



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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TO THE MEMBERS OF CITY COUNCIL  
CITY OF HARRISONBURG, VIRGINIA

**SUBJECT:** Public hearing to consider a request from the City of Harrisonburg to amend the Zoning Ordinance Article Y Floodplain Zoning District by replacing the entire article with new and updated Floodplain regulations. As with the current regulations, these provisions shall apply to all privately and publicly owned lands within the jurisdiction of the City of Harrisonburg and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the City of Harrisonburg by FEMA. 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 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; restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding; 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, protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON:** May 14, 2014.

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said The City of Harrisonburg is requesting adoption of an updated Article Y, Floodplain Zoning District of the City's Zoning Ordinance per requirements of the Federal Emergency Management Agency (FEMA).

The Virginia Department of Conservation & Recreation (DCR), on behalf of FEMA, periodically conducts Community Assistance Visits (CAVs) to Virginia communities that participate in the National Flood Insurance Program (NFIP). The primary purpose of the CAV is to help the City maintain compliance with NFIP requirements. City Staff met with a representative of DCR as part of a recent CAV and the outcome of the meeting identified some changes that needed to be made within Article Y in order to maintain compliance with the NFIP requirements. After evaluating the needed changes, rather than trying to modify the existing text, staff chose to adapt FEMA's 2011 Virginia Model Floodplain Ordinance text specific to the City's needs, thus ensuring all current requirements would be met. This update is very similar to the Floodplain Zoning District amendment City Council

approved in 2007; however at that time the flood map was revised as well. A formal adoption of a compliant floodplain ordinance must be completed this summer to complete the CAV review.

Staff recommends adopting the updated Article Y, Floodplain Zoning District of the Zoning Ordinance.

Chair Fitzgerald asked if there were any questions for staff at this time.

Mr. Colman said I have a couple of questions and one of them is with the definitions section. With the current ordinance, the definitions are listed in the front of the ordinance; it is always useful to have the definitions at the beginning so you know what you are reading when you are going through the ordinance. The proposed amendment has the definitions in the back; I do not know if this is something we can change or not.

Mrs. Banks said if it is a preference of the Planning Commission we can certainly change that.

Mr. Fletcher said the existing Floodplain Ordinance from 2008 was also the model, so the model changed as well.

Mr. Colman continued saying in the current regulations it lists penalties and but they are not listed in the new regulations.

Mrs. Banks said the Floodplain regulations are part of the Zoning Ordinance and therefore we refer back to penalties within the zoning regulations for the floodplain.

Mr. Colman said in terms of Section 10-3-163, Use and Interpretation of FIRMS, in my experience the map is what determined if a property was in the floodplain or not. This section is basically saying that if something seems to be in the floodplain or if the Floodplain Administrator makes the determination to have a survey done, then that property could possibly become part of the Floodplain. This is not something we have done before and I feel it is significant.

Mr. Fletcher said this is one of the sections that we proposed to DCR that we would like to remove and they wrote back and said this section needs to remain in the regulations and should not be deleted.

Mrs. Turner said I believe that was Section 10-3-162 (17) that you are remembering; but you are correct, I do not specifically recall about Section 10-3-163.

Mrs. Banks said Section 10-3-163 is a new section to the regulations.

Staff discussed with Planning Commission the specifics of Section 10-3-162 (17) which states “it is the duty of the Community 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 the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).” FEMA has explained that this should be included within the regulations to allow more flexibility for the Floodplain Administrator.

Chair Fitzgerald asked how much flexibility does the Floodplain Administrator need.

Mrs. Turner replied that FEMA cannot answer that question; honestly there are some things within the ordinance that FEMA can just not clearly answer for us.

Mr. Colman said I can see where there are some situations when you look at the profile and the floodplain should be further out than it is based on the topography. Do you look at the profile or the actual map?

Mrs. Turner said that is exactly one of those things that just does not make a whole lot of sense when interpreting the regulations. We just have to have it there. This is one reason why we decided to go with the model; FEMA wanted these items within the regulations.

There was one item that we could remove, page 15, under definitions; FEMA did say we could remove this item. It is the definition of Coastal A Zone, we can remove it from our regulations; we do not have it.

Another definitions item that is a change is under substantial improvement; if you are new construction or substantial improvement than certain things apply to you. Currently, the definition of substantial improvement says the term does not however include any alteration of a historic structure; therefore the way our ordinance is currently worded historic structures are exempt from the regulations. We work with people who own historic structures and try to get them to comply to the best that we can when they are renovating. The new regulations change that and basically say that they have to comply up until the point where it would preclude their designation as a historic structure or a contributing structure to a historic district. The new ordinance states that “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.”

Mr. Heatwole asked if there was any way to modify these regulations.

Mrs. Turner replied if we want to continue to be part of the NFIP, then we need to adopt these requirements.

Chair Fitzgerald asked if there were further questions for staff. Hearing none, she opened the public hearing and asked if there was anyone wishing to speak.

Mr. John Serrell, 109 Fairway Drive, said he owns property that, when purchased in 2002, it was not in the floodplain. A motel was developed next to my property on a site on which nothing existed for nine years. They raised the property over five feet and now the motel is out of the floodway and my property is in it. I have sent engineering data to Stacy over a year ago and asked her to review it for my engineers, and it was never reviewed. I wrote letters several months ago to Community Development and asked for specific engineering and legal questions to be answered; they have never been answered. I met with the City Attorney and he promised me answers; I have not got them. Mayor Ted Byrd has promised me in writing answers to my questions and I have not gotten any answers.

I filled my property and now it is two feet higher than the motel. The motel is certified as one foot out of the floodway, so how can my property still be considered in the floodway and the motel not? I have asked for answers to these questions, I have been promised answers and I have not received any. I would like to see all of this (Floodplain Ordinance Amendment) tabled until all my questions are answered. Please come out to my property and see what I am talking about. I have been ignored by the City and this is the perfect time to tell you all to come to my site and see what I am talking about.

I am paying \$10,000 a year and lost a sale of my property because of this; I do not care about that, it is not an issue. But, when I am not treated fairly I do not appreciate it.

Thank you for your time.

Chair Fitzgerald asked if there was anyone else wishing to speak. Seeing none, she closed the public hearing. She then asked staff if they would like to address the speaker’s comments.

Mr. Fletcher said the changes to the regulations proposed tonight do not change the floodplain map.

Mrs. Turner said as far as what he has asked, we have discussed it with FEMA and they found there was not a problem. We take our direction from FEMA with regard to floodplain matters. Mr. Serrell has been answered multiple times, maybe not this last time he asked; but he was answered the three or four times before when he asked similar questions. The last I heard of this was that the City Attorney was going to contact him about it. I do not know if that has happened, I can check into that. I do not know what answer he can get from the City Attorney at this point, FEMA has provided his answer.

Mr. Colman asked if his property was in the floodplain or the floodway as he referred to it.

Mrs. Turner said it is in the floodplain, I do not believe he has anything in the floodway.

Mr. Colman asked if the property was in the floodplain on the old maps (prior to the 2008 change).

Mrs. Turner replied no.

Mr. Colman said he filled his property so he can be identified as out of the floodplain.

Mrs. Turner said he would still need to apply for a letter of map revision (LOMR) and he is not interested in pursuing that level of investigation into it.

Mr. Colman said so there is a course of action and if he does not want to follow the course of action that is on him.

Mr. Baugh said I cannot comment on what discussions he has had with the Mayor or the City Attorney, but I can generally say this has been going on for years with Mr. Serrell, it is not new information. He is somewhat insistent that the solution be handled a certain way.

Mr. Heatwole questioned how the Serrell property could be one foot higher than the motel, yet still be in the floodplain.

Mr. Fletcher said what he has done on his property may make the site higher, but for it to be recognized on the map he first has to apply for a LOMR so that FEMA recognizes the property as out of the floodplain. Mr. Serrell does not want to do that.

Mr. Da'Mes said he is paying extra flood insurance each year, which is quite significant. There has to be more to this than what we are hearing.

Mr. Heatwole asked if the City had an idea of how much a LOMR would cost.

Mr. Fletcher replied no.

Mr. Colman said you would have to pay an engineer to do the study and then provide the calculations to FEMA. Then turn in the application to the City and the City would apply to FEMA. That is how the process works. I do not see any other way around it for this site; the City cannot decide if a property is no longer in the floodplain.

Chair Fitzgerald asked if there were any further questions or discussion regarding the amendment.

Mr. Colman moved to recommend approval of the proposed Floodplain Ordinance Amendment, Article Y, Floodplain Zoning District with the discussed changes to the formatting and the removal of the Coastal A Zone definition.

Dr. Dilts seconded the motion.

Chair Fitzgerald called for a voice vote on the motion. All voted in favor (6-0) of the motion to recommend approval.

Chair Fitzgerald said this will be heard at the June 10<sup>th</sup> City Council meeting.

Respectfully Submitted,

Alison Banks  
Planner