

SECTION 46- FLOOD AREA MANagements REGULATIONS

46.01 STATUTORY AUTHORIZATION AND PURPOSE

46.01.01 STATUTORY AUTHORIZATION

The Legislature of the State of Connecticut has in Title 7, Chapter 98, Section 7-148(c)(7)(A) and in Title 8, Chapter 124, Section 8-2 of the General Statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Planning and Zoning Commission of the City of Middletown, Connecticut, does ordain as follows:

46.01.02 FINDING OF FACT

The flood hazard areas of the City of Middletown are subject to periodic flood inundation which results in the loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

These flood losses are caused by the cumulative effect of obstructions in the floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazards to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damage. Uncontrolled development and use of the floodplains can adversely affect the community.

The City of Middletown has voluntarily participated in the National Flood Insurance Program (NFIP) since December 16, 1980. The NFIP is founded on a mutual agreement between the federal government and each participating community. Local, state and federal governments must share roles and responsibilities to meet the goals and objectives of the NFIP. The community's role is of paramount importance. Property owners are able to receive federally-subsidized flood insurance only if the community enacts and enforces the minimum floodplain regulations required for participation in the NFIP.

46.01.03 STATEMENT OF PURPOSE

It is the purpose of this regulation to regulate floodplain development, promote public health, safety, and general welfare, and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

A. To protect human life and health, and prevent damage to property;

- B. To minimize expenditure of public funds for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions and other economic disruptions;
- E. To minimize damage to public facilities, infrastructure and utilities, such as water and gas mains, electric, telephone and sewer lines, and streets and bridges, located in the floodplain;
- F. To help maintain a stable tax base by providing for the sound use and development of flood hazard areas in such a manner as to minimize flood damage and flood blight areas;
- G. To insure that potential buyers are notified that property is in a flood hazard area;
- H. To prevent increase in flood heights that could increase flood damage and result in conflicts between property owners;
- I. To ensure that those who occupy the flood hazard areas assume responsibility for their actions; and
- J. To discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

46.01.04

OBJECTIVES

In order to accomplish its purposes, this regulation includes objectives, methods and provisions that:

- A. Restrict or prohibit uses which are dangerous to health, safety and property due to flood or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of flood waters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- E. Prevent or regulate the construction of barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards to other lands.

- 46.02 DEFINITIONS
Unless specifically defined below, words and phrases used in this regulation shall have the same meaning as they have in common usage and to give this regulation its most reasonable application.
- 46.02.01 Area of Shallow Flooding (for a community with AO or AH Zones only)
A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- 46.02.02 Base Flood
The flood having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood, as published by the Federal Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a Flood Insurance Rate Map (FIRM).
- 46.02.03 Base Flood Elevation (BFE)
The elevation of the crest of the base flood or 100-year flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.
- 46.02.04 Basement
Any area of the building having its floor subgrade (below ground level) on all sides.
- 46.02.05 Building
See definition for "Structure".
- 46.02.06 Cost
As related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior finishing elements, structural elements, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in

appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include: cost of plans and specifications, survey costs, permit fees, outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

46.02.07 Critical Facility

A development which is critical to the community's public health and safety, are essential to the orderly functioning of a community, store or produce highly volatile, toxic or water-reactive materials, or housing occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include: jails, hospitals, fire stations, police stations, nursing homes, schools, wastewater treatment facilities, drinking water plants, and gas/oil/propane storage facilities.

46.02.08 Dangerous Material

Any material or substance which may pose an unreasonable risk to the health and safety of individuals, property, water supplies and/or the environment if discharged or released. These materials or substances may be defined as explosive, blasting agent, flammable gas, non-flammable gas, combustible liquid, flammable solid, organic peroxide, oxidizer, poison, irritating material, etiologic agent, radioactive material, corrosive material, other regulated material.

46.02.09 Development

Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or structures; the construction of additions, alterations or substantial improvements to buildings or structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage, deposition, or extraction of materials; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

46.02.10 Existing Manufactured Home Park or Subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

- 46.02.11 Expansion to an Existing Manufactured Home Park or Subdivision
The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- 46.02.10 Federal Emergency Management Agency (FEMA)
The federal agency that administers the National Flood Insurance Program (NFIP).
- 46.02.11 Finished Living Space
Finished living space can include, but is not limited to, a space that is heated and/or cooled, contains finished floors (tile, linoleum, hardwood, etc.), has sheetrock walls that may or may not be painted or wallpapered, and other amenities such as furniture, appliances, bathrooms, fireplaces and other items that are easily damaged by floodwaters and expensive to clean, repair or replace. A fully enclosed area below the base flood elevation (BFE) cannot have finished living space and needs to be designed for exposure to flood forces. These spaces can only to be used for parking, building access or limited storage.
- 46.02.12 Five Hundred (500) Year Area
Means the flood that has a .2% (1/5th of 1%) chance of occurring each year.
- 46.02.13 Flood or Flooding
A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.
- 46.02.16 Flood Boundary and Floodway Map (FBFM)
The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated the limits of the regulatory floodway and 100-year floodplain.
- 46.02.17 Flood Insurance Rate Map (FIRM)
The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (100-year floodplain) and the insurance risk premium zones applicable to a community. FIRM published after January 1990 may also show the limits of the regulatory floodway.

- 46.02.18 Flood Insurance Study (FIS)
The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.
- 46.02.19 Floodproofing
Protective measures added to or incorporated in a building that is not elevated above the base flood elevation to prevent or minimize flood damage. “Dry floodproofing” measures are designed to keep water from entering a building. “Wet floodproofing” measures minimize damage to a structure and its contents from water that is allowed into a building.
- 46.02.20 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 (1.0) foot. For the purposes of these regulations, the term “Regulatory Floodway” is synonymous in meaning with the term “Floodway”.
- 46.02.21 Functionally Dependent Use or Facility
A use or facility that 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 the loading and unloading of cargo or passengers, and ship building and ship repair facilities. The term does not include seafood processing facilities, long-term storage, manufacturing, sales or service facilities.
- 46.02.22 Highest Adjacent Grade (HAG)
The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 46.02.23 Historic Structure
Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the 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 historic 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.

46.02.24 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 an area meets the design requirements specified in Section 46.05.03(A)(3) of this regulation.

46.02.25 Manufactured Home

A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term also includes park trailers, travel trailers, recreational vehicles and other similar vehicles or transportable structures placed on a site for one hundred and eighty (180) consecutive days or longer and intended to be improved property.

46.02.26 Manufactured Home Park or Subdivision

A parcel or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale.

46.02.27 Market Value

Market value of the structure shall be determined by the property's tax assessment.

46.02.28 Mean Sea Level (MSL)

The North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

46.02.29 New Construction

Structures for which the "start of construction" commenced on or after August 28, 2008, the effective date of the floodplain management regulations, and includes any subsequent improvements to such structures.

- 46.02.30 New Manufactured Home Park or Subdivision
A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date, August 28, 2008, of the floodplain management regulation adopted by the community.
- 46.02.31 Recreational Vehicle
A vehicle which is: (a) built on a single chassis; (b) four hundred (400) square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towed by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
- 46.02.32 Special Flood Hazard Area (SFHA)
The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as Zones A, A1-30, AE, AO, AH, and the Coastal High Hazard Areas shown as Zones V, V1-30, and VE on a FIRM. The SFHA is also called the Area of Special Flood Hazard.
- 46.02.33 Start of Construction
For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and 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 one hundred and eighty (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 erections of temporary forms; not 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 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.

46.02.34 Structure

A walled and roofed building which is principally above ground, including a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

46.02.35 Substantial Damage

Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

46.02.36 Substantial Improvement

Any combination of repairs, reconstruction, rehabilitation, alterations, additions or other improvements to a structure, taking place during a ten (10) year period, in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure as determined at the beginning of such ten (10) year period. This term includes structures that have incurred “substantial damage”, regardless of the actual repair work performed. For purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. 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”.

46.02.37 Variance

A grant of relief by a community from the terms of the floodplain management regulation that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

46.02.38 Violation
Failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is resumed to be in violation until such time as that documentation is provided.

46.02.39 Water Surface Elevation
The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

46.03 GENERAL PROVISIONS

46.03.01 AREAS TO WHICH THIS REGULATION APPLIES
This regulation shall apply to all Special Flood Hazard Areas (SFHA) within the City of Middletown.

46.03.02 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS (SFHA)
The Special Flood Hazard Areas (SFHA) identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study (FIS) for the City of Middletown, dated August 28, 2008, and accompanying Flood Insurance Rate Maps (FIRM) and/or Flood Boundary and Floodway Maps (FBFM), dated August 28, 2008, and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this regulation. Since mapping is legally adopted by reference into this regulation it must take precedence when more restrictive until such time as a map amendment or map revision is obtained from FEMA.

The SFHA includes any area shown on the FIRM as Zones A, A1-30, AE, AO, and AH, including areas designated as a floodway on a FIRM or FBFM. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. Also included are areas of potential, demonstrable or historical flooding, including any area contiguous with but outside the SFHA identified by FEMA, and where the

land surface elevation is lower than the base flood elevation (BFE) as shown in the FIS, and the area is not protected from flooding by a natural or man-made feature. The FIRM, FBFM and FIS are on file in the Department of Planning, Conservation and Development, 245 DeKoven Drive Middletown, Connecticut, 06457.

46.03.03 RESIDENTIAL DEVELOPMENT PROHIBITION

All new residential development is not allowed in any flood area or flood zone, that is reported in most recent FIS and FRIM maps.

46.03.04 NON-RESIDENTIAL DEVELOPMENT REQUIREMENT

All new non-residential development will require a special exception from the Planning and Zoning Commission. See Section 44 of the Zoning Code in addition to the requirement required in this Section (Section 46).

46.03.05 STRUCTURES ALREADY IN COMPLIANCE

A structure or development already in compliance with this regulation shall not be made non-compliant by any alteration, modification, repair, reconstruction or improvement and must also comply with other applicable local, state, and federal regulations. No structure or land shall hereafter be located, extended, converted, modified or structurally altered without full compliance with the terms of this regulation and other applicable regulations.

46.03.06 ABROGATION AND GREATER RESTRICTIONS

This regulation is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this regulation and another ordinance, regulation easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

46.03.07 INTERPRETATION

In the interpretation and application of this regulation, all provisions shall be: considered as minimum requirements; 2) liberally construed in favor of the governing body, and; 3) deemed neither to limit nor repeal any other powers granted under State statutes.

46.03.08 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this regulation is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering consideration and research. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This regulation does not imply or guarantee that land

outside the Special Flood Hazard Area or uses permitted in such areas will be free from flooding and flood damages. This regulation shall not create liability on the part of the City of Middletown or by any officer or employee thereof for any flood damages that result from reliance on this regulation or any administrative decision lawfully made thereunder. The City of Middletown, its officers and employees shall assume no liability for another person's reliance on any maps, data or information provided by the City of Middletown.

46.03.09 SEVERABILITY

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

46.04 ADMINISTRATION

46.04.01 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Director of Planning, Conservation and Development is hereby appointed to administer, implement and enforce the provisions of this regulation.

46.04.02 CERTIFICATION

Where required under this regulation, a Connecticut registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this regulation. Such certification must be provided to the Director of Planning, Conservation and Development.

46.04.03 ESTABLISHMENT OF THE FLOODPLAIN DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required in conformance with the provisions of this regulation prior to the commencement of any development activities. Permits issued under this regulation shall expire if actual construction of a permitted structure does not commence within one hundred and eighty (180) days of the permit approval date.

46.04.04 PERMIT APPLICATION PROCEDURES

A floodplain development permit is hereby established for all construction and other development to be undertaken in Special Flood Hazard Areas in this community. Prior to any development activities, application for a floodplain development permit shall be made to the Director of Planning,

Conservation and Development on forms provided and may include, but not be limited to, plans in duplicate drawn to scale showing, at a minimum, the property lines and location of the parcel; the nature, location, dimensions, and elevations of the area in question; limit and extent of the 100-year floodplain and/or floodway boundary and base flood elevation(s); existing and proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required to be submitted to the Director of Planning, Conservation and Development:

A. Application Stage

The applicant shall provide at least the following information, where applicable. Additional information may be required on the permit application form.

1. Base flood elevation (BFE) for the site in question as determined in the FEMA Flood Insurance Study (FIS) or Flood Insurance Rate Map (FIRM). The FIS flood profiles provide more accurate BFE data than the FIRM. The extent of the 100-year floodplain and floodway must be depicted with a boundary line on any site plans and shown in relation to existing and proposed structures or development;
2. Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all new construction, substantial improvements or repairs to structures that have sustained substantial damage;
3. Elevation in relation to mean sea level to which any non-residential new construction, substantial improvements or repair to structures that have sustained substantial damage will be dry flood-proofed;
4. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other materials required by the Federal Emergency Management Agency (FEMA) in order to officially amend or revise the Flood Insurance Rate Map. The applicant must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained;

5. A statement and supporting documentation (all costs of project, market value of structure, etc.) verifying that the proposed alterations to an existing structure meets or does not meet the criteria of the substantial improvement and/or substantial damage definition. If a development meets the definition of substantial improvement and/or substantial damage, the structure must be brought into compliance with all floodplain regulations as if it was new construction;
6. Where applicable the following certifications by a Connecticut registered engineer or architect are required, and must be provided to the Director of Planning, Conservation and Development. The design and methods of construction must be certified to be in accordance with accepted standards of practice and with the provisions of Section 46.05.03.
 - (a) Non-residential flood-proofing must meet the provisions of Section 46.05.03(A)(2);
 - (b) Fully enclosed areas below the base flood elevation (BFE) must meet the minimum design criteria in Section 46.05.03(A)(3);
 - (c) No (0.00) increase in floodway water surface elevations are allowed. Any development in a floodway must meet the provisions of Section 46.05.03(D);
 - (d) Support structures and other foundation members shall be certified by a registered professional engineer or architect as designed in accordance with ASCE24, Flood Resistant Design and Construction.

B. Construction Stage

Upon completion of the applicable portion of construction, the applicant shall provide verification to the Director of Planning, Conservation and Development of the following as is applicable:

1. Lowest floor elevation shall be verified for:
 - (a) A structure in Zones A, AE, A1-30, AO or AH is the top of the lowest floor (including basement). An elevation certificate prepared by a Connecticut licensed land surveyor, engineer or architect must be provided;
 - (b) A non-residential structure which has been dry flood-

proofed is the elevation to which the flood-proofing is effective (Note: For insurance purposes, a dry flood-proofed, non-residential structure is rated based on the elevation of its lowest floor unless it is floodproofed to one foot above the BFE.) A FEMA Floodproofing Certificate (FEMA Form 81-65) prepared by a Connecticut licensed engineer or architect must be provided;

2. Deficiencies detected by the review of the above listed shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

46.04.05 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR
Duties of the Director of Planning, Conservation and Development shall include, but not be limited to:

- A. Review all permit applications for completeness, particularly with the requirements of Section 46.04.04(A).
- B. Review all permit applications to determine whether the proposed development and building sites will be reasonably safe from flooding.
- C. Review all development permits to assure that the permit requirements of this regulation have been satisfied.
- D. Notify the regional planning agency and affected municipality at least thirty-five (35) days prior to a public hearing if any change of regulation or use of a flood zone will affect an area within five hundred (500) feet of another municipality.
- E. Notify the adjacent communities and the Department of Environmental Protection (DEP), Inland Water Resources Division, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- F. Where interpretation is needed as to the exact location of boundaries of the area of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Director of Planning, Conservation and Development shall make necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided Section 46.07(F) of the Zoning Code.

- G. When base flood elevation data or floodway data have not been provided in accordance with Section 46.03.02 and Section 46.04.04, the Director of Planning, Conservation and Development shall determine the application to be incomplete and deny approval of the application without prejudice.
- H. All records pertaining to the provisions of this regulation shall be obtained and maintained in the office of the Director of Planning, Conservation and Development.

46.04.05 RESPONSIBILITIES OF THE APPLICANT

The applicant shall be responsible for the following, in addition to requirement set forth in this Section (Section 46).

- A. Seek all necessary permits that may be required by State and Federal Agencies, such permits include, but are not limited to, Stream Channel Encroachment Line (SCEL) Permit, Coastal Area Management (CAM) Permit, Water Diversion Permit, Dam Safety Permit, and Army Corps of Engineers 401 and 404 Permits.
- B. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- C. Obtain and maintain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new construction, substantial improvements or repair to a structure that has sustained substantial damage. Obtain Elevation Certificates provided by the applicant and prepared by a Connecticut licensed land surveyor, engineer or architect containing this information and record it with the Director of Planning, Conservation and Development.
- D. Obtain and maintain the elevation (in relation to mean sea level) to which the new construction, substantial improvement or repair to a structure that has sustain substantial damage has been flood-proofed. Obtain a FEMA Floodproofing Certificates for Non-Residential Structures (FEMA Form 81-65). Floodproofing Certificate provided by the applicant and prepared by a Connecticut licensed land surveyor, engineer or architect containing this information and record it with the Director of Planning, Conservation and Development.
- E. When flood-proofing is utilized for a particular structure obtain certification from a registered professional engineer or architect, in accordance with Section 46.05.03(A)(2) and record it with the Director of Planning, Conservation and Development.
- F. Require the applicant to provide base flood elevation data for all proposed development and subdivisions.

- G. Upon completion of the permitted development and prior to issuance of a Certificate of Occupancy (CO), necessary as-built surveys (prepared by a Connecticut Licensed Professional as per Connecticut State Statutes) and engineering and architectural certifications shall be provided to the Director of Planning, Conservation and Development demonstrating compliance with the approved plans and standards set forth in Section 46.04.04.

46.05 PROVISIONS FOR FLOOD HAZARD REDUCTION

46.05.01 GENERAL STANDARDS

In all Special Flood Hazard Areas (SFHAs) the following provisions are required:

- A. New construction, substantial improvements, and structures that have sustained substantial damage shall be constructed using methods and practices that minimize flood damage.
- B. New construction, substantial improvements, and structures that have sustained substantial damage shall be constructed with materials and utility equipment resistant to flood damage.
- C. New construction, substantial improvements, and repairs to structures that have sustained substantial damage shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- D. New construction, substantial improvements and repair to structures that have sustained substantial damage cannot be constructed or located entirely or partially over water.
- E. Electrical, heating, ventilation, plumbing, air conditioning equipment, HVAC ductwork, and other service facilities, or any machinery or utility equipment or connections servicing a structure shall be elevated to or above the base flood elevation (BFE) to prevent water from entering or accumulating within the components during conditions of flooding. This includes, but is not limited to, furnaces, oil or propane tanks, air conditioners, heat pumps, hot water heaters, ventilation ductwork, washer and dryer hook-ups, electrical junction boxes, and circuit breaker boxes.
- 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 system and discharges from the system 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.
- I. Above-ground storage tanks (oil, propane, etc.) which are located outside or inside of the structure must either be elevated above the base flood elevation (BFE) on a concrete pad, or be securely anchored with tie-down straps to prevent flotation or lateral movement, have the top of the fill pipe extended above the BFE, and have a screw fill cap that does not allow for the infiltration of flood water.
- J. In any portion of a watercourse that is altered or relocated, the flood carrying capacity must be maintained. Notify adjacent communities and the Connecticut Department of Environmental Protection (DEP), Inland Water Resources Division prior to any alteration or relocation of a watercourse.
- K. If any portion of a structure lies within the Special Flood Hazard Area (SFHA), the entire structure is considered to be in the SFHA. The entire structure must meet the construction requirements of the flood zone. The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.
- L. If a structure lies within two or more flood zones, the construction standards of the most restrictive zone apply to the entire structure (i.e., V zone is more restrictive than A zone; structure must be built to the highest BFE). The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. (Decks or porches that extend into a more restrictive zone will require the entire structure to meet the requirements of the more restrictive zone.)
- M. Compensatory Storage. The water holding capacity of the floodplain, except those areas which are tidally influenced, shall not be reduced. Any reduction caused by filling, new construction or substantial improvements involving an increase in footprint to the structure, shall be compensated for by deepening and/or widening of the floodplain. Storage shall be provided on-site, unless easements have been gained from adjacent property owners; it shall be provided within the same hydraulic reach and a volume not previously used for flood storage; it shall be hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project.

Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Compensatory storage can be provided off-site if approved by the municipality.

- N. Equal Conveyance. Within the floodplain, except those areas which are tidally influenced, as designated on the Flood Insurance Rate Map (FIRM) for the community, encroachments resulting from filling, new construction or substantial improvements involving an increase in footprint of the structure, are prohibited unless the applicant provides certification by a registered professional engineer demonstrating, with supporting hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachments shall not result in any (0.00 feet) increase in flood level (base flood elevation). Work within the floodplain and the land adjacent to the floodplain, including work to provide compensatory storage shall not be constructed in such a way so as to cause an increase in flood stage or flood velocity.
- O. Dry Land Access. Each new non-residential development in the Special Flood Hazard Area (Zones A, A1-30, AE, AO, AH) shall have direct access to a walkway, driveway, or roadway whose surface elevation is not less than the base flood elevation (BFE) and such escape route shall lead directly out of the floodplain area.

46.05.02

STANDARDS FOR WATERCOURSES WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS (UN-NUMBERED A ZONE), ADOPTED FLOODWAYS AND/OR FLOOD MAPPING

- A. Any new development shall require base flood elevation (BFE) data be provide with any application for new construction, substantial improvement, repair to structures which have sustained substantial damage or other development in Zone A without a FEMA-published BFE (un-numbered A Zone). Any new development shall obtain, review and reasonably utilize any BFE and floodway data available from a federal, state or other source, including data developed for subdivision proposals, as criteria for requiring that new construction, substantial improvements, repair to structures which have sustained substantial damage or other development in un-numbered A Zones on the community's Flood Insurance Rate Map (FIRM) meet the standards in Section 46.04.04 and Section 46.05.03. If no BFE can be determined, the lowest floor, including basement, must be elevated to two (2) feet above the highest adjacent grade next to the structure.

- B. When BFEs have been determined within Zones A1-30 and AE on FIRM but a regulatory floodway has not been designated, no new construction, substantial improvements, repair to structures which have sustained substantial damage or other development, including fill, shall be permitted which will increase the water surface elevation of the base flood more than one (1.0) foot at any point within the community when all existing and anticipated development is considered cumulatively with the proposed development.
- C. When watercourses without FEMA-published floodways are local with a new development the community shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1.0) foot at any point within the community.
- D. Any new construction, substantial improvements, repair to structures which have sustained substantial damage or other development in any area of potential, demonstrable or historical flooding within the community meet the standards in Section 46.04.04 and Section 46.05.03.
- E. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one (1.0) foot, provided that the community first completes all of the provisions required by Section 65.12.

46.05.03 SPECIFIC STANDARDS

- A. Construction Standards in Special Flood Hazard Areas (SFHA), Zones A, A1-30, AE.
 - 1. Residential Construction- All substantial improvements, and repair to structures that have sustained substantial damage which are residential structures shall have the bottom of the lowest floor, including basement, elevated one foot above the base flood elevation (BFE). Electrical, plumbing, machinery or other utility equipment that service the structure must be elevated to or above the BFE. All new construction residential shall not be allowed in the SFHA.

2. Non-Residential Construction- All new construction, substantial improvements, and repair to structures that have sustained substantial damage which are commercial, industrial or non-residential structures shall:
 - (a) Have the bottom of the lowest floor, including basement, elevated one foot above the base flood elevation (BFE); or
 - (b) In lieu of being elevated, non-residential structures may be dry flood-proofed to one (1) foot above the BFE provided that together with all attendant utilities and sanitary facilities the areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, and provided that such structures are composed of structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A Connecticut registered professional engineer or architect shall review and/or develop structural design specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice for meeting the provisions of this section. Such certification shall be provided to the Director of Planning, Conservation and Development on the FEMA Floodproofing Certificate, Form 81-65.
 - (c) Electrical, plumbing, machinery or other utility equipment that service the structure must be elevated to or above the BFE.
3. Fully Enclosed Areas Below The Base Flood Elevation (BFE) are prohibited for all new construction, substantial improvements, or repairs of substantial damage to residential or non-residential structures. These areas are formed by solid foundation wall below the base flood elevation that are designed to allow for the automatic entry and exit of flood waters and do not contain finished living space.

B. Manufactured (Mobile) Homes and Recreational Vehicles (RVs).

1. Manufactured (Mobile) Homes and Recreational vehicles (RVs) are prohibited in all Special Flood Hazard Areas (SFHAs). This includes SFHAs outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood.

C. Floodways

Located within Special Flood Hazard Areas (SFHA) are areas designated as floodways on the community's Flood Insurance Rate Maps (FIRM) or Flood Boundary and Floodway Maps (FBFM). Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, no encroachments, including fill, new construction, substantial improvements, repairs to substantially damaged structures and other developments shall be permitted unless certification, with supporting technical data, by a Connecticut licensed professional engineer is provided demonstrating that encroachments shall not result in any (0.00 feet) increase in flood levels during occurrence of the base flood discharge. Fences in the floodway must be aligned with the flow and be of an open design. A permit may be given which allows encroachments resulting in increases in base flood elevations provided the community first obtains a conditional floodway revision by meeting the requirements of C.F.R. 44, Chapter 1, Subsection 65.12.

D. Standards for Development in Areas of Shallow Flooding (Zones AO and AH). Located within the Special Flood Hazard Areas (SFHA) are areas designated as shallow flooding areas (AO and AH Zones). These areas have flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In AO and AH zones, the following provisions apply:

1. For residential structures, all new construction, substantial improvements and repair to structures that have sustained substantial damage shall have the lowest floor, including basement, elevated to one foot above the depth number specified on the Flood Insurance Rate Map (FIRM), in feet,

above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least three (3) feet above the highest adjacent grade. All new construction residential shall not be allowed in the Zones AO and AH.

2. For non-residential structures, all new construction, substantial improvements and repair to structures that have sustained substantial damage shall:

(a) Have the lowest floor, including basement, elevated to one foot above the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least three (3) feet above the highest adjacent grade; or

(b) Together with attendant utility and sanitary facilities be completely flood-proofed to or above the depth number, in feet, specified on the FIRM above the highest adjacent grade, or if no depth number is specified at least three (3) feet above the highest adjacent grade, 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. Designs for complying with this requirement must be certified by either a Connecticut licensed professional engineer or architect.

3. On-site drainage for all proposed structures in AO and AH Zones located on slopes shall provide adequate drainage paths to guide flood waters around and away from such structures.

E. Critical facilities are prohibited in all Special Flood Hazard Areas (SFHA).

F. Standards for the Placement of Fill in the Special Flood Hazard Area, Zones A, A1-30 and AE. The following standards apply to all fill activities in the Special Flood Hazard Area:

1. Fill material, upon which structures will be constructed or placed, must be compact to 95 percent of the Maximum Dry Density obtainable with the Standard Proctor Test method according to the ASTM Standard D-698 or an acceptable equivalent method. Fill soils must be fine-grained soils of low permeability, such as those classified as CH, CL, SC, or ML according to ASTM Standard D-2487, Classification of Soils for Engineering Purposes.
2. Fill slopes shall not be steeper than one foot vertical to two feet horizontal.
3. Adequate protection against erosion and scour is provided for fill slopes. When expected velocities during the occurrence of the base flood of five feet per second armoring with stone or rock protection shall be provided. When expected velocities during the base flood are five feet per second or less protection shall be provided by covering them with vegetative cover.
4. Fill shall be composed of clean granular or earthen material. Fill material must be homogeneous and isotropic. The soil must be all of one material and the engineering properties must be the same in all directions.

G. Prohibited Uses. The following uses are prohibited in the Special Flood Hazard Area (SFHA):

1. Storage or processing of dangerous materials.
2. Critical Facilities.
3. The storage of materials or equipment that, in time of flooding, could become buoyant and pose an obstruction to flow in identified floodway areas is prohibited. Construction materials and inventory at lumberyards, building supply centers, manufacturing facilities, and landscaping or garden supply stores are included. Storage of material or equipment not otherwise prohibited shall be firmly anchored to prevent flotation or lateral movement.

46.05 DESIGN STANDARDS FOR SUBDIVISION PROPOSALS

If a proposed subdivision, including the placement of a manufactured home park or subdivision, is located in or has portions located in a Special Flood Hazard Area (SFHA) the following requirements shall apply:

- 46.06.01 All subdivision proposals shall be consistent with the need to minimize flood damage;

- 46.06.02 All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 46.06.03 All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- 46.06.04 In all special flood hazard areas where base flood elevation (BFE) data is not available, the applicant shall provide a hydrologic and hydraulic engineering analysis performed by a Connecticut licensed professional engineer that generates BFEs for all subdivision proposals and other proposed development, including manufactured home parks and subdivisions. The applicant shall provide BFE data for all subdivision proposals, including manufactured home parks and subdivisions, as per Section 46.04.06(H).
- 46.06.05 All subdivision proposals shall provide the boundary of the SFHA, the floodway boundary, and base flood elevation.
- 46.06.06 Approval shall not be given for streets within a subdivision which would be subject to flooding. All street surfaces must be located at or above the base flood elevations.
- 46.06.07 In subdivisions, all proposed lots or parcels that will be future building sites shall have a minimum buildable area outside the natural (non-filled) 100-year floodplain. The buildable area shall be large enough to accommodate any primary structures and associated structures such as sheds, barns, swimming pools, detached garages, on-site sewerage disposal systems, and water supply wells, if applicable.

46.07 ENFORCEMENT

- 46.07.01 Each Floodplain Development Permit shall authorize, as a condition of approval, the Zoning and Wetlands Enforcement Officer to make regular inspections of the subject property. The Zoning and Wetlands Enforcement Officer is also authorized to inspect any property in a Special Flood Hazard Area (SFHA) where it appears that violations of these regulations may be taking place.

If the Zoning and Wetlands Enforcement Officer finds that any person is undertaking any construction, substantial improvement, filing, or any other

activity or maintaining a condition which in violation of these regulations, the Zoning and Wetlands Enforcement Officer shall:

- A. Issue a written order by certified mail, return receipt requested, to the subject property owner, ordering that the activity cease and ordering the property owner to either seek to obtain a Floodplain Development Permit prior to continuing with the activity or, if appropriate, ordering that all violations and/or obstructions be removed from the Special Flood Hazard Area (SFHA) immediately.
- B. Notify the Building Inspector and request that any floodplain development permit(s) in force be revoked or suspended and that a stop work order be issued.
- C. The Zoning and Wetlands Enforcement Officer may suspend or revoke a Floodplain Development Permit if it is found that the applicant has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of work as set forth in the application including application plans. Prior to revoking any permit, the Zoning/Wetlands Enforcement Officer shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action.
- D. Failure to comply with any written order issued under this section shall be considered a violation of these regulations and is subject to the penalties described in Section 46.08.
- E. In the event violations or obstructions are not promptly removed from the Special Flood Hazard Area (SFHA), the Zoning and Wetlands Enforcement Officer may take necessary corrective action allowed by the City Ordinance, Connecticut Statutes and/or Federal Regulations, or may notify the Connecticut Department Environmental Protection, or may direct the Director of Public Works to cause such work to be done and to place a lien against the property.
- F. Any person subjected to enforcement action pursuant to this regulation, may appeal any requirement, decision, determination of the Zoning and Wetlands Enforcement Officer to the Zoning Board of Appeals. Such person shall provide such information as necessary including appropriate certifications from a registered professional engineer or architect in order to substantiate the claim that the requirement, decision, or determination of the Zoning and

Wetlands Enforcement Officer was in error or unwarranted.

- G. Nothing contained herein shall prevent the owner of a residential dwelling, commercial or industrial building existing at the time of the adoption of regulation from repairing, replacing or restoring said building or the components thereof to substantially the same character and form as existed at the time of such adoption.
(Section amended effective 3/2/09)

46.08 PENALTIES FOR VIOLATION

Any violation of the provisions of this regulation or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grant of variances or special exceptions, shall constitute a misdemeanor. Any person who violates this regulation or fails to comply with any of its requirements shall, upon conviction thereof, be fined a penalty of \$250.00 per day and in addition shall pay all costs and reasonable legal fees involved in the case. Nothing herein contained shall prevent the City of Middletown from taking such lawful action as is necessary to prevent or remedy any violation.

(Entire section amended effective 8/28/08)

46.09 VARIANCE PROCEDURES

Section 53.07 of the Zoning Code provides the requirements for applying for a variance to the Middletown Zoning Code. A request to receive a variance from Section 46 or any part of Section 46, will require the following additional listed in this section in order for a variance to be granted. The City of Middletown shall maintain all records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.

46.09.01 SPECIFIC SITUATION VARIANCES

- A. Buildings on a Historic Register-Variations may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or any locally-adopted historic district with regard to the procedures set forth in the remainder of this section and provided the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
- B. Functionally Dependent Use or Facility-Variations may be issued for new construction and substantial improvements and other development necessary for the conduct of a functionally dependent use or facility provided the structure or other development is protected by methods that minimize flood damage, creates no additional threat to public safety and meet all the requirements of Section 46.05.

- C. Floodway Prohibition-Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

46.09.02 CONSIDERATIONS FOR GRANTING OF VARIANCES

The Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other section 46 of the Zoning Code and the items listed below as 46.09.02(A)-46.09.02(K). Upon consideration of these factors and the purposes of this regulation, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this regulation.

- A. The danger that materials may be swept onto other lands to the injury of others;
- B. The danger to life and property due to flooding or erosion damage;
- C. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- D. The importance of the services provided by the proposed facility to the community;
- E. The necessity of the facility to waterfront location, in the case of a functionally dependent facility;
- F. The availability of alternative locations not subject to flooding or erosion damage for the proposed use;
- G. The compatibility of the proposed use with existing and anticipated development;
- H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- I. The safety access to the property in times of flood for ordinary and emergency vehicles;
- J. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- K. The cost of providing governmental services during and after flooding conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electric and water systems, and streets and bridges.

46.09.03 CONDITIONS FOR VARIANCES

- A. Variances shall only be used upon a determination that the variance is the minimum necessary to afford relief considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum necessary as not to destroy the historic character and design of the building and result in the loss of historic designation of the building. Variances pertain

to a piece of property and are not personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so usual that complying with the regulation would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that property and not be shared by adjacent parcels. For example, economic or financial hardship is not sufficient cause for a variance, nor are inconvenience, aesthetic considerations, physical handicaps, personal preferences or disapproval of one's neighbors.

- B. Variances shall only be used upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, damage the rights or property values of other persons in the area, cause fraud on or victimization of the public, or conflict with existing local laws, ordinances or regulations. Only hardships that are based on unusual or unique physical characteristics of the property in question, characteristics that are not shared by adjacent parcels, shall qualify to meet subsection (ii) above. Claims of hardship based on the structure, on economic gain or loss, or on personal or self-created circumstances are not sufficient causes for the granting of a variance.
- C. No variance may be issued within a regulatory floodway that will result in any increase in the 100-year flood levels. A variance may be issued for new construction, substantial improvements and other development necessary for the conduct of a "functionally dependent use" provided that there is good and sufficient cause for providing relief; and the variance does not cause a rise in the 100-year flood level within a regulatory floodway. The structure and other development must be protected by methods that minimize flood damages.
- D. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation (BFE) and the elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation.

(Section added effective 3/2/09)