

Chapter 81
FLOOD DAMAGE PREVENTION

ARTICLE I
Findings; Purpose

- § 81-1. Findings.
- § 81-2. Purpose.
- § 81-3. Objectives.

ARTICLE II
Terminology

- § 81-4. Definitions.

ARTICLE III
General Provisions

- § 81-5. Lands to which this chapter applies.
- § 81-6. Basis for establishing the areas of special flood hazard.
- § 81-7. Interpretation, conflict with other laws.
- § 81-8. Penalties for offenses.
- § 81-9. Warning and disclaimer of liability.

ARTICLE IV
Administration

- § 81-10. Designation of the local administration.
- § 81-11. Establishment of the development permit.
- § 81-12. Duties and responsibilities of the local administrator.

ARTICLE V
Provisions for Flood Hazard Reduction

- § 81-13. General standards.
- § 81-14. Specific standards.
- § 81-15. Floodways.

ARTICLE VI
Variance Procedure

- § 81-16. Appeals Board.
- § 81-17. Conditions for variances.

[HISTORY: Adopted by the Town Board of the Town of Rochester 1-31-1991 by L.L. No. 2-1991. Amendments noted where applicable.]

ARTICLE I
Findings; Purpose

- § 81-1. Findings.

The Town Board of the Town of Rochester finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Rochester 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 objectives hereinafter set forth, this chapter is adopted.

§ 81-2. Purpose.

It is the purpose of this chapter 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:

- A. 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 height or velocities;
- B. Require that uses vulnerable to floods, including facilities which 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 which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 81-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health;
- B. To minimize expenditure of public money 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;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood-blight areas;
- G. To provide that developers are notified that property is in an area of special flood hazard; and,
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

ARTICLE II
Terminology

§ 81-4. Definitions.

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

APPEAL — A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO, 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 annual depth of one foot 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.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 – 30, A99, V, VO, VE or V1 – 30. It is also commonly referred to as the base floodplain or one-hundred-year floodplain.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

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

BUILDING — See "structure."

CELLAR — The same meaning as "basement."¹

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING — A nonbasement building:

- A. Built, in the case of a building in Zones A1 – 30, AE, A, A99, AO, AH, B, C, X or D, to have the top of the elevated floor or, in the case of a building in Zones V1 – 30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and

¹ Editor's Note: Former definition for "coastal high-hazard area" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1 – 30, AE, A, A99, AO, AH, B, C, X or D, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with opening sufficient to facilities the unimpeded movement of floodwaters. In the case of Zone V1 – 30, VE or V, elevated building also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

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 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 complete before the effective date of the floodplain management regulations adopted by the community.

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 manufactured 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).

FEDERAL EMERGENCY MANAGEMENT AGENCY — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY — An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See “flood elevation study.”

FLOOD or FLOODING:

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters;
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.

- B. “Flood” or “flooding” also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) above.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source (see definition of “flooding”).

FLOODPROOFING — 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 — Has the same meaning as “regulatory floodway.”

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair facilities. The term does not include long-term storage, manufacturing, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR — The person appointed by the Town Board under § 81-10 of this chapter to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person shall be the Code Enforcement Officer unless otherwise designated by the Town Board.²

² Editor’s Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

LOWEST FLOOR — Lowest floor of the lowest enclosed area (including basement or cellar). 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 enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — 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 does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes 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's 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 varying elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation and includes any subsequent improvements to such structure.

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 of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD — Has the same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — At least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATION VEHICLE — A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters recreational, camping, travel or seasonal use.

REGULATORY 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 a designated height as

determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 81-12B of this chapter.³

START OF CONSTRUCTION — The initiation, excluding planning and design, of any phase or 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, footings, piers or foundations or the erections of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes the “actual start” means affixing of the manufactured home to its permanent site.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure’s continued designation as an historic structure.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

ARTICLE III General Provisions

§ 81-5. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Rochester.

§ 81-6. Basis for establishing the areas of special flood hazard.

- A. The areas of special flood hazard are identified by the Federal Emergency Management Agency as follows:

³ Editor’s Note: Former definition for “sand dune” was deleted at time of adoption of Code (see Ch. I, General Provisions, Art. I).

- (1) A scientific and engineering report entitled, "Flood Insurance Study, Town of Rochester, New York, Ulster County," dated February 6, 1991, with Flood Insurance Rate Map/Maps enumerated on Map Index No. 360861, dated February 6, 1991.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the Assessor's office, Town Hall, Accord, New York.

§ 81-7. Interpretation, conflict with other laws.

- A. This chapter includes all revisions to the National Flood Insurance Program through November 1, 1989, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 81-8. Penalties for offenses.

No structure in an area of special flood hazard 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 chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 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 Town of Rochester from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 81-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is 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 chapter 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 chapter shall not create liability on the part of the Town of Rochester, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE IV
Administration

§ 81-10. Designation of the local administration.

The Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying development permits in accordance with its provisions.

§ 81-11. Establishment of the development permit.

A floodplain development permit shall be obtained before the start of construction or any other development, including the placement or replacement of manufactured homes or recreational vehicles, within the area of special flood hazard as established in § 81-6. 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 and showing the nature, locations, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the locations of the foregoing.

- A. Fees. All applications for a floodplain development permit shall be accompanied by an application fee in an amount set from time to time by resolution of the Town Board.⁴ In addition, the applicant shall pay all reasonable costs necessary for review, approval and inspection of this project.⁵
- B. Application stage. The following information is required where applicable:
- (1) Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures;
 - (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
 - (3) When required, a certificate from a licensed professional engineer or architect that the utility flood proofing will meet the criteria in § 81-13B(1);
 - (4) Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 81-14C; and
 - (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- C. Construction stage. Upon placement of the lowest floor, or floodproofing by whatever means, it shall be the duty of the permit holder to provide the local administrator a certificate of the 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 the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be

⁴ Editor's Note: The fee schedule is on file in the town offices.

⁵ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's 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.

§ 81-12. Duties and responsibilities of the local administrator.

Duties of the local administrator shall include, but not be limited to:

A. Permit application review.

- (1) Review of all development permit applications to determine that the requirements of this chapter have been satisfied.
- (2) Review of all development permit applications to determine that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required.
- (3) Review of all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent and other properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (4) Review of all development permits for compliance with the provisions of § 81-13D, Encroachments.

B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 81-6, Basis for establishing the areas of special flood hazard, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 81-13C(4), in order to administer § 81-14, Specific standards and § 81-15, Floodways.

C. Information to be obtained and maintained.

- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
- (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
 - (b) Maintain the floodproofing certifications required in §§ 81-13 and 81-14.

- (3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances when granted and certificates of compliance.
- D. Alteration of watercourses.
- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocated of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 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.
- E. Interpretation of FIRM boundaries.
- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
 - (2) Base flood elevation data established pursuant to § 81-6 and/or § 81-12B, when available, shall be used to accurately delineate the areas of special flood hazard.
 - (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish flood elevations within the areas of special flood hazard when base flood elevations are not available.
- F. Stop-work orders.
- (1) All floodplain development found ongoing without a development permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall subject the violator to the penalties described in § 81-8 of this chapter.
 - (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall subject the violator to the penalties described in § 81-8 of this chapter.
- G. Inspections. The local administrator and/or the developer's 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 the development permit and/or any variance provisions.
- H. 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 this chapter.

- (2) All other development occurring within the designated areas of special flood hazard will have upon completion a certificate of compliance issued by the local administrator.
- (3) All certifications shall be based upon the inspections conducted subject to § 81-12G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

ARTICLE V
Provisions for Flood Hazard Reduction

§ 81-13. General standards.

In all areas of special flood hazard the following standards are required:

A. 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. Manufactured homes shall be elevated in accordance with § 81-14B.
- (3) Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (4) All recreational vehicles placed on-site for longer than 180 consecutive days and not fully licensed and ready for highway use must be elevated and anchored to resist flotation, collapse or lateral movement. Recreation vehicles shall be elevated in accordance with § 81-14B.

B. 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 location below the base flood elevation, a professional engineer's or architect's certification is required;
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (3) New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of floodwaters; and
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

C. 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 by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) greater than either 50 lots or five acres.

D. Encroachments.

- (1) All proposed development in riverine areas where no flood elevation data are available (unnumbered A Zones) shall be reviewed as set forth in § 81-12A to determine the effects of the encroachment on the flood-carrying capacity of the stream. The local administrator may require submission of additional technical analyses and data necessary to complete the determination.
- (2) In all areas of special flood hazard in which base flood elevation data are available pursuant to § 81-12B or Subsection C(4) and no floodway has been determined, the cumulative effects 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 are provided or available pursuant to § 81-12B, the requirements of § 81-15, Floodways, shall apply except as provided in Subsection D(4).
- (4) Notwithstanding any other provisions of this chapter, certain development in Zones A1 – 30, AE and AH may be permitted to increase the water surface elevation of the base flood (e.g., dams, levees, etc.), provided that the Code Enforcement Officer endorses application to the Federal Emergency Management Agency (FEMA), the permit applicant provides all necessary data and analyses and pays all fees and FEMA approval is received.
- (5) The local administrator shall require within Zones AH and AO adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

§ 81-14. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 81-6, Basis for establishing the areas of special flood hazards and § 81-12B, Use of other base flood and floodway data, the following standards are required:

- A. Residential construction. New construction and substantial improvements of residential structures shall:

- (1) In Zones A1-30, AE and AH have the lowest floor, including basement or cellar, elevated to or above the base flood elevation;
- (2) In all areas of special flood hazard have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which 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 architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automotive entry and exit of floodwaters.
- (3) Within any AO Zone, have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- (4) Within any A Zone, when no base flood data are available, have the lowest floor elevated at least three feet above the highest adjacent grade.

B. Manufactured homes and recreational vehicles.

- (1) A manufactured home that is placed or substantially improved on a site in an A1 – 30, AE or AH Zone that is either:
 - (a) Outside of a manufactured home park or subdivision;
 - (b) In a new manufactured home park or subdivision as herein defined;
 - (c) In an expansion to an existing manufactured home park or subdivision as herein defined; or
 - (d) In an existing manufactured home park or subdivision as herein defined on which a manufactured home has incurred substantial damage as the result of a flood shall be elevated on a permanent foundation such that the lowest floor is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (2) A manufactured home to be placed or substantially improved on a site located in a A1 – 30, AE or AH Zone in a manufactured home park or subdivision, as herein defined, that is not subject to the provisions of Subsection B(1) shall be elevated so that either:
 - (a) The lowest floor of the manufactured home is at or above the base flood elevation; or

- (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system.
 - (3) New construction or substantial improvements of manufactured homes in Zone A, where no base flood elevation data are available, shall be elevated at least three feet above the highest adjacent grade.
 - (4) All recreational vehicles placed on-site for longer than 180 consecutive days and not fully licensed and ready for highway use must be elevated in accordance with Subsection B(1), (2) or (3).
 - (5) Manufactured homes and recreational vehicles, on-site for longer than 180 consecutive days, with fully enclosed areas below the lowest floor, must meet the requirements of Subsection A(2).
- C. Nonresidential construction.
- (1) In Zones A1 – 30, AE and AH, new construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either;
 - (a) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or
 - (b) Be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - (2) In an AO Zone, all new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
 - (3) In an A Zone, when no base flood data are available, all new construction and substantial improvements shall have the lowest floor elevated at least three feet above the highest adjacent grade.
 - (4) If the structure is to be elevated, fully enclosed areas below the lowest floor that are usable solely for parking for vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically (without human intervention) equalize hydrostatic 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:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (b) The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and openings may be equipped with louvers,

valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

- (5) If the structure is to be floodproofed, 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 for meeting the provisions of § Subsection C(1)(b) (in relation to mean sea level) to which the structure is floodproofed.
- (6) The local administrator shall maintain on record a copy of all such certificates noted in this section.

§ 81-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways (see definition, Article II). The floodway is an extremely hazardous area due to high velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by § 81-6 or when applicable, § 81-12B, all encroachments including fill, new construction, 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.

ARTICLE VI Variance Procedure

§ 81-16. Appeals Board.

- A. The Zoning Board of Appeals as established by the Town of Rochester shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;

- (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The costs to local governments and the dangers associated with conducting search-and-rescue operations during periods of flooding;
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (12) The costs of providing governmental services during and after flood conditions, including search-and-rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. 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.

§ 81-17. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that items in § 81-16D(1) through (12) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (1) The proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure."
 - (2) The variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that the criteria of Subsections A, D, E and F of this section are met; the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- F. Variances shall only be issued upon receiving written justification of:
 - (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, causes fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.