

1-87 Providing for flood damage prevention within the Village of Fonda as authorized by the NYS Constitution Article IX Section 2 and Environmental Conservation Law Article 36

Section 1 Statutory authorization and purpose

1.1 Findings The Board of Trustees of the Village of Fonda finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Fonda and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objective hereinafter set forth this Local law is adopted

1.2 State purpose It is the purpose of this local law to promote the public health safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to (1) regulate uses which are dangerous to health safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities (2) require that uses vulnerable to floods including facilities which serve such used be protected against flood damage at the time of initial construction (3) control the alteration of natural floodplains stream channels and natural protective barriers which are involved in the accommodation of flood waters (4) control filling grading dredging and other development which may increase erosion or flood damages (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands and (6) qualify and maintain participation in the National Flood Insurance Program

1.3 Objective The objectives of this local law are 1) to protect human ,life and health (2) to minimize expenditure of public money for costly flood control projects (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public (4) to minimize prolonged business interruptions (5) to minimize damage to public facilitates and utilities such as water and gas mains, electric telephone and sewer lines streets and bridges located in areas of special flood hazard (6) to help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future blight areas (7) to insure that potential buyers are notified that property is in an area f special flood hazard and (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Section 2 Definitions

Unless specifically defined below words or phrases used in this local law shall be interpreted so as to give them the meaning they have in common usage and to give this local law its most reasonable application

Appeal means a request for a review of the enforcement officers interpretation of any provision of this local law or a request for a variance.

Area of shallow flooding means a designated A0 zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident

Area of special flood hazard means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces

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without causing damage to the elevated portion of the building or the supporting foundation system.

Building means any structure built for support shelter or enclosure for occupancy or storage.

Coastal high hazard area means the area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE VO or V.

Development means any man-made change to improved or unimproved real estate including but not limited to buildings or other structures mining dredging filling grading paving excavation or drilling operations located within the are of special flood hazard

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of fill solid foundation perimeter walls pilings columns (posts and piers) or shear walls.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow or inland or tidal waters and/or (2) the unusual and rapid accumulation or runoff of surface waters from any source

Flood boundary and floodway map FBFM means an official map of the community published by the Federal Emergency Management Agency as part of a riverine Communitys Flood Insurance Study The FBFM delineates a regulatory floodway along water courses studied in detail in the flood insurance study.

Flood hazard boundary map FHBM means an official map of a community issued by the Federal Emergency Management Agency where the boundaries of the area of special flood hazard have been defined but no water surface elevation data is provided

Flood insurance rate map (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zone applicable to the community

Flood insurance study means the official report provided in which the Federal Insurance Administration has provided flood profiles as well as the flood boundary floodway map and the water surface elevation of the base flood

Floodproofing means any combination of structural and nonstructural additions changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property water and sanitary facilities structures and their contents.

Floodway means 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 cumulative increasing the water surface elevation more than 1.0 foot

Floor means the top surface of an enclosed area in a building including basement IE top of slab in concrete slab construction or top of wood frame construction

Functional dependent use means a use which cannot perform its intended purpose unless it is locate or carried out in close proximity to water such as a docking or port facility necessary for the loading and unloading of cargo or passengers shipbuilding and ship repair. The term does not include long-term storage manufacture sales or service facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure

Lowest floor means lowest level including basement or cellar of the lowest enclosed area An unfinished or flood resistant enclosure usable solely for parking of vehicles building access or storage in an area other than a basement or cellar is not considered a buildings lowers floor

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provided that such enclosure is not built as to render the structure in violation of the applicable nonelevation design requirements of this local law

Manufactured home means a structure transportable in one or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Mean sea level means for purpose of the National Flood insurance program the national geodetic vertical datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community flood insurance rate map are referenced.

Mobile home has the same meaning as manufactured home

National Geodetic Vertical Datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing elevations within the flood plain.

New construction means structures for which the start of construction commenced on or after the effective date of this Local law.

Principally above ground means that at least 51 percent of the actual cash value of the structure excluding land value is above ground

100 year flood has the same meaning as base flood

Regulatory floodway means 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 a designated height as determined by the Federal Emergency Management Agency in a flood insurance study or by other agencies as provided in section 4.3-2 of the law.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach

Start of construction means the initiation excluding planning and design of any phase of a project physical alteration of the property and shall include land preparation such as clearing grading and filling installation of streets and/or walkways excavation for a basement footing piers or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages sheds storage trailers and building materials.

Structure means a walled and roofed building a manufactured home or a gas or liquid storage tank that is principally above ground.

Substantial improvement means any repair, reconstruction or improvement of a structure the cost of which equal or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is stated or (2) if the structure has been damaged and is being restored before the damage occurred For the purpose 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 the alteration affects the external dimensions of the structure The term does not however include either: (1) any project for improvement of a structure to comply with existing state or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places

Variance means a grant of relief from the requirement of this local law which permits construction in a manner that would otherwise be prohibited by this local law.

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Section 3 General Provision

Section 3.1 Lands to which this local law applies This local law shall apply to all areas of special flood hazards within the jurisdiction of Village of Fonda NY

Section 3.2 Basis for establishing the areas of special flood hazard The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled The Flood Insurance Study of the Village of Fonda NY dated July 19, 1982 with accompanying flood insurance rate maps and flood boundary floodway maps is hereby adopted by reference and declared to be a part of this local law. The flood insurance study is on file at the office of the Village Clerk of Fonda NY

Section 3.3 interpretation conflict with other laws This local law is adopted in response to revisions to the national flood insurance program effective October 1 1986 and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance In their interpretation and application the provision of this local law shall be held to the minimum requirements adopted for the promotion of the public health safety and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules regulations or ordinance the most restrictive or that imposing the higher standards shall govern.

Section 3.4 Severability The invalidity of any section or provision of this local law shall not invalidate any other section or provision thereof.

Section 3.5 Penalties for noncompliance No structure shall hereafter be constructed located extended converted or altered and no land shall be excavated or filled without full compliance with the terms of this local law and other applicable regulations. Violations of the provisions of this local law by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation. Any person who violates this Local law or fails to comply with any of its requirements shall upon conviction thereof be fined not more than 250 dollars or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Fonda from taking such other lawful action as is necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for an received an approve variance under section 6.0 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

Section 3.6 Warning and disclaimer of liability The degree of flood protection required by this local law considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Local law does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Village of Fonda any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this Local law or any administrative decision lawfully made thereafter.

Section 4 Administration

4.1 Designation of the local administrator

The enforcement officer is hereby appointed to administer and implement this local law by granting or denying development permit applications in accordance with its provisions

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Section 4.2 Establishment of development permit A development permit shall be obtained before the start of construction or any development within any area of special flood hazard established in Section 3.2. Application for a development permit shall be made on forms furnished by the Local Administrator and may include but not be limited to plans in duplicate drawn to scale showing the nature location dimensions and elevations of the area in question existing or proposed structures fill storage of materials drainage facilities and the location of the foregoing.

4.2-1 Application stage The following information is required where applicable:

(1) elevation in relation to mean sea level of the lowest floor (including basement or cellar) of all structures (2) elevation in relation to mean sea level to which any structure has been floodproofed (3) when required a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in section 5.1-2(1). (4) certification by a licensed professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 5.2-2 and (5) description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

4.2-2 Construction stage Upon placement of the lowest floor or floodproofing by whatever means it shall be the duty of the permit holder to submit to the local administrator a certificate of the as built elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same. Any further work undertaken prior to submission and approval of the certificate shall be at the permit holders risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

4.3 Duties and responsibilities of the local administrator Duties of the local administrator shall include But not be limited to

4.3-1 Permit Application Review (1) review all development permits to determine that the permit requirements of this local law have been satisfied (2) review all development permits to determine that all necessary permits have been obtained from those federal state or local governmental agencies from which prior approval is required (3) review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this local law adversely affects means physical damage to adjacent properties. A hydraulic engineering study may be required of the applicant for this purpose (i) if there is no adverse effect then the permit shall be granted consistent with the provisions of this local law (ii) if there is adverse effect then flood damage mitigation measures shall be made a condition of the permit (4) review all development permits for compliance with the provisions of Section 5.1-5 Encroachments

Section 4.3-2 Use of other base flood data When base flood elevation data has not been provided in accordance with section 3.2 basis for establishing the areas of special flood hazard the enforcement officer shall obtain review and reasonably utilize any base flood elevation data available from a federal state or other source including data development pursuant to section 5.1-4(4) in order to administer section 5.2 in order to administer sections 5.2-1 specific standards and section 5.3 floodways.

Section 4.3-3 Information to be obtained and maintained (1) obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement or cellar)

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of all new or substantially improved structures and whether or not the structure contains a basement or cellar (2) for all new substantially improved floodproofed structure (i) verify and record the actual elevation in relation to mean sea level and (ii) maintain the floodproofing certifications required in section 5.1 and 5.2. (3) maintain for public inspection all records pertaining to the provision of this local law, including variances when granted and certificates of compliance.

Section 4.3-4 Alteration of watercourse (1) notify adjacent communities and the state coordinating agency prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director Federal Emergency Management Agency Region II 26 Federal Plaza New York, NY 10278 (2) require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished

Section 4.3-5 Interpretation of FHBM firm or FBFM boundaries The Local Administrator shall have the authority to make interpretations where there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions. Base flood elevation data established pursuant to Section 3.2 and/or section 4.3-2 when available shall be used to accurately delineate the area of special flood hazards. The local administrator shall use flood information from any other authoritative source including historical data to establish the limits of the area of special flood hazards when base flood elevations are not available.

4.3-6 Stop Work Orders (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop work order by the local administrator. Disregard of a stop work order shall be subject to the penalties described in section 3.5 of this local law. (2) all floodplain development found noncompliant with the provisions of this law and/or the conditions of the approved permit shall be subject to the issuance of a stop work order by the local administrator. Disregard of a stop work order shall be subject to the penalties described in section 3.5 of this local law.

4.3-7 Inspection The local administrator and/or the developers engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of this local law.

4.3-8 Certificate of compliance (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises or both or part thereof hereafter created erected changed converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of either the development permit or the approved variance. (2) all other development occurring within the area of special flood hazard will have upon completion a certificate of compliance issued by the local administrator. All certificates shall be based upon the inspection conducted subject to section 4.3-7 and/or any certified elevations, hydraulic information, floodproofing anchoring requirements or encroachment analysis which may have been required at a condition of the approved permit.

Section 5.1 General Standards In all areas of special flood hazard the following standards are required

Section 5.1-1 Anchoring (1) all new construction and substantial improvements shall be anchored to prevent flotation collapse or lateral movement of the structure (2) all manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation collapse or lateral movement. Methods of anchoring may include but are not to be limited to use of over the top or frame ties to ground

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anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

Section 5.1-2 Construction materials and methods (1) all new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage (2) all new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

Section 5.1-3 Utilities (1) Electrical heating ventilation plumbing air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for located below the base flood elevation a professional engineers or architect certification is required. (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system (3) new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters and (4) on site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Section 5.1-4 Subdivision proposals (1) all subdivision proposals shall be consistent with the need to minimize flood damage (2) all subdivision proposals shall have public utilities and facilities such as sewer gas electrical and water systems located and constructed to minimize flood damage (3) all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage and (4) base flood elevation data shall be provided for subdivision proposals and other proposed development including proposals for manufactured home parks and subdivisions greater than either 50 lots or 5 acres.

5.1-5 Encroachments (1) all proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects of the flood carrying capacity of the area of special flood hazards set forth in section 4.3-1(3) permit review. This may require the submission of additional technical data to assist in the determinations (2) in all areas of special flood hazard in which base flood elevation data is available pursuant to section 4.3-2 or section 5.1-4(4) and no floodway has been designated the cumulative effect of any proposed development when combined with all other existing and anticipated development shall not increase the water surface elevation of the base flood more than one foot at any point. (3) in all areas of the special flood hazard where floodway data is provided or available pursuant to section 4.3-2 the requirements of section 5.3 floodways shall apply.

Section 5.2 Specific standards In all areas of special flood hazards where base flood elevation data have been provided as set forth in section 3.2 Basis for establishing the areas of special flood hazard or in section 4.3-2 use of other base flood data, the following standards are required:

Section 5.2-1 Residential construction New construction and substantial improvement of any residential structure shall have the lowest floor including basement elevated to or above base flood elevation.

Section 5.2-2 Nonresidential construction New construction and substantial improvement of any commercial industrial or other nonresidential structure shall either have the lowest floor including basement elevated to the level of the base flood elevation or together with attendant utility and sanitary facilities shall (1) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water (2) have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs

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for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria: (i) a minimum of two openings having a total net area of not less than one square inch for every square foot on enclosed area subject to flooding; (ii) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade and (iii) openings may be equipped with louvers valves screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. (3) If the structure is to be floodproofed (i) a licensed professional engineer or architect shall develop and/or review structural design specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and (ii) a licensed professional engineer or licensed land surveyor shall certify the specific elevation in relation to mean sea level to which the structure is floodproofed. The local administrator shall maintain on record a copy of all such certificate noted in this section.

5.2-3 Construction standards for areas of special flood hazards without base flood elevations

(1) new construction or substantial improvements of structures including manufactured homes shall have the lowest floor including basement elevated at least 2 feet above the highest adjacent grade next to the proposed foundation of the structure
(2) fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria: (i) a minimum of two openings having a total net area of not less than one square inch for every square foot on enclosed area subject to flooding; (ii) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade and (iii) openings may be equipped with louvers valves screens or other coverings or devices

Section 5.3 Floodways Located within areas of special flood hazard are areas designated as floodways. see definition section 2.0. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by section 4.3-2 all encroachments including fill new constructions substantial improvements and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge

Section 6.0 Variance procedure

Section 6-1 Appeal Board (1) the flood control appeals board as established by village of Fonda shall hear and decide appeals and requests for variances from the requirements of this Local law
(2) the flood control appeals board shall hear and decide appeals when it is alleged there is an error in any requirement decision or determination made by the enforcement officer in the enforcement or administration of this local law. (3) those aggrieved by the decision of the Board of appeals may appeal such decision to the Supreme court pursuant to article 78 of the civil practice law and rules. (4) in passing upon such applications the board of appeals shall consider all technical evaluations all relevant factors standards specified in other sections of this Local law and (i) the danger that material may be swept onto other lands to the injury of others (ii) the danger to life and property due to flooding or erosion danger (iii) the susceptibility of the proposed facility and

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its contents to flood damage and the effect of such damage on the individual owner (iv) the importance of the services provided by the proposed facility to the community (v) the necessity to the facility of A waterfront location where applicable (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage (vii) the compatibility of the proposed use with existing and anticipated development (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of the area (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles (x) the costs to local governments and the dangers associated with conducting search and rescue operations during period of flooding (xi) 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 (xii) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer gas electrical and water systems and streets and bridges (5) upon consideration of the factors of section 6-1(4) and the purposes of this Local law the Board of appeals may attach such conditions to the granting of variances as it deems necessary to further the proposes of this Local law (6) the local administrator shall maintain the records of all appeal actions including technical information and report any variances to the federal emergency management agency upon request.

Section 6-2 Conditions for variances (1) Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in Section 6-1 (4) have been fully considered. As the lot size increases beyond the one-half acre the technical justification required for issuing the variance increases. (2) variances ma be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section (3) variances may be issued by a community for new constriction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of subparagraphs 1,4,5 and 6 of this sections are met (ii) the structure of other development is protected by methods that minimize flood damages during the base flood and create though additional threats to public safety. (4) Variances shall not be issued within any designated floodway in any increase in flood levels during the base flood discharge would result. (5) Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard to afford relief (6) Variances shall only be issued upon (1) a showing of good and sufficient cause (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant and (3) a determination that the granting of a variance will not result in increased flood heights additional threats to public safety extraordinary public expense create nuisances cause fraud on or victimization of the public as identified in Section 4.4-1(4) or conflict with existing local laws or ordinances (7) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 6 This local law shall become effective immediately