

TOWN OF ABINGDON
PLANNING COMMISSION
REGULAR MEETING
JUNE 28, 2010 - 5:30 P.M.

The regular meeting of the Abingdon Planning Commission was held Monday, June 28, 2010, at 5:30 P.M. The meeting was held in the Municipal Building, downstairs meeting room.

Mr. Matthew T. Bundy, Chairman, called the meeting to order. Mr. Garrett Jackson called the roll.

ROLL CALL

Members Present: Mr. Matthew T. Bundy, Chairman
Mr. Gregory W. Kelly
Mrs. Cathy Lowe
Mr. Kenneth Shuman
Mr. Gary Kimbrell

Comprising a quorum of the Commission

Members Absent: Dr. H. Ramsey White, Jr., Vice-Chairman
Ms. Francine Ivery

Administrative Staff: Mr. W. Garrett Jackson, Director of Planning/Zoning
Mrs. Deborah Icenhour, Town Attorney

Visitors: Mr. Don Frye
Dr. Damian Sooklall
Mr. Doug Ellis
Mrs. Helen Shupe

(2) Approval of Minutes: Regular Meeting, June 2, 2010

Mr. Shuman made a motion that the minutes of the regular meeting, June 2, 2010 (rescheduled from May 24, 2010), be approved as presented. Mr. Kimbrell seconded the motion, with Mr. Kelly abstaining. The motion passed.

(3) PUBLIC HEARING
PROPOSED AMENDMENTS - Application to Repeal, Amend and Reenact, Article 15, Flood Hazard District, Article 24-2, Penalty, and Article 26, Definitions, of the Town of Abingdon Zoning Ordinance.

Mr. Bundy declared the Public Hearing as being open and asked if anyone present would like to address the Proposed Amendments as submitted.

Mr. Jackson explained that Planning, Public Works and Building Inspections staff have worked on revising the Town's Flood Hazard Mitigation Ordinance over the past few months. The Federal Emergency Management Agency (FEMA) has completed digital mapping of all Flood Insurance Maps and is now requiring updates of all localities' ordinances, to meet standards set forth by each State's Department of Environmental Quality and Conservation and Recreation. The following is a draft of the proposed amendments to Article 15 as well as section in Article 24 and Article 26 of the Zoning Ordinance. The amendments of Article 26 are those where definitions were not the same or needed to be added, to coincide with those of Article 15.

Article 15 FH Flood Hazard District.

Section 15-1 Purpose.

This ordinance is adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

The purpose of this article is to establish and identify those areas which should be subject to special regulations on account of a greater probability of flooding thereon. The purposes of establishing such areas are to protect life and property; to reduce public costs for flood control, rescue and relief efforts; to protect recognizable ecological values; to prevent: the creation of health and safety hazards, disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, the impairment of the tax base and to support and conform to the National Flood Insurance Program, by:

15-1-1 Regulating uses, activities, and developments which, acting alone or in combination with other existing or future uses, activities and developments, will cause unacceptable increases in flood heights, velocities and frequencies.

15-1-2 Restricting or prohibiting certain uses, activities and developments from locating within areas subject to flooding.

15-1-3 Requiring all those uses, activities and developments that do occur in flood prone areas to be protected and/or flood-proofed against flooding and flood damage.

15-1-4 Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

Section 15-2 Applicability.

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

Section 15-3 Compliance and Liability

15-3-1 No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

15-3-2 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 man-made 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.

15-3-3 Records of actions associated with administering this ordinance shall be kept on file and maintained by the administrator or his/her designee.

15-3-4 This ordinance shall not create liability on the part of The Town of Abingdon or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

Section 15-4 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 15-5 Severability

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

Section 15-6 - Penalty for violations

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Town of Abingdon shall be guilty of the provisions of the Violation and Penalty article as set forth in the Town of Abingdon Zoning Ordinance. 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 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 Abingdon to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

Section 15-7 Definitions.

- 15-7-1 Base flood; For the purposes of this ordinance the one hundred (100) year flood. The flood having a one percent chance of being equaled or exceeded in any given year.
- 15-7-2 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 flood.
- 15-7-3 Basement; Any area of the building having its floor surface sub-grade (below ground level) on any side.
- 15-7-4 Board of Zoning Appeals; A quasi-judicial board appointed to review appeals and requests for variances made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.
- 15-7-5 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, excavating or drilling operations or storage of equipment or materials.
- 15-7-6 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 (post and piers).
- 15-7-7 Encroachment; **For the purposes of this Article** 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.
- 15-7-8 Fill; The placing of any material which results in increasing the natural ground surface elevation.
- 15-7-9 Federal Emergency Management Agency (FEMA); an independent agency of the United States government that provides a single point of accountability for all federal emergency preparedness and mitigation and response activities.
- 15-7-10 Flood hazard district; The land located within the base flood area which includes the Floodway, the Special Floodplain District, the Approximated Floodplain District, and the Other Flood Districts (designated as Zone X in the Town of Abingdon on Flood Insurance Rate Map, Washington County, Virginia and Incorporated Areas).
- 15-7-11 Flood Insurance Rate Map (FIRM); means an official map of a community, on which the FEMA has delineated both the areas of special flood hazard 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).
- 15-7-12 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.
- 15-7-13 Flood or Flooding;
- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. *Mudflows which are proximately caused by flooding as defined in paragraph (a.)(2) 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.*

b. *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 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 (a) (1) of this definition.*

15-7-14 Floodplain management; *A term applied to full range of public policy and action for ensuring wise use of the floodplains. It includes everything from collection and dissemination of flood control information to actual acquisition of floodplain lands, including the enactment and administration of floodplain regulations, including building codes and the building of flood-modifying structures.*

15-7-15 Floodplain or flood-prone area; *Any land area susceptible to being inundated by water from any source.*

15-7-16 Floodproofing; *A combination of design modifications that results in a building or structure that is subject to flooding, including the attendant utility and sanitary facilities, being watertight with walls substantially impermeable to the passage of water.*

15-7-17 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 base flood elevation more than one foot. The area identified as "Floodway" in the FIS prepared by FEMA.*

The term shall also include floodway areas which have been identified in the FIS prepared by the FEMA.

15-7-18 Floodway fringe; *The floodway fringe encompasses the portion of the floodplain that could be completely obstructed without increasing the base flood elevation by more than 1.0 foot at any point.*

15-7-19 Highest adjacent grade; *The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.*

15-7-20 Historic structure; *Any structure that is:*

a. *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;*

b. *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;*

c. *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,*

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

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

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

15-7-21 Lowest floor; *The floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage 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 44CFR §60.3.*

15-7-22 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.*

- 15-7-23 New construction; For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after September 29, 2010 or after **March 16, 1988**, whichever is later, and includes any subsequent improvements to such structures. For floodplain management or development 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 the Town of Abingdon and includes any subsequent improvements to such structures.
- 15-7-24 One-hundred-year flood; The flood having a one percent (1%) chance of being equaled or exceeded in any given year. It does not imply that no greater flood is likely to occur, nor that such a flood will not happen more often than once every hundred years.
- 15-7-25 Recreational vehicle; A vehicle which is
- a. built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. designed to be self-propelled or towable; and,
 - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- 15-7-26 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.
- 15-7-27 Special flood hazard area; The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 15-8-4 of this ordinance.
- 15-7-28 Start of construction; 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. 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.
- 15-7-29 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.
- 15-7-30 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.
- 15-7-31 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:
- a. 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
 - b. any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.
- 15-7-32 Violation; The failure of a structure or other development to be fully compliant with the Town of Abingdon’s flood plain management regulations in this article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sec. 60.3(d)(3) of the National Flood Insurance Program regulations, is presumed to be in violation until such time as that documentation is provided.

15-7-33 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.

Section 15-8 Establishment of flood hazard districts.

15-8-1 Basis of Districts The various flood hazard districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the FIS and the FIRM for Washington County, Virginia and incorporated areas prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 29, 2010, and any subsequent revisions or amendments thereto. The boundaries of the Special Flood Hazard Area and Flood Hazard Districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Abingdon Planning Department offices.

a. The Floodway District is delineated for purposes of this ordinance using the criteria that a certain area within the floodplain must be capable of carrying the water of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point. These areas included in this district are specifically defined in Table 3 of the above-referenced FIS and shown on the accompanying FIRM (FIRM) on file with the Abingdon Planning Department.

b. The Floodway Fringe District shall be those areas identified as an AE Zone on the maps accompanying the FIS for which the base flood elevations have been provided.

c. The Approximated Floodplain District shall be those areas identified as an A Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the base flood floodplain boundary has been approximated. 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 base 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., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. 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 Abingdon.

d. Other Flood Districts shall be those areas identified as Zone X on the maps accompanying the Flood Insurance Study. This zone includes areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile.

15-8-2 Overlay concept:

a. The flood hazard 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 floodplain districts shall serve as a supplement to the underlying district provisions.

b. If there is any conflict between the provisions or requirements of the flood hazard districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the flood hazard districts shall apply.

c. In the event any provisions concerning a flood hazard district is declared inapplicable as a result of any legislative or administrative action or judicial discretion, the underlying district provisions shall remain applicable.

15-8-3 Official flood hazard districts map. The boundaries of the flood hazard 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 by the Town of Abingdon Planning Department.

15-8-4 District Boundary Changes. The delineation of any of the flood hazard districts may be revised by the Town of Abingdon 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.

15-8-5 Interpretation of district boundaries. Initial interpretations of the boundaries of the flood hazard district shall be made by the 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.

15-8-6 Submitting Technical Data The Town of Abingdon'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, the Administrator 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 15-9 Utilization of the flood hazard district.

All uses, activities and development occurring within any flood hazard district shall be undertaken only upon the issuance of a *special use* 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 (VA USBC) and the Town of Abingdon Subdivision Regulations (VA USBC is available online, public libraries and at the office of the building official at the Abingdon Town Hall). Prior to the issuance of any such permit, the 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 or any watercourse, drainage ditch or any other drainage facility or system.

15-9-1 The placement of any manufactured home (mobile home) within any Flood Hazard District is specifically prohibited, except as a replacement for a manufactured home on an individual lot or parcel or in an existing manufactured home park or subdivision. A replacement manufactured home may be placed provided all the requirements specified in Section 15-12-5(d) are met.

15-9-2 Any order, requirement, decision or determination made by the administrator or designee in the administration or enforcement of this article or of any ordinance adopted pursuant thereto shall follow the process of appeal as set forth in the Provisions for Appeal in the Town of Abingdon Zoning Ordinance, herein.

15-9-3 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:

- a. The elevation of the Base Flood at the site.
- b. The elevation of the lowest floor (including basement).
- c. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.
- d. Topographic information showing existing and proposed ground elevations.

15-9-4 The following uses shall be permissible in the floodway district provided that they are in compliance with the provisions of the underlying district and provided that the development will not increase base flood elevations:

- a. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.
- b. Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, swimming areas, hiking and horseback trails, wildlife and nature preserves, game farms, fish hatcheries and fishing areas.
- c. Open accessory residential uses such as yard areas, gardens, play areas and previous loading areas, but not storage or other structures.
- d. 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 administrator. Development activities which increase the water surface elevation of the base flood may be allowed, provided that the developer or applicant first applies – with the Town of Abingdon’s endorsement – for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency.

e. If Section 15-9-5 (d) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 15-12.

15-9-5 *The following uses may be permitted in the floodway fringe district provided that they are in compliance with the provision of the underlying district:*

a. Structures, except for mobile homes, accessory to the uses and activities in section 15-9-4, above.

b. Utilities and public facilities and improvements such as railroads, streets, bridges, transmission lines, pipe lines, water and sewage treatment plants and other similar, related uses.

c. Temporary uses such as circuses, carnivals and similar activities.

d. Other similar uses and activities provided that they cause no increase in flood heights and/or velocities. All uses, activities and structural developments shall be undertaken in strict compliance with the floodproofing provisions contained in this and all other applicable codes and ordinances.

e. 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 Zone AE 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 Town of Abingdon. Development activities in Zone AE, on the Washington County, Virginia and Incorporated Areas 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 or applicant first applies – with the Town of Abingdon’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency.

15-9-6 *Approximated floodplain districts: In flood fringe or approximated flood plain district, the development and/or use of land shall be permitted in accordance with the regulations of underlying district provided that all such uses, activities and/or developments shall be undertaken in strict compliance with the elevation, flood-proofing and related provisions contained in the VA USBC and all other applicable portions of the town code and ordinances. For development proposed in the approximate floodplain 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 administrator.*

The administrator reserves the right to require a hydrologic and hydraulic analyses for any development.

When base flood elevation data is utilized, the lowest floor shall be elevated a minimum of one foot or above the base flood elevation. During the permitting process, the administrator shall obtain:

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

b. 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.

15-9-7 *In Other Flood Districts, the development and/or use of land shall be permitted in accordance with the regulations of underlying district provided that all such uses , activities and/or developments shall be undertaken in strict compliance with the elevation, floodproofing and related provisions contained in the VA USBC and all other applicable portions of the town code.*

a. All new construction and substantial improvements of residential structures shall have the lowest floor, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor shall be elevated no less than one foot above the highest adjacent grade.

b. All new construction and substantial improvements of non-residential structures shall

1. Have the lowest floor elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, shall be elevated at least one foot above the highest adjacent grade; or,

2. *Together with attendant utility and sanitary facilities, be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
- c. *Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.*

Section 15-10 Procedures for considering variances in the flood hazard districts.

15-10-1 Variances shall be authorized only upon notice and hearing as required by the Code of Virginia, §15.1-431, as amended, and in accordance with the sections set forth in Article 22 of the Zoning Ordinance for the Town of Abingdon, Virginia. Variances shall be issued only upon a finding by the Board of Zoning Appeals that:

- a. *The strict application of the ordinance would produce undue hardship to the applicant; and*
- b. *After the Board of Zoning Appeals has determined that the granting of such variance will not result in:*
 1. *unacceptable or prohibited increases in flood height; or*
 2. *additional threats to public safety, or otherwise strictly against public policy; or*
 3. *extraordinary public expense; or*
 4. *the authorization of said variance shall not:*
 - (a) *create nuisances; or*
 - (b) *cause fraud or victimization of the public; or*
 - (c) *conflict with local laws or ordinances.*

15-10-2 All actions by any agent, commission or board of the Town including but not limited to variances, shall consider all pertinent facts found in other sections of the Zoning Ordinance and especially:

- 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 base flood elevation.*
- b. *The danger that materials may be swept on to other lands or downstream or 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 Town and surrounding 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.*

15-10-3 When considering variances, the Board of Zoning Appeals shall ensure that the granting of same will comply with the requirements of the VA USBC. In addition, no variance within the floodway will be granted if it will cause an increase in the base flood elevation.

15-10-4 The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to a registered design professional 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.

- 15-10-5 Variances shall be issued only after the Board of Zoning Appeals has made its determination in accordance with 15-10-1 (a – b) above, and as set forth in ~~Article 22~~ the Provisions for Appeal article of the Zoning Ordinance for the Town of Abingdon, Virginia.
- 15-10-6 Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.
- 15-10-7 The Board of Zoning Appeals shall notify the applicant for a variance, in writing and signed by the Administrator with regard to applicant's petition. If the requested variance is authorized and the applicant is, thereby, allowed to construct a structure below the base flood elevation, said Board of Zoning Appeals shall include in such written communication official notification that such construction below the base flood elevation:
- a. increases the risks to life and property; and
 - b. will result in increased premium rates for flood insurance.
- 15-10-8 Should the decision of the Board of Zoning Appeals uphold the prior decision of the Administrator, the above mentioned written communication notice shall include instructions as to appeal procedure from the Board's decision, as found in **Article 22, Sections 22-5 – 22-7** of the Zoning Ordinance for the Town of Abingdon, Virginia.
- 15-10-9 A record shall be maintained of the above referenced 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 15-11 Existing structures in the floodplain.

- 15-11-1 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 and/or uses in the Floodway District 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 districts to an extent or amount of less than fifty (50) percent of its market value (determined by an independent licensed appraiser and as based upon percentage determination of a registered design professional, at the burden of the applicant) 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 districts to an extent or amount of fifty (50) percent or more of its market value (determined by an independent licensed appraiser and as based upon percentage determination of a registered design professional, at the burden of the applicant) shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the VA USBC.

Section 15-12 Site design regulations.

- 15-12-1 All subdivision proposals and other proposed developments, including utilities and drainage, shall be located and designed to be consistent with the need to minimize flood damage as stated in the VA USBC. Base flood elevation data shall be provided for subdivision proposals and other proposed development.
- 15-12-2 Site plan criteria; The owner or developer of any proposed subdivision and/or other proposed development shall submit a site plan to the administrator which includes the following information in addition to that required in Site Plan Review regulations, as set-forth in the Town of Abingdon Zoning Ordinance.
- a. All requirements stated heretofore in this ordinance.
 - b. Name of engineer, surveyor or other qualified person responsible for providing the information required in this section.
 - c. A map showing the location of the proposed subdivision and other new development with respect to the town and adjacent county flood prone areas, proposed lots and sites, fills, flood or erosion protection facilities and areas subject to special deed restriction. In addition, it is required that all subdivision

proposals greater than twenty-five (25) lots or five (5) acres, whichever is the lesser, shall include base flood elevation data.

d. Where the subdivision and other new development lies partially or completely in the flood prone areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet, depending upon the slope of the land, and shall identify accurately the boundaries of the flood prone areas.

Property with slopes less than twenty percent (20%) shall show contours at intervals of two (2) feet.

15-12-3 Design criteria Additional information required for purposes of flood hazards mitigation in proposed subdivisions or other developments which are within the floodplain district as delineated. The following additional provisions shall be met:

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

c. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

d. Sanitary sewer facilities All new or replacement sanitary sewer facilities (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

e. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

f. Water facilities All new or replacement water facilities and/or supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and shall be located and constructed to minimize or eliminate flood damages.

g. Drainage facilities All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The system shall ensure drainage away from buildings and onsite waste disposal sites. Drainage plans shall be consistent with facilities discharge of excess runoff into adjacent properties.

h. Utilities All utilities such as gas lines, electrical and telephone systems being placed in floodprone areas should be located, elevated (where possible) and constructed to minimize the chance of impairment during a flooding occurrence.

i. 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.

j. Water supply systems, sanitary sewage systems and gas and oil supply systems shall be designed to preclude infiltration of flood waters into the systems and discharges from the systems into flood waters.

k. Adequate drainage shall be provided to minimize exposure to flood heights.

l. The preliminary plat requirements shall include a map showing the location of the proposed subdivision and/or land development with respect to any zoning classifications, utility easements, designated flood district including information on, but not limited to, the base flood elevations, boundaries of the floodplain district, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restrictions in addition to the requirements of the Town of Abingdon Subdivision Ordinance.

15-12-4 In addition to the provisions of Section 15-12-3, in all special flood hazard areas, the additional provisions shall apply:

a. 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 Floodplain Management) and the Federal Insurance Administrator.

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

15-12-5 In all special flood hazard areas where base flood elevations have been provided in the FIS or generated according Section 15-9-6, the following provisions shall apply:

- a. Residential Construction New construction or substantial improvement of any residential structure shall have the lowest floor, elevated to at least one (1) foot above the base flood elevation.
- b. Non-Residential Construction New construction or substantial improvement of any commercial, industrial, or non-residential building shall have the lowest floor, including basement, elevated to at least one (1) foot above the base flood elevation. Buildings located in Zone AE may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the base flood elevation 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 design professional 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 floodproofed, shall be maintained by administrator.
- c. Elevated Buildings Fully enclosed areas, of proposed 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.
 2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
 3. include, in Zone AE, 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 registered design professional 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. Manufactured Homes All manufactured homes replaced, or substantially improved, on individual lots or parcels 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:
 1. the elevation and anchoring requirements of the VA USBC; and
 2. shall be anchored to prevent flotation, collapse, or lateral movement of the structure. 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; and
 3. shall have the lowest floor elevated to one (1) foot above the base flood elevation.
- e. Recreational Vehicles 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 Section 15-12-5 (d).

Section 15-13 Regulation of real estate sales in flood hazard areas.

15-13-1 Any owner or partial owner of real estate or his agent and any real estate broker or his agent who contracts to sell or sells real estate without first notifying in writing the buyer or his agent that such real

estate is subject to floodplain regulations shall be subject to the penalties set forth in section 15-13-3 below. Real estate professionals within the Commonwealth of Virginia are subject to any/all applicable sections thereunder, including but not limited to Title 55, Code of Virginia, 1950, as amended.

15-13-2 Floodplain regulations referred to in section 15-13-1 include zoning ordinances, subdivision regulations and building codes which impose restrictions specifically relating to flooding on the whole or a portion of the lands.

15-13-3 The penalties for violation of section 15-13-1 above may, at the discretion of the court, include any or all of the following:

- a. Rescission of the contract at the option of the buyer.*
- b. Payment to the buyer for damages he may have suffered whether the buyer rescinds the contract or not.*
- c. A fine of not more than one thousand dollars (\$1,000).*

Section 24-2. Penalties.

- a. Any person who violates any of the provisions of this article shall be guilty of a Class 1 misdemeanor and upon conviction shall be subject to punishment by a fine of not more than two-thousand five hundred dollars (\$2,500.00) per violation per day and confinement in jail for not more than twelve (12) months, either or both.*
- b. Each day during which a violation of this article occurs or continues shall be deemed a separate and distinct violation of this ordinance.*
- c. Any person who commits any of the acts prohibited by this article or violates any of the provisions of this ordinance shall be liable to the town for any/all costs of testing, containment, cleanup, abatement, removal, disposal and any other related costs or expenses that the town may incur in connection with the enforcement of this article, the prohibition or correction of a violation of this article, or the abatement of any violation hereunder.*
- d. In addition to the penalties set forth above, all other actions are hereby reserved, including an action in equity for the proper enforcement of this ordinance, the imposition of a civil fine or penalty for any violation or noncompliance or permitting it to continue as provided for by the Code of Virginia (1950), as amended, §10.1-603.14 which are incorporated herein by reference and authorizes civil penalties and injunctions to address violations, hereunder; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this ordinance may be declared by the town council to be a public nuisance and abatable as such.*
- e. Any person who knowingly makes any false statements, representations or certifications in any record, report, or other document, either filed or requested pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the director under this article in monitoring discharges, shall be guilty or liable of this article.*

Mr. Bundy asked if there was anyone else to speak for or against the Proposed Amendments. There being no one else to speak, Mr. Bundy declared the public hearing closed and asked if there was a motion in terms of the Proposed Amendments.

There being no further discussion, Mr. Kimbrell made a motion that it be recommended to Town Council, to approve the Proposed Amendments to Repeal, Amend and Reenact, Article 15, Flood Hazard District, Article 24-2, Penalty, and Article 26, Definitions, of the Town of Abingdon Zoning Ordinance. Mr. Shuman seconded the motion.

After further discussion, Mrs. Lowe made a motion to amend Mr. Kimbrell’s previous motion to include a “conflicts of law” sentence in Article 15.

Mr. Kimbrell seconded the motion.

VOTE:

Mrs. Lowe Aye
Mr. Kimbrell Aye
Mr. Kelly Aye
Mr. Shuman Aye
Mr. Bundy Aye

The motion passed.

(4) PUBLIC HEARING

SPECIAL USE PERMIT - Damian Sooklal, Representative, 20377 Josh Allen Drive, Abingdon, Virginia 24211; application for Evanash Properties, LLC, requesting a Special Use Permit pursuant to Article 8, Section 8-2b, Special Use, of the Zoning Ordinance, southwest corner of Reservoir Street and West Valley Street, for use of Museums within the O&H Old & Historic District. **Tax Map No. 12 (1) 67.**

This is a request for a Special Use Permit for the use of a museum to be located at the southwest corner of Reservoir Street and West Valley Street.

Dr. Damian Sooklal, applicant, in keeping with the Town’s rich cultural heritage, wishes to open a museum that will focus on artifacts that depicts early American and specifically on implements used in everyday country life. One section of the proposed museum will house antique medical devices and tools used in pharmacy, and will also highlight local Town history and culture.

After discussion, Mr. Shuman made a motion that the request for the Special Use Permit pursuant to Article 8, Section 8-2b, Special Use, of the Zoning Ordinance, southwest corner of Reservoir Street and West Valley Street, for use of Museums within the O&H Old & Historic District be recommended to Town Council for approval. Mr. Kelly seconded the motion.

VOTE:

Mr. Shuman Aye
Mr. Kelly Aye
Mrs. Lowe Aye
Mr. Kimbrell Aye
Mr. Bundy Aye

The motion passed.

- (5) **CERTIFICATE OF APPROPRIATENESS - Mountain Empire Oil Company (Road Runner Market, 191 Jonesboro Road), Don Frye, Representative,** request for approval of new signage, to re-image existing station from Chevron to accommodate BP or Sunoco face replacement in pylon, reface canopy fascia, paint building and re-image pumps **Tax Map No. 104C2 (5) 2, 2A**

This is a request for approval of new signage, in order to re-image the existing Chevron station face replacements in pylon, reface canopy fascia, paint building and re-image pumps to accommodate a BP or Sunoco station. The existing business is located at 191 Jonesboro Road.

After discussion, Mr. Lowe made a motion to approve this application request, as presented. Mr. Kimbrell seconded the motion.

VOTE:

- Mrs. Lowe Aye
- Mr. Kimbrell Aye
- Mr. Kelly Aye
- Mr. Shuman Aye
- Mr. Bundy Aye

The motion passed.

- (6) **CERTIFICATE OF APPROPRIATENESS - Mountain Empire Oil Company (Road Runner Market, 906 East Main Street), Don Frye, Representative,** request for approval of new signage, to re-image existing station from Chevron to BP or Sunoco face replacement in pylon, reface canopy fascia, paint building and re-image pumps. **Tax Map No. 106 (3) 9.**

This is a request for approval of new signage, in order to re-image the existing Chevron station face replacements in pylon, reface canopy fascia, paint building and re-image pumps to accommodate a BP or Sunoco station. The existing business is located at 906 East Main Street.

After discussion, Mrs. Lowe made a motion to approve this application request, as presented. Mr. Kimbrell seconded the motion.

VOTE:

- Mrs. Lowe Aye
- Mr. Kimbrell Aye
- Mr. Kelly Aye
- Mr. Shuman Aye
- Mr. Bundy Aye

The motion passed.

There being no further business, Mr. Shuman made a motion made that the meeting be adjourned. Mr. Kimbrell seconded the motion, with unanimous approval.

Matthew T. Bundy, Chairman

Gregory W. Kelly, Secretary