

ORDINANCE-3828

AN ORDINANCE TO AMEND SECTION 1.3, 4.3,  
4.10, 6.1, 6.3 AND 6.7 OF THE FLOODPLAIN  
ORDINANCE PERTAINING TO FUNCTIONALLY  
DEPENDENT USES, RESIDENTIAL  
CONSTRUCTION REQUIREMENTS AND  
GRANDFATHERING

Sections Amended: §§ 1.3, 4.3, 4.10, 6.1, 6.3, and  
6.7

WHEREAS, the public necessity, convenience, general welfare and good zoning  
practice so require;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA  
BEACH, VIRGINIA:

That Sections 1.3, 4.3, 4.10, 6.1, 6.3 AND 6.7 of the Floodplain Ordinance are  
hereby amended and reordained to read as follows:

**APPENDIX K – FLOODPLAIN ORDINANCE**

**ARTICLE I. – GENERAL PROVISIONS**

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**Sec. 1.3. – Definitions.**

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*Freeboard.* A factor of safety usually expressed in feet above the base flood elevation  
for purposes of floodplain management. "Freeboard" tends to compensate for the many  
unknown factors that could contribute to flood heights greater than the height calculated  
for a selected size flood and floodway conditions, such as wave action, bridge openings,  
and the hydrological effect of urbanization in the watershed. When a freeboard is  
included in the height of a structure, the flood insurance premiums may be less  
expensive.

*Functionally dependent use.* A use which cannot perform its intended purpose unless it  
is located or carried out in close proximity to water. The term includes only docking  
facilities, port facilities that are necessary for loading and unloading of cargo or  
passengers, and ship building and ship repair facilities, but does not include long-term  
storage or related manufacturing facilities.

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46 **ARTICLE IV. FLOODPLAIN DISTRICT PROVISIONS**  
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50 **Sec. 4.3. Elevation and construction requirements.**  
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52 In all floodplain districts, with the exception of Coastal A and Coastal High  
53 Hazard (VE) zones, the following provisions shall apply:  
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- 55 A. Residential construction requirements. The lowest ~~flood~~ floor, including  
56 basement, shall be set to the higher of the following:  
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58 . . . .  
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60 **Sec. 4.10. Floodplain subject to special restrictions.**  
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62 A. All SFHAs that ultimately drain to Back Bay or the Currituck Sound shall be identified  
63 as a floodplain subject to special restrictions.  
64

65 B. The following provisions shall apply within the floodplain subject to special  
66 restrictions:  
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- 68 1. Notwithstanding any provision of this ordinance to the contrary, no filling shall  
69 be permitted, including filling with material excavated from the same floodplain  
70 except for:  
71  
72 a. The purpose of public roadway or other similar public works  
73 construction undertaken by the Department of Public Works or Virginia  
74 Department of Transportation, or their agent for construction. This  
75 construction includes flood protection and flood mitigation projects. If a  
76 project received discretionary approval or was submitted for site plan  
77 review prior to February 1, 2022, this can include any public roadway or  
78 other similar public works construction;  
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82 **ARTICLE VI. – VARIANCES AND APPEALS**  
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84 **Sec. 6.1. – Administrative variances.**  
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86 The floodplain administrator shall approve or deny an application requesting an  
87 administrative variance after receipt of a complete application. Administrative variances  
88 will only be granted if they are not contrary to the public interest in cases in which the  
89 strict application of the provisions of this ordinance would effectively prohibit or  
90 unreasonably restrict the use of the subject property. No variance shall be granted for

any proposed use, development, or activity within any Floodway District that will cause any increase of the base flood elevation. Administrative variances may only be granted for the following uses, development, or redevelopment:

- A. As defined in section 4.10, floodplains subject to special restrictions, for filling only.
- B. Any structure or use sustaining damage not caused by flood to an extent or amount of fifty (50) percent or more of its market value to allow the structure to be rebuilt to the freeboard height in effect at the start of construction for the original structure. If the structure is a pre-FIRM structure, full compliance with the current VAUSBC freeboard above the base flood elevation is required. Structures that are utilizing an approved land management plan for their on-site waste disposal may be allowed to continue the use of the land management plan as long as it is approved by the city and the health department, even for damage or destruction resulting from flood.
- C. As defined in section 4.8 B, X and X (Shaded) Zone requirements. (Other Areas of Flood Risk), and 4.3 A(ii) when the required finished floor is higher than the BFE plus two feet of freeboard, where the floodplain administrator, in consultation with the Development Services Center, has determined that the proposed stormwater engineering design will approximately mitigate any impacts to the finished floor of the nonresidential development.
- (D) Any new construction or substantial improvement of functionally dependent uses without requiring compliance with elevation or dry floodproofing requirements. Said administrative variance shall be issued only after determining whether the inclusion of wet floodproofing measures satisfies the requirement that variances be the minimum necessary.

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### **Sec. 6.3. Application process.**

- A. Applications for variances under Section 6.2 City council from the requirements of this ordinance shall be made to the city council and filed with the director of planning. The fee for such applications shall be seven hundred eighty dollars (\$780.00). Such fee shall include all costs of notifications and advertising. Except in cases in which such fee is waived, the director shall not accept any application not accompanied by payment of the required fee. The procedure for the advertising, hearing and determination of applications for floodplain variances shall be in accordance with the requirements pertaining to applications for subdivision variances, as set forth in section 9.4 of the subdivision ordinance. In cases in which a variance application is filed by reason of a natural disaster that is the subject of a federal declaration of emergency, application and associated advertising fees shall

be waived and such application shall be given expedited processing to the maximum practical extent.

B. All variance applications shall be accompanied by the following:

1. A separate map, on a 1" = 100' or greater scale, identifying all proposed land disturbance, including fill and mitigation areas, and the limits of the existing and proposed SFHAs, tidal and non-tidal wetlands, Southern Rivers Watershed Management Area Buffer, and CBPA Resource Protection Area Buffer; and

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#### **Sec. 6.7. Appeals to variance decisions.**

A. Appeals of decisions by the city council under Section 6.2 of this ordinance shall be subject to review by the Circuit Court of the City of Virginia Beach, if filed within thirty (30) days from the date of city council action.

B. Appeals to decisions made by the floodplain administrator under 6.1 of this ordinance may be filed as a City council variance under Section 6.2 of this ordinance.

Adopted by the Council of the City of Virginia Beach, Virginia, on the 16<sup>th</sup> day of September, 2025.