Rate Map (FIRM) – an official map of a community on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- J. Flood Insurance Study (FIS) – an examination, evaluation and determination of flood hazards and if appropriate corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.
- K. Flood plain or flood-prone area – Any land area susceptible to being inundated by water from any source.
- L. 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.

- M. 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.
- N. Freeboard – A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the main 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 will be significantly cheaper.
- O. Highest Adjacent Grade – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- P. 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 by an approved state program as determined by the Secretary of the Interior.
- Q. Lowest floor – The lowest floor of the lowest enclosed area (including 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 Section 60.3.
- R. 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 flood plain 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.
- S. Manufactured Home Park or Subdivision – A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.
- T. New Construction – For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after April 15, 1981 and includes any subsequent improvements to structures. For flood plain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a flood plain

- management regulation adopted by the Town of Wise and includes any subsequent improvements to such structures.
- U. Recreational Vehicle – A vehicle which is built on a single chassis; 400 sf or less when measured at the largest horizontal projection; designed to be self propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel or seasonal use.
  - V. 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.
  - W. Special Flood Hazard Area – The land in the flood plain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 9.3.2 of Article 4.
  - X. Start of Construction. For other than new construction and substantial improvement, under the Coastal Barriers Resource Act 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 state 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 of any wall, ceiling, floor, or other structure part of a building, whether or not that alteration affects the external dimensions of the building.
  - Y. Structure – for flood plain 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.
  - Z. 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.
  - AA. Substantial improvement – Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% 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.
- BB. Violation – the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required is presumed to be in violation until such time as that documentation is provided.
- CC. Watercourse – A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

### Section 9.3. Establishment of Zoning Districts

#### Section 9.3.1 – Description of Districts

##### A. Basis of Districts

The various flood plain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps (FIRM) for Wise County and the Town of Wise prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated February 18, 2011, and any subsequent revisions or amendments thereto.

The boundaries of the Special Flood Hazard Area and the Flood Plain Districts are established as shown on the Flood Insurance Rate map which is declared to be a part of this ordinance and which shall be kept on file at the Town of Wise offices.

1. The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the flood plain must be capable of carrying the waters of one hundred (100)-year 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 6 of the Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
2. The Special Flood Plain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study



for which one hundred (100) year flood elevations have been provided.

3. The Approximated Flood Plain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100) year flood plain boundary has been approximated.
4. The Shallow Flooding District shall be those areas identified as Zone AO or AH on the maps accompanying the Flood Insurance Study.

B. Overlay Concept

1. The Flood Plain Districts described above shall be overlays to the existing underlying zoning districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the flood plain districts shall serve as a supplement to the underlying district provisions.
2. If there is any conflict between the provisions or requirements of the Flood Plain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the flood plain districts shall apply.
3. In the event any provision concerning a Flood Plain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

Section 9.3.2 District Boundary Changes

The delineation of any of the Flood Plain Districts may be revised by the Town of Wise 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 Insurance Administration.

Section 9.3.3 Interpretation of District Boundaries

Initial interpretations of the boundaries of the Flood Plain Districts shall be made by the Flood Plain Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The persona 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 9.3.4 Submitting Technical Data

A community's base flood elevation 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 Insurance Administrator 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 9.4 District Provisions

##### Section 9.4.1 – Permit and Application Requirement

###### A. Permit Requirement

All uses, activities, and development occurring within any flood plain 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 Ordinance and with all other applicable codes and ordinances as amended, such as the Virginia Uniform Statewide Building Code and the Town of Wise Subdivision Regulations. Prior to issuance of any such permit, the Town of Wise Flood Plain 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 flood plain district and all building permits issued for the flood plain shall incorporate the following information:

1. The elevation of the Base Flood at the site.
2. The elevation of the lowest floor (including basement).
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 9.4.2 – General Standards

The following provisions shall apply to all permits:

- A. New construction and substantial improvements shall be 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.
- 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 A-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. 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 Flood Plain Management) and the Federal Insurance Administrator.
- J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

#### Section 9.4.3 Specific Standards

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according to Section 9.4.6, the following provisions shall apply:

- A. Residential Construction – New construction or substantial improvement of any residential structure including manufactured homes shall have the lowest floor, including basement, elevated to one foot freeboard or above the base flood elevation.

- B. Non-Residential Construction – New construction or substantial improvement of any commercial, industrial, or non-residential building or manufactured home shall have the lowest floor, including basement, elevated to one foot freeboard or above the base flood elevation. 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 structures are floodproofed shall be maintained by the Flood Plain Administrator.
- C. Elevated Buildings

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 (garage door) or limited storage of maintenance equipment standard exterior door or entry to the living area (stairway or elevator).
2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. include in Zones A, AO, AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exist 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 (1) 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 (1) 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.
- 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. All manufactured homes placed, or substantially improved, on individual lots or parcels in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in this section.
2. All recreational vehicles placed on sites must either
  - a. be on the site for fewer than 180 consecutive days;
  - b. 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,
  - c. meet all the requirements for manufactured homes in Article 4, Section 9.4.2 and 9.4.3(d).

Section 9.4.4 - Standards for the Floodway District

The following provisions shall apply within the Floodway District:

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. 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 Town of Wise Flood Plain Administrator.

Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Town of Wise’s endorsement – for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency.

- B. If Article 4, Section 9.4.4 (A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4 Section 9.
- C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) 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.
- D. Permitted Uses in the Flood Way Areas: In the Floodway, the following uses and activities are permitted provided that they are in compliance with the provisions of the underlying zoning district and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials or equipment which would result in an increase in the flood levels of the base flood:
  - 1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.
  - 2. Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet ranges, and hunting and fishing areas.
  - 3. Residential uses such as yard areas, gardens, play areas and parking areas.
  - 4. Industrial and commercial uses such as yard areas, parking and loading areas, airport landing strips, etc.

#### Section 9.4.5 – Standards for the Special Flood Plain District

The following provisions shall apply within the Special Flood Plain District:

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 on the Flood Insurance Rate Map, 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 Town of Wise.

Development activities in Zones A1-30, AE, and AH on the Town of Wise Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer and/or applicant first applies, with the Town of Wise's endorsement, for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

#### Section 9.4.6 – Standards for Approximated Flood Plain

The following provisions shall apply with the approximate flood plain district:

The Approximated Flood Plain District shall be that flood plain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100) year flood plain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100) year flood elevations and floodway information from federal, state and other acceptable sources, shall be used, when available. It is recommended that the applicant refer to FEMA 265, "Managing Flood Plain Development in Approximate Zone A Areas, A Guide for Obtaining and Developing Base (100 year) Flood Elevations."

Where the specific one hundred (100) year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., an applicant for a proposed use, development and/or activity greater than 50 lots or 5 acres, whichever is lesser, shall determine this elevation. For development proposed in the approximate flood plain the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Town of Wise Flood Plain Administrator.

The Town of Wise Flood Plain Administrator reserves the right to require a hydrologic and hydraulic analyses for any development.

When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot freeboard or above the base flood elevation. During the permitting process, the Town of Wise Flood Plain 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.

#### Section 9.4.7 – 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 provided 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.

#### Section 9.5 – Variances: Factors to be Considered

Variances shall be issued only upon a showing of good and sufficient cause; after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant and after the Board of Zoning Appeals has determined that the granting of such variance will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety, extraordinary public expense; and will not create nuisances, cause fraud or victimization of the public or 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 to 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 (100) year flood elevation.
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.



- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- L. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. Such other factors which are relevant to the purposes of this ordinance.

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.

Variance shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in unacceptable or prohibited increases in flood heights; additional threats to public safety; extraordinary public expense; and will not create nuisances, cause fraud or victimization of the public or 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 and signed by the Zoning Administrator, that the issuance of a variance to construct a structure below the one hundred (100) year flood elevation increases the risks to life and property and 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.

#### Section 9.6 – Existing Structures in Flood Plain 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 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 flood plain areas to an extent of amount of less than 50% 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 flood plain area to an extent or amount of 50% or more of its market value shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the VA USBC.